

1 HOUSE BILL NO. 493

2 INTRODUCED BY K. ZOLNIKOV

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR AN ADVANCED ESTHETICS PRACTITIONER
5 LICENSE; ADDRESSING THE SCOPE OF PRACTICE AND REGULATIONS FOR ADVANCED PRACTICE
6 ESTHETICS AND SCHOOLS TEACHING ADVANCED PRACTICE ESTHETICS; CLARIFYING DEFINITIONS;
7 PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-1747, 37-31-101, 37-31-103, 37-31-
8 203, 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-323,
9 37-31-331, 37-33-404, AND 49-2-101, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12

13 **Section 1.** Section 2-15-1747, MCA, is amended to read:

14 **"2-15-1747. Board of barbers and cosmetologists.** (1) There is a board of barbers and
15 cosmetologists.

16 (2) The board consists of nine members appointed by the governor with the consent of the senate
17 and must include:

18 (a) three licensed cosmetologists, each of whom has been a resident of this state for at least 5 years
19 and has been actively engaged in the profession of cosmetology for at least 5 years immediately prior to being
20 appointed to the board;

21 (b) one member who has been a resident of this state for at least 5 years and has been actively
22 engaged as a licensed electrologist, esthetician, or manicurist for at least 5 years immediately prior to being
23 appointed to the board;

24 (c) three licensed barbers or barbers nonchemical, each of whom has been a resident of this state for
25 at least 5 years and has been actively engaged in the profession of barbering for at least 5 years immediately
26 prior to appointment to the board; and

27 (d) two members of the public who are not engaged in the practice of barbering, cosmetology,
28 electrology, esthetics, or manicuring.

1 (3) Two members of the board must be affiliated with a school.

2 (4) (a) If there is not a licensed barber or a barber nonchemical who is qualified and willing to serve
3 on the board in one of the three positions under subsection (2)(c), the governor may appoint a cosmetologist,
4 electrologist, esthetician, or manicurist otherwise qualified under this section to fill the position.

5 (b) If there is not a licensed cosmetologist qualified and willing to serve on the board in one of the
6 three positions under subsection (2)(a), the governor may appoint a barber, barber nonchemical, electrologist,
7 esthetician, advanced esthetics practitioner, or manicurist otherwise qualified under this section to fill the
8 position.

9 (5) Each member shall serve for a term of 5 years. The terms must be staggered.

10 (6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-
11 121."

12

13 **Section 2.** Section 37-31-101, MCA, is amended to read:

14 **"37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following
15 definitions apply:

16 (1) "Advanced esthetics practitioner" means a person who is licensed under this chapter to practice
17 advanced practice esthetics.

18 (2) "Advanced practice esthetics" means procedures outside the scope of practice of a cosmetologist
19 or esthetician that involve care of the skin through advanced nonablative procedures that use chemical,
20 mechanical, laser, or heat modality, or a combination of modalities.

21 ~~(1)~~(3) "Board" means the board of barbers and cosmetologists provided for in 2-15-1747.

22 ~~(2)~~(4) "Booth" means any part of a salon or shop that is rented or leased for the performance of
23 barbering, barbering nonchemical, cosmetology, electrology, esthetics, advanced practice esthetics, or
24 manicuring services, as specified in 39-51-204.

25 ~~(3)~~(5) "Department" means the department of labor and industry provided for in Title 2, chapter 15,
26 part 17.

27 ~~(4)~~(6) (a) "Electrology" means the study of and the professional practice of permanently removing
28 superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle.

1 Electrology includes electrolysis and thermolysis. Electrology may include the use of waxes for epilation and the
2 use of chemical depilatories.

3 (b) Electrology does not include pilethermology, which is the study and professional practice of
4 removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

5 ~~(5)(7)~~ "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

6 ~~(6)(8)~~ "Esthetics" means skin care of the body, including but not limited to hot compresses or the use
7 of approved electrical appliances or chemical compounds formulated for professional application only and the
8 temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or
9 appliances on another person.

10 (9) "Instructor" or "teacher" means an individual licensed under 37-31-303 to teach barbering,
11 barbering nonchemical, cosmetology, electrology, esthetics, advanced practice esthetics, or manicuring.

12 ~~(7)(10)~~ "Manicuring" includes care of the nails, the hands, the lower arms, the feet, and the lower legs
13 and the application and maintenance of artificial nails.

14 (11) "Nonablative" means involving an action performed on the skin or hair of a person that does not
15 result in wounding, scarring, or altering scars of the skin or underlying tissue.

16 ~~(8)(12)~~ "Place of residence" means a home and the following residences defined under 50-5-101:

- 17 (a) an assisted living facility;
- 18 (b) an intermediate care facility for the developmentally disabled;
- 19 (c) a hospice;
- 20 (d) a critical access hospital;
- 21 (e) a long-term care facility; or
- 22 (f) a residential treatment facility.

23 ~~(9)(13)~~ "Practice or teaching of barbering" means any of the following practices performed for
24 payment, either directly or indirectly, upon the human body for tonsorial purposes and not performed for the
25 treatment of disease or physical or mental ailments:

- 26 (a) shaving or trimming a beard;
- 27 (b) cutting, styling, coloring, or waving hair;
- 28 (c) straightening hair by the use of chemicals;

1 (d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other
2 preparations applied by hand or mechanical appliance;

3 (e) shampooing hair, applying hair tonic, or bleaching or highlighting hair; or

4 (f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face,
5 hands, or neck.

6 ~~(10)(14)~~ "Practice or teaching of barbering nonchemical" means the practice or teaching of barbering
7 as provided in subsection ~~(9)-(13)~~ but excludes the use of chemicals to wave, straighten, color, bleach, or
8 highlight hair.

9 ~~(14)(15)~~ (a) "Practice or teaching of cosmetology" means work included in the terms "hairdressing",
10 "manicuring", "esthetics", and "beauty culture" and performed in salons or shops, in booths, or by itinerant
11 cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair and
12 body.

13 (b) The practice and teaching of cosmetology may not be construed to include itinerant
14 cosmetologists who perform their services without compensation for demonstration purposes in any regularly
15 established store or place of business holding a license from the state of Montana as a store or place of
16 business.

17 ~~(12)(16)~~ (a) "Salon or shop" means the physical location in which a person licensed under this chapter
18 practices barbering or barbering nonchemical, cosmetology, electrology, esthetics, advanced practice esthetics,
19 or manicuring.

20 (b) The term does not include:

21 (i) a room provided in a place of residence that is used for the purposes of barbering or barbering
22 nonchemical, cosmetology, electrology, esthetics, advanced practice esthetics, or manicuring unless the owner,
23 manager, or operator allows the room to be used for the practice of barbering or barbering nonchemical or the
24 practice of cosmetology to serve nonresidents for compensation, in which case the room must be licensed as a
25 salon or a shop; or

26 (ii) a room within the practice location of a medical practitioner, as defined in 37-2-101, used for
27 advanced practice esthetics, if the advanced esthetics practitioner practices under the supervision of the
28 medical practitioner, as defined in 37-2-101.

1 ~~(13)~~(17) "School" means a program and location approved by the board with respect to its course of
 2 instruction for training persons for licensure in barbering, barbering nonchemical, cosmetology, electrology,
 3 esthetics, advanced practice esthetics, or manicuring and that meets any other criteria established by the
 4 board."

5

6 **Section 3.** Section 37-31-103, MCA, is amended to read:

7 **"37-31-103. Purpose.** It is a matter of legislative policy in the state of Montana that the practice of
 8 barbering, barbering nonchemical, cosmetology, electrology, esthetics, advanced practice esthetics, and
 9 manicuring affects the public health, safety, and welfare and is subject to regulation and control in order to
 10 protect the public from unauthorized and unqualified practice."

11

12 **Section 4.** Section 37-31-203, MCA, is amended to read:

13 **"37-31-203. Rulemaking powers.** The board shall prescribe rules for:

14 (1) the conduct of board business;

15 (2) the qualification and licensure of applicants to practice ~~barbering, barbering nonchemical,~~
 16 ~~cosmetology, electrology, esthetics, or manicuring or to teach barbering, barbering nonchemical, cosmetology,~~
 17 ~~electrology, esthetics, or manicuring~~ or teach under this chapter;

18 (3) the regulation and instruction of apprentices and students;

19 (4) the conduct of schools of ~~barbering, barbering nonchemical, cosmetology, electrology, esthetics,~~
 20 ~~and manicuring~~ for apprentices and students;

21 (5) the qualification and licensure of applicants for booth rental licenses; ~~and~~

22 (6) the conduct of advanced esthetics practitioners, including procedures that may only be performed
 23 by an advanced esthetics practitioner under the supervision of a medical practitioner, as defined in 37-2-101;
 24 and

25 ~~(6)~~(7) generally the conduct of the persons, firms, or corporations affected by this chapter."

26

27 **Section 5.** Section 37-31-301, MCA, is amended to read:

28 **"37-31-301. Prohibited acts.** (1) Without an appropriate license issued under this chapter, it is

1 unlawful to:

2 (a) practice barbering, barbering nonchemical, cosmetology, electrology, esthetics, advanced practice
3 esthetics, or manicuring for compensation;

4 (b) own, manage, operate, or conduct a school of ~~barbering, barbering nonchemical, cosmetology,~~
5 ~~electrology, esthetics, or manicuring~~;

6 (c) manage or operate a salon or shop or a booth; or

7 (d) teach in a school of ~~barbering, barbering nonchemical, cosmetology, electrology, esthetics, or~~
8 ~~manicuring~~, unless the person is a student teacher practicing under the supervision of a licensed instructor.

9 (2) It is unlawful:

10 (a) for a person who owns, manages, or controls a salon or shop to employ or use an unlicensed
11 person as a barber, ~~a barber nonchemical, a cosmetologist, an electrologist, an esthetician,~~ advanced esthetics
12 practitioner, or ~~a manicurist~~;

13 (b) to operate a school of ~~barbering, barbering nonchemical, cosmetology, electrology, esthetics, or~~
14 ~~manicuring~~ without complying with all of the regulations of 37-31-311;

15 (c) to practice barbering, barbering nonchemical, cosmetology, electrology, esthetics, advanced
16 practice esthetics, or manicuring in any place other than in a licensed salon or shop as provided in this chapter,
17 except when a licensee is requested:

18 (i) by a customer to go to a place other than a licensed salon or shop and is sent to the customer from
19 a licensed salon or shop; or

20 (ii) by a customer with a disability or homebound customer to go to the customer's place of residence;

21 or

22 (d) to violate any of the provisions of this chapter."

23

24 **Section 6.** Section 37-31-302, MCA, is amended to read:

25 **"37-31-302. License required to practice, teach, or operate salon or shop, booth, or school. (1)**

26 A person may not practice or teach barbering, barbering nonchemical, cosmetology, electrology, esthetics,
27 advanced practice esthetics, or manicuring without a license.

28 (2) A place may not be used or maintained ~~for the teaching of~~ to teach barbering, barbering

1 nonchemical, cosmetology, electrology, esthetics, advanced practice esthetics, or manicuring for compensation
 2 unless licensed as a school.

3 (3) A person may not operate or manage a salon or shop without a license or a temporary operating
 4 permit as provided in 37-31-312.

5 (4) A person may not operate ~~or conduct~~ a school of ~~barbering, barbering nonchemical, cosmetology,~~
 6 ~~electrology, esthetics, or manicuring~~ or teach ~~barbering, barbering nonchemical, cosmetology, electrology,~~
 7 ~~esthetics, or manicuring~~ under this chapter without a ~~an instructor~~ license to teach ~~barbering, barbering~~
 8 ~~nonchemical, cosmetology, electrology, esthetics, or manicuring.~~

9 (5) A person may not manage or operate a booth without a booth rental license.

10 (6) A person, firm, partnership, corporation, or other legal entity desiring to operate a salon or shop
 11 shall apply to the department for a license. The application must be accompanied by the license fee.

12 (7) A license may not be issued until the inspection fees required in 37-31-312 have been paid."
 13

14 **Section 7.** Section 37-31-303, MCA, is amended to read:

15 **"37-31-303. Application for license to practice or teach.** An applicant for a license to practice or
 16 teach ~~barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring~~ under this chapter
 17 shall file an application provided by the department and pass the examination prescribed by the board to qualify
 18 for licensure."
 19

20 **Section 8.** Section 37-31-304, MCA, is amended to read:

21 **"37-31-304. Qualifications of applicants for license to practice.** ~~(1) Before a person may practice:~~

22 ~~(a) barbering, the person shall obtain a license to practice barbering from the department;~~

23 ~~(b) barbering nonchemical, the person shall obtain a license to practice barbering nonchemical from~~
 24 ~~the department;~~

25 ~~(c) cosmetology, the person shall obtain a license to practice cosmetology from the department;~~

26 ~~(d) electrology, the person shall obtain a license to practice electrology from the department;~~

27 ~~(e) manicuring, the person shall obtain a license to practice manicuring from the department unless~~
 28 ~~the person is licensed to practice cosmetology; or~~

1 ~~(f) esthetics, the person shall obtain a license to practice esthetics from the department unless the~~
 2 ~~person is already licensed to practice cosmetology.~~

3 ~~(2)(1)~~ (a) (i) To be eligible to take the examination to practice barbering or barbering nonchemical,
 4 the applicant must be at least 18 years of age, must be of good moral character, and must possess a high
 5 school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may
 6 apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board
 7 shall adopt by rule procedures for granting an exception.

8 (ii) An applicant to practice barbering must have completed a course of study of at least 1,100 hours in
 9 a licensed barbering school and must have received a diploma from the barbering school or must have
 10 completed the course of study in barbering at a school of cosmetology authorized to offer a course of study in
 11 barbering prescribed by the board by rule.

12 (iii) An applicant to practice barbering nonchemical must have completed a course of study of at least
 13 900 hours in a licensed barbering or barbering nonchemical school, not including hours applicable to the use of
 14 chemicals to wave, straighten, color, bleach, or highlight hair, and must have received a diploma from the
 15 barbering or barbering nonchemical school or must have completed the course of study in barbering or
 16 barbering nonchemical at a school of cosmetology authorized to offer a course of study in barbering or
 17 barbering nonchemical as prescribed by the board by rule.

18 (b) A person qualified under subsection ~~(2)(a)~~ (1)(a) shall file an application and deposit the
 19 application fee with the department and pass an examination as to fitness to practice barbering or barbering
 20 nonchemical.

21 (c) The board shall issue a license to practice barbering or barbering nonchemical, without
 22 examination, to a person licensed in another state if the board determines that:

23 (i) the other state's course of study hour requirement is equal to or greater than the hour requirement
 24 in this state; and

25 (ii) the person's license from the other state is current and the person is not subject to pending or final
 26 disciplinary action for unprofessional conduct or impairment.

27 ~~(3)(2)~~ (a) To be eligible to take the examination to practice cosmetology, the applicant must be at
 28 least 18 years of age, must be of good moral character, and must possess a high school diploma or its

1 equivalent that is recognized by the superintendent of public instruction. A person may apply to the board for an
2 exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by
3 rule procedures for granting an exception. The applicant must have completed a course of study of at least
4 1,500 hours in a licensed cosmetology school and must have received a diploma from the cosmetology school
5 or must have completed the course of study in cosmetology prescribed by the board by rule.

6 (b) A person qualified under subsection ~~(3)(a)~~ (2)(a) shall file an application and deposit the required
7 application fee with the department and pass an examination as to fitness to practice cosmetology.

8 ~~(4)(3)~~ (a) To be eligible to take the examination to practice electrology, the applicant must be at least
9 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent
10 that is recognized by the superintendent of public instruction. An applicant may apply to the board for an
11 exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule
12 procedures for granting an exception. The applicant must have completed a course of education, training, and
13 experience in the field of electrology as prescribed by the board by rule.

14 (b) A person qualified under subsection ~~(4)(a)~~ (3)(a) shall file an application and deposit the required
15 application fee with the department and pass an examination as to fitness to practice electrology.

16 ~~(5)(4)~~ (a) To be eligible to take the examination to practice manicuring, an applicant must be at least
17 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent
18 that is recognized by the superintendent of public instruction. The applicant must have completed a course of
19 study prescribed by the board in a licensed school of cosmetology or a licensed school of manicuring. A person
20 may apply to the board for an exception to the educational requirement of a high school diploma or its
21 equivalent or a certificate of completion from a vocational-technical program. The board shall adopt by rule
22 procedures for granting an exception.

23 (b) A person qualified under subsection ~~(5)(a)~~ (4)(a) shall file an application and deposit the required
24 application fee with the department and pass an examination as to fitness to practice manicuring.

25 ~~(6)(5)~~ (a) To be eligible to take the examination to practice esthetics, an applicant must be at least 18
26 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is
27 recognized by the superintendent of public instruction. The applicant must have completed a course of study
28 prescribed by the board and consisting of not less than 650 hours of training and instruction in a licensed

1 school of cosmetology or a licensed school of esthetics. A person may apply to the board for an exception to
 2 the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule
 3 procedures for granting an exception.

4 (b) A person qualified under subsection ~~(6)(a)~~ ~~(5)(a)~~ shall file an application and deposit the required
 5 application fee with the department and pass an examination as to fitness to practice esthetics.

6 (6) (a) To be eligible to take the examination to practice advanced practice esthetics, an applicant
 7 must be of good moral character. The applicant must:

8 (i) have passed the examination to practice esthetics and completed a course of study in esthetics
 9 and advanced practice esthetics prescribed by the board and consisting of not less than 1,150 hours of training
 10 and instruction in a licensed school of advanced practice esthetics or in a nationally recognized program that is
 11 approved by the board; or

12 (ii) be an esthetician and:

13 (A) have completed an additional course of study prescribed by the board and consisting of not less
 14 than 500 hours of training and instruction in a licensed school of advanced practice esthetics or in a nationally
 15 recognized program that is approved by the board; or

16 (B) for estheticians who completed a course of study in a licensed school of esthetics before October
 17 1, 2018, have 3 years of experience practicing esthetics.

18 (b) A person qualified under subsection (6)(a) shall file an application and deposit the required
 19 application fee with the department and pass an examination as to fitness to practice advanced practice
 20 esthetics."

21

22 **Section 9.** Section 37-31-305, MCA, is amended to read:

23 **"37-31-305. Qualifications of applicants for license to teach.** (1) Before a person may teach or
 24 instruct in a school of ~~barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring,~~
 25 under this chapter, the person shall obtain from the department a license to teach.

26 (2) To be eligible for a license to teach ~~barbering, barbering nonchemical, cosmetology, electrology,~~
 27 ~~esthetics, or manicuring,~~ a person must:

28 (a) be a graduate of high school or possess an equivalent of a high school diploma that is recognized

1 by the superintendent of public instruction;

2 (b) have a license to practice issued by the department in the particular area of practice in which the
3 person plans to teach;

4 (c) have been actively engaged in that particular area of practice for 12 continuous months before
5 taking the teacher's examination; and

6 (d) (i) have received a diploma from a licensed school approved by the board, certifying satisfactory
7 completion of 650 hours of student teacher training; or

8 (ii) have 3 years of experience in that particular area of practice. A person who qualifies for a license
9 under this subsection (2)(d)(ii) has 2 years to complete board-approved coursework related to teaching
10 methodology before a license to teach is renewed."
11

12 **Section 10.** Section 37-31-308, MCA, is amended to read:

13 **"37-31-308. Exemption for persons with disabilities.** A person with a physical disability who is
14 trained ~~for barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring to practice~~
15 under this chapter by the department of public health and human services is, for a period of 1 year immediately
16 following graduation, exempt from the examination and the fees described in 37-31-323. On certification from
17 the department of public health and human services that a department of public health and human services
18 beneficiary has successfully completed the required training in a school of ~~barbering, barbering nonchemical,~~
19 ~~cosmetology, electrology, esthetics, or manicuring~~, the department shall issue the person the necessary license
20 to practice the profession in this state."
21

22 **Section 11.** Section 37-31-311, MCA, is amended to read:

23 **"37-31-311. Schools -- license -- requirements -- bond -- curriculum.** (1) A person, firm,
24 partnership, corporation, or other legal entity may not operate a school ~~for the purpose of teaching barbering,~~
25 ~~barbering nonchemical, cosmetology, electrology, esthetics, or manicuring~~ for compensation unless licensed by
26 the department. Application for the license must be filed with the department on an approved form.

27 (2) A school for teaching barbering or barbering nonchemical may not be granted a license unless the
28 school complies with or is able to comply with the following requirements:

1 (a) It has in its employ either a licensed teacher who is at all times involved in the immediate
2 supervision of the work of the school or other teachers determined by the board to be necessary for the proper
3 conduct of the school. There may not be more than 25 students for each teacher.

4 (b) It possesses apparatus and equipment the board determines necessary for the teaching of all
5 subjects or practices of barbering or barbering nonchemical.

6 (c) It maintains a school term of not less than 1,100 hours for barbering and not less than 900 hours
7 for barbering nonchemical and a course of practical training and technical instruction equal to the requirements
8 for board examinations. The school's course of training and technical instruction must be prescribed by the
9 board by rule.

10 (d) It keeps a daily record of the attendance of each student, establishes grades, and holds
11 examinations before issuing diplomas.

12 (e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that
13 would make the room unsanitary a room used wholly or in part for a school of barbering or barbering
14 nonchemical.

15 (3) A school for teaching cosmetology may not be granted a license unless the school complies with
16 or is able to comply with the following requirements:

17 (a) It has in its employ either a licensed teacher who is at all times involved in the immediate
18 supervision of the work of the school or other teachers determined by the board to be necessary for the proper
19 conduct of the school. There may not be more than 25 students for each teacher.

20 (b) It possesses apparatus and equipment the board determines necessary for the teaching of all
21 subjects or practices of cosmetology.

22 (c) It maintains a school term of not less than 1,500 hours and a course of practical training and
23 technical instruction equal to the requirements for board examinations. The school's course of training and
24 technical instruction must be prescribed by the board by rule.

25 (d) It keeps a daily record of the attendance of each student, establishes grades, and holds
26 examinations before issuing diplomas.

27 (e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that
28 would make the room unsanitary a room used wholly or in part for a school of cosmetology.

1 (4) A school for teaching electrology may not be granted a license unless the school maintains a
2 school term and a course of practical training and technical instruction prescribed by the board, and possesses
3 apparatus and equipment necessary for teaching electrology as prescribed by the board by rule.

4 (5) A school for teaching manicuring may not be granted a license unless the school complies with
5 subsections (3)(a) and (3)(d) and the following requirements:

6 (a) It possesses apparatus and equipment the board determines necessary for the teaching of all
7 subjects or practices of manicuring.

8 (b) It maintains a school term and a course of practical training and technical instruction as prescribed
9 by the board by rule.

10 (c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that
11 would make the room unsanitary a room used wholly or in part for a school of manicuring.

12 (6) A school for teaching esthetics may not be granted a license unless the school complies with
13 subsections (3)(a) and (3)(d) and the following requirements:

14 (a) It possesses apparatus and equipment the board determines necessary for the ready and full
15 teaching of all subjects or practices of esthetics.

16 (b) It maintains a school term and a course consisting of not less than 650 hours of practical training
17 and technical instruction as prescribed by the board.

18 (c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that
19 would make the room unsanitary a room used wholly or in part for a school of esthetics.

20 (7) A school for teaching advanced practice esthetics may not be granted a license unless the school
21 complies with subsections (3)(a) and (3)(d) and the following requirements:

22 (a) It possesses apparatus and equipment the board determines necessary for the ready and full
23 teaching of all subjects or practices of advanced practice esthetics.

24 (b) It maintains a school term as prescribed by the board of not less than 500 hours of practical
25 training and technical instruction in advanced practice esthetics or 1,150 of practical training and technical
26 instruction of esthetics and advanced practice esthetics.

27 (c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that
28 would make the room unsanitary a room used wholly or in part for a school of advanced practice esthetics.

1 ~~(7)(8)~~ Licenses for schools of ~~barbering, barbering nonchemical, cosmetology, electrology, esthetics,~~
2 ~~or manicuring~~ may be refused, revoked, or suspended as provided in 37-31-331.

3 ~~(8)(9)~~ A teacher or student teacher may not ~~be permitted to practice~~ barbering, barbering
4 nonchemical, cosmetology, electrology, esthetics, advanced practice esthetics or manicuring on the public in a
5 school of ~~barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring~~. A school that
6 enrolls student teachers for a course of student teacher training may not have, at any one time, more than one
7 student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may
8 not substitute for full-time teachers.

9 ~~(9)~~ ~~The board may make further rules necessary for the proper conduct of schools of barbering,~~
10 ~~barbering nonchemical, cosmetology, electrology, esthetics, and manicuring.~~

11 (10) The board shall require the person, firm, partnership, corporation, or other legal entity operating a
12 school of ~~barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring~~ to furnish a
13 bond or other security in the amount of \$5,000 and in a form and manner prescribed by the board by rule.

14 (11) A ~~professional~~ salon or shop may not be operated in connection with a school of ~~barbering,~~
15 ~~barbering nonchemical, cosmetology, electrology, esthetics, or manicuring.~~

16 (12) The board may, by rule, establish a suitable curriculum for teachers' training in licensed schools of
17 ~~barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring.~~"

18

19 **Section 12.** Section 37-31-312, MCA, is amended to read:

20 "**37-31-312. Inspection -- temporary permits.** (1) The department shall appoint one or more
21 inspectors, each of whom shall devote time to inspecting salons or shops and performing other duties as the
22 department, in cooperation with the board, may direct. The inspectors may enter a salon or shop, booth, or
23 school of ~~barbering, school of barbering nonchemical, school of cosmetology, school of electrology, school of~~
24 ~~esthetics, or school of manicuring~~ during business hours for the purpose of inspection, ~~and the~~ The refusal of a
25 licensee ~~or school~~ to permit the inspection during business hours is cause for license revocation ~~of a licensee's~~
26 ~~or school's~~ license.

27 (2) When an owner or operator applies for a shop or salon license and pays licensure and inspection
28 fees prescribed by the board, the board:

1 (a) may authorize the department to grant to a new salon or shop a temporary operating permit; or

2 (b) shall, ~~in order~~ to avoid a disruption of business, authorize the department to grant a temporary
 3 operating permit to an existing shop or salon whose owner or operator is currently in good standing with the
 4 board, as defined by the board, and who is relocating to a new location. An owner or operator of an existing
 5 shop or salon may not receive a temporary operating permit under this section within 90 days of a license
 6 renewal date.

7 (3) A temporary operating permit granted pursuant to subsection (2) authorizes the salon or shop to
 8 operate until an inspection is conducted of the salon or shop and the salon or shop owner or manager has had
 9 30 days to respond in writing to all inspection report violations to the board office. A license will not be granted
 10 to a salon or shop if the board does not receive a response within 30 days from the date of the inspection or the
 11 response received does not indicate that all of the inspection violations have been corrected, in which case a
 12 new license application must be filed. A temporary permit is not renewable.

13 (4) The department shall require an inspector appointed under subsection (1) to conduct an annual
 14 inspection of each salon or shop in the state."
 15

16 **Section 13.** Section 37-31-323, MCA, is amended to read:

17 **"37-31-323. Fees.** (1) Fees for licenses must be paid to the department in amounts prescribed by the
 18 board by rule.

19 (2) The license fees must be paid in advance to the department unless otherwise provided by board
 20 rule.

21 (3) Other or additional license fees may not be imposed by a municipal corporation or other political
 22 subdivision of this state ~~for the practice or teaching of barbering, barbering nonchemical, cosmetology,~~
 23 ~~electrology, esthetics, or manicuring~~ to practice under this chapter."

24

25 **Section 14.** Section 37-31-331, MCA, is amended to read:

26 **"37-31-331. Refusal, revocation, or suspension of licenses -- grounds -- notice and hearing.** (1)

27 The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the
 28 following cases:

1 (a) failure of a person, firm, partnership, corporation, or other legal entity operating a salon or shop or
 2 a school of ~~barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring~~ to comply with
 3 this chapter;

4 (b) failure to comply with the sanitary rules adopted by the board and approved by the department of
 5 public health and human services for the regulation of salons or shops or schools of ~~barbering, barbering~~
 6 ~~nonchemical, cosmetology, electrology, esthetics, or manicuring~~;

7 (c) gross malpractice;

8 (d) continued practice by a person who knowingly has an infectious or contagious disease;

9 (e) habitual drunkenness or habitual addiction to the use of any habit-forming drug;

10 (f) permitting a license to be used when the holder is not personally, actively, and continuously
 11 engaged in business; or

12 (g) failure to display the license.

13 (2) The board may not refuse to authorize the department to issue or renew a license or to revoke or
 14 suspend a license already issued until after notice and opportunity for a hearing."
 15

16 **Section 15.** Section 37-33-404, MCA, is amended to read:

17 **"37-33-404. Exemptions -- rules.** (1) The provisions of this chapter do not limit or regulate the scope
 18 of practice of any other profession licensed under the laws of this state, including but not limited to medicine,
 19 dentistry, osteopathy, podiatry, nursing, physical therapy, chiropractic, acupuncture, veterinary medicine,
 20 occupational therapy, naturopathic medicine, cosmetology, manicuring, barbering, barbering nonchemical,
 21 esthetics, advanced practice esthetics, electrology, professional counseling, social work, psychology, or athletic
 22 training.

23 (2) A continuing education course instructor is not required to be licensed as a massage therapist.

24 (3) A massage therapy student, when enrolled in a board-approved program and while practicing the
 25 skills of massage therapy designated as a school-sanctioned activity and under the supervision of a licensed
 26 massage therapist, is not required to be licensed.

27 (4) The provisions of this chapter do not limit or regulate the practice of Native American traditional
 28 healing or faith healing.

- 1 (5) (a) The provisions of this chapter do not limit or regulate the practice of any person who uses:
- 2 (i) touch, words, and directed movement to deepen awareness of existing patterns of movement in
- 3 the body, as well as to suggest new possibilities of movement. Exempt practices under this subsection (5)(a)(i)
- 4 include but are not limited to the Feldenkrais method of somatic education, the Trager approach to movement
- 5 education, and body-mind centering.
- 6 (ii) touch to affect the human energy systems, energy meridians, or energy fields. Exempted practices
- 7 under this subsection (5)(a)(ii) include but are not limited to polarity bodywork therapy, Asian bodywork therapy,
- 8 acupressure, jin shin do, qigong, reiki, shiatsu, and tui na.
- 9 (iii) touch to effect change on the integration of the structure of the physical body. Exempt practices
- 10 under this subsection (5)(a)(iii) include but are not limited to the Rolf method of structural integration, Rolfing,
- 11 and Hellerwork.
- 12 (iv) touch to affect the reflex areas located in the hands, feet, and outer ears. Exempt practices under
- 13 this subsection (5)(a)(iv) include but are not limited to reflexology.
- 14 (b) The exemptions in subsection (5)(a) apply only if:
- 15 (i) the person is recognized by or meets the established requirements of either a professional
- 16 organization or credentialing agency that represents or certifies the respective practice based on a minimum
- 17 level of training, demonstration of competence, and adherence to ethical standards; and
- 18 (ii) the person's services are not designated as or implied to be massage therapy."
- 19

20 **Section 16.** Section 49-2-101, MCA, is amended to read:

21 **"49-2-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following

22 definitions apply:

23 (1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle

24 responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for

25 discrimination without reference to age.

26 (2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as

27 distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a

28 violation of this chapter.

- 1 (3) "Commission" means the commission for human rights provided for in 2-15-1706.
- 2 (4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.
- 3 (5) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt
4 and defer its payment, or to purchase property or services and defer payment. It includes without limitation the
5 right to incur and defer debt that is secured by residential real property.
- 6 (6) "Credit transaction" means any invitation to apply for credit, application for credit, extension of
7 credit, or credit sale.
- 8 (7) "Creditor" means a person who, regularly or as a part of the person's business, arranges for the
9 extension of credit for which the payment of a financial charge or interest is required, whether in connection
10 with loans, sale of property or services, or otherwise.
- 11 (8) "Department" means the department of labor and industry provided for in 2-15-1701.
- 12 (9) "Educational institution" means a public or private institution and includes an academy; college;
13 elementary or secondary school; extension course; kindergarten; nursery; school system; university; business,
14 nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.
- 15 (10) (a) "Employee" means an individual employed by an employer.
- 16 (b) The term does not include an individual providing services for an employer if the individual has an
17 independent contractor exemption certificate issued under 39-71-417 and is providing services under the terms
18 of that certificate.
- 19 (11) "Employer" means an employer of one or more persons or an agent of the employer but does not
20 include a fraternal, charitable, or religious association or corporation if the association or corporation is not
21 organized either for private profit or to provide accommodations or services that are available on a
22 nonmembership basis.
- 23 (12) "Employment agency" means a person undertaking to procure employees or opportunities to
24 work.
- 25 (13) "Financial institution" means a commercial bank, trust company, savings bank, finance company,
26 savings and loan association, credit union, investment company, or insurance company.
- 27 (14) "Housing accommodation" means a building or portion of a building, whether constructed or to be
28 constructed, that is or will be used as the sleeping quarters of its occupants.

1 (15) "Labor organization" means an organization or an agent of an organization organized for the
2 purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms
3 or conditions of employment, or of other mutual aid and protection of employees.

4 (16) "National origin" means ancestry.

5 (17) (a) "Organization" means a corporation, association, or any other legal or commercial entity that
6 engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

7 (b) The term does not include a labor organization.

8 (18) "Person" means one or more individuals, labor unions, partnerships, associations, corporations,
9 legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees'
10 associations, employers, employment agencies, organizations, or labor organizations.

11 (19) (a) "Physical or mental disability" means:

12 (i) a physical or mental impairment that substantially limits one or more of a person's major life
13 activities;

14 (ii) a record of such an impairment; or

15 (iii) a condition regarded as such an impairment.

16 (b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental
17 disability includes the failure to make reasonable accommodations that are required by an otherwise qualified
18 person who has a physical or mental disability. An accommodation that would require an undue hardship or that
19 would endanger the health or safety of any person is not a reasonable accommodation.

20 (20) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to
21 the general public subject only to the conditions and limitations established by law and applicable to all persons.
22 It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or
23 alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern,
24 nightclub, trailer park, resort, campground, barbering, barbering nonchemical, cosmetology, electrology,
25 esthetics, advanced practice esthetics; or manicuring salon or shop, bathroom, resthouse, theater, swimming
26 pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public
27 amusement and business establishments.

28 (b) Public accommodation does not include an institution, club, or place of accommodation that

1 proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be
2 considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and
3 regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or
4 indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this
5 subsection (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly
6 private."

7

8 NEW SECTION. **Section 17. Effective date.** [This act] is effective January 1, 2022.

9

- END -