

HOUSE BILL NO. 49

INTRODUCED BY DOLEZAL  
BY REQUEST OF THE DEPARTMENT OF COMMERCE

IN THE HOUSE

DECEMBER 23, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
JANUARY 4, 1993	FIRST READING.
JANUARY 6, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 8, 1993	PRINTING REPORT.  SECOND READING, DO PASS.
JANUARY 11, 1993	ENGROSSING REPORT.  THIRD READING, PASSED. AYES, 97; NOES, 2.  TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 13, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.  FIRST READING.
JANUARY 27, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
JANUARY 28, 1993	SECOND READING, CONCURRED IN.
JANUARY 29, 1993	THIRD READING, CONCURRED IN. AYES, 45; NOES, 2.  RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 3, 1993	SECOND READING, AMENDMENTS NOT CONCURRED IN.
MARCH 5, 1993	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE SENATE

MARCH 10, 1993

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

MARCH 29, 1993

CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

MARCH 30, 1993

CONFERENCE COMMITTEE REPORTED.

APRIL 3, 1993

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 12, 1993

SECOND READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

APRIL 13, 1993

THIRD READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

## 1 HOUSE BILL NO. 49

2 INTRODUCED BY DOLEZAL

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
6 COSMETOLOGY LAWS; REDEFINING CERTAIN TERMS; REQUIRING A HIGH  
7 SCHOOL DIPLOMA TO PRACTICE COSMETOLOGY; PROVIDING FOR  
8 PART-TIME COSMETOLOGY STUDENTS; PROVIDING REQUIREMENTS FOR  
9 TEMPORARY WITHDRAWAL FROM COSMETOLOGY SCHOOL; REDUCING THE  
10 NUMBER OF HOURS OF PROFESSIONAL TEACHER TRAINING ANNUALLY  
11 REQUIRED OF ACTIVE TEACHERS; AND AMENDING SECTIONS  
12 37-31-101, 37-31-301, 37-31-302, 37-31-304, 37-31-305,  
13 37-31-308, 37-31-311, 37-31-312, 37-31-322, 37-31-331, AND  
14 39-51-204, MCA."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 37-31-101, MCA, is amended to read:

18 "37-31-101. Definitions. Unless the context requires  
19 otherwise, in this chapter, the following definitions apply:20 (1) "Board" means the board of cosmetologists provided  
21 for in 2-15-1857.22 (2) "Booth" means any part of a ~~cosmetological~~  
23 ~~establishment~~ cosmetology salon or manicuring shop salon  
24 that is rented or leased for the performance of  
25 cosmetologist services, as specified in 39-51-204(1)(1).1 (3) "~~Cosmetological--establishment~~ Cosmetology salon"2 means premises, building, or part of a building in which is  
3 practiced a branch or combination of branches of cosmetology  
4 or the occupation of a hairdresser and cosmetician or  
5 cosmetologist and which that must have a manager-operator in  
6 charge.7 (4) "Department" means the department of commerce  
8 provided for in Title 2, chapter 15, part 18.9 (5) "Manicuring" includes nail care of the hands and  
10 feet and the application and maintenance of artificial  
11 nails.12 (6) "Manicuring shop salon" means premises, a building,  
13 or part of a building in which the art of manicuring is  
14 practiced.15 (7) "Practice and teaching of cosmetology" ~~includes~~  
16 means work ~~generally--and--usually~~ included in the terms  
17 "hairdressing", "manicuring", and "beauty culture" and  
18 performed in ~~so-called--hairdressing--and---beauty---shops~~  
19 cosmetology salons, in booths, or by itinerant  
20 cosmetologists, which work is done for the embellishment,  
21 cleanliness, and beautification of the hair, scalp, face,  
22 arms, feet, or hands. The practice and teaching of  
23 cosmetology ~~shall~~ may not be construed to include itinerant  
24 cosmetologists who perform their services without  
25 compensation for demonstration purposes in any regularly

1 established store or place of business holding a license  
2 from the state of Montana as ~~such a~~ store or place of  
3 business."

4 **Section 2.** Section 37-31-301, MCA, is amended to read:

5 "37-31-301. Prohibited acts. (1) Without an appropriate  
6 license issued under this chapter, it ~~shall be~~ is unlawful  
7 to:

8 (a) practice cosmetology for compensation;

9 (b) own, manage, operate, or conduct a school of  
10 cosmetology or school of manicuring;

11 (c) manage or operate a cosmetology ~~shop~~ salon,  
12 manicuring ~~shop~~ salon, or booth, or beauty-parlor;

13 (d) teach in a school of cosmetology or school of  
14 manicuring;

15 (e) practice manicuring for compensation;

16 (f) practice as a finger waver.

17 (2) It is unlawful:

18 (a) for any a person who owns, manages, or controls a  
19 cosmetology ~~shop~~ salon to employ or use an unlicensed person  
20 as a cosmetologist or manicurist;

21 (b) to operate a cosmetology school without complying  
22 with all of the regulations of 37-31-311;

23 (c) to practice cosmetology in any place other than in  
24 a licensed establishment salon as provided in this chapter,  
25 except when a licensed operator is requested by a customer

1 to go to a place other than a licensed establishment salon  
2 and is sent to ~~such a~~ customer from a licensed establishment  
3 salon;

4 (d) for any a person who owns, manages, or controls a  
5 manicuring ~~shop~~ salon to employ or use an unlicensed person  
6 as a manicurist;

7 (e) to operate a manicuring school without complying  
8 with 37-31-311;

9 (f) to violate any of the provisions of this chapter."

10 **Section 3.** Section 37-31-302, MCA, is amended to read:

11 "37-31-302. License required to practice, teach, or  
12 operate ~~shop~~ salon, booth, or school. (1) No A person may  
13 not practice or teach cosmetology or practice or teach  
14 manicuring without a license.

15 (2) No A place may not be used or maintained for the  
16 teaching of cosmetology or manicuring for compensation  
17 except under a certificate of registration.

18 (3) No A person may not operate or manage a beauty-shop  
19 cosmetology salon or a manicuring ~~shop~~ salon or practice  
20 cosmetology or manicuring without a manager-operator  
21 license.

22 (4) No A person may not operate or conduct a school of  
23 cosmetology or a school of manicuring and teach the art of  
24 cosmetology or manicuring without a license to teach  
25 cosmetology.

(5) No A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, or corporation desiring to operate a ~~cosmetological~~---~~establishment~~ cosmetology salon shall make an application to the department for a certificate of registration and license. The application ~~shall~~ must be accompanied by the annual registration fee.

(7) No A license may not be issued until the inspection fees required in 37-31-312 have been paid."

**Section 4.** Section 37-31-304, MCA, is amended to read:

"37-31-304. Qualifications of applicants for license to practice. (1) Before a person may practice cosmetology, he must the person shall obtain a license to practice cosmetology from the department. Before a person may practice manicuring, ~~he--must~~ the person shall obtain a license to practice manicuring from the department unless he the person is licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice cosmetology, the applicant must may not be ~~not~~ less than 18 years of age and, must be of good moral character, and ~~must have completed 2 years of high school or~~ possess a high school diploma or the equivalent of a high school diploma recognized by the superintendent of public instruction. The applicant must have completed a continuous

course of study of at least 2,000 hours in a registered beauty cosmetology school, which course of study has been distributed over a period of not less than 10 months or more than 14 months for a full-time student and not less than 14 months or more than 24 months for a part-time student, and must have received a diploma from the beauty cosmetology school or must have completed the course of study in cosmetology prescribed by the board. A student may not temporarily withdraw from school to avoid the 14-month full-time or the 24-month part-time requirement except as provided in subsection (2)(c). A student may change from full-time to part-time status, or vice versa, according to procedures set by board rule.

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

(c) (i) A person may apply to the board for an exception to the 14- or 24-month requirement because of extreme hardship or duress, as defined by the board. The hardship or duress may include but is not limited to death in the immediate family, personal medical hardship, or immediate family medical hardship.

(ii) An application for an exception must be filed in

1 accordance with board procedures. The decision on an  
2 exception is left to the sole discretion of the board.

3 (iii) An application for an exception must be  
4 accompanied by valid documentation, as defined by the board,  
5 of the hardship.

6 (3) (a) To be eligible to take the examination to  
7 practice manicuring, an applicant must ~~may not~~ be not less  
8 than 18 years of age; must be of good moral character; must  
9 possess a high school diploma, an equivalent of a high  
10 school diploma recognized by the superintendent of public  
11 instruction, or a certificate of completion from a  
12 vocational-technical center program; and must have  
13 completed a course of study prescribed by the board in a  
14 registered school of cosmetology or a registered school of  
15 manicuring.

16 (b) A person qualified under subsection (3)(a) must  
17 shall file with the department a written application to take  
18 the examination and deposit with the department the required  
19 examination fee."

20 **Section 5.** Section 37-31-305, MCA, is amended to read:

21 "37-31-305. Qualifications of applicants for license to  
22 teach. (1) Before a person may teach manicuring to persons  
23 seeking only to be licensed to practice manicuring or teach  
24 cosmetology, he--must the person shall obtain from the  
25 department a license to teach cosmetology.

1 (2) To be eligible to take an examination to obtain a  
2 license to teach cosmetology, a person must:

3 (a) be a graduate of high school or possess an  
4 equivalent of a high school diploma recognized by the  
5 superintendent of public instruction; and

6 (b) (i) have a license to practice cosmetology issued  
7 by the department and have received a diploma from a  
8 registered school of cosmetology approved by the board,  
9 certifying satisfactory completion of 650 hours of student  
10 teacher training; or

11 (ii) have been actively engaged as a beauty--operator  
12 cosmetologist for 3 continuous years immediately prior to  
13 taking the teachers' examination."

14 **Section 6.** Section 37-31-308, MCA, is amended to read:

15 "37-31-308. Examination -- reexamination -- exemption  
16 for handicapped persons. (1) Examinations for a license to  
17 practice cosmetology or manicuring or to teach cosmetology  
18 ~~shall~~ must be held at places and times specified by the  
19 board. The examinations ~~shall~~ must be supervised by the  
20 board. The examinations may not be confined to a specific  
21 method or system. The examinations ~~shall~~ must be conducted  
22 by persons who hold a current ~~license~~ licenses to practice  
23 in the profession for which the applicant is being examined.

24 (2) Anyone failing twice to pass the examination for a  
25 license to practice cosmetology may not apply to retake the

1 examination:

2 (a) sooner than 6 months after the date of the second  
3 failure; or

4 (b) until he the applicant has taken 200 hours  
5 additional training at a registered school of cosmetology  
6 approved by the board.

7 (3) Anyone failing twice to pass the examination for a  
8 license to practice manicuring ~~must~~ shall meet the  
9 additional requirements prescribed by the board before  
10 applying to retake the examination.

11 (4) Anyone failing twice to pass the examination for a  
12 license to teach cosmetology ~~must~~ shall wait 1 year before  
13 reapplying to take the examination. Upon reapplying, the  
14 applicant ~~must~~ shall provide certification of completion of  
15 500 hours of teacher training during that year in a  
16 registered school licensed as a teacher training unit.

17 (5) Physically handicapped persons trained for  
18 cosmetology or manicuring by the department of social and  
19 rehabilitation services ~~shall~~ are, for a period of 1 year  
20 immediately following their graduation, be exempt from the  
21 examination and the fees described in 37-31-323. On  
22 certification from the department of social and  
23 rehabilitation services that a department of social and  
24 rehabilitation services beneficiary has successfully  
25 completed the required training in a beauty cosmetology

1 school or manicuring school, the department shall issue the  
2 person the necessary certificate or license to practice the  
3 profession in this state."

4 **Section 7.** Section 37-31-311, MCA, is amended to read:

5 "37-31-311. Schools -- certificate of registration --  
6 requirements -- bond -- curriculum. (1) No A person, firm,  
7 partnership, or corporation may not operate a school for the  
8 purpose of teaching cosmetology for compensation or for the  
9 purpose of teaching manicuring for compensation unless a  
10 certificate of registration has been first obtained from the  
11 department. Application for the certificate ~~shall~~ must be  
12 filed with the department on a form prescribed by the board.

13 (2) No A school for teaching cosmetology may not be  
14 granted a certificate of registration unless it complies or  
15 can comply with the following requirements:

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

22 (b) It ~~shall~~ possesses apparatus and equipment  
23 the board determines is necessary for the ready and full  
24 teaching of all subjects or practices of cosmetology.

25 (c) It ~~shall~~ maintains a school term of not

1 less than 2,000 hours and ~~shall--prescribe~~ prescribes a  
 2 course of practical training and technical instruction equal  
 3 to the requirements for board examinations, which course of  
 4 training and technical instruction ~~shall~~ must be prescribed  
 5 by the board.

6 (d) It ~~shall---keep~~ keeps a daily record of the  
 7 attendance of each student, ~~establiish~~ establishes grades,  
 8 and ~~hold~~ holds examinations before issuing diplomas.

9 (e) No An owner or person in charge of a school of  
 10 cosmetology may not permit a person to sleep in or use for  
 11 residential purposes, or for any other purpose ~~which~~ that  
 12 would ~~tend-to~~ make the room unsanitary, a room used wholly  
 13 or in part for a school of cosmetology.

14 (3) No A school for teaching manicuring may not be  
 15 granted a certificate of registration unless it complies  
 16 with subsections (2)(a) and (2)(d) and the following  
 17 requirements:

18 (a) It ~~must-possess~~ possesses apparatus and equipment  
 19 the board determines necessary for the ready and full  
 20 teaching of all subjects or practices of manicuring.

21 (b) It ~~must-maintain~~ maintains a school term and a  
 22 course of practical training and technical instruction as  
 23 prescribed by the board.

24 (c) No An owner or person in charge of a school of  
 25 manicuring may not permit a person to sleep in or use for

1 residential purposes, or for any other purpose that would  
 2 ~~tend--to~~ make the room unsanitary, a room used wholly or in  
 3 part for a school of manicuring.

4 (4) Licenses or certificates of registration for  
 5 schools of cosmetology and schools of manicuring may be  
 6 refused, revoked, or suspended, as provided in 37-31-331.

7 (5) No A teacher or student teacher may not be  
 8 permitted to practice cosmetology or manicuring on the  
 9 public in a school of cosmetology or a school of manicuring.  
 10 A school that enrolls student teachers for a course of  
 11 student teacher training may not have, at any one time, more  
 12 than one student teacher for each full-time licensed teacher  
 13 actively engaged at the school. The student teachers may not  
 14 substitute for full-time teachers.

15 (6) The board may make further rules necessary for the  
 16 proper conduct of schools of cosmetology and schools of  
 17 manicuring.

18 (7) The board shall require the person, firm,  
 19 partnership, or corporation operating a school of  
 20 cosmetology or a school of manicuring to furnish a good and  
 21 sufficient bond in the amount of \$5,000 and in a form and  
 22 manner prescribed by the board.

23 (8) No A professional beauty-shop cosmetology salon or  
 24 manicuring shop salon may not be operated in connection with  
 25 a school of cosmetology or school of manicuring.



1 (9) The board may, by rule, establish a suitable  
2 curriculum for teachers' training in registered schools of  
3 cosmetology."

4 **Section 8.** Section 37-31-312, MCA, is amended to read:

5 "37-31-312. Inspection. (1) The department shall  
6 appoint one or more inspectors, each of whom shall devote  
7 his time to inspecting ~~beauty-parlors~~ cosmetology salons and  
8 performing other duties as the department, in cooperation  
9 with the board, may direct. The inspectors may enter a  
10 ~~beauty--parlor~~ cosmetology salon, manicuring shop salon,  
11 booth, school of cosmetology, or school of manicuring during  
12 business hours for the purpose of inspection, and the  
13 refusal of a licensee to permit the inspection during  
14 business hours is cause for revocation of the license.

15 (2) Upon application for a license, ~~any a~~  
16 ~~cosmetological-establishment~~ cosmetology salon or manicuring  
17 shop salon ~~must~~ shall pay an initial inspection fee  
18 prescribed by the board.

19 (3) The board may authorize the department to grant to  
20 a ~~cosmetological---~~ cosmetology salon or  
21 manicuring shop salon, upon payment of the initial  
22 inspection fee, a temporary permit authorizing the  
23 ~~cosmetological-establishment~~ cosmetology salon or manicuring  
24 shop salon to operate for a period of not to exceed 90 days  
25 or until the inspector is able to make the inspection,

1 whichever event occurs first. This temporary permit is not  
2 renewable.

3 (4) The department shall cause an inspector, appointed  
4 as provided in subsection (1), to conduct an annual  
5 inspection of each ~~cosmetological-establishment~~ cosmetology  
6 salon and manicuring shop salon in the state."

7 **Section 9.** Section 37-31-322, MCA, is amended to read:

8 "37-31-322. Renewal -- continuing education --  
9 ~~delinquency fee.~~ (1) Licenses and certificates may be issued  
10 for no longer than 1 year unless otherwise provided by rule.  
11 Licenses and certificates expire on December 31 unless  
12 otherwise provided by rule or renewed for the next year or  
13 renewal period. Licenses and certificates may be renewed by  
14 application made prior to December 31 of each year, unless  
15 otherwise provided, and by the payment of a required renewal  
16 fee. Expired licenses and certificates may be renewed under  
17 rules made by the board, but the right to renew an expired  
18 license or certificate terminates after 10 years of  
19 nonpayment. The board may provide by rule for a change in  
20 the renewal date and renewal period for the manager-operator  
21 and salon owner category. The renewal fee may not exceed  
22 twice the fee for a 2-year renewal or three times the fee  
23 for a 3-year renewal and ~~shall~~ must be as set by the board.

24 (2) In addition to the foregoing requirements for  
25 renewal, persons applying for the renewal of licenses to

1 teach cosmetology must have fulfilled the following  
2 additional requirements:

3 (a) During each year, an active teacher, either  
4 full-time or part-time, must have successfully completed 30  
5 15 hours' professional teacher training at a school approved  
6 by the board.

7 (b) A person holding a license to teach cosmetology but  
8 not actively engaged either full-time or part-time in  
9 teaching cosmetology or manicuring during the preceding year  
10 may renew the license by paying the required fee. A person  
11 holding a license to teach cosmetology but not actively  
12 engaged in teaching cosmetology or manicuring either  
13 full-time or part-time for the preceding year or longer and  
14 wishing to resume active teaching of cosmetology or  
15 manicuring must successfully complete 30 hours' professional  
16 teacher training at a school approved by the board before  
17 resuming active teaching. However, the foregoing provisions  
18 do not prevent the board, under rules it adopts, from  
19 permitting a person holding who holds a license to teach  
20 cosmetology and who is not actively engaged either full-time  
21 or part-time in teaching cosmetology or manicuring from  
22 teaching as a substitute for an active teacher.

23 (3) A fee prescribed by the board ~~shall~~ must be  
24 charged, in addition to other fees fixed by law, for renewal  
25 applications of licenses and certificates made after

1 December 31 of each year or other predetermined renewal  
2 deadline."

3 **Section 10.** Section 37-31-331, MCA, is amended to read:

4 "37-31-331. Refusal, revocation, or suspension of  
5 licenses -- grounds -- notice and hearing. (1) The board may  
6 refuse to issue, may refuse to renew, or may revoke or  
7 suspend a license in any one of the following cases:

8 (a) failure of a person, firm, partnership, or  
9 corporation operating a ~~cosmetological~~ establishment  
10 cosmetology salon, manicuring shop salon, school of  
11 cosmetology, or school of manicuring to comply with this  
12 chapter;

13 (b) failure to comply with the sanitary rules adopted  
14 by the board and approved by the department of health and  
15 environmental sciences for the regulation of ~~cosmetological~~  
16 establishments cosmetology salons, manicuring shops salons,  
17 schools of cosmetology, or schools of manicuring;

18 (c) gross malpractice;

19 (d) continued practice by a person knowingly having an  
20 infectious or contagious disease;

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

23 (f) permitting a certificate of registration or license  
24 to be used where the holder is not personally, actively, and  
25 continuously engaged in business; or

(g) failure to display the license.

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

**Section 11.** Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment.

(1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this

chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system

1 established by an act of congress, provided that the  
2 department must enter into agreements with the proper  
3 agencies under such act of congress, which agreements shall  
4 become effective in the manner prescribed in the Montana  
5 Administrative Procedure Act for the adoption of rules, to  
6 provide reciprocal treatment to individuals who have, after  
7 acquiring potential rights to benefits under this chapter,  
8 acquired rights to unemployment insurance under such act of  
9 congress or who have, after acquiring potential rights to  
10 unemployment insurance under such act of congress, acquired  
11 rights to benefits under this chapter;

12 (g) services performed as a newspaper carrier or  
13 free-lance correspondent if the person performing the  
14 services or a parent or guardian of the person performing  
15 the services in the case of a minor has acknowledged in  
16 writing that the person performing the services and the  
17 services are not covered. As used in this subsection:

18 (i) "free-lance correspondent" is a person who submits  
19 articles or photographs for publication and is paid by the  
20 article or by the photograph; and

21 (ii) "newspaper carrier" means a person who provides a  
22 newspaper with the service of delivering newspapers singly  
23 or in bundles. The term does not include an employee of the  
24 paper who, incidentally to his main duties, carries or  
25 delivers papers.

1 (h) services performed by real estate, securities, and  
2 insurance salespeople paid solely by commissions and without  
3 guarantee of minimum earnings;

4 (i) service performed in the employ of a school,  
5 college, or university if such service is performed by a  
6 student who is enrolled and is regularly attending classes  
7 at such school, college, or university or by the spouse of  
8 such a student if such spouse is advised, at the time such  
9 spouse commences to perform such service, that the  
10 employment of such spouse to perform such service is  
11 provided under a program to provide financial assistance to  
12 such student by such school, college, or university and such  
13 employment will not be covered by any program of  
14 unemployment insurance;

15 (j) service performed by an individual who is enrolled  
16 at a nonprofit or public educational institution, which  
17 normally maintains a regular faculty and curriculum and  
18 normally has a regularly organized body of students in  
19 attendance at the place where its educational activities are  
20 carried on, as a student in a full-time program taken for  
21 credit at such institution which combines academic  
22 instruction with work experience if such service is an  
23 integral part of such program and such institution has so  
24 certified to the employer, except that this subsection shall  
25 not apply to service performed in a program established for

1 or on behalf of an employer or group of employers;

2 (k) service performed in the employ of a hospital if  
3 such service is performed by a patient of the hospital;

4 (l) services performed by a cosmetologist who is  
5 licensed under Title 37, chapter 31, or a barber who is  
6 licensed under Title 37, chapter 30, and who has  
7 acknowledged in writing that he is not covered by  
8 unemployment insurance and workers' compensation and who  
9 contracts with a ~~cosmetological--establishment~~ cosmetology  
10 salon as defined in 37-31-101 or a barbershop as defined in  
11 37-30-101, which contract shall show the cosmetologist or  
12 barber is free from all control and direction of the owner  
13 in the contract and in fact; receives payment for services  
14 from his or her individual clientele; leases, rents, or  
15 furnishes all of his or her own equipment, skills, or  
16 knowledge; and whose contract gives rise to an action for  
17 breach of contract in the event of contract termination (the  
18 existence of a single license for the ~~cosmetological~~  
19 ~~establishment~~ cosmetology salon or barbershop shall not be  
20 construed as a lack of freedom from control or direction  
21 under this subsection);

22 (m) casual labor not in the course of an employer's  
23 trade or business performed in any calendar quarter, unless  
24 the cash remuneration paid for such service is \$50 or more  
25 and such service is performed by an individual who is

1 regularly employed by such employer to perform such service.  
2 "Regularly employed" means the services are performed during  
3 at least 24 days in the same quarter.

4 (n) employment of sole proprietors or working members  
5 of a partnership;

6 (o) services performed for the installation of floor  
7 coverings if the installer;

8 (i) bids or negotiates a contract price based upon work  
9 performed by the yard or by the job;

10 (ii) is paid upon completion of an agreed upon portion  
11 of the job or after the job is completed;

12 (iii) may perform services for anyone without  
13 limitation;

14 (iv) may accept or reject any job;

15 (v) furnishes substantially all tools and equipment  
16 necessary to provide the services; and

17 (vi) works under a written contract that:

18 (A) gives rise to a breach of contract action if the  
19 installer or any other party fails to perform the contract  
20 obligations;

21 (B) states the installer is not covered by unemployment  
22 insurance; and

23 (C) requires the installer to provide a current  
24 workers' compensation policy or to obtain an exemption from  
25 workers' compensation requirements.

1 (2) "Employment" does not include elected public  
2 officials.

3 (3) For the purposes of 39-51-203(6), the term  
4 "employment" does not apply to service performed:

5 (a) in the employ of a church or convention or  
6 association of churches or an organization which is operated  
7 primarily for religious purposes and which is operated,  
8 supervised, controlled, or principally supported by a church  
9 or convention or association of churches;

10 (b) by a duly ordained, commissioned, or licensed  
11 minister of a church in the exercise of the church's  
12 ministry or by a member of a religious order in the exercise  
13 of duties required by such order;

14 (c) in a facility conducted for the purpose of carrying  
15 out a program of rehabilitation for individuals whose  
16 earning capacity is impaired by age or physical or mental  
17 deficiency or injury or providing remunerative work for  
18 individuals who, because of their impaired physical or  
19 mental capacity, cannot be readily absorbed in the  
20 competitive labor market by an individual receiving such  
21 rehabilitation or remunerative work;

22 (d) as part of an unemployment work-relief or  
23 work-training program assisted or financed in whole or in  
24 part by a federal agency or any agency of a state or  
25 political subdivision thereof by an individual receiving

1 such work relief or work training; or

2 (e) for a state prison or other state correctional or  
3 custodial institution by an inmate of that institution.

4 (4) An individual found to be an independent contractor  
5 by the department under the terms of 39-71-401(3) is  
6 considered an independent contractor for the purposes of  
7 this chapter."

-End-

APPROVED BY COMM. ON BUSINESS  
AND ECONOMIC DEVELOPMENT

## HOUSE BILL NO. 49

INTRODUCED BY DOLEZAL

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE COSMETOLOGY LAWS; REDEFINING CERTAIN TERMS; ~~REQUIRING A HIGH SCHOOL DIPLOMA TO PRACTICE COSMETOLOGY; PROVIDING FOR PART-TIME COSMETOLOGY STUDENTS; PROVIDING REQUIREMENTS FOR TEMPORARY WITHDRAWAL FROM COSMETOLOGY SCHOOL;~~ REDUCING THE NUMBER OF HOURS OF PROFESSIONAL TEACHER TRAINING ANNUALLY REQUIRED OF ACTIVE TEACHERS; AND AMENDING SECTIONS 37-31-101, 37-31-301, 37-31-302, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-322, 37-31-331, AND 39-51-204, MCA."

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

**Section 1.** Section 37-31-101, MCA, is amended to read:

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

(1) "Board" means the board of cosmetologists provided for in 2-15-1857.

(2) "Booth" means any part of a ~~cosmetological~~ establishment cosmetology salon or manicuring shop salon that is rented or leased for the performance of cosmetologist services, as specified in 39-51-204(1)(1).

(3) "~~Cosmetological~~ establishment Cosmetology salon" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and which that must have a manager-operator in charge.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(6) "Manicuring shop salon" means premises, a building, or part of a building in which the art of manicuring is practiced.

(7) "Practice and teaching of cosmetology" ~~includes~~ means work ~~generally and usually~~ included in the terms "hairdressing", "manicuring", and "beauty culture" and performed in ~~so-called hairdressing and beauty shops~~ cosmetology salons, in booths, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology ~~shall~~ may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly

1 established store or place of business holding a license  
2 from the state of Montana as such a store or place of  
3 business."

4 **Section 2.** Section 37-31-301, MCA, is amended to read:

5 "37-31-301. Prohibited acts. (1) Without an appropriate  
6 license issued under this chapter, it ~~shall be~~ is unlawful  
7 to:

8 (a) practice cosmetology for compensation;

9 (b) own, manage, operate, or conduct a school of  
10 cosmetology or school of manicuring;

11 (c) manage or operate a cosmetology shop salon,  
12 manicuring shop salon, or boothr-or-beauty-parlor;

13 (d) teach in a school of cosmetology or school of  
14 manicuring;

15 (e) practice manicuring for compensation;

16 (f) practice as a finger waver.

17 (2) It is unlawful:

18 (a) for any a person who owns, manages, or controls a  
19 cosmetology shop salon to employ or use an unlicensed person  
20 as a cosmetologist or manicurist;

21 (b) to operate a cosmetology school without complying  
22 with all of the regulations of 37-31-311;

23 (c) to practice cosmetology in any place other than in  
24 a licensed establishment salon as provided in this chapter,  
25 except when a licensed operator is requested by a customer

1 to go to a place other than a licensed establishment salon  
2 and is sent to such a customer from a licensed establishment  
3 salon;

4 (d) for any a person who owns, manages, or controls a  
5 manicuring shop salon to employ or use an unlicensed person  
6 as a manicurist;

7 (e) to operate a manicuring school without complying  
8 with 37-31-311;

9 (f) to violate any of the provisions of this chapter."

10 **Section 3.** Section 37-31-302, MCA, is amended to read:

11 "37-31-302. License required to practice, teach, or  
12 operate shop salon, booth, or school. (1) No A person may  
13 not practice or teach cosmetology or practice or teach  
14 manicuring without a license.

15 (2) No A place may not be used or maintained for the  
16 teaching of cosmetology or manicuring for compensation  
17 except under a certificate of registration.

18 (3) No A person may not operate or manage a beauty-shop  
19 cosmetology salon or a manicuring shop salon or practice  
20 cosmetology or manicuring without a manager-operator  
21 license.

22 (4) No A person may not operate or conduct a school of  
23 cosmetology or a school of manicuring and teach the art of  
24 cosmetology or manicuring without a license to teach  
25 cosmetology.



(5) No A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, or corporation desiring to operate a ~~cosmetological~~ establishment cosmetology salon shall make an application to the department for a certificate of registration and license. The application ~~shall~~ must be accompanied by the annual registration fee.

(7) No A license may not be issued until the inspection fees required in 37-31-312 have been paid."

**Section 4.** Section 37-31-304, MCA, is amended to read:

"37-31-304. Qualifications of applicants for license to practice. (1) Before a person may practice cosmetology, he must the person shall obtain a license to practice cosmetology from the department. Before a person may practice manicuring, he ~~must~~ the person shall obtain a license to practice manicuring from the department unless he the person is licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice cosmetology, the applicant must may not be not less than 18 years of age and, must be of good moral character, and ~~must have completed 2 years of high school or~~ HAVE COMPLETED 2 YEARS OF HIGH SCHOOL OR possess ~~a high school diploma or~~ the equivalent of a high school diploma recognized by the superintendent of public instruction. The

applicant must have completed a ~~continuous~~ course of study of at least 2,000 hours in a registered beauty cosmetology school, ~~which course of study has been distributed over a period of not less than 18 months or more than 14 months for a full-time student and not less than 14 months or more than 24 months for a part-time student,~~ and must have received a diploma from the beauty cosmetology school or must have completed the course of study in cosmetology prescribed by the board. ~~A student may not temporarily withdraw from school to avoid the 14-month full-time or the 24-month part-time requirement except as provided in subsection (2)(c). A student may change from full-time to part-time status, or vice versa, according to procedures set by board rule.~~

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

~~(c) (i) A person may apply to the board for an exception to the 14 or 24-month requirement because of extreme hardship or duress, as defined by the board. The hardship or duress may include but is not limited to death in the immediate family, personal medical hardship, or immediate family medical hardship.~~

~~{ii}-An application for an exception must be filed in accordance with board procedures. The decision on an exception is left to the sole discretion of the board.~~

~~{iii}-An application for an exception must be accompanied by valid documentation as defined by the board of the hardship.~~

(3) (a) To be eligible to take the examination to practice manicuring, an applicant must may not be not less than 18 years of age; must be of good moral character; must HAVE COMPLETED 2 YEARS OF HIGH SCHOOL, possess a ~~high school diploma~~, an THE equivalent of a high school diploma recognized by the superintendent of public instruction, or POSSESS a certificate of completion from a vocational-technical center program; and must have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring.

(b) A person qualified under subsection (3)(a) must shall file with the department a written application to take the examination and deposit with the department the required examination fee."

**Section 5.** Section 37-31-305, MCA, is amended to read:

"37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach manicuring to persons seeking only to be licensed to practice manicuring or teach

cosmetology, he ~~must~~ the person shall obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a beauty operator cosmetologist for 3 continuous years immediately prior to taking the teachers' examination."

**Section 6.** Section 37-31-308, MCA, is amended to read:

"37-31-308. Examination -- reexamination -- exemption for handicapped persons. (1) Examinations for a license to practice cosmetology or manicuring or to teach cosmetology ~~shall~~ must be held at places and times specified by the board. The examinations ~~shall~~ must be supervised by the board. The examinations may not be confined to a specific method or system. The examinations ~~shall~~ must be conducted by persons who hold a current ~~license~~ licenses to practice in the profession for which the applicant is being examined.

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he the applicant has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring ~~must~~ shall meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology ~~must~~ shall wait 1 year before reapplying to take the examination. Upon reapplying, the applicant ~~must~~ shall provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Physically handicapped persons trained for cosmetology or manicuring by the department of social and rehabilitation services ~~shall~~ are, for a period of 1 year immediately following their graduation, be exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and

rehabilitation services beneficiary has successfully completed the required training in a beauty cosmetology school or manicuring school, the department shall issue the person the necessary certificate or license to practice the profession in this state."

**Section 7.** Section 37-31-311, MCA, is amended to read:

"37-31-311. Schools -- certificate of registration -- requirements -- bond -- curriculum. (1) No A person, firm, partnership, or corporation may not operate a school for the purpose of teaching cosmetology for compensation or for the purpose of teaching manicuring for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate ~~shall~~ must be filed with the department on a form prescribed by the board.

(2) No A school for teaching cosmetology may not be granted a certificate of registration unless it complies or can comply with the following requirements:

(a) It ~~shall--have~~ has in its employ either a licensed teacher who is at all times in the immediate supervision of the work of the school, or other teachers who the board determines are necessary for the proper conduct of the school. There may not be more than 25 students to each teacher.

(b) It ~~shall--possess~~ possesses apparatus and equipment the board determines is necessary for the ready and full

1 teaching of all subjects or practices of cosmetology.

2 (c) It ~~shall-maintain~~ maintains a school term of not  
3 less than 2,000 hours and ~~shall--prescribe~~ prescribes a  
4 course of practical training and technical instruction equal  
5 to the requirements for board examinations, which course of  
6 training and technical instruction ~~shall~~ must be prescribed  
7 by the board.

8 (d) It ~~shall--keep~~ keeps a daily record of the  
9 attendance of each student, ~~establish~~ establishes grades,  
10 and ~~hold~~ holds examinations before issuing diplomas.

11 (e) No An owner or person in charge of a school of  
12 cosmetology may not permit a person to sleep in or use for  
13 residential purposes, or for any other purpose ~~which~~ that  
14 would ~~tend--to~~ make the room unsanitary, a room used wholly  
15 or in part for a school of cosmetology.

16 (3) No A school for teaching manicuring may not be  
17 granted a certificate of registration unless it complies  
18 with subsections (2)(a) and (2)(d) and the following  
19 requirements:

20 (a) It ~~must--possess~~ possesses apparatus and equipment  
21 the board determines necessary for the ready and full  
22 teaching of all subjects or practices of manicuring.

23 (b) It ~~must--maintain~~ maintains a school term and a  
24 course of practical training and technical instruction as  
25 prescribed by the board.

1 (c) No An owner or person in charge of a school of  
2 manicuring may not permit a person to sleep in or use for  
3 residential purposes, or for any other purpose that would  
4 tend to make the room unsanitary, a room used wholly or in  
5 part for a school of manicuring.

6 (4) Licenses or certificates of registration for  
7 schools of cosmetology and schools of manicuring may be  
8 refused, revoked, or suspended, as provided in 37-31-331.

9 (5) No A teacher or student teacher may not be  
10 permitted to practice cosmetology or manicuring on the  
11 public in a school of cosmetology or a school of manicuring.  
12 A school that enrolls student teachers for a course of  
13 student teacher training may not have, at any one time, more  
14 than one student teacher for each full-time licensed teacher  
15 actively engaged at the school. The student teachers may not  
16 substitute for full-time teachers.

17 (6) The board may make further rules necessary for the  
18 proper conduct of schools of cosmetology and schools of  
19 manicuring.

20 (7) The board shall require the person, firm,  
21 partnership, or corporation operating a school of  
22 cosmetology or a school of manicuring to furnish a good and  
23 sufficient bond in the amount of \$5,000 and in a form and  
24 manner prescribed by the board.

25 (8) No A professional beauty-shop cosmetology salon or

manicuring shop salon may not be operated in connection with a school of cosmetology or school of manicuring.

(9) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology."

**Section 8.** Section 37-31-312, MCA, is amended to read:

"37-31-312. **Inspection.** (1) The department shall appoint one or more inspectors, each of whom shall devote his time to inspecting ~~beauty-parlors~~ cosmetology salons and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a ~~beauty-parlor~~ cosmetology salon, manicuring shop salon, booth, school of cosmetology, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, ~~any a~~ cosmetological-establishment cosmetology salon or manicuring shop salon must ~~shall~~ pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a ~~cosmetological---~~ establishment cosmetology salon or manicuring shop salon, upon payment of the initial inspection fee, a temporary permit authorizing the ~~cosmetological-establishment~~ cosmetology salon or manicuring

shop salon to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The department shall cause an inspector, appointed as provided in subsection (1), to conduct an annual inspection of each ~~cosmetological-establishment~~ cosmetology salon and manicuring shop salon in the state."

**Section 9.** Section 37-31-322, MCA, is amended to read:

"37-31-322. **Renewal** -- continuing education -- delinquency fee. (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and by the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and ~~shall~~ must be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of licenses to teach cosmetology must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 30 15 hours' professional teacher training at a school approved by the board.

(b) A person holding a license to teach cosmetology but not actively engaged either full-time or part-time in teaching cosmetology or manicuring during the preceding year may renew the license by paying the required fee. A person holding a license to teach cosmetology but not actively engaged in teaching cosmetology or manicuring either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology or manicuring must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person ~~holding~~ who holds a license to teach cosmetology and who is not actively engaged either full-time or part-time in teaching cosmetology or manicuring from teaching as a substitute for an active teacher.

(3) A fee prescribed by the board ~~shall~~ must be

charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline."

**Section 10.** Section 37-31-331, MCA, is amended to read:

"37-31-331. Refusal, revocation, or suspension of licenses -- grounds -- notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a ~~cosmetological~~---establishment cosmetology salon, manicuring shop salon, school of cosmetology, or school of manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of health and environmental sciences for the regulation of ~~cosmetological~~ establishments cosmetology salons, manicuring shops salons, schools of cosmetology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

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

(f) permitting a certificate of registration or license

to be used where the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

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

**Section 11.** Section 39-51-204, MCA, is amended to read:

**"39-51-204. Exclusions from definition of employment.**

(1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has

domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the

paper who, incidentally to his main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so



certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a ~~cosmetological-establishment~~ cosmetology salon as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the ~~cosmetological establishment~~ cosmetology salon or barbershop shall not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless

the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors or working members of a partnership;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current

1 workers' compensation policy or to obtain an exemption from  
2 workers' compensation requirements.

3 (2) "Employment" does not include elected public  
4 officials.

5 (3) For the purposes of 39-51-203(6), the term  
6 "employment" does not apply to service performed:

7 (a) in the employ of a church or convention or  
8 association of churches or an organization which is operated  
9 primarily for religious purposes and which is operated,  
10 supervised, controlled, or principally supported by a church  
11 or convention or association of churches;

12 (b) by a duly ordained, commissioned, or licensed  
13 minister of a church in the exercise of the church's  
14 ministry or by a member of a religious order in the exercise  
15 of duties required by such order;

16 (c) in a facility conducted for the purpose of carrying  
17 out a program of rehabilitation for individuals whose  
18 earning capacity is impaired by age or physical or mental  
19 deficiency or injury or providing remunerative work for  
20 individuals who, because of their impaired physical or  
21 mental capacity, cannot be readily absorbed in the  
22 competitive labor market by an individual receiving such  
23 rehabilitation or remunerative work;

24 (d) as part of an unemployment work-relief or  
25 work-training program assisted or financed in whole or in

1 part by a federal agency or any agency of a state or  
2 political subdivision thereof by an individual receiving  
3 such work relief or work training; or

4 (e) for a state prison or other state correctional or  
5 custodial institution by an inmate of that institution.

6 (4) An individual found to be an independent contractor  
7 by the department under the terms of 39-71-401(3) is  
8 considered an independent contractor for the purposes of  
9 this chapter."

-End-

HOUSE BILL NO. 49

INTRODUCED BY DOLEZAL

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE COSMETOLOGY LAWS; REDEFINING CERTAIN TERMS; ~~REQUIRING-A-HIGH SCHOOL---DIPLOMA--TO--PRACTICE--COSMETOLOGY;--PROVIDING--FOR PART-TIME-COSMETOLOGY-STUDENTS;--PROVIDING--REQUIREMENTS--FOR TEMPORARY--WITHDRAWAL--FROM-COSMETOLOGY-SCHOOLS,~~ REDUCING THE NUMBER OF HOURS OF PROFESSIONAL TEACHER TRAINING ANNUALLY REQUIRED OF ACTIVE TEACHERS; AND AMENDING SECTIONS 37-31-101, 37-31-301, 37-31-302, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-322, 37-31-331, AND 39-51-204, MCA."

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

**Section 1.** Section 37-31-101, MCA, is amended to read:

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

(1) "Board" means the board of cosmetologists provided for in 2-15-1857.

(2) "Booth" means any part of a ~~cosmetological establishment~~ cosmetology salon or manicuring shop salon that is rented or leased for the performance of cosmetologist services, as specified in 39-51-204(1)(1).

(3) ~~"Cosmetological--establishment~~ Cosmetology salon" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and which that must have a manager-operator in charge.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(6) "Manicuring shop salon" means premises, a building, or part of a building in which the art of manicuring is practiced.

(7) "Practice and teaching of cosmetology" includes means work generally--and--usually included in the terms "hairdressing", "manicuring", and "beauty culture" and performed in ~~so-called--hairdressing--and---beauty---shops~~ cosmetology salons, in booths, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology ~~shall~~ may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly

1 established store or place of business holding a license  
2 from the state of Montana as such a store or place of  
3 business."

4 **Section 2.** Section 37-31-301, MCA, is amended to read:

5 "37-31-301. Prohibited acts. (1) Without an appropriate  
6 license issued under this chapter, it ~~shall be~~ is unlawful  
7 to:

8 (a) practice cosmetology for compensation;

9 (b) own, manage, operate, or conduct a school of  
10 cosmetology or school of manicuring;

11 (c) manage or operate a cosmetology shop salon,  
12 manicuring shop salon, or booth-or-beauty-parlor;

13 (d) teach in a school of cosmetology or school of  
14 manicuring;

15 (e) practice manicuring for compensation;

16 (f) practice as a finger waver.

17 (2) It is unlawful:

18 (a) for any a person who owns, manages, or controls a  
19 cosmetology shop salon to employ or use an unlicensed person  
20 as a cosmetologist or manicurist;

21 (b) to operate a cosmetology school without complying  
22 with all of the regulations of 37-31-311;

23 (c) to practice cosmetology in any place other than in  
24 a licensed establishment salon as provided in this chapter,  
25 except when a licensed operator is requested by a customer

1 to go to a place other than a licensed establishment salon  
2 and is sent to such a customer from a licensed establishment  
3 salon;

4 (d) for any a person who owns, manages, or controls a  
5 manicuring shop salon to employ or use an unlicensed person  
6 as a manicurist;

7 (e) to operate a manicuring school without complying  
8 with 37-31-311;

9 (f) to violate any of the provisions of this chapter."

10 **Section 3.** Section 37-31-302, MCA, is amended to read:

11 "37-31-302. License required to practice, teach, or  
12 operate shop salon, booth, or school. (1) No A person may  
13 not practice or teach cosmetology or practice or teach  
14 manicuring without a license.

15 (2) No A place may not be used or maintained for the  
16 teaching of cosmetology or manicuring for compensation  
17 except under a certificate of registration.

18 (3) No A person may not operate or manage a beauty-shop  
19 cosmetology salon or a manicuring shop salon or practice  
20 cosmetology or manicuring without a manager-operator  
21 license.

22 (4) No A person may not operate or conduct a school of  
23 cosmetology or a school of manicuring and teach the art of  
24 cosmetology or manicuring without a license to teach  
25 cosmetology.

(5) No A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, or corporation desiring to operate a ~~cosmetological~~ establishment cosmetology salon shall make an application to the department for a certificate of registration and license. The application ~~shall~~ must be accompanied by the annual registration fee.

(7) No A license may not be issued until the inspection fees required in 37-31-312 have been paid."

**Section 4.** Section 37-31-304, MCA, is amended to read:

"37-31-304. Qualifications of applicants for license to practice. (1) Before a person may practice cosmetology, he must the person shall obtain a license to practice cosmetology from the department. Before a person may practice manicuring, ~~he--must the person shall~~ obtain a license to practice manicuring from the department unless he the person is licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice cosmetology, the applicant must may not be not less than 18 years of age and, must be of good moral character, and ~~must have completed 2 years of high school or~~ HAVE COMPLETED 2 YEARS OF HIGH SCHOOL OR possess a high school diploma--or the equivalent of a high school diploma recognized by the superintendent of public instruction. The

applicant must have completed a continuous course of study of at least 2,000 hours in a registered beauty cosmetology school, which course of study has been distributed over a period of not less than 10 months or more than 14 months for a full-time student and not less than 14 months or more than 24 months for a part-time student, and must have received a diploma from the beauty cosmetology school or must have completed the course of study in cosmetology prescribed by the board. ~~A--student--may--not--temporarily--withdraw--from school--to--avoid--the--14-month--full-time--or--the--24-month part-time--requirement--except--as--provided--in--subsection (2)(c)--A student may change from full-time to part-time status, or vice versa, according to procedures set by board ruler~~

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

~~(c)--(i)--A--person--may--apply--to--the--board--for--an exception to the 14--or--24-month--requirement--because--of extreme--hardship--or--duress,--as--defined--by--the--board. The hardship or duress may include but is not limited to death in the immediate family, personal medical hardship, or immediate family medical hardship.~~

~~(ii) An application for an exception must be filed in accordance with board procedures. The decision on an exception is left to the sole discretion of the board.~~

~~(iii) An application for an exception must be accompanied by valid documentation as defined by the board of the hardship.~~

(3) (a) To be eligible to take the examination to practice manicuring, an applicant ~~must~~ may not be not less than 18 years of age; must be of good moral character; must HAVE COMPLETED 2 YEARS OF HIGH SCHOOL, possess a ~~high school diploma~~ an THE equivalent of a high school diploma recognized by the superintendent of public instruction, or POSSESS a certificate of completion from a vocational-technical center program; and must have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring.

(b) A person qualified under subsection (3)(a) must shall file with the department a written application to take the examination and deposit with the department the required examination fee."

**Section 5.** Section 37-31-305, MCA, is amended to read:

"37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach manicuring to persons seeking only to be licensed to practice manicuring or teach

cosmetology, he ~~must~~ the person shall obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a beauty-operator cosmetologist for 3 continuous years immediately prior to taking the teachers' examination."

**Section 6.** Section 37-31-308, MCA, is amended to read:

"37-31-308. Examination -- reexamination -- exemption for handicapped persons. (1) Examinations for a license to practice cosmetology or manicuring or to teach cosmetology ~~shall~~ must be held at places and times specified by the board. The examinations ~~shall~~ must be supervised by the board. The examinations may not be confined to a specific method or system. The examinations ~~shall~~ must be conducted by persons who hold a current license licenses to practice in the profession for which the applicant is being examined.

1 (2) Anyone failing twice to pass the examination for a  
2 license to practice cosmetology may not apply to retake the  
3 examination:

4 (a) sooner than 6 months after the date of the second  
5 failure; or

6 (b) until he the applicant has taken 200 hours  
7 additional training at a registered school of cosmetology  
8 approved by the board.

9 (3) Anyone failing twice to pass the examination for a  
10 license to practice manicuring ~~must~~ shall meet the  
11 additional requirements prescribed by the board before  
12 applying to retake the examination.

13 (4) Anyone failing twice to pass the examination for a  
14 license to teach cosmetology ~~must~~ shall wait 1 year before  
15 reapplying to take the examination. Upon reapplying, the  
16 applicant ~~must~~ shall provide certification of completion of  
17 500 hours of teacher training during that year in a  
18 registered school licensed as a teacher training unit.

19 (5) Physically handicapped persons trained for  
20 cosmetology or manicuring by the department of social and  
21 rehabilitation services ~~shall~~ are, for a period of 1 year  
22 immediately following their graduation, be exempt from the  
23 examination and the fees described in 37-31-323. On  
24 certification from the department of social and  
25 rehabilitation services that a department of social and

1 rehabilitation services beneficiary has successfully  
2 completed the required training in a beauty cosmetology  
3 school or manicuring school, the department shall issue the  
4 person the necessary certificate or license to practice the  
5 profession in this state."

6 **Section 7.** Section 37-31-311, MCA, is amended to read:

7 "37-31-311. Schools -- certificate of registration --  
8 requirements -- bond -- curriculum. (1) No A person, firm,  
9 partnership, or corporation may not operate a school for the  
10 purpose of teaching cosmetology for compensation or for the  
11 purpose of teaching manicuring for compensation unless a  
12 certificate of registration has been first obtained from the  
13 department. Application for the certificate ~~shall~~ must be  
14 filed with the department on a form prescribed by the board.

15 (2) No A school for teaching cosmetology may not be  
16 granted a certificate of registration unless it complies or  
17 can comply with the following requirements:

18 (a) It ~~shall--have~~ has in its employ either a licensed  
19 teacher who is at all times in the immediate supervision of  
20 the work of the school, or other teachers who the board  
21 determines are necessary for the proper conduct of the  
22 school. There may not be more than 25 students to each  
23 teacher.

24 (b) It ~~shall--possess~~ possesses apparatus and equipment  
25 the board determines is necessary for the ready and full

1 teaching of all subjects or practices of cosmetology.

2 (c) It ~~shall-maintain~~ maintains a school term of not  
3 less than 2,000 hours and ~~shall--prescribe~~ prescribes a  
4 course of practical training and technical instruction equal  
5 to the requirements for board examinations, which course of  
6 training and technical instruction ~~shall~~ must be prescribed  
7 by the board.

8 (d) It ~~shall--keep~~ keeps a daily record of the  
9 attendance of each student, ~~establish~~ establishes grades,  
10 and ~~hold~~ holds examinations before issuing diplomas.

11 (e) No An owner or person in charge of a school of  
12 cosmetology may not permit a person to sleep in or use for  
13 residential purposes, or for any other purpose which that  
14 would ~~tend--to~~ make the room unsanitary, a room used wholly  
15 or in part for a school of cosmetology.

16 (3) No A school for teaching manicuring may not be  
17 granted a certificate of registration unless it complies  
18 with subsections (2)(a) and (2)(d) and the following  
19 requirements:

20 (a) It ~~must--possess~~ possesses apparatus and equipment  
21 the board determines necessary for the ready and full  
22 teaching of all subjects or practices of manicuring.

23 (b) It ~~must--maintain~~ maintains a school term and a  
24 course of practical training and technical instruction as  
25 prescribed by the board.

1 (c) No An owner or person in charge of a school of  
2 manicuring may not permit a person to sleep in or use for  
3 residential purposes, or for any other purpose that would  
4 ~~tend-to~~ make the room unsanitary, a room used wholly or in  
5 part for a school of manicuring.

6 (4) Licenses or certificates of registration for  
7 schools of cosmetology and schools of manicuring may be  
8 refused, revoked, or suspended, as provided in 37-31-331.

9 (5) No A teacher or student teacher may not be  
10 permitted to practice cosmetology or manicuring on the  
11 public in a school of cosmetology or a school of manicuring.  
12 A school that enrolls student teachers for a course of  
13 student teacher training may not have, at any one time, more  
14 than one student teacher for each full-time licensed teacher  
15 actively engaged at the school. The student teachers may not  
16 substitute for full-time teachers.

17 (6) The board may make further rules necessary for the  
18 proper conduct of schools of cosmetology and schools of  
19 manicuring.

20 (7) The board shall require the person, firm,  
21 partnership, or corporation operating a school of  
22 cosmetology or a school of manicuring to furnish a good and  
23 sufficient bond in the amount of \$5,000 and in a form and  
24 manner prescribed by the board.

25 (8) No A professional beauty-shop cosmetology salon or



manicuring shop salon may not be operated in connection with a school of cosmetology or school of manicuring.

(9) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology."

**Section 8.** Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection. (1) The department shall appoint one or more inspectors, each of whom shall devote his time to inspecting beauty-parlors cosmetology salons and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a beauty-parlor cosmetology salon, manicuring shop salon, booth, school of cosmetology, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any a cosmetological-establishment cosmetology salon or manicuring shop salon must shall pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetological---establishment cosmetology salon or manicuring shop salon, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological-establishment cosmetology salon or manicuring

shop salon to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The department shall cause an inspector, appointed as provided in subsection (1), to conduct an annual inspection of each cosmetological-establishment cosmetology salon and manicuring shop salon in the state."

**Section 9.** Section 37-31-322, MCA, is amended to read:

"37-31-322. Renewal -- continuing education -- delinquency fee. (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and by the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and shall must be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of licenses to teach cosmetology must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 30 15 hours' professional teacher training at a school approved by the board.

(b) A person holding a license to teach cosmetology but not actively engaged either full-time or part-time in teaching cosmetology or manicuring during the preceding year may renew the license by paying the required fee. A person holding a license to teach cosmetology but not actively engaged in teaching cosmetology or manicuring either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology or manicuring must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person holding who holds a license to teach cosmetology and who is not actively engaged either full-time or part-time in teaching cosmetology or manicuring from teaching as a substitute for an active teacher.

(3) A fee prescribed by the board shall must be

charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline."

**Section 10.** Section 37-31-331, MCA, is amended to read:

"37-31-331. Refusal, revocation, or suspension of licenses -- grounds -- notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a ~~cosmetological~~---establishment cosmetology salon, manicuring shop salon, school of cosmetology, or school of manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of health and environmental sciences for the regulation of ~~cosmetological~~ establishments cosmetology salons, manicuring shops salons, schools of cosmetology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

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

(f) permitting a certificate of registration or license

1 to be used where the holder is not personally, actively, and  
2 continuously engaged in business; or

3 (g) failure to display the license.

4 (2) However, the board may not refuse to authorize the  
5 department to issue or renew a license or revoke or suspend  
6 a license already issued until after notice and opportunity  
7 for a hearing."

8 **Section 11.** Section 39-51-204, MCA, is amended to read:

9 **"39-51-204. Exclusions from definition of employment.**

10 (1) The term "employment" does not include:

11 (a) agricultural labor, except as provided in  
12 39-51-202(2). If an employer is otherwise subject to this  
13 chapter and has agricultural employment, all employees  
14 engaged in agricultural labor must be excluded from coverage  
15 under this chapter if the employer:

16 (i) in any quarter or calendar year, as applicable,  
17 does not meet either of the tests relating to the monetary  
18 amount or number of employees and days worked, for the  
19 subject wages attributable to agricultural labor; and

20 (ii) keeps separate books and records to account for the  
21 employment of persons in agricultural labor.

22 (b) household and domestic service in a private home,  
23 local college club, or local chapter of a college fraternity  
24 or sorority, except as provided in 39-51-202(3). If an  
25 employer is otherwise subject to this chapter and has

1 domestic service employment, all employees engaged in  
2 domestic service must be excluded from coverage under this  
3 chapter if the employer:

4 (i) does not meet the monetary payment test in any  
5 quarter or calendar year, as applicable, for the subject  
6 wages attributable to domestic service; and

7 (ii) keeps separate books and records to account for the  
8 employment of persons in domestic service.

9 (c) service performed as an officer or member of the  
10 crew of a vessel on the navigable waters of the United  
11 States;

12 (d) service performed by an individual in the employ of  
13 that individual's son, daughter, or spouse and service  
14 performed by a child under the age of 21 in the employ of  
15 the child's father or mother;

16 (e) service performed in the employ of any other state  
17 or its political subdivisions or of the United States  
18 government or of an instrumentality of any other state or  
19 states or their political subdivisions or of the United  
20 States, except that national banks organized under the  
21 national banking law shall not be entitled to exemption  
22 under this subsection and shall be subject to this chapter  
23 the same as state banks, provided that such service is  
24 excluded from employment as defined in the Federal  
25 Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the

paper who, incidentally to his main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so

certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a ~~cosmetological-establishment~~ cosmetology salon as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the ~~cosmetological-establishment~~ cosmetology salon or barbershop shall not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless

the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors or working members of a partnership;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current

1 workers' compensation policy or to obtain an exemption from  
2 workers' compensation requirements.

3 (2) "Employment" does not include elected public  
4 officials.

5 (3) For the purposes of 39-51-203(6), the term  
6 "employment" does not apply to service performed:

7 (a) in the employ of a church or convention or  
8 association of churches or an organization which is operated  
9 primarily for religious purposes and which is operated,  
10 supervised, controlled, or principally supported by a church  
11 or convention or association of churches;

12 (b) by a duly ordained, commissioned, or licensed  
13 minister of a church in the exercise of the church's  
14 ministry or by a member of a religious order in the exercise  
15 of duties required by such order;

16 (c) in a facility conducted for the purpose of carrying  
17 out a program of rehabilitation for individuals whose  
18 earning capacity is impaired by age or physical or mental  
19 deficiency or injury or providing remunerative work for  
20 individuals who, because of their impaired physical or  
21 mental capacity, cannot be readily absorbed in the  
22 competitive labor market by an individual receiving such  
23 rehabilitation or remunerative work;

24 (d) as part of an unemployment work-relief or  
25 work-training program assisted or financed in whole or in

1 part by a federal agency or any agency of a state or  
2 political subdivision thereof by an individual receiving  
3 such work relief or work training; or

4 (e) for a state prison or other state correctional or  
5 custodial institution by an inmate of that institution.

6 (4) An individual found to be an independent contractor  
7 by the department under the terms of 39-71-401(3) is  
8 considered an independent contractor for the purposes of  
9 this chapter."

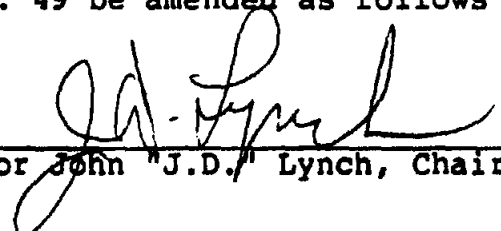
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 27, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 49 (first reading copy -- white), respectfully report that House Bill No. 49 be amended as follows and as so amended be concurred in.

Signed:   
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, line 9.

Following: "~~SCHOOL,~~"

Insert: "REQUIRING A HIGH SCHOOL DIPLOMA TO PRACTICE  
COSMETOLOGY;"

2. Page 5, lines 22 and 23.

Strike: "HAVE" on line 22 through "OR" on line 23

3. Page 5, line 24.

Following: "or"

Insert: "a high school diploma or"

4. Page 7, line 10.

Strike: "must" through "SCHOOL,"

5. Page 7, line 11.


Following: "an"

Insert: "a high school diploma,"

6. Page 7, line 13.

Strike: "POSESS"

-END-

 Amd. Coord.  
Sec. of Senate

HB 49

SENATE

Conference Committee  
on House Bill 49  
Report No. , March 29, 1993

Page 1 of 1

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 49 met and considered and recommend that House Bill 49 (reference copy -- salmon) be amended as follows:

1. Page 6, line 2.

Following: "instruction."

Insert: "A person may apply to the board for an exception to the educational requirement of a high school diploma or the equivalent of a high school diploma. The board shall adopt by rule procedures for granting an exception."

2. Page 7, line 18.

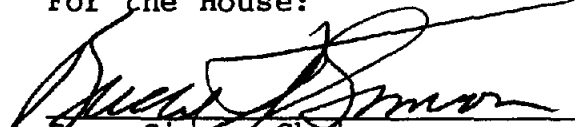
Following: "manicuring."

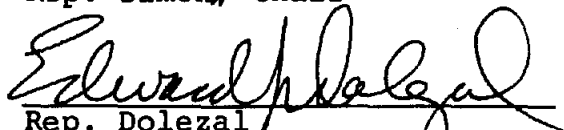
Insert: "A person may apply to the board for an exception to the educational requirement of a high school diploma, the equivalent of a high school diploma, or a vocational-technical center certificate of completion. The board shall adopt by rule procedures for granting an exception."

(A statement of intent is not necessary as the board currently has rulemaking authority in the application process and eligibility requirements.)

And this Conference Committee report be adopted.

For the House:

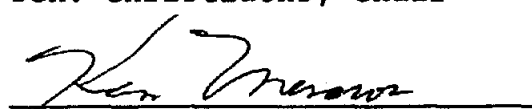
  
Rep. Simon, Chair


  
Rep. Dolezal

  
Rep. Brandewie

For the Senate:

  
Sen. Christiaens, Chair

  
Sen. Mesaros

  
Sen. Lynch

ADOPT

REJECT

CCR.#1  
HB 49  
701401CC.Hss



## HOUSE BILL NO. 49

INTRODUCED BY DOLEZAL

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE COSMETOLOGY LAWS; REDEFINING CERTAIN TERMS; ~~REQUIRING A HIGH SCHOOL DIPLOMA TO PRACTICE COSMETOLOGY; PROVIDING FOR PART-TIME COSMETOLOGY STUDENTS; PROVIDING REQUIREMENTS FOR TEMPORARY WITHDRAWAL FROM COSMETOLOGY SCHOOLS; REQUIRING A~~ HIGH SCHOOL DIPLOMA TO PRACTICE COSMETOLOGY; REDUCING THE NUMBER OF HOURS OF PROFESSIONAL TEACHER TRAINING ANNUALLY REQUIRED OF ACTIVE TEACHERS; AND AMENDING SECTIONS 37-31-101, 37-31-301, 37-31-302, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-322, 37-31-331, AND 39-51-204, MCA."

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

**Section 1.** Section 37-31-101, MCA, is amended to read:

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

(1) "Board" means the board of cosmetologists provided for in 2-15-1857.

(2) "Booth" means any part of a ~~cosmetological establishment~~ cosmetology salon or manicuring shop salon that is rented or leased for the performance of

cosmetologist services, as specified in 39-51-204(1)(1).

(3) ~~"Cosmetological establishment~~ Cosmetology salon" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and which that must have a manager-operator in charge.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(6) "Manicuring shop salon" means premises, a building, or part of a building in which the art of manicuring is practiced.

(7) "Practice and teaching of cosmetology" includes means work generally ~~and usually~~ included in the terms "hairdressing", "manicuring", and "beauty culture" and performed in ~~so-called hairdressing and beauty shops~~ cosmetology salons, in booths, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology ~~shall~~ may not be construed to include itinerant cosmetologists who perform their services without

REFERENCE BILL  
AS AMENDED HB 49

1 compensation for demonstration purposes in any regularly  
2 established store or place of business holding a license  
3 from the state of Montana as such a store or place of  
4 business."

5 **Section 2.** Section 37-31-301, MCA, is amended to read:

6 "37-31-301. Prohibited acts. (1) Without an appropriate  
7 license issued under this chapter, it ~~shall be~~ is unlawful  
8 to:

9 (a) practice cosmetology for compensation;

10 (b) own, manage, operate, or conduct a school of  
11 cosmetology or school of manicuring;

12 (c) manage or operate a cosmetology shop salon,  
13 manicuring shop salon, or booth-or-beauty-parlor;

14 (d) teach in a school of cosmetology or school of  
15 manicuring;

16 (e) practice manicuring for compensation;

17 (f) practice as a finger waver.

18 (2) It is unlawful:

19 (a) for any a person who owns, manages, or controls a  
20 cosmetology shop salon to employ or use an unlicensed person  
21 as a cosmetologist or manicurist;

22 (b) to operate a cosmetology school without complying  
23 with all of the regulations of 37-31-311;

24 (c) to practice cosmetology in any place other than in  
25 a licensed establishment salon as provided in this chapter,

1 except when a licensed operator is requested by a customer  
2 to go to a place other than a licensed establishment salon  
3 and is sent to such a customer from a licensed establishment  
4 salon;

5 (d) for any a person who owns, manages, or controls a  
6 manicuring shop salon to employ or use an unlicensed person  
7 as a manicurist;

8 (e) to operate a manicuring school without complying  
9 with 37-31-311;

10 (f) to violate any of the provisions of this chapter."

11 **Section 3.** Section 37-31-302, MCA, is amended to read:

12 "37-31-302. License required to practice, teach, or  
13 operate shop salon, booth, or school. (1) No A person may  
14 not practice or teach cosmetology or practice or teach  
15 manicuring without a license.

16 (2) No A place may not be used or maintained for the  
17 teaching of cosmetology or manicuring for compensation  
18 except under a certificate of registration.

19 (3) No A person may not operate or manage a beauty-shop  
20 cosmetology salon or a manicuring shop salon or practice  
21 cosmetology or manicuring without a manager-operator  
22 license.

23 (4) No A person may not operate or conduct a school of  
24 cosmetology or a school of manicuring and teach the art of  
25 cosmetology or manicuring without a license to teach

1 cosmetology.

2 (5) No A person may not manage or operate a booth  
3 without a booth rental license.

4 (6) A person, firm, partnership, or corporation  
5 desiring to operate a cosmetological---establishment  
6 cosmetology salon shall make an application to the  
7 department for a certificate of registration and license.  
8 The application shall must be accompanied by the annual  
9 registration fee.

10 (7) No A license may not be issued until the inspection  
11 fees required in 37-31-312 have been paid."

12 **Section 4.** Section 37-31-304, MCA, is amended to read:

13 "37-31-304. Qualifications of applicants for license to  
14 practice. (1) Before a person may practice cosmetology, he  
15 must the person shall obtain a license to practice  
16 cosmetology from the department. Before a person may  
17 practice manicuring, he--must the person shall obtain a  
18 license to practice manicuring from the department unless he  
19 the person is licensed to practice cosmetology.

20 (2) (a) To be eligible to take the examination to  
21 practice cosmetology, the applicant must may not be not less  
22 than 18 years of age and, must be of good moral character,  
23 and must have--completed--2--years--of-high-school--or HAVE  
24 COMPLETED 2 YEARS OF HIGH SCHOOL OR possess a--high--school  
25 diploma--or A HIGH SCHOOL DIPLOMA OR the equivalent of a high

1 school diploma recognized by the superintendent of public  
2 instruction. The applicant must have completed a continuous  
3 course of study of at least 2,000 hours in a registered  
4 beauty cosmetology school, which course of--study--has--been  
5 distributed over a period of not less than 18 months or more  
6 than--14 months for a full-time student and not less than 14  
7 months or more than 24 months for a part-time--student, and  
8 must have received a diploma from the beauty cosmetology  
9 school or must have completed the course of study in  
10 cosmetology prescribed by the board. A--student--may--not  
11 temporarily withdraw--from--school--to--avoid--the--14-month  
12 full-time--or--the--24-month part-time requirement except as  
13 provided in subsection (2)(c). A--student--may--change--from  
14 full-time--to--part-time status, or vice versa, according to  
15 procedures set by board rule.

16 (b) A person qualified under subsection (2)(a) shall  
17 file with the department a written application to take the  
18 examination and shall deposit with the department the  
19 required examination fee and pass an examination as to his  
20 fitness to practice cosmetology.

21 (c)--(i)--A--person--may--apply--to--the--board--for--an  
22 exception to the 14--or--24-month--requirement--because--of  
23 extreme--hardship--or--duress, as defined by the board. The  
24 hardship or duress may include but is not limited to--death  
25 in--the--immediate--family, personal--medical--hardship, or

~~immediate-family-medical-hardship~~

~~(ii)-An-application-for-an-exception-must-be-filed-in  
accordance-with-board-procedures. The decision on an  
exception-is-left-to-the-sole-discretion-of-the-board.~~

~~(iii)-An-application-for-an-exception-must-be  
accompanied-by-valid-documentation-as-defined-by-the-board,  
of-the-hardship.~~

(3) (a) To be eligible to take the examination to practice manicuring, an applicant ~~must~~ may not be not less than 18 years of age; must be of good moral character; must ~~HAVE COMPLETED 2 YEARS OF HIGH SCHOOL~~, possess a--high school--diploma, an A HIGH SCHOOL DIPLOMA, THE equivalent of a high school diploma recognized by the superintendent of public instruction, or POSSESS a certificate of completion from a vocational-technical center program; and must have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring.

(b) A person qualified under subsection (3)(a) must shall file with the department a written application to take the examination and deposit with the department the required examination fee."

**Section 5.** Section 37-31-305, MCA, is amended to read:

"37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach manicuring to persons

seeking only to be licensed to practice manicuring or teach cosmetology, he--must the person shall obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a beauty--operator cosmetologist for 3 continuous years immediately prior to taking the teachers' examination."

**Section 6.** Section 37-31-308, MCA, is amended to read:

"37-31-308. Examination -- reexamination -- exemption for handicapped persons. (1) Examinations for a license to practice cosmetology or manicuring or to teach cosmetology ~~shall~~ must be held at places and times specified by the board. The examinations ~~shall~~ must be supervised by the board. The examinations may not be confined to a specific method or system. The examinations ~~shall~~ must be conducted by persons who hold a current ~~license~~ licenses to practice

1 in the profession for which the applicant is being examined.

2 (2) Anyone failing twice to pass the examination for a  
3 license to practice cosmetology may not apply to retake the  
4 examination:

5 (a) sooner than 6 months after the date of the second  
6 failure; or

7 (b) until he the applicant has taken 200 hours  
8 additional training at a registered school of cosmetology  
9 approved by the board.

10 (3) Anyone failing twice to pass the examination for a  
11 license to practice manicuring must shall meet the  
12 additional requirements prescribed by the board before  
13 applying to retake the examination.

14 (4) Anyone failing twice to pass the examination for a  
15 license to teach cosmetology must shall wait 1 year before  
16 reapplying to take the examination. Upon reapplying, the  
17 applicant must shall provide certification of completion of  
18 500 hours of teacher training during that year in a  
19 registered school licensed as a teacher training unit.

20 (5) Physically handicapped persons trained for  
21 cosmetology or manicuring by the department of social and  
22 rehabilitation services ~~shall~~ are, for a period of 1 year  
23 immediately following their graduation, be exempt from the  
24 examination and the fees described in 37-31-323. On  
25 certification from the department of social and

1 rehabilitation services that a department of social and  
2 rehabilitation services beneficiary has successfully  
3 completed the required training in a beauty cosmetology  
4 school or manicuring school, the department shall issue the  
5 person the necessary certificate or license to practice the  
6 profession in this state."

7 **Section 7.** Section 37-31-311, MCA, is amended to read:

8 "37-31-311. Schools -- certificate of registration --  
9 requirements -- bond -- curriculum. (1) No A person, firm,  
10 partnership, or corporation may not operate a school for the  
11 purpose of teaching cosmetology for compensation or for the  
12 purpose of teaching manicuring for compensation unless a  
13 certificate of registration has been first obtained from the  
14 department. Application for the certificate ~~shall~~ must be  
15 filed with the department on a form prescribed by the board.

16 (2) No A school for teaching cosmetology may not be  
17 granted a certificate of registration unless it complies or  
18 can comply with the following requirements:

19 (a) It ~~shall~~ has in its employ either a licensed  
20 teacher who is at all times in the immediate supervision of  
21 the work of the school, or other teachers who the board  
22 determines are necessary for the proper conduct of the  
23 school. There may not be more than 25 students to each  
24 teacher.

25 (b) It ~~shall~~ possesses apparatus and equipment

the board determines is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It ~~shall--maintain~~ maintains a school term of not less than 2,000 hours and ~~shall--prescribe~~ prescribes a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction ~~shall~~ must be prescribed by the board.

(d) It ~~shall---~~ keep keeps a daily record of the attendance of each student, ~~establish~~ establishes grades, and ~~hold~~ holds examinations before issuing diplomas.

(e) No A owner or person in charge of a school of cosmetology may not permit a person to sleep in or use for residential purposes, or for any other purpose which that would ~~tend-to~~ make the room unsanitary, a room used wholly or in part for a school of cosmetology.

(3) No A school for teaching manicuring may not be granted a certificate of registration unless it complies with subsections (2)(a) and (2)(d) and the following requirements:

(a) It ~~must-possess~~ possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of manicuring.

(b) It ~~must-maintain~~ maintains a school term and a course of practical training and technical instruction as

prescribed by the board.

(c) No An owner or person in charge of a school of manicuring may not permit a person to sleep in or use for residential purposes, or for any other purpose that would ~~tend--to~~ make the room unsanitary, a room used wholly or in part for a school of manicuring.

(4) Licenses or certificates of registration for schools of cosmetology and schools of manicuring may be refused, revoked, or suspended, as provided in 37-31-331.

(5) No A teacher or student teacher may not be permitted to practice cosmetology or manicuring on the public in a school of cosmetology or a school of manicuring. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(6) The board may make further rules necessary for the proper conduct of schools of cosmetology and schools of manicuring.

(7) The board shall require the person, firm, partnership, or corporation operating a school of cosmetology or a school of manicuring to furnish a good and sufficient bond in the amount of \$5,000 and in a form and manner prescribed by the board.

(8) No A professional beauty-shop cosmetology salon or manicuring shop salon may not be operated in connection with a school of cosmetology or school of manicuring.

(9) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology."

**Section 8.** Section 37-31-312, MCA, is amended to read:

"37-31-312. **Inspection.** (1) The department shall appoint one or more inspectors, each of whom shall devote his time to inspecting beauty-parlors cosmetology salons and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a beauty--parlor cosmetology salon, manicuring shop salon, booth, school of cosmetology, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any a cosmetological-establishment cosmetology salon or manicuring shop salon must shall pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetological---establishment cosmetology salon or manicuring shop salon, upon payment of the initial inspection fee, a temporary permit authorizing the

cosmetological-establishment cosmetology salon or manicuring shop salon to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The department shall cause an inspector, appointed as provided in subsection (1), to conduct an annual inspection of each cosmetological-establishment cosmetology salon and manicuring shop salon in the state."

**Section 9.** Section 37-31-322, MCA, is amended to read:

"37-31-322. **Renewal -- continuing education -- delinquency fee.** (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and by the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee

1 for a 3-year renewal and shall must be as set by the board.

2 (2) In addition to the foregoing requirements for  
3 renewal, persons applying for the renewal of licenses to  
4 teach cosmetology must have fulfilled the following  
5 additional requirements:

6 (a) During each year, an active teacher, either  
7 full-time or part-time, must have successfully completed 30  
8 15 hours' professional teacher training at a school approved  
9 by the board.

10 (b) A person holding a license to teach cosmetology but  
11 not actively engaged either full-time or part-time in  
12 teaching cosmetology or manicuring during the preceding year  
13 may renew the license by paying the required fee. A person  
14 holding a license to teach cosmetology but not actively  
15 engaged in teaching cosmetology or manicuring either  
16 full-time or part-time for the preceding year or longer and  
17 wishing to resume active teaching of cosmetology or  
18 manicuring must successfully complete 30 hours' professional  
19 teacher training at a school approved by the board before  
20 resuming active teaching. However, the foregoing provisions  
21 do not prevent the board, under rules it adopts, from  
22 permitting a person holding who holds a license to teach  
23 cosmetology and who is not actively engaged either full-time  
24 or part-time in teaching cosmetology or manicuring from  
25 teaching as a substitute for an active teacher.

1 (3) A fee prescribed by the board shall must be  
2 charged, in addition to other fees fixed by law, for renewal  
3 applications of licenses and certificates made after  
4 December 31 of each year or other predetermined renewal  
5 deadline."

6 **Section 10.** Section 37-31-331, MCA, is amended to read:

7 "37-31-331. Refusal, revocation, or suspension of  
8 licenses -- grounds -- notice and hearing. (1) The board may  
9 refuse to issue, may refuse to renew, or may revoke or  
10 suspend a license in any one of the following cases:

11 (a) failure of a person, firm, partnership, or  
12 corporation operating a ~~cosmetological~~ establishment  
13 cosmetology salon, manicuring shop salon, school of  
14 cosmetology, or school of manicuring to comply with this  
15 chapter;

16 (b) failure to comply with the sanitary rules adopted  
17 by the board and approved by the department of health and  
18 environmental sciences for the regulation of ~~cosmetological~~  
19 establishments cosmetology salons, manicuring shops salons,  
20 schools of cosmetology, or schools of manicuring;

21 (c) gross malpractice;

22 (d) continued practice by a person knowingly having an  
23 infectious or contagious disease;

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



(f) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

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

**Section 11.** Section 39-51-204, MCA, is amended to read:

**"39-51-204. Exclusions from definition of employment.**

(1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an

employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal

Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly

or in bundles. The term does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an

1 integral part of such program and such institution has so  
2 certified to the employer, except that this subsection shall  
3 not apply to service performed in a program established for  
4 or on behalf of an employer or group of employers;

5 (k) service performed in the employ of a hospital if  
6 such service is performed by a patient of the hospital;

7 (l) services performed by a cosmetologist who is  
8 licensed under Title 37, chapter 31, or a barber who is  
9 licensed under Title 37, chapter 30, and who has  
10 acknowledged in writing that he is not covered by  
11 unemployment insurance and workers' compensation and who  
12 contracts with a ~~cosmetological--establishment~~ cosmetology  
13 salon as defined in 37-31-101 or a barbershop as defined in  
14 37-30-101, which contract shall show the cosmetologist or  
15 barber is free from all control and direction of the owner  
16 in the contract and in fact; receives payment for services  
17 from his or her individual clientele; leases, rents, or  
18 furnishes all of his or her own equipment, skills, or  
19 knowledge; and whose contract gives rise to an action for  
20 breach of contract in the event of contract termination (the  
21 existence of a single license for the ~~cosmetological~~  
22 establishment cosmetology salon or barbershop shall not be  
23 construed as a lack of freedom from control or direction  
24 under this subsection);

25 (m) casual labor not in the course of an employer's

1 trade or business performed in any calendar quarter, unless  
2 the cash remuneration paid for such service is \$50 or more  
3 and such service is performed by an individual who is  
4 regularly employed by such employer to perform such service.  
5 "Regularly employed" means the services are performed during  
6 at least 24 days in the same quarter.

7 (n) employment of sole proprietors or working members  
8 of a partnership;

9 (o) services performed for the installation of floor  
10 coverings if the installer:

11 (i) bids or negotiates a contract price based upon work  
12 performed by the yard or by the job;

13 (ii) is paid upon completion of an agreed upon portion  
14 of the job or after the job is completed;

15 (iii) may perform services for anyone without  
16 limitation;

17 (iv) may accept or reject any job;

18 (v) furnishes substantially all tools and equipment  
19 necessary to provide the services; and

20 (vi) works under a written contract that:

21 (A) gives rise to a breach of contract action if the  
22 installer or any other party fails to perform the contract  
23 obligations;

24 (B) states the installer is not covered by unemployment  
25 insurance; and

1 (C) requires the installer to provide a current  
2 workers' compensation policy or to obtain an exemption from  
3 workers' compensation requirements.

4 (2) "Employment" does not include elected public  
5 officials.

6 (3) For the purposes of 39-51-203(6), the term  
7 "employment" does not apply to service performed:

8 (a) in the employ of a church or convention or  
9 association of churches or an organization which is operated  
10 primarily for religious purposes and which is operated,  
11 supervised, controlled, or principally supported by a church  
12 or convention or association of churches;

13 (b) by a duly ordained, commissioned, or licensed  
14 minister of a church in the exercise of the church's  
15 ministry or by a member of a religious order in the exercise  
16 of duties required by such order;

17 (c) in a facility conducted for the purpose of carrying  
18 out a program of rehabilitation for individuals whose  
19 earning capacity is impaired by age or physical or mental  
20 deficiency or injury or providing remunerative work for  
21 individuals who, because of their impaired physical or  
22 mental capacity, cannot be readily absorbed in the  
23 competitive labor market by an individual receiving such  
24 rehabilitation or remunerative work;

25 (d) as part of an unemployment work-relief or

1 work-training program assisted or financed in whole or in  
2 part by a federal agency or any agency of a state or  
3 political subdivision thereof by an individual receiving  
4 such work relief or work training; or

5 (e) for a state prison or other state correctional or  
6 custodial institution by an inmate of that institution.

7 (4) An individual found to be an independent contractor  
8 by the department under the terms of 39-71-401(3) is  
9 considered an independent contractor for the purposes of  
10 this chapter."

-End-

## HOUSE BILL NO. 49

INTRODUCED BY DOLEZAL

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE COSMETOLOGY LAWS; REDEFINING CERTAIN TERMS; ~~REQUIRING A HIGH SCHOOL DIPLOMA TO PRACTICE COSMETOLOGY; PROVIDING FOR PART-TIME COSMETOLOGY STUDENTS; PROVIDING REQUIREMENTS FOR TEMPORARY WITHDRAWAL FROM COSMETOLOGY SCHOOLS;~~ REQUIRING A HIGH SCHOOL DIPLOMA TO PRACTICE COSMETOLOGY; REDUCING THE NUMBER OF HOURS OF PROFESSIONAL TEACHER TRAINING ANNUALLY REQUIRED OF ACTIVE TEACHERS; AND AMENDING SECTIONS 37-31-101, 37-31-301, 37-31-302, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-322, 37-31-331, AND 39-51-204, MCA."

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

**Section 1.** Section 37-31-101, MCA, is amended to read:

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

(1) "Board" means the board of cosmetologists provided for in 2-15-1857.

(2) "Booth" means any part of a ~~cosmetological establishment~~ cosmetology salon or manicuring shop salon that is rented or leased for the performance of

cosmetologist services, as specified in 39-51-204(1)(1).

(3) "~~Cosmetological establishment~~ Cosmetology salon" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and which that must have a manager-operator in charge.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(6) "Manicuring shop salon" means premises, a building, or part of a building in which the art of manicuring is practiced.

(7) "Practice and teaching of cosmetology" includes means work generally--and--usually included in the terms "hairdressing", "manicuring", and "beauty culture" and performed in ~~so-called--hairdressing--and--beauty--shops~~ cosmetology salons, in booths, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology ~~shall~~ may not be construed to include itinerant cosmetologists who perform their services without



1 compensation for demonstration purposes in any regularly  
2 established store or place of business holding a license  
3 from the state of Montana as such a store or place of  
4 business."

5 **Section 2.** Section 37-31-301, MCA, is amended to read:

6 "37-31-301. Prohibited acts. (1) Without an appropriate  
7 license issued under this chapter, it ~~shall be~~ is unlawful  
8 to:

9 (a) practice cosmetology for compensation;

10 (b) own, manage, operate, or conduct a school of  
11 cosmetology or school of manicuring;

12 (c) manage or operate a cosmetology shop salon,  
13 manicuring shop salon, or booth-or-beauty-parlor;

14 (d) teach in a school of cosmetology or school of  
15 manicuring;

16 (e) practice manicuring for compensation;

17 (f) practice as a finger waver.

18 (2) It is unlawful:

19 (a) for any a person who owns, manages, or controls a  
20 cosmetology shop salon to employ or use an unlicensed person  
21 as a cosmetologist or manicurist;

22 (b) to operate a cosmetology school without complying  
23 with all of the regulations of 37-31-311;

24 (c) to practice cosmetology in any place other than in  
25 a licensed establishment salon as provided in this chapter,

1 except when a licensed operator is requested by a customer  
2 to go to a place other than a licensed establishment salon  
3 and is sent to such a customer from a licensed establishment  
4 salon;

5 (d) for any a person who owns, manages, or controls a  
6 manicuring shop salon to employ or use an unlicensed person  
7 as a manicurist;

8 (e) to operate a manicuring school without complying  
9 with 37-31-311;

10 (f) to violate any of the provisions of this chapter."

11 **Section 3.** Section 37-31-302, MCA, is amended to read:

12 "37-31-302. License required to practice, teach, or  
13 operate shop salon, booth, or school. (1) No A person may  
14 not practice or teach cosmetology or practice or teach  
15 manicuring without a license.

16 (2) No A place may not be used or maintained for the  
17 teaching of cosmetology or manicuring for compensation  
18 except under a certificate of registration.

19 (3) No A person may not operate or manage a beauty-shop  
20 cosmetology salon or a manicuring shop salon or practice  
21 cosmetology or manicuring without a manager-operator  
22 license.

23 (4) No A person may not operate or conduct a school of  
24 cosmetology or a school of manicuring and teach the art of  
25 cosmetology or manicuring without a license to teach

1 cosmetology.

2 (5) No A person may not manage or operate a booth  
3 without a booth rental license.

4 (6) A person, firm, partnership, or corporation  
5 desiring to operate a ~~cosmetological~~ establishment  
6 cosmetology salon shall make an application to the  
7 department for a certificate of registration and license.  
8 The application ~~shall~~ must be accompanied by the annual  
9 registration fee.

10 (7) No A license may not be issued until the inspection  
11 fees required in 37-31-312 have been paid."

12 **Section 4.** Section 37-31-304, MCA, is amended to read:

13 "37-31-304. Qualifications of applicants for license to  
14 practice. (1) Before a person may practice cosmetology, he  
15 must the person shall obtain a license to practice  
16 cosmetology from the department. Before a person may  
17 practice manicuring, he ~~must~~ the person shall obtain a  
18 license to practice manicuring from the department unless he  
19 the person is licensed to practice cosmetology.

20 (2) (a) To be eligible to take the examination to  
21 practice cosmetology, the applicant must may not be not less  
22 than 18 years of age and, must be of good moral character,  
23 and ~~must have completed 2 years of high school or HAVE~~  
24 ~~COMPLETED 2 YEARS OF HIGH SCHOOL OR~~ possess ~~a high school~~  
25 ~~diploma or~~ A HIGH SCHOOL DIPLOMA OR the equivalent of a high

1 school diploma recognized by the superintendent of public  
2 instruction. A PERSON MAY APPLY TO THE BOARD FOR AN  
3 EXCEPTION TO THE EDUCATIONAL REQUIREMENT OF A HIGH SCHOOL  
4 DIPLOMA OR THE EQUIVALENT OF A HIGH SCHOOL DIPLOMA. THE  
5 BOARD SHALL ADOPT BY RULE PROCEDURES FOR GRANTING AN  
6 EXCEPTION. The applicant must have completed a continuous  
7 course of study of at least 2,000 hours in a registered  
8 beauty cosmetology school, which course of study has been  
9 distributed over a period of not less than 10 months or more  
10 than 14 months for a full-time student and not less than 14  
11 months or more than 24 months for a part-time student, and  
12 must have received a diploma from the beauty cosmetology  
13 school or must have completed the course of study in  
14 cosmetology prescribed by the board. ~~A student may not~~  
15 ~~temporarily withdraw from school to avoid the 14-month~~  
16 ~~full-time or the 24-month part-time requirement except as~~  
17 ~~provided in subsection (2)(c). A student may change from~~  
18 ~~full-time to part-time status, or vice versa, according to~~  
19 ~~procedures set by board rule.~~

20 (b) A person qualified under subsection (2)(a) shall  
21 file with the department a written application to take the  
22 examination and shall deposit with the department the  
23 required examination fee and pass an examination as to his  
24 fitness to practice cosmetology.

25 ~~(c) (i) A person may apply to the board for an~~

~~exception to the 14--or--24-month--requirement--because--of  
extreme--hardship--or--duress,--as--defined--by--the--board. The  
hardship--or--duress--may--include--but--is--not--limited--to--death  
in--the--immediate--family,--personal--medical--hardship,--or  
immediate-family-medical-hardship.~~

~~(ii) An application for an exception must be filed in  
accordance with board procedures. The decision on an  
exception is left to the sole discretion of the board.~~

~~(iii) An application for an exception must be  
accompanied by valid documentation, as defined by the board,  
of the hardship.~~

(3) (a) To be eligible to take the examination to  
practice manicuring, an applicant ~~must~~ may not be not less  
than 18 years of age; ~~must~~ be of good moral character; ~~must~~  
~~MUST HAVE COMPLETED 2 YEARS OF HIGH SCHOOL~~ possess a--high  
school--diploma, ~~an A HIGH SCHOOL DIPLOMA, THE~~ equivalent of  
a high school diploma recognized by the superintendent of  
public instruction, or ~~POSSESS~~ a certificate of completion  
from a vocational-technical center program; and ~~must~~ have  
completed a course of study prescribed by the board in a  
registered school of cosmetology or a registered school of  
manicuring. A PERSON MAY APPLY TO THE BOARD FOR AN EXCEPTION  
TO THE EDUCATIONAL REQUIREMENT OF A HIGH SCHOOL DIPLOMA, THE  
EQUIVALENT OF A HIGH SCHOOL DIPLOMA, OR A  
VOCATIONAL-TECHNICAL CENTER CERTIFICATE OF COMPLETION. THE

BOARD SHALL ADOPT BY RULE PROCEDURES FOR GRANTING AN  
EXCEPTION.

(b) A person qualified under subsection (3)(a) must  
shall file with the department a written application to take  
the examination and deposit with the department the required  
examination fee."

**Section 5.** Section 37-31-305, MCA, is amended to read:

"37-31-305. Qualifications of applicants for license to  
teach. (1) Before a person may teach manicuring to persons  
seeking only to be licensed to practice manicuring or teach  
cosmetology, ~~he--must~~ the person shall obtain from the  
department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a  
license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an  
equivalent of a high school diploma recognized by the  
superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued  
by the department and have received a diploma from a  
registered school of cosmetology approved by the board,  
certifying satisfactory completion of 650 hours of student  
teacher training; or

(ii) have been actively engaged as a ~~beauty--operator~~  
cosmetologist for 3 continuous years immediately prior to  
taking the teachers' examination."



**Section 6.** Section 37-31-308, MCA, is amended to read:

"37-31-308. **Examination -- reexamination -- exemption for handicapped persons.** (1) Examinations for a license to practice cosmetology or manicuring or to teach cosmetology ~~shall~~ must be held at places and times specified by the board. The examinations ~~shall~~ must be supervised by the board. The examinations may not be confined to a specific method or system. The examinations ~~shall~~ must be conducted by persons who hold a current ~~license~~ licenses to practice in the profession for which the applicant is being examined.

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he ~~the~~ applicant has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring ~~must~~ shall meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology ~~must~~ shall wait 1 year before reapplying to take the examination. Upon reapplying, the

applicant ~~must~~ shall provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Physically handicapped persons trained for cosmetology or manicuring by the department of social and rehabilitation services ~~shall~~ are, for a period of 1 year immediately following their graduation, ~~be exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required training in a beauty~~ cosmetology school or manicuring school, the department shall issue the person the necessary certificate or license to practice the profession in this state."

**Section 7.** Section 37-31-311, MCA, is amended to read:

"37-31-311. **Schools -- certificate of registration -- requirements -- bond -- curriculum.** (1) No A person, firm, partnership, or corporation may ~~not~~ operate a school for the purpose of teaching cosmetology for compensation or for the purpose of teaching manicuring for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate ~~shall~~ must be filed with the department on a form prescribed by the board.

(2) No A school for teaching cosmetology may ~~not~~ be

1 granted a certificate of registration unless it complies or  
2 can comply with the following requirements:

3 (a) It ~~shall-have~~ has in its employ either a licensed  
4 teacher who is at all times in the immediate supervision of  
5 the work of the school, or other teachers who the board  
6 determines are necessary for the proper conduct of the  
7 school. There may not be more than 25 students to each  
8 teacher.

9 (b) It ~~shall-possess~~ possesses apparatus and equipment  
10 the board determines is necessary for the ready and full  
11 teaching of all subjects or practices of cosmetology.

12 (c) It ~~shall--maintain~~ maintains a school term of not  
13 less than 2,000 hours and ~~shall--prescribe~~ prescribes a  
14 course of practical training and technical instruction equal  
15 to the requirements for board examinations, which course of  
16 training and technical instruction ~~shall~~ must be prescribed  
17 by the board.

18 (d) It ~~shall---~~ keep keeps a daily record of the  
19 attendance of each student, ~~establish~~ establishes grades,  
20 and ~~hold~~ holds examinations before issuing diplomas.

21 (e) No An owner or person in charge of a school of  
22 cosmetology may not permit a person to sleep in or use for  
23 residential purposes, or for any other purpose which that  
24 would ~~tend to~~ make the room unsanitary, a room used wholly  
25 or in part for a school of cosmetology.

1 (3) No A school for teaching manicuring may not be  
2 granted a certificate of registration unless it complies  
3 with subsections (2)(a) and (2)(d) and the following  
4 requirements:

5 (a) It ~~must-possess~~ possesses apparatus and equipment  
6 the board determines necessary for the ready and full  
7 teaching of all subjects or practices of manicuring.

8 (b) It ~~must-maintain~~ maintains a school term and a  
9 course of practical training and technical instruction as  
10 prescribed by the board.

11 (c) No An owner or person in charge of a school of  
12 manicuring may not permit a person to sleep in or use for  
13 residential purposes, or for any other purpose that would  
14 ~~tend--to~~ make the room unsanitary, a room used wholly or in  
15 part for a school of manicuring.

16 (4) Licenses or certificates of registration for  
17 schools of cosmetology and schools of manicuring may be  
18 refused, revoked, or suspended, as provided in 37-31-331.

19 (5) No A teacher or student teacher may not be  
20 permitted to practice cosmetology or manicuring on the  
21 public in a school of cosmetology or a school of manicuring.  
22 A school that enrolls student teachers for a course of  
23 student teacher training may not have, at any one time, more  
24 than one student teacher for each full-time licensed teacher  
25 actively engaged at the school. The student teachers may not

1 substitute for full-time teachers.

2 (6) The board may make further rules necessary for the  
3 proper conduct of schools of cosmetology and schools of  
4 manicuring.

5 (7) The board shall require the person, firm,  
6 partnership, or corporation operating a school of  
7 cosmetology or a school of manicuring to furnish a good and  
8 sufficient bond in the amount of \$5,000 and in a form and  
9 manner prescribed by the board.

10 (8) No A professional beauty-shop cosmetology salon or  
11 manicuring shop salon may not be operated in connection with  
12 a school of cosmetology or school of manicuring.

13 (9) The board may, by rule, establish a suitable  
14 curriculum for teachers' training in registered schools of  
15 cosmetology."

16 **Section 8.** Section 37-31-312, MCA, is amended to read:

17 "37-31-312. Inspection. (1) The department shall  
18 appoint one or more inspectors, each of whom shall devote  
19 his time to inspecting beauty-parlors cosmetology salons and  
20 performing other duties as the department, in cooperation  
21 with the board, may direct. The inspectors may enter a  
22 beauty--parlor cosmetology salon, manicuring shop salon,  
23 booth, school of cosmetology, or school of manicuring during  
24 business hours for the purpose of inspection, and the  
25 refusal of a licensee to permit the inspection during

1 business hours is cause for revocation of the license.

2 (2) Upon application for a license, any a  
3 cosmetological-establishment cosmetology salon or manicuring  
4 shop salon must shall pay an initial inspection fee  
5 prescribed by the board.

6 (3) The board may authorize the department to grant to  
7 a cosmetological---establishment cosmetology salon or  
8 manicuring shop salon, upon payment of the initial  
9 inspection fee, a temporary permit authorizing the  
10 cosmetological-establishment cosmetology salon or manicuring  
11 shop salon to operate for a period of not to exceed 90 days  
12 or until the inspector is able to make the inspection,  
13 whichever event occurs first. This temporary permit is not  
14 renewable.

15 (4) The department shall cause an inspector, appointed  
16 as provided in subsection (1), to conduct an annual  
17 inspection of each cosmetological-establishment cosmetology  
18 salon and manicuring shop salon in the state."

19 **Section 9.** Section 37-31-322, MCA, is amended to read:

20 "37-31-322. Renewal -- continuing education --  
21 delinquency fee. (1) Licenses and certificates may be issued  
22 for no longer than 1 year unless otherwise provided by rule.  
23 Licenses and certificates expire on December 31 unless  
24 otherwise provided by rule or renewed for the next year or  
25 renewal period. Licenses and certificates may be renewed by

1 application made prior to December 31 of each year, unless  
 2 otherwise provided, and by the payment of a required renewal  
 3 fee. Expired licenses and certificates may be renewed under  
 4 rules made by the board, but the right to renew an expired  
 5 license or certificate terminates after 10 years of  
 6 nonpayment. The board may provide by rule for a change in  
 7 the renewal date and renewal period for the manager-operator  
 8 and salon owner category. The renewal fee may not exceed  
 9 twice the fee for a 2-year renewal or three times the fee  
 10 for a 3-year renewal and ~~shall~~ must be as set by the board.

11 (2) In addition to the foregoing requirements for  
 12 renewal, persons applying for the renewal of licenses to  
 13 teach cosmetology must have fulfilled the following  
 14 additional requirements:

15 (a) During each year, an active teacher, either  
 16 full-time or part-time, must have successfully completed ~~30~~  
 17 15 hours' professional teacher training at a school approved  
 18 by the board.

19 (b) A person holding a license to teach cosmetology but  
 20 not actively engaged either full-time or part-time in  
 21 teaching cosmetology or manicuring during the preceding year  
 22 may renew the license by paying the required fee. A person  
 23 holding a license to teach cosmetology but not actively  
 24 engaged in teaching cosmetology or manicuring either  
 25 full-time or part-time for the preceding year or longer and

1 wishing to resume active teaching of cosmetology or  
 2 manicuring must successfully complete 30 hours' professional  
 3 teacher training at a school approved by the board before  
 4 resuming active teaching. However, the foregoing provisions  
 5 do not prevent the board, under rules it adopts, from  
 6 permitting a person ~~holding~~ who holds a license to teach  
 7 cosmetology and who is not actively engaged either full-time  
 8 or part-time in teaching cosmetology or manicuring from  
 9 teaching as a substitute for an active teacher.

10 (3) A fee prescribed by the board ~~shall~~ must be  
 11 charged, in addition to other fees fixed by law, for renewal  
 12 applications of licenses and certificates made after  
 13 December 31 of each year or other predetermined renewal  
 14 deadline."

15 **Section 10.** Section 37-31-331, MCA, is amended to read:

16 "37-31-331. Refusal, revocation, or suspension of  
 17 licenses -- grounds -- notice and hearing. (1) The board may  
 18 refuse to issue, may refuse to renew, or may revoke or  
 19 suspend a license in any one of the following cases:

20 (a) failure of a person, firm, partnership, or  
 21 corporation operating a ~~cosmetological~~---establishment  
 22 cosmetology salon, manicuring shop salon, school of  
 23 cosmetology, or school of manicuring to comply with this  
 24 chapter;

25 (b) failure to comply with the sanitary rules adopted

by the board and approved by the department of health and environmental sciences for the regulation of ~~cosmetological establishments~~ cosmetology salons, manicuring shops salons, schools of cosmetology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

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

(f) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

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

**Section 11.** Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment.

(1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

1 (e) service performed in the employ of any other state  
 2 or its political subdivisions or of the United States  
 3 government or of an instrumentality of any other state or  
 4 states or their political subdivisions or of the United  
 5 States, except that national banks organized under the  
 6 national banking law shall not be entitled to exemption  
 7 under this subsection and shall be subject to this chapter  
 8 the same as state banks, provided that such service is  
 9 excluded from employment as defined in the Federal  
 10 Unemployment Tax Act by section 3306(c)(7) of that act;

11 (f) service with respect to which unemployment  
 12 insurance is payable under an unemployment insurance system  
 13 established by an act of congress, provided that the  
 14 department must enter into agreements with the proper  
 15 agencies under such act of congress, which agreements shall  
 16 become effective in the manner prescribed in the Montana  
 17 Administrative Procedure Act for the adoption of rules, to  
 18 provide reciprocal treatment to individuals who have, after  
 19 acquiring potential rights to benefits under this chapter,  
 20 acquired rights to unemployment insurance under such act of  
 21 congress or who have, after acquiring potential rights to  
 22 unemployment insurance under such act of congress, acquired  
 23 rights to benefits under this chapter;

24 (g) services performed as a newspaper carrier or  
 25 free-lance correspondent if the person performing the

1 services or a parent or guardian of the person performing  
 2 the services in the case of a minor has acknowledged in  
 3 writing that the person performing the services and the  
 4 services are not covered. As used in this subsection:

5 (i) "free-lance correspondent" is a person who submits  
 6 articles or photographs for publication and is paid by the  
 7 article or by the photograph; and

8 (ii) "newspaper carrier" means a person who provides a  
 9 newspaper with the service of delivering newspapers singly  
 10 or in bundles. The term does not include an employee of the  
 11 paper who, incidentally to his main duties, carries or  
 12 delivers papers.

13 (h) services performed by real estate, securities, and  
 14 insurance salespeople paid solely by commissions and without  
 15 guarantee of minimum earnings;

16 (i) service performed in the employ of a school,  
 17 college, or university if such service is performed by a  
 18 student who is enrolled and is regularly attending classes  
 19 at such school, college, or university or by the spouse of  
 20 such a student if such spouse is advised, at the time such  
 21 spouse commences to perform such service, that the  
 22 employment of such spouse to perform such service is  
 23 provided under a program to provide financial assistance to  
 24 such student by such school, college, or university and such  
 25 employment will not be covered by any program of

1 unemployment insurance;

2 (j) service performed by an individual who is enrolled  
3 at a nonprofit or public educational institution, which  
4 normally maintains a regular faculty and curriculum and  
5 normally has a regularly organized body of students in  
6 attendance at the place where its educational activities are  
7 carried on, as a student in a full-time program taken for  
8 credit at such institution which combines academic  
9 instruction with work experience if such service is an  
10 integral part of such program and such institution has so  
11 certified to the employer, except that this subsection shall  
12 not apply to service performed in a program established for  
13 or on behalf of an employer or group of employers;

14 (k) service performed in the employ of a hospital if  
15 such service is performed by a patient of the hospital;

16 (l) services performed by a cosmetologist who is  
17 licensed under Title 37, chapter 31, or a barber who is  
18 licensed under Title 37, chapter 30, and who has  
19 acknowledged in writing that he is not covered by  
20 unemployment insurance and workers' compensation and who  
21 contracts with a ~~cosmetological--establishment~~ cosmetology  
22 salon as defined in 37-31-101 or a barbershop as defined in  
23 37-30-101, which contract shall show the cosmetologist or  
24 barber is free from all control and direction of the owner  
25 in the contract and in fact; receives payment for services

1 from his or her individual clientele; leases, rents, or  
2 furnishes all of his or her own equipment, skills, or  
3 knowledge; and whose contract gives rise to an action for  
4 breach of contract in the event of contract termination (the  
5 existence of a single license for the ~~cosmetological~~  
6 ~~establishment~~ cosmetology salon or barbershop shall not be  
7 construed as a lack of freedom from control or direction  
8 under this subsection);

9 (m) casual labor not in the course of an employer's  
10 trade or business performed in any calendar quarter, unless  
11 the cash remuneration paid for such service is \$50 or more  
12 and such service is performed by an individual who is  
13 regularly employed by such employer to perform such service.  
14 "Regularly employed" means the services are performed during  
15 at least 24 days in the same quarter.

16 (n) employment of sole proprietors or working members  
17 of a partnership;

18 (o) services performed for the installation of floor  
19 coverings if the installer:

20 (i) bids or negotiates a contract price based upon work  
21 performed by the yard or by the job;

22 (ii) is paid upon completion of an agreed upon portion  
23 of the job or after the job is completed;

24 (iii) may perform services for anyone without  
25 limitation;

1 (iv) may accept or reject any job;

2 (v) furnishes substantially all tools and equipment  
3 necessary to provide the services; and

4 (vi) works under a written contract that:

5 (A) gives rise to a breach of contract action if the  
6 installer or any other party fails to perform the contract  
7 obligations;

8 (B) states the installer is not covered by unemployment  
9 insurance; and

10 (C) requires the installer to provide a current  
11 workers' compensation policy or to obtain an exemption from  
12 workers' compensation requirements.

13 (2) "Employment" does not include elected public  
14 officials.

15 (3) For the purposes of 39-51-203(6), the term  
16 "employment" does not apply to service performed:

17 (a) in the employ of a church or convention or  
18 association of churches or an organization which is operated  
19 primarily for religious purposes and which is operated,  
20 supervised, controlled, or principally supported by a church  
21 or convention or association of churches;

22 (b) by a duly ordained, commissioned, or licensed  
23 minister of a church in the exercise of the church's  
24 ministry or by a member of a religious order in the exercise  
25 of duties required by such order;

1 (c) in a facility conducted for the purpose of carrying  
2 out a program of rehabilitation for individuals whose  
3 earning capacity is impaired by age or physical or mental  
4 deficiency or injury or providing remunerative work for  
5 individuals who, because of their impaired physical or  
6 mental capacity, cannot be readily absorbed in the  
7 competitive labor market by an individual receiving such  
8 rehabilitation or remunerative work;

9 (d) as part of an unemployment work-relief or  
10 work-training program assisted or financed in whole or in  
11 part by a federal agency or any agency of a state or  
12 political subdivision thereof by an individual receiving  
13 such work relief or work training; or

14 (e) for a state prison or other state correctional or  
15 custodial institution by an inmate of that institution.

16 (4) An individual found to be an independent contractor  
17 by the department under the terms of 39-71-401(3) is  
18 considered an independent contractor for the purposes of  
19 this chapter."

-End-