

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #7

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FILED

2012 MAY 16 AM 11:21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: BOARD OF BARBERS AND COSMETOLOGISTS TITLE NUMBER: 3

CITE AUTHORITY: 30-27-8a

EMERGENCY 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 RULE BEING PROPOSED: 13

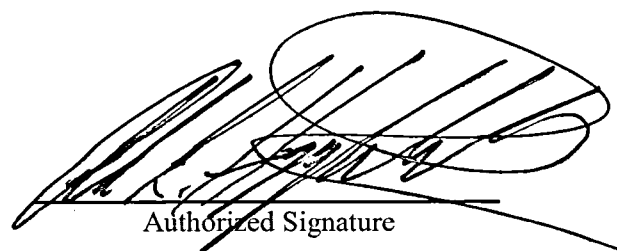
TITLE OF RULE BEING PROPOSED: Barber Apprenticeship

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Please see the attached document.

Use additional sheets if necessary


Authorized Signature



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

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Sarah Hamrick Susan Poveromo
Jim Ryan Rick Stache

Honorable Natalie Tennant
Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Boulevard East
Charleston, West Virginia 25305-0770

May 15th, 2012

Dear Honorable Secretary:

On behalf of the members of the State of West Virginia Board of Barbers and Cosmetologists, I respectfully submit this emergency rule request for your review and consideration.

On April 29, 2012, the members of the Board of Barbers and Cosmetologists unanimously voted to submit the Barber Apprenticeship rule as an emergency rule with the Secretary of State based on several reasons that I hope to explain within this request.

For nearly 10 years there has been only one barber school in the State and that barber school is located in Charleston, West Virginia. The most recent barber school that has opened in West Virginia was in June 1995 and West Virginia has had only one barber school in the State since December 1997, which has been nearly 15 years. The reason there has been no new barber schools that have opened in the last 17 years and that there is only one barber school currently licensed is due to high barriers of entry of opening a school that hindered growth of the educational opportunities for barbering.

These high barriers of entry were due to the troubling and confusing rules of a tiered instructor program that severely limited the number of barber instructors and weighting the necessity of having multiple "master" instructors from the top of the instructor tier as the only option of opening a school.

In 2009, the relatively newly-appointed Board recognized that the 20+ year old rules concerning the requirements to become an instructor and to open a school severely hindered the growth and development of all schools in the state, but especially the barber profession which has seen more licensed barbers pass away than barbers newly licensed for the last three years. During the 2011 legislative session the Board introduced rules that knocked down the barriers of entry and replaced the rules with more obtainable, fair, and business-friendly rules by creating one instructor license (in lieu of three [student, regular, and master]), requiring only three instructors to open a school (in lieu of three of the top-tiered instructors and two regular instructors), and increasing the student-instructor ration from 20-1 to 30-1.

Although the Board has made strides in promoting de-regulation in certain un-friendly rules, the success of these changes have not occurred rapidly due to the years of high barriers of entry. The requirement to open a barber school is still limited by the number of barber instructors. Since there has only been one barber school in the State for the last 15 years and for the last 14 years a barber licensee interested in becoming an instructor would have had to attend the State's only barber school to become an instructor.

It has been heard by the Board that when licensees wanted to earn an instructor license, which required the licensee to start at a licensed school as a student instructor, that a school may not accept the licensee as a student instructor if it was determined the licensee had hopes of opening a school in the future. Thus we have a never-ending cycle of not supplying educational support or means to other areas of the State. This emergency rule filing is based solely on providing resources to all West Virginians seeking to earn a license as a barber.

Based on data reviewed from the US Census Bureau, West Virginia has an estimated population of 1.85 million people. In the Kanawha County, where Charleston is located, and the surrounding counties of Cabell, Putnam, Jackson, Roane, Clay, Nicholas, Fayette, Raleigh, Boone, and Lincoln there is an estimated population of 595,871 people. Based on the assumption that an individual living in one of the counties mentioned earlier may comfortably attend barber school in Charleston by commuting, there are only 32% of West Virginians that would have the option to earn a license in a fairly recession-proof profession.

The Board clearly understands that not even 98% of the West Virginians in the counties mentioned above would be interested in the barbering profession, but the Board strongly feels that the remaining 68% of West Virginians that live outside of Charleston in Kanawha County and its surrounding counties must have access to the education of earning a barber's license and the members feel it is best earned through a barber apprenticeship outlined in the attached rule.

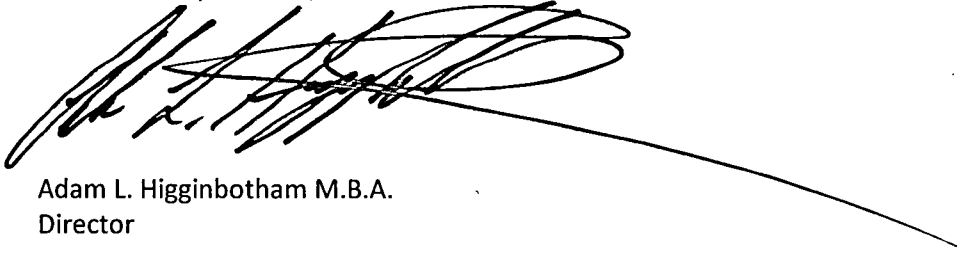
Certain counties outside of Kanawha and surrounding counties are rapidly growing areas of West Virginia. Over the past 10 years, US Census Bureau has Monongalia County growing 17.5%, Berkeley County, 37.2%, Jefferson County 26.8%, and Morgan County 17.4%. The Board has fielded and currently fields many calls from people showing interest in the barber profession but become disinterested when the caller learns of only one school in the State and one option to licensure. Through a grassroots movement, these concerned citizens lobbied their legislators and the legislature successfully passed a barber apprenticeship bill providing the Board authority to establish these rules.

The final need for this rule's immediate consideration is that the counties mentioned above are bordering other states. The individuals in Monongalia, Berkeley, Jefferson, and Morgan counties, to name a few, that are interested in barbering are without a doubt going to another state to earn their training, to obtain their license, and to start their business. With the approval of this rule we can keep West Virginians here, entice citizens of bordering states to West Virginia, and keep businesses, taxes, and jobs in West Virginia.

With the authority to implement rules for the barber apprenticeship having been established and the Board now being in a position to develop, manage, and implement this rule, the members of the State of West Virginia Board of Barbers and Cosmetologists strongly and unanimously request your approval of this rule as an emergency to create more educational opportunities, to satisfy the growing demands of the public, and to promote jobs and businesses in West Virginia.

Should you desire more information or an explanation into a matter further, please do not hesitate to contact me.

Montani Semper Liberi,

A handwritten signature in black ink, appearing to read "Adam L. Higginbotham", is written over a long, thin horizontal line that extends across the page.

Adam L. Higginbotham M.B.A.
Director

EMERGENCY RULE QUESTIONNAIRE

DATE: MAY 16TH, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* BOARD OF BARBERS AND COSMETOLOGISTS
1201 DUNBAR AVENUE
DUNBAR, WV 25064 (304-558-2924)

EMERGENCY RULE TITLE: BARBER APPRENTICESHIP

1. Date of filing MAY 16TH, 2012

2. Statutory authority for promulgating emergency rule:
30-27-8a d.

3. Date of filing of proposed legislative rule: May 16th, 2012

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Creates a new rule.

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
~~Develops educational opportunities to citizens of West Virginia that are not eligible~~
based on the area of State the citizen resides. Many residents of West Virginia desire educational opportunities in barbering and cannot attend the State's only barber school
The implementation of this rule will allow the obtainment of a barber license through an apprenticeship across the State.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

~~No time limit.~~

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

~~Please see attached letter for more information.~~

Creates educational opportunities that will lead to employment and possible business ownership where that opportunity is only readily available to only 32% of West Virginians that live within commuting distance of Charleston. The public from northern areas of the State have been determined to see this rule implemented and approached their legislators to get the Board's Code changed so this program could be offered.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: BARBER APPRENTICESHIP

Type of Rule: Legislative Interpretive Procedural

Agency: BOARD OF BARBERS AND COSMETOLOGISTS

Address: 1201 DUNBAR AVENUE
DUNBAR, WV 25064

Phone Number: 304-558-2924 Email: ADAM.L.HIGGINBOTHAM@WV.GOV

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule will create additional expenses and revenue for the Board of Barbers and Cosmetologists Special fund.

Additionally, the jobs and businesses that will be created through this rule is unmeasurable to determine the revenue that may be generated through other state agencies.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	25,000.00	15,000.00	15,000.00
Personal Services			
Current Expenses	25,000.00	15,000.00	15,000.00
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	12,500.00	18,000.00	20,000.00

BARBER APPRENTICESHIP

Rule Title: _____

Rule Title: _____

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The initial fiscal year impact will result in software changes to implement and manage this type of educational program, promotion of the new program, training staff, and other associated operational costs. The expense decrease will occur from not incurring the software changes after that first year and the promotion of the program will decline as more people become aware of the educational program.

The \$12,500 initial revenue is based on 500 applicants into the barbering program within the first year at \$25.00 each. The second year of implementation is based on the decrease of applicants into the program to 300 at \$25.00 each (\$7,500) and with 300 first time licensees from the initial year of implementation at \$35.00 each (\$10,500). The third year of implementation the program should reach it's cap on generated revenue and expenses.

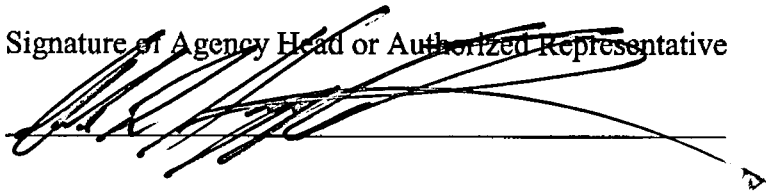
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

[Empty box for memorandum content]

Date: May 15th, 2012

Signature of Agency Head or Authorized Representative



TITLE 3

LEGISLATIVE RULES

WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

SERIES 13

BARBER APPRENTICESHIP

FILED
2012 MAY 16 AM 11:21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§3-13-1. General.

1.1. Scope. -- This legislative rule establishes a barber apprenticeship.

1.2. Authority. -- W. Va. Code §30-27-8(a)

1.3. Filing Date. – May 16, 2012

1.4. Effective Date. -- Emergency

§3-13-2. Definitions.

2.1. "Barber Apprentice" means a permitted person seeking to learn barbering under a permitted master barber.

2.2. "Master Barber" means a permitted licensed barber that instructs and is responsible for a barber apprentice during the time of the apprenticeship.

2.3. "Barber Apprenticeship" means the program in which a master barber instructs a barber apprentice in the profession of barbering which include theory and practical instruction.

2.4. "Paying Customer" means an individual paying for services.

2.5. "Cosmetologist" means a person licensed under the provisions of this article 27 chapter 30 who engages in the practice of cosmetology.

§3-13-3. Qualifications for a Barber Apprentice.

To be eligible to practice as a barber apprentice an applicant:

3.1. Is at least eighteen years of age;

3.2. Is of good moral character;

3.3. Has a high school diploma, a GED, or has passed the "ability to benefit test" approved by the US Department of Education;

3.4. Has paid the application fee;

- 3.5. Has a certificate of health from a licensed physician;
- 3.6. Is a citizen of the United States or is eligible for employment in the United States; and
- 3.7. Has submitted completed application to the Board.

§3-13-4. Qualification for a Master Barber Offering Barber Apprenticeship

To be eligible to be a master barber a licensee:

- 4.1. Has had an active Barber license in West Virginia for at least five years;
- 4.2. Currently owns a licensed barber shop in West Virginia for at least five years with at least two barber chairs in the barber shop;
- 4.3. Is of good moral and responsible character;
- 4.4. Has consistent history of satisfactory inspections conducted by Board's agent at shop.
- 4.5. Has an individual license and barber shop license currently in good standing with the Board;
- 4.6. Has paid the application fee; and
- 4.7. Has submitted completed application to the Board.

§3-13-5. Apprentice Requirements

To obtain a barber's license a barber apprentice:

- 5.1. Shall complete 2,000 hours of apprenticeship training offered solely by a master barber as in Table 1 or in conjunction with a school teaching theory courses outlined in Table 2 prior to commencing practical work in a licensed facility or through a Board pre-approved online theory educational program for teaching theory courses outlined in Table 2.
- 5.2. Shall complete the curriculum listed in Table 1.
- 5.3. Shall obtain a work permit from the Board immediately after completing apprenticeship hours and while waiting to take the examination. A work permit can only be issued if the applicant is registered for the upcoming examination and can only be renewed once.
- 5.4. May receive compensation after earning no less than 600 hours of apprenticeship hours.
- 5.5. Shall obtain 100 hours of theory work focusing on General Professional Information, The Science of Barbering, and Professional Barbering categories, as indicated in Table 1, before commencing practical work on a mannequin. Applicant must also obtain at least 50 hours of practical work on a mannequin before practicing on a live individual in a licensed facility.

5.6. Shall use Milady Barbering Textbook or Pivot Point Barbering Textbook, less than 5 years from published date, for apprenticeship theory work.

5.7. Shall successfully pass each chapter review examination with at least a 70% and shall retain each examination for a period of two years after completion of apprenticeship program.

5.8. Shall complete apprenticeship program within 24 months of commencing studies.

5.9. Shall have direct supervision from the registered Master Barber while performing services.

5.10. Shall work with Master Barber to ensure accurate record keeping including but not limited to daily hours attended, number of customers serviced, hours spent learning theory, and other information to assist with ensuring completion of the apprentice program. A Board created and required records form will be issued to apprentice and Master Barber. Tracking of hours, services, and education progress will be indicated on the form.

5.11. Shall keep all records on file at the Master Barber's shop for inspection by the Board or its agents.

5.12. Shall have access to all records pertaining to his/her apprenticeship within three days of request from Master Barber.

5.13. Shall submit to questions from Board's agent pertaining to sanitation steps and processes used.

5.14. Shall submit an application for registration for licensure after completing apprenticeship and passing the barber examination.

§3-13-6. Master Barber Requirements

To be a master barber a licensed barber shall:

6.1. Follow the curriculum listed in Table 1 if apprentice follows Table 1 for licensure.

6.2. Promote good attendance from applicant that would ensure completion of the barber apprenticeship within 24 months of commencing studies.

6.3. Ensure apprentice completes at least 150 hours and is professionally competent before practicing on a live individual in a licensed facility.

6.4. Grade and oversee completion of theory work and written examinations.

6.5. Oversee and check all practical work performed during the apprenticeship.

6.6. Use Milady Barbering Textbook or Pivot Point Barbering Textbook, less than 5 years from published date, for apprenticeship theory work.

6.7. Keep accurate records to include name of apprentice(s), daily hours attended, number of customers serviced, hours spent learning theory, and other information to assist with ensuring completion of the apprentice program.

6.8. Submit monthly records on a form created by the Board electronically as mentioned in 6.7 to the Board.

6.9. Have no more than two apprentices at any time.

6.10. Assume professional responsibility over apprentice at all times while apprentice is in the shop and must have direct supervision over apprentice while apprentice is performing services.

6.11. Perform frequent practical demonstrations for apprentice to include haircuts, shaves, styling, and other techniques commonly used by licensed barbers. Demonstrations may be done on paying customers or mannequin. Master Barber will determine when an apprentice is ready to perform on paying customer, provided that, apprentice has completed at least 350 hours of the apprenticeship program.

6.12. Submit to inspection of shop, apprentice documents, and other required records ensuring compliance with this rule and other rules created by the Board.

6.13 Earn 4 hours of continuing education every calendar year in accordance to series 11.

§3-13-7. Master Barber's Shop Requirements

7.1. Shop shall have at least two working barber chairs.

7.2. Shop shall maintain proper equipment in good repair and products to perform daily services typically offered in a barber shop.

7.3. Shop shall have and post a sign clearly visible to the public indicating a barber apprentice is on staff and shall have service prices indicating the cost for barber apprentice.

§3-13-8. Cosmetologist Requirements for Barber Apprenticeship

A cosmetologist who wants to obtain licensure as a barber through an apprentice program shall:

8.1. Submit application to the Board;

8.2. Pay the applicable issuance fee;

8.3. Have a West Virginia license in good standing;

8.4. Complete 20 hours of apprenticeship in shaving and its techniques with 2 hours being in theory and 18 hours being in practical work and demonstration observations;

8.5. Complete 60 hours of apprenticeship in clipper technique and style with 5 hours being in theory and 55 hours being in practical work and demonstration observations;

8.6. Complete the total 80 hour apprentice program within 6 months of commencing studies; and

8.7. Sit for the barber examination and must pass within 6 months of completing apprenticeship.

§3-13-9. Revocation of Master Barber and Barber Apprentice Permit

9.1. The permit of a Master Barber and Barber Apprentice may be revoked or suspended by the Board for any reason specified in W.Va. Code §30-27.1 et seq.

§3-13-10. Administrative Due Process

10.1. Those persons adversely affected by the enforcement of this rule have the right to request a hearing in a manner pursuant to the provisions of W.Va. Code §30-27-1 et seq.

TABLE 1

General Professional Information	Theory Work 100 Clock Hours	Practical Work 0 Clock Hours
In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations: <ul style="list-style-type: none"> • Professional Development • Effective Communication • Human Relations • Business Management/Ownership • State Law • Sanitation in the Licensed Facility • Sanitation Processes and Guidelines • First Aid • General Infection Control 		

Introduction into Barbering	Theory Work 3 Clock Hours	Practical Work 0 Clock Hours
In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations: <ul style="list-style-type: none"> • Course Outlines • History of Barbering • Study Skills • Professional Image as a Student and Future Licensee 		

The Science of Barbering	Theory Work 200 Clock Hours	Practical Work 150 Clock Hours
In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations: <ul style="list-style-type: none"> • Microbiology • Infection Control Specifically to Barbering 		

<ul style="list-style-type: none"> • Implements, Tools, and Equipment • Anatomy and Physiology • Chemistry • Electricity • Properties and Disorders of the Skin, Hair, and Scalp

Professional Barbering	Theory Work 150 Clock Hours	Practical Work 1,397 Clock Hours
<p>In this section, students will learn by watching demonstrations of the items below, reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> • Treatment of the Hair and Scalp • Shaving and Facial Hair Design • Men’s Haircutting and Styling • Men’s Hair Replacements 		

Total Barbering Program	Theory Work 453 Clock Hours	Practical Work 1,547 Clock Hours
TOTAL HOURS- 2,000		

TABLE 2

General Professional Information	Theory Work 100 Clock Hours	Practical Work 0 Clock Hours
<p>In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> • Professional Development • Effective Communication • Human Relations • Business Management/Ownership • State Law • Sanitation in the Licensed Facility • Sanitation Processes and Guidelines • First Aid • General Infection Control 		

Introduction into Barbering	Theory Work 3 Clock Hours	Practical Work 0 Clock Hours
<p>In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> • Course Outlines • History of Barbering 		

- Study Skills
- Professional Image as a Student and Future Licensee

The Science of Barbering	Theory Work 200 Clock Hours	Practical Work 0 Clock Hours
<p>In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> • Microbiology • Infection Control Specifically to Barbering • Implements, Tools, and Equipment • Anatomy and Physiology • Chemistry • Electricity • Properties and Disorders of the Skin, Hair, and Scalp 		

Professional Barbering	Theory Work 150 Clock Hours	Practical Work 0 Clock Hours
<p>In this section, students will learn by watching demonstrations of the items below, reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> • Treatment of the Hair and Scalp • Shaving and Facial Hair Design • Men's Haircutting and Styling • Men's Hair Replacements 		

Total Barbering Theory by school/online	Theory Work 453 Clock Hours	Practical Work 0 Clock Hours
<i>TOTAL HOURS of THEORY 453 hours</i>		

TABLE 3

The Science of Barbering/General Professional Information (continued)	Theory Work 0 Clock Hours	Practical Work 150 Clock Hours
<p>In this section, students will learn by reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> • Microbiology • Infection Control Specifically to Barbering • Implements, Tools, and Equipment • Anatomy and Physiology • Chemistry • Electricity • Properties and Disorders of the Skin, Hair, and Scalp • Sanitation in the Licensed Facility 		

- | |
|---|
| <ul style="list-style-type: none"> • Sanitation Processes and Guidelines • First Aid • General Infection Control |
|---|

Professional Barbering	Theory Work 0 Clock Hours	Practical Work 1,397 Clock Hours
<p>In this section, students will learn by watching demonstrations of the items below, reading required textbook, lectures from Master Barber, and chapter review examinations:</p> <ul style="list-style-type: none"> • Treatment of the Hair and Scalp • Shaving and Facial Hair Design • Men's Haircutting and Styling • Men's Hair Replacements 		

Total Barbering Practical with Master Barber	Theory Work 0 Clock Hours	Practical Work 1,547 Clock Hours
<i>TOTAL HOURS-1,547</i>		