

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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FILED

OCT 29 3 04 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: The WV Board of Respiratory Care TITLE NUMBER: 30

CITE AUTHORITY 30-34

AMENDMENT TO AN EXISTING RULE: YES NO

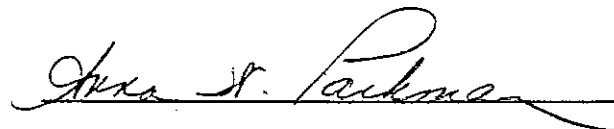
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Establishment of Fees

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Title 30
Legislative Rules
The West Virginia Board of Respiratory Care
Series #2
Establishment of Fees

FILED

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30-2-1 General.

2.1 Scope. -- This legislative rule sets forth in detail all fees charged by the board. OFFICE OF WEST VIRGINIA SECRETARY OF STATE

1.2. Authority. -- W.Va. Code 30-34-6

1.3. Filing Date. --

1.4. Effective Date. --

30-2-2. Application Fee

2.1. An applicant for licensure shall file with the West Virginia Board of Respiratory Care a signed application form and pay an initial application fee of two hundred dollars (\$200.00).

30-2-3. Renewal fees schedule

3.1. Every licensee shall renew his or her license on or before the first of January of each year.

3.2. The renewal fee is sixty-five (65) dollars.

3.3. The first renewal date is January 1, 1998.

3.4. Any licensee who files for early renewal between the dates of November 1 and November 30, in any year, is entitled to a \$10.00 discount on the license renewal.

3.5. The renewal fee for renewal of a licensee's inactive status is twenty dollars (\$20.00).

3.6. Any license that is not renewed on January 1 automatically lapses and the person whose license has lapsed shall submit a new application and the two hundred dollar (\$200.00) application fee.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Board of Respiratory Care

Subject: Establishment of Fees

PERTINENT DATES

Filed for public comment: July 29, 1996

Public comment period ended: August 30, 1996

Filed following public comment period: August 30, 1996

Filed LRMRC: August 30, 1996

Filed as emergency:

Fiscal Impact: The fiscal note does not set forth the anticipated revenues from the proposed fees.

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 sets forth a licensure renewal fee of \$65 and an inactive status renewal of \$20. A discount of \$10 is provided for early renewals and a penalty of \$35 is provided for late renewals. It allows the Board to waive the renewal fee for all licensees in any given year. It provides that a license which is not renewed by January 31 is lapsed and gives the Board the discretion in enforcing this provision.

Section 3 sets forth a \$10 fee for upgrading temporary permits and certain licenses to a respiratory care or therapist license.

AUTHORITY

Statutory authority: W.Va. Code, §30-34-6, which provides, in part, as follows:

(a) The board may:

(1) Adopt rules pursuant to article three, chapter twenty-nine-a of this code, as may be necessary to enable it to effect the provisions of this article;

...(5) Fix appropriate and reasonable fees for mandatory licensure, which shall be no greater than two hundred dollars for initial licensure or one hundred fifty dollars for annual license renewal. All fees shall be reviewed periodically and modified as necessary...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes. the Board has no authority to: waive a renewal fee required by statute; to allow payment of a late penalty fee through January 1 each year when the statute provides that a license lapses if the renewal fee is not paid by January 1, requiring payment of the initial application fee; give itself discretion in enforcing a rule; or to allow an upgrade fee for licensure when the statute requires payment of an initial fee of \$200. Section 2 of the proposed rule also refers types of licensure and permits not provided for in the statute.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

No. See I.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes. See I.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY

ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Parts of the proposed rule are necessary. The proposed rule should, but does not contain a fee for temporary permits.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes, except for the problems stated previously.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

No. The proposed rule did not contain a summary of the proposed rule or a statement of the circumstances requiring the proposed rule.

VIII. OTHER.

Counsel has technical modifications to suggest.



West Virginia Legislature
Legislative Rule-Making Review Committee

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

October 15, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Ms. Anna Parkman
WV Board of Respiratory Care
P. O. Box 3709
Charleston, WV 25337
FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Establishment of Fees

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agencyX
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

Senate Bill No. 208

(By Senator(s) Ross, Anderson, Macnaughtan,
Boley and Buckalew)

[Introduced March 3, 1997; referred to the
Committee on Health and Human Resources; then
to the Committee on Finance; and then to the
Committee on the Judiciary.]

10 A BILL to amend article nine, chapter sixty-four of the
11 code of West Virginia, one thousand nine hundred
12 thirty-one, as amended, by adding thereto a new
13 section, designated section eight, relating to
14 authorizing the board of respiratory care to
15 promulgate a legislative rule relating to the
16 establishment of fees.

17 *Be it enacted by the Legislature of West Virginia:*

18 That article nine, chapter sixty-four of the code of
19 West Virginia, one thousand nine hundred thirty-one, as
20 amended, be amended by adding thereto a new section,
21 designated section eight, to read as follows:

22 ARTICLE 9. . AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
23 BOARDS TO PROMULGATE LEGISLATIVE RULES.

1 §64-9-8. Board of respiratory care.

2 The legislative rule filed in the state register on
3 the thirtieth day of August, one thousand nine hundred
4 ninety-six, under the authority of section six, article
5 thirty-four, chapter thirty, of this code, modified by the
6 board of respiratory care to meet the objections of the
7 legislative rule-making review committee and refiled in the
8 state register on the twenty-ninth day of October, one
9 thousand nine hundred ninety-six, relating to the board of
10 respiratory care (establishment of fees, 30 CSR 2), is
11 authorized.

12

13 NOTE: The purpose of this bill is to authorize the
14 Board of Respiratory Care to promulgate a legislative rule
15 relating to the Establishment of Fees.

16

17 This section is new; therefore, strike-throughs and
18 underscoring have been omitted.

1 Bill-Respiratory, Fees

2

(By Delegate(s) Douglas, Hunt, Compton,
3 Faircloth, Linch and Riggs)

4

5

[Introduced March 3, 1997; referred to the

6

Committee on Government Organization then the

7

Judiciary.]

8

9

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