

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-230
SENATE BILL 916

AN ACT TO REWRITE THE LAWS REGULATING COSMETIC ART AND TO
REGULATE THE PRACTICE OF MASSAGE AND BODYWORK THERAPY.

The General Assembly of North Carolina enacts:

PART I. REWRITE OF THE NC COSMETIC ART ACT.

Section 1. Chapter 88 of the General Statutes is repealed.

Section 2. The General Statutes are amended by adding the following new Chapter to read:

"Chapter 88B.

"Cosmetic Art.

"§ 88B-1. Short title.

This act shall be known and may be cited as the North Carolina Cosmetic Art Act.

"§ 88B-2. Definitions.

The following definitions apply in this Chapter:

- (1) Apprentice. – A person who is not a manager or operator and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.
- (2) Board. – The North Carolina Board of Cosmetic Art Examiners.
- (3) Booth. – A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.
- (4) Booth renter. – A person who rents a booth in a cosmetic art shop.
- (5) Cosmetic art. – All or any part or combination of: (i) the systematic massaging with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet; (ii) the use of cosmetic chemicals and preparations and antiseptics; (iii) manicuring, including the application of artificial nails; (iv) esthetics; or (v) cutting, coloring, cleansing, arranging, dressing, waving, and marcelling the hair, and the use of electricity for stimulating growth of hair.
- (6) Cosmetic art shop. – Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.
- (7) Cosmetic art school. – Any building or part thereof where cosmetic art is taught.
- (8) Cosmetologist. – Any individual who is licensed to practice all parts of cosmetic art.

- (9) Cosmetology teacher. – An individual licensed by the Board to teach all parts of cosmetic art.
- (10) Esthetician. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.
- (11) Esthetician teacher. – An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.
- (12) Manicurist. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.
- (13) Manicuring. – The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term 'manicuring' shall not include the treatment of pathologic conditions.
- (14) Manicurist teacher. – An individual licensed by the Board to teach manicuring.
- (15) Shampooing. – The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair.

"§ 88B-3. Creation and membership of the Board; term of office; removal for cause; officers.

(a) The North Carolina Board of Cosmetic Art Examiners is established. The Board shall consist of six members who shall be appointed as follows:

- (1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a cosmetologist.
- (2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a cosmetologist.
- (3) The Governor shall appoint two cosmetologists, a cosmetology teacher, and a member of the public who is not licensed under this Chapter.

(b) Each cosmetologist member shall have practiced all parts of cosmetic art in this State for at least five years immediately preceding appointment to the Board and shall not have any connection with any cosmetic art school while serving on the Board. The cosmetology teacher member shall be currently employed as a teacher by a North Carolina public school, community college, or other public or private cosmetic art school and shall have practiced or taught cosmetic art for at least five years immediately preceding appointment to the Board.

(c) Cosmetologist members of the Board shall serve staggered terms of three years. No Board member shall serve more than two consecutive terms, except that each member shall serve until a successor is appointed and qualified. All other board members shall serve three-year terms, but they shall not be staggered.

(d) The Governor may remove any member of the Board for cause.

(e) A vacancy shall be filled in the same manner as the original appointment, except that unexpired terms in seats appointed by the General Assembly shall be filled

in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(f) The Board shall elect a chair, a vice-chair, and other officers as deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(g) The Board shall not issue a teacher's license to any Board member during that member's term on the Board.

(h) No Board member may be employed by the Board for at least one year after that member's term expires.

"§ 88B-4. Powers and duties of the Board.

(a) The Board shall have the following powers and duties:

- (1) To administer and interpret this Chapter.
- (2) To adopt, amend, and repeal rules to carry out the provisions of this Chapter.
- (3) To examine and determine the qualifications and fitness of applicants for licensure under this Chapter.
- (4) To issue, renew, deny, restrict, suspend, or revoke licenses.
- (5) To conduct investigations of alleged violations of this Chapter or the Board's rules.
- (6) To collect fees required by G.S. 88B-20 and any other monies permitted by law to be paid to the Board.
- (7) To approve new cosmetic art schools.
- (8) To inspect cosmetic art schools and shops.
- (9) To adopt rules for the sanitary management and physical requirements of cosmetic art shops and cosmetic art schools.
- (10) To establish a curriculum for each course of study required for the issuance of a license issued under this Chapter.
- (11) To employ an executive director and any additional professional, clerical, or special personnel necessary to carry out the provisions of this Chapter, and to purchase or rent necessary office space, equipment, and supplies.
- (12) To adopt a seal.
- (13) To carry out any other actions authorized by this Chapter.

(b) A member of the Board shall have the authority to inspect cosmetic art shops and cosmetic art schools at any reasonable hour to determine compliance with the provisions of this Chapter if the inspection is made: (i) at the request of the Board, or with the approval of the chair or the executive director as the result of a complaint made to the Board or a problem reported by an inspector, or (ii) at the request of an inspector who deems it necessary to request the assistance of a Board member and who has the prior approval of the chair or executive director to do so. A Board member who makes an inspection pursuant to this subsection shall file a report with the Board before requesting reimbursement for expenses.

(c) The Board shall keep a record of its proceedings relating to the issuance, renewal, denial, restriction, suspension, and revocation of licenses. This record shall also contain each licensee's name, business and home addresses, license number, and the date the license was issued.

"§ 88B-5. Meetings and compensation of the Board.

(a) Each member of the Board shall receive compensation for services and expenses as provided in G.S. 93B-5, but shall be limited to payment for services deemed official business of the Board when such business exceeds three continuous hours per day. Official business of the Board includes meetings called by the chair and time spent inspecting cosmetic art shops and schools as permitted by this Chapter. No payment for per diem or travel expenses shall be authorized or paid for Board meetings other than those called by the chair. The Board may annually select one member to attend a national state board of cosmetic arts meeting on official business of the Board. No other Board members shall be authorized to attend trade shows or to travel out-of-state at the Board's expense.

(b) The Board shall hold four regular meetings a year in the months of January, April, July, and October. The chair may call additional meetings whenever necessary.

"§ 88B-6. Board office, employees, funds, budget requirements.

(a) The Board shall maintain its office in Raleigh, North Carolina.

(b) The Board shall employ an executive director who shall not be a member of the Board. The executive director shall keep all records of the Board, issue all necessary notices, and perform any other duties required by the Board.

(c) With the approval of the Director of the Budget and the Office of State Personnel, the Board may employ as many inspectors, investigators, and other staff as necessary to perform inspections and other duties prescribed by the Board. Inspectors and investigators shall be experienced in all parts of cosmetic art and shall have authority to examine cosmetic art shops and cosmetic art schools during business hours to determine compliance with this Chapter.

(d) The salaries of all employees of the Board, including the executive director, shall be subject to the State Personnel Act.

(e) The executive director may collect in the Board's name and on its behalf the fees prescribed in this Chapter and shall turn these and any other monies paid to the Board over to the State Treasurer. These funds shall be credited to the Board and shall be held and expended under the supervision of the Director of the Budget only for the administration and enforcement of this Chapter. Nothing in this Chapter shall authorize any expenditure in excess of the amount credited to the Board and held by the State Treasurer as provided in this subsection.

(f) The Executive Budget Act and the State Personnel Act apply to the administration of this Chapter.

"§ 88B-7. Qualifications for licensing cosmetologists.

The Board shall issue a license to practice as a cosmetologist to any individual who meets all of the following requirements:

- (1) Successful completion of at least 1,500 hours of a cosmetology curriculum in an approved cosmetic art school, or at least 1,200 hours

of a cosmetology curriculum in an approved cosmetic art school and completion of an apprenticeship for a period of at least six months under the direct supervision of a cosmetologist, as certified by sworn affidavit of three licensed cosmetologists or by other evidence satisfactory to the Board.

- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20.

"§ 88B-8. Qualifications for licensing apprentices.

The Board shall issue a license to practice as an apprentice to any individual who meets all of the following requirements:

- (1) Successful completion of at least 1,200 hours of a cosmetology curriculum in an approved cosmetic art school.
- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20.

"§ 88B-9. Qualifications for licensing as an esthetician.

The Board shall issue a license to practice as an esthetician to any individual who meets all of the following requirements:

- (1) Successful completion of at least 600 hours of an esthetician curriculum in an approved cosmetic art school.
- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20.

"§ 88B-10. Qualifications for licensing manicurists.

The Board shall issue a license to practice as a manicurist to any individual who meets all of the following requirements:

- (1) Successful completion of at least 150 hours of a manicurist curriculum in an approved cosmetic art school.
- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20.

"§ 88B-11. Qualifications for licensing teachers.

(a) Applicants for any teacher's license issued by the Board shall meet all of the following requirements:

- (1) Possession of a high school diploma or a high school graduation equivalency certificate.
- (2) Payment of the fees required by G.S. 88B-20.

(b) The Board shall issue a license to practice as a cosmetology teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a cosmetologist license issued by the Board.
- (2) Submits proof of either practice of cosmetic art in a cosmetic art shop for a period equivalent to five years of full-time work immediately prior to application or successful completion of at least 800 hours of a cosmetology teacher curriculum in an approved cosmetic art school.
- (3) Passes an examination for cosmetology teachers conducted by the Board.

(c) The Board shall issue a license to practice as an esthetician teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a cosmetologist or an esthetician license issued by the Board.
- (2) Submits proof of either practice as an esthetician in a cosmetic art shop for a period equivalent to three years of full-time work immediately prior to application or successful completion of at least 650 hours of an esthetician teacher curriculum in an approved cosmetic art school.
- (3) Passes an examination for esthetician teachers conducted by the Board.

(d) The Board shall issue a license to practice as a manicurist teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a cosmetologist or manicurist license issued by the Board.
- (2) Submits proof of either practice as a manicurist in a cosmetic art shop for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a manicurist teacher curriculum in an approved cosmetic art school.
- (3) Passes an examination for manicurist teachers conducted by the Board.

"§ 88B-12. Temporary employment permit; extensions; limits on practice.

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, or manicurist who meets all of the following:

- (1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.
- (2) Has applied to take the examination within three months of completing the required hours.
- (3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, or esthetician, as appropriate, and may not operate a cosmetic art shop.

"§ 88B-13. Applicants licensed in other states.

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, or manicurist in another state if the applicant shows:

- (1) The applicant is an active practitioner in good standing.
- (2) The applicant has practiced at least one of the three years immediately preceding the application for a license.
- (3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.
- (4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach.

"§ 88B-14. Licensing of cosmetic art shops.

(a) The Board shall issue a license to operate a cosmetic art shop to any applicant who submits a properly completed application, on a form approved by the Board, pays the required fee, and is determined, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) The applicant shall list all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(c) A cosmetic art shop shall be allowed to operate for a period of 30 days while the Board inspects and determines the shop's compliance with this Chapter and the Board's rules. If the Board is unable to complete the inspection within 30 days, the shop will be authorized to operate until such an inspection can be completed.

(d) A license to operate a cosmetic art shop shall not be transferable from one location to another or from one owner to another.

"§ 88B-15. Practice outside cosmetic art shops.

(a) Any individual licensed under this Chapter may visit the residences of individuals who are sick or disabled and confined to their places of residence in order to attend to their cosmetic needs. A licensed individual may also visit hospitals, nursing homes, rest homes, retirement homes, mental institutions, correctional facilities, funeral homes, and similar institutions to attend to the cosmetic needs of those in these institutions.

(b) An individual licensed under this Chapter may practice in a licensed barbershop as permitted by G.S. 86A-14.

"§ 88B-16. Licensing cosmetic art schools.

(a) The Board shall issue a license to any cosmetic art school that submits a properly completed application, on a form approved by the Board, pays the required license fee, and is determined by the Board, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) No one may open or operate a cosmetic art school before the Board has approved a license for the school. The Board shall not issue a license before a cosmetic art school has been inspected and determined to be in compliance with the provisions of this Chapter and the Board's rules.

(c) Cosmetic art schools located in this State shall be licensed by the Board before any credit may be given for curriculum hours taken in the school. The Board

may establish standards for approving hours from schools in other states that are licensed.

"§ 88B-17. Bond required for private cosmetic art schools.

(a) Each private cosmetic art school shall provide a guaranty bond unless the school has already provided a bond or an alternative to a bond under G.S. 115D-95. The Board may restrict, suspend, revoke, or refuse to renew or reinstate the license of a school that fails to maintain a bond or an alternative to a bond pursuant to this section or G.S. 115D-95.

(b) (1) The applicant shall file the guaranty bond with the clerk of superior court in the county in which the school is located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student or the student's parent or guardian who has suffered loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services as related to course enrollment for any reason, including suspension, revocation, or nonrenewal of a school's approval, bankruptcy, foreclosure, or the school's ceasing to operate.

(2) The bond amount shall be at least equal to the maximum amount of prepaid tuition held at any time by the school during the last fiscal year, but in no case shall be less than ten thousand dollars (\$10,000). Each application for license or license renewal shall include a letter signed by an authorized representative of the school showing the calculations made and the method of computing the amount of the bond in accordance with rules prescribed by the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

(3) The bond shall remain in force and effect until canceled by the guarantor. The guarantor may cancel the bond upon 30 days' notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(c) An applicant who is unable to secure a bond may seek from the Board a waiver of the guaranty bond requirement and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the Board, an applicant may file one of the following instead of a bond with the clerk of court in the county in which the school is located:

(1) An assignment of a savings account in an amount equal to the bond required that is in a form acceptable to the Board, and is executed by the applicant and a state or federal savings and loan association, state bank, or national bank that is doing business in this State and whose

accounts are insured by a federal depositor's corporation, and access to the account is subject to the same conditions as those for a bond in subsection (b) of this section.

- (2) A certificate of deposit that is executed by a state or federal savings and loan association, state bank, or national bank that is doing business in this State and whose accounts are insured by a federal depositor's corporation and access to the certificate of deposit is subject to the same conditions as those for a bond in subsection (b) of this section.

"§ 88B-18. Examinations.

(a) Each applicant for any examination shall file an application with the Board, on a form approved by the Board, which shall be verified by the applicant under oath, and the applicant shall pay the required examination fee. Applications shall be filed at least 30 days before the requested examination date.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in the Board's office or in a publicly supported two-year postsecondary educational institution with appropriate facilities. The Board shall reimburse an institution, if requested, for the use of its facilities in administering examinations.

(d) An applicant for a cosmetologist license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board.

"§ 88B-19. Expired school credits.

No credit shall be approved by the Board if five years or more have elapsed from the date a person enrolled in a cosmetic art school unless the person completed the required number of hours and filed an application to take an examination administered by the Board.

"§ 88B-20. Fees required.

(a) The Board may charge examination fees as follows:

(1)	<u>Cosmetologist</u>	<u>\$ 20.00</u>
(2)	<u>Apprentice</u>	<u>\$ 5.00</u>
(3)	<u>Manicurist</u>	<u>\$ 15.00</u>
(4)	<u>Esthetician</u>	<u>\$ 20.00</u>
(5)	<u>Teacher</u>	<u>\$ 25.00.</u>

(b) The Board may charge application fees as follows:

(1)	<u>Inspection of a newly established cosmetic art shop</u>	<u>\$ 25.00</u>
(2)	<u>Reciprocity applicant under G.S. 88B-13</u>	<u>\$ 15.00.</u>

(c) The Board may charge license fees as follows:

(1)	<u>Cosmetologist</u>	<u>\$ 39.00 every 3 years</u>
(2)	<u>Apprentice</u>	<u>\$ 10.00 per year</u>
(3)	<u>Esthetician</u>	<u>\$ 10.00 per year</u>
(4)	<u>Manicurist</u>	<u>\$ 10.00 per year</u>

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| (5) | <u>Teacher</u> | <u>\$ 10.00 every 2 years</u> |
| (6) | <u>Cosmetic art shop per active booth</u> | <u>\$ 3.00 per year</u> |
| (7) | <u>Cosmetic art school</u> | <u>\$ 50.00 per year</u> |
| (8) | <u>Duplicate license</u> | <u>\$ 1.00.</u> |

(d) The Board may require payment of late fees and reinstatement fees as follows:

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| (1) | <u>Apprentice, cosmetologist, esthetician, manicurist, and teacher late renewal</u> | <u>\$ 10.00</u> |
| (2) | <u>Cosmetic art schools and shops late renewal</u> | <u>\$ 10.00</u> |
| (3) | <u>Reinstatement - cosmetic art schools and shops</u> | <u>\$ 25.00.</u> |

(e) The Board may prorate fees as appropriate.

"§ 88B-21. Renewals; expired licenses.

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a teacher's license, the teacher shall annually complete a minimum of eight hours of continuing education which shall be approved by the Board. Teachers shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection.

(f) If an apprentice, cosmetologist, esthetician, manicurist, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pay the license fee for each year that the fees are delinquent and to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

"§ 88B-22. Licenses required; criminal penalty.

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an esthetician or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this act is a Class 3 misdemeanor.

"§ 88B-23. Licenses to be posted.

(a) Every apprentice, cosmetologist, esthetician, manicurist, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works.

(b) Every certificate of license to operate a cosmetic art shop or school shall be conspicuously posted in the shop or school for which it is issued.

"§ 88B-24. Revocation of licenses and other disciplinary measures.

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

- (1) Conviction of a felony shown by certified copy of the record of the court of conviction.
- (2) Gross malpractice or gross incompetency as determined by the Board.
- (3) Advertising by means of knowingly false or deceptive statements.
- (4) Permitting any individual to practice cosmetic art without a license or temporary employment permit, with an expired license or temporary employment permit, or with an invalid license or temporary employment permit.
- (5) Obtaining or attempting to obtain a license for money or other thing of value other than the required fee or by fraudulent misrepresentation.
- (6) Practicing or attempting to practice by fraudulent misrepresentation.
- (7) Willful failure to display a certificate of license as required by G.S. 88B-23.
- (8) Willful violation of the rules adopted by the Board.
- (9) Violation of G.S. 86A-15 by a cosmetologist, esthetician, or manicurist licensed by the Board and practicing cosmetic art in a barber shop.

"§ 88B-25. Exemptions.

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their professional duties:

- (1) Undertakers and funeral establishments licensed under G.S. 90-210.25.

- (2) Persons authorized to practice medicine or surgery under Chapter 90 of the General Statutes.
- (3) Nurses licensed under Chapter 90 of the General Statutes.
- (4) Commissioned medical or surgical officers of the United States Army, Air Force, Navy, Marine, or Coast Guard.
- (5) A person employed in a cosmetic art shop to shampoo hair.

"§ 88B-26. Rules to be posted.

(a) The Board shall furnish a copy of its rules relating to sanitary management of cosmetic art shops and cosmetic art schools to each shop and school licensed by the Board. Each shop and school shall post the rules in a conspicuous place.

(b) The Board shall furnish a copy of its rules relating to curriculum and schools to each licensed cosmetic art school. Each cosmetic art school shall make these rules available to all teachers and students.

"§ 88B-27. Inspections.

Any inspector or other authorized representative of the Board may enter any cosmetic art shop or school to inspect it for compliance with this Chapter and the Board's rules. All persons practicing cosmetic art in a shop or school shall, upon request, present satisfactory proof of identification. Satisfactory proof shall be in the form of a photographic driver's license or photographic identification card issued by any state, federal, or other government entity. The Board may require a cosmetic art shop or school to be inspected as a condition for license renewal.

"§ 88B-28. Restraining orders.

The Board, the Department of Health and Human Services, or any county or district health director may apply to the superior court for an injunction to restrain any person from violating the provisions of this Chapter or the Board's rules. Actions under this section shall be brought in the county where the defendant resides or maintains his or her principal place of business or where the alleged acts occurred.

"§ 88B-29. Civil penalties.

(a) Authority to Assess Civil Penalties. – In addition to taking any of the actions permitted under G.S. 88B-24, the Board may assess a civil penalty not in excess of one thousand dollars (\$1,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(b) Consideration Factors. – Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberations, take into consideration the following factors:

- (1) The nature, gravity, and persistence of the particular violation.
- (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
- (3) Whether the violation was willful and malicious.
- (4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Chapter. The schedule shall indicate for each type of

violation whether the violation can be corrected. Penalties shall be assessed for the first, second, and third violations of specified sections of this Chapter and for specified rules.

(d) Costs. – The Board may in a disciplinary proceeding charge costs, including reasonable attorneys' fees, to the licensee against whom the proceedings were brought."

Section 2.1. G.S. 88B-10, as enacted by this act, reads as rewritten:

"§ 88B-10 Qualifications for licensing manicurists.

The Board shall issue a license to practice as a manicurist to any individual who meets all of the following requirements:

- (1) Successful completion of at least 150–300 hours of a manicurist curriculum in an approved cosmetic art school.
- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20."

Section 2.2. G.S. 86A-14 reads as rewritten:

"§ 86A-14. Persons exempt from the provisions of this Chapter.

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their duties:

- (1) Persons authorized under the laws of the State to practice medicine and surgery, and those working under their supervision;
- (2) Commissioned medical or surgical officers of the U.S. Army or other components of the U.S. armed forces, and those working under their supervision;
- (3) Registered nurses and licensed practical nurses and those working under their supervision;
- (4) Licensed embalmers and funeral directors and those working under their supervision;
- (5) Persons who are working in licensed cosmetic shops or beauty schools and are licensed by the State Board of Cosmetic Art Examiners pursuant to Chapter ~~88~~88B of the General Statutes; and
- (6) Persons who are working in licensed barber shops and are licensed by the State Board of Cosmetic Art Examiners pursuant to Chapter ~~88~~88B of the General Statutes, provided that those persons shall comply with G.S. 86A-15."

Section 3. Any esthetician who submits proof to the Board that the esthetician is actively engaged in the practice of esthetics on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-9, as enacted by Section 2 of this act. A cosmetic art shop that practices esthetics only and that submits proof to the Board that the shop is actively engaged in the practice of esthetics on the effective date of this act, shall have one year from the date of this act to comply with the requirements in G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 4. Any manicurist who submits proof to the Board that the manicurist is actively engaged in the practice of manicuring on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-10, as enacted by Section 2 of this act. A cosmetic art shop that practices manicuring only and that submits proof to the Board that the shop is actively engaged in the practice of manicuring on the effective date of this act, shall have one year from the date of this act to comply with the requirements in G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 5. Until the Board adopts a staggered license renewal plan under G.S. 88B-21(b), as enacted by Section 2 of this act, any cosmetologist who applies for licensure in a year other than the year all other cosmetologist licenses are due for renewal shall pay the annual fee provided in G.S. 88B-20, as enacted by Section 2 of this act, on or before October 1 of each year until the year all other cosmetologist licenses are again due for renewal. Any license not renewed shall expire on October 1 of that year.

Section 6. Any license currently issued by the State Board of Cosmetic Art Examiners shall remain valid until its expiration.

Section 7. The State Board of Cosmetic Art Examiners existing on the effective date of this act shall continue in effect until the terms of the members expire or a member is removed as authorized in G.S. 88B-3, as enacted by Section 2 of this act. Vacancies on the Board shall be filled as authorized in G.S. 88B-3, as enacted by Section 2 of this act. The rules of the State Board of Cosmetic Art Examiners in effect on the effective date of this Chapter shall continue in effect until amended.

Section 9. G.S. 14-400 reads as rewritten:

"§ 14-400. ~~Tattooing~~Tattooing; body piercing prohibited.

(a) It shall be unlawful for any person or persons to tattoo the arm, limb, or any part of the body of any other person under 18 years of age. Anyone violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(b) It shall be unlawful for any person to pierce any part of the body other than ears of another person under the age of 18 for the purpose of allowing the insertion of earrings, jewelry, or similar objects into the body, unless the prior consent of a custodial parent or guardian is obtained. Anyone violating the provisions of this section is guilty of a Class 2 misdemeanor."

PART II. CREATE THE NORTH CAROLINA MASSAGE AND BODYWORK THERAPY PRACTICE ACT.

Section 10. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 36.
"Massage and Bodywork Therapy Practice.

"§ 90-620. Short title.

This Article shall be known as the North Carolina Massage and Bodywork Therapy Practice Act.

"§ 90-621. Declaration of purpose.

The General Assembly recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapy is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.

"§ 90-622. Definitions.

The following definitions apply in this Article:

- (1) Board. – The North Carolina Board of Massage and Bodywork Therapy.
- (2) Board-approved school. – Any massage and bodywork therapy school or training program in this State or another state that has met the criteria established by the Board.
- (3) Massage and bodywork therapy. – Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:
 - a. Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.
 - b. Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.
 - c. The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.
- (4) Massage and bodywork therapist. – A person licensed under this Article.
- (5) Practice of massage and bodywork therapy. – The application of massage and bodywork therapy to any person for a fee or other consideration. 'Practice of massage and bodywork therapy' does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"§ 90-623. License required.

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including 'massage therapist', 'bodywork therapist', 'masseur', 'masseuse', 'massagist', 'somatic practitioner', 'body therapist', 'structural integrator', or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term 'massage therapist' or 'bodywork therapist' or any other term that implies a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title 'Licensed Massage and Bodywork Therapist'. No other person shall assume this title or use an abbreviation or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

"§ 90-624. Exemptions.

Nothing in this Article shall be construed to prohibit or affect:

- (1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.
- (2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.
- (3) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under this Article.
- (4) Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.
- (5) A person giving massage and bodywork therapy to members of that person's immediate family.
- (6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.
- (7) The practice of techniques that are specifically intended to affect the human energy field.

"§ 90-625. North Carolina Board of Massage and Bodywork Therapy.

(a) The North Carolina Board of Massage and Bodywork Therapy is created. The Board shall consist of seven members who are residents of this State and are as follows:

- (1) Five members shall be massage and bodywork therapists who have been licensed under this Article and have been in the practice of massage and bodywork therapy for at least five of the last seven years prior to their serving on the Board. The appointments may be made from lists provided by the North Carolina Therapeutic Massage and Bodywork Task Force. Consideration shall be given to geographical distribution, practice setting, clinical specialty, and other factors that

will promote diversity of the profession on the Board. Two of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, two shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed by the Governor.

(2) One member shall be a physician licensed pursuant to Article 1 of Chapter 90 of the General Statutes. The appointment shall be made by the Governor and may be made from a list provided by the North Carolina Medical Society.

(3) One member shall be a member of the general public who shall not be licensed under Chapter 90 of the General Statutes or the spouse of a person who is so licensed, or have any financial interest, directly or indirectly, in the profession regulated under this Article. The appointment shall be made by the Governor.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member of the Board shall serve for a term of three years, ending on June 30 of the last year of the term. A member shall not be appointed to serve more than two consecutive terms.

(d) The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business but no less than twice a year. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

"§ 90-626. Powers and duties.

The Board shall have the following powers and duties:

(1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage and bodywork therapy practice.

(2) Evaluate the qualifications of applicants for licensure under this Article.

(3) Issue, renew, deny, suspend, or revoke licenses under this Article.

(4) Reprimand or otherwise discipline licensees under this Article.

(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.

- (6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.
- (7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.
- (8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.
- (9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board, including rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapy establishments. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.
- (10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.
- (11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.
- (12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.
- (13) Provide a system for grievances to be presented and resolved.

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective.

"§ 90-627. Custody and use of funds.

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article.

"§ 90-628. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the General Fund.

(b) The Board may impose the following fees up to the amounts listed below:

<u>(1)</u>	<u>Application for examination</u>	<u>\$200.00</u>
<u>(2)</u>	<u>License fee</u>	<u>150.00</u>
<u>(3)</u>	<u>License renewal</u>	<u>100.00</u>
<u>(4)</u>	<u>Late renewal penalty</u>	<u>75.00</u>
<u>(5)</u>	<u>License by reciprocity</u>	<u>50.00</u>
<u>(6)</u>	<u>Duplicate license</u>	<u>25.00</u>

(7) Provisional license 150.00.

"§ 90-629. Requirements for licensure.

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

- (1) Has obtained a high school diploma or equivalent.
- (2) Is 18 years of age or older.
- (3) Is of good moral character as determined by the Board.
- (4) Has successfully completed a course of study consisting of a minimum of 500 classroom hours of supervised instruction at a Board-approved school.
- (5) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board.

"§ 90-630. Reciprocity.

(a) An applicant shall be eligible for licensure if (i) the applicant has been licensed in another state within five years of the application to the Board and the other state has standards for massage and bodywork therapists that are substantially equivalent to those in this State; (ii) the applicant holds a current certification from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets NCCA standards; or (iii) the applicant meets special requirements established by the Board.

(b) Upon receipt of an application for reciprocity, the Board shall contact each jurisdiction that has previously certified or licensed the applicant to determine whether there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

(c) Reciprocity may not be granted if the state in which the applicant is licensed has not granted a similar reciprocity to licensees in this State.

"§ 90-631. Massage and bodywork therapy schools.

The Board shall establish rules for the approval of massage and bodywork therapy schools. These rules shall include:

- (1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapy.
- (2) Standards for faculty and learning resources.
- (3) Requirements for reporting changes in instructional staff and curriculum.
- (4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapy may make application for approval to the Board. The Board shall grant approval to schools,

whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved schools.

"§ 90-632. License renewal and continuing education.

The license to practice under this Article shall be renewed every two years. When renewing a license, each licensee shall submit to the Board evidence of the successful completion of at least 25 hours of study, as approved by the Board, during the immediately preceding two years, in the practice of massage and bodywork therapy.

"§ 90-633. Disciplinary action.

The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:

- (1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.
- (2) The use of drugs or intoxicating liquors to an extent that affects professional competency.
- (3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.
- (4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.
- (5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.
- (6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules.
- (7) The commission of an act of malpractice, gross negligence, or incompetency.
- (8) Practice as a licensee under this Article without a valid certificate or renewal.
- (9) Engaging in conduct that could result in harm or injury to the public.
- (10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.
- (11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapy without successfully completing training approved by the Board in that specialty.

"§ 90-634. Enforcement; injunctive relief.

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

- (1) Practice of massage and bodywork therapy.
- (2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.
- (3) Use any title descriptive of any branch of massage and bodywork therapy, as provided in G.S. 90-623, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action.

"§ 90-635. Third-party reimbursement.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article.

"§ 90-636. Regulation by county or municipality.

Nothing in this Article shall be construed to prohibit a county or municipality from regulating persons covered by this Article, however, a county or municipality may not impose regulations that are inconsistent with this Article."

Section 12. Notwithstanding the provisions of G.S. 90-625(a), as enacted in Section 10 of this act, the terms of initial appointments to the North Carolina Board of Massage and Bodywork Therapy shall be as follows:

- (1) The terms of the three members appointed by the Governor pursuant to G.S. 90-625(a)(1), as enacted in Section 10 of this act, shall expire June 30, 2001.
- (2) The terms of all other members shall expire June 30, 2000.

Section 13. The five initial appointments to the North Carolina Board of Massage and Bodywork Therapy pursuant to G.S. 90-625(a)(1), as enacted in Section 10 of this act, shall satisfy all of the provisions of G.S. 90-625(a)(1), except the licensure requirement, and shall satisfy the provisions of G.S. 90-629(1) through (4), as enacted in Section 10 of this act, except the 500 classroom hours of supervised instruction do not have to be in a curriculum that meets the basic guidelines established by the North Carolina Board of Massage and Bodywork Therapy.

Section 14. If an applicant does not meet the educational or examinations requirements in G.S. 90-629(4) and (5), as enacted in Section 10 of this act, then for a maximum period of two years after the effective date of this act, the Board may permanently waive those requirements and grant a provisional license to the applicant. At the end of two years after the granting of the provisional license, the applicant shall submit evidence to the Board of his or her compliance with the continuing education requirements in G.S. 90-632, as enacted in Section 10 of this act. Upon receipt of proper documentation, the applicant shall be issued a license to practice massage and bodywork therapy. An applicant for a provisional license shall meet the requirements set forth in G.S. 90-629 (1) through (3), as enacted in Section 10 of this act, and shall submit all of the following for consideration by the Board:

- (1) Documentation that the applicant has been engaged in the professional practice of massage and bodywork therapy for a minimum of four years prior to the application to the Board.
- (2) Documentation of a minimum of 500 hours of professional practice in the field of massage and bodywork therapy during the four years prior to the application to the Board.

- (3) Verification that the applicant has been practicing in the State at the time the application is submitted.
- (4) Three letters of reference from sources approved by the Board attesting to the sound moral character, professional qualifications, and competence of the applicant.

PART III. EFFECTIVE DATES.

Section 15. Sections 1 through 7 of this act become effective November 1, 1998, and apply to applications made and acts occurring on or after that date, except that Section 2.1 of this act becomes effective January 1, 1999. Section 9 of this act becomes effective December 1, 1998, and applies to offenses committed on or after that date. Sections 10 through 14 of this act become effective November 1, 1998, and apply to offenses occurring on or after that date, except that G.S. 90-623 and G.S. 90-634 become effective July 1, 1999. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of October, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 7:30 p.m. this 6th day of November, 1998