

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED
1991 AUG 13 AM 9:57
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: W. Va. Board of Barbers and Beauticians TITLE NUMBER: 3

CITE AUTHORITY 30-27-1 et seq

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Rules and Regulations for licensing schools
of barbering and beauty culture

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Albert C. [Signature]

FISCAL NOTE FOR PROPOSED RULES

Rule Title: CURRICULUM AND MINIMUM REQUIREMENTS, SUBJECTS AND HOUR SCHEDULE, RULES AND REGULATIONS FOR SCHOOLS OF BEAUTY CULTURE OPERATING IN WV, JOINT BARBER AND BEAUTICIAN LICENSE

Type of Rule: X Legislative Interpretive Procedural

Agency BOARD OF BARBERS AND BEAUTICIANS Address 4860 BRENDA LANE, GUTHRIE CENTER, CHARLESTON, WV 25312

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

FILED
 1991 AUG 13 AM 9:57
 OFFICE OF THE SECRETARY OF STATE
 WEST VIRGINIA

2. Explanation of above estimates.
 The proposed rule will not affect present or future budgets.

3. Objectives of these rules: The proposed amendments 1) delete curriculum and licensing information which will be consolidated along with similar information from all other series of our Legislative Rules. Said information will be included within a new Legislative Rule, series 4. 2) changes terminology from beautician and beauty culture to cosmetologist and cosmetology. 3) Changes title of senior instructor to master instructor and makes other minor "clean up" changes.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

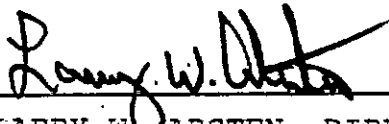
NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date 6/12/91

Signature of Agency Head or Authorized Representative



LARRY W. ABSTEN, DIRECTOR
BOARD OF BARBERS AND BEAUTICIANS

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached^{N/A}

TO: Legislative Rule Making Review Committee
FROM: West Virginia Board of Barbers and Beauticians

Summary of Rule:

This series 3 rule provides for the licensing standards necessary for the licensing of schools of barbering and beauty culture. This rule details procedures and the subsequent actions that the Board must take in responding to licensure requests. This rule also deals with the revocation and suspension of the various licenses.

Statements of Facts and Circumstances:

This series is prepared for the purpose of repealing and replacing the former rule. This rule was only effective for a one year period, expiring on July 1991, and was also in need of reorganization and rewriting.

TITLE 3
LEGISLATIVE RULES
BOARD OF BARBERS AND BEAUTICIANS

SERIES 3
RULES AND REGULATIONS FOR LICENSING SCHOOLS
OF BARBERING AND BEAUTY CULTURE

FILED
1991 AUG 13 AM 9:57
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 3-3-1. **General**

1.1. **Scope** - This legislative rule establishes general rules for the licensing of schools of barbering or beauty culture by the West Virginia Board of Barbers and Beautician (hereinafter Board)

1.2. **Authority** - W. Va. Code § 30-27-1. et seq., Related - W. Va. Code § 30-27-1, et seq.

1.3. **Filing Date** -

1.4. **Effective Date** -

1.5. **Approval Date** - This rule was approved by the West Virginia Board of Barbers and Beauticians on

1.6. **Repeal and Replace Former Regulations** - This rule repeals and replaces the former Rule titled "Rules and Regulations for Licensing Schools of Barbering and Beauty Culture," 3 CSR 5, filed December 7, 1990, and effective July 1, 1991.

§ 3-3-2. **Licensing Standards**

2.1. **General Policy** - A license for a school of barbering or beauty culture shall be issued only when it is clear that the public safety, health and welfare is adequately and sufficiently protected by the conditions surrounding the establishment of the proposed school, and when the issuance of such license would be in the best interest and protection of public health. Therefore, licenses shall be issued only when the applicant has proven to the satisfaction of the Board that: (a) The applicant is professionally competent, financially responsible, and adequate physical facilities will be available for the school, and (b) That the applicant has contracted for the employment of two (2) or more licensed senior instructors, or in the instance of a school purchased or opened after the effective date of this rule, has contracted for the employment of three (3) or more licensed master instructors.

2.2. **Professional Competency** - Each applicant must provide evidence of his or her background of training or experience in barbering or beauty culture, as the case may be, as will support a finding by the Board of professional competency and managerial ability so as to provide a substantial likelihood of the continued successful operation of the proposed school.

2.3. **Financial Responsibility** - The applicant must prove to the satisfaction of the Board: (a) The ability to finance the construction and equipping of the proposed school and (b) The purchase of a surety performance bond made payable to West Virginia Board of Barbers and Beauticians in the amount of fifty thousand dollars (\$50,000), to be renewed annually for five (5) consecutive years. The Board may, by not less than 3/4 majority vote of its membership, accept other alternate forms of security, payable to the West Virginia Board of Barbers and Beauticians in the amount of fifty thousand (\$50,000) per school to guarantee full instruction to students who enroll at the school. In the event the applicant should default in providing such instruction, a refund from the surety bond, or other form of security, shall be made to the student if that student has prepaid, according to the number of hours of instruction lacking. State or county schools not charging tuition shall be exempt from the bonding requirement.

2.4. **Facilities** - The applicant must show that the intended premises for the proposed school are adequate and sufficient so as to insure proper facilities for teaching a minimum of fifty (50) students at all times and that the proposed school will be properly fitted and equipped.

§ 3-3-3. Applications for Licenses

3.1. **General Form and Content** - Applications for a license shall be in writing, made under oath, and are sufficient if made either in letter form or on forms made available by the Board. Applications shall be addressed to: West Virginia Board of Barbers and Beauticians, West Virginia Department of Health, 1800 Washington Street East, Charleston, West Virginia, 25305. The application shall contain at least the following:

- (a) The name of the applicant;
- (b) The place at which the applicant will conduct its operations and whether the property is owned or leased by the applicant;
- (c) If such applicant is a partnership or association, the name and addresses of the partners or governing board;
- (d) If the applicant is a corporation, the names and resident addresses of its officers and directors;
- (e) A copy of a proposed floor plan of the school, which arrangement shall have at least two (2) classrooms and a room for clinical and demonstration work;
- (f) A list of the equipment proposed to be installed;

- (g) A report from the state fire marshal indicating that the floor plan, equipment installation and premises will meet all rules and regulations pertaining to fire safety;
- (h) The background of all persons connected with the applicant as either owner, manager or instructor relative to: (1) Training and experience in barbering or beauty culture, and (2) business and managerial training, experience or ability;
- (i) An applicant's financial statement certified to by a qualified public accountant and a surety performance bond instituted consistent with the provisions of subsection 2.3 of this rule;
- (j) A statement setting forth the applicant's general operating plan for the school;
- (k) A list of the names of the licensed master instructors to be employed in the school;
- (l) Copies of proposed: (1) Advertising to be used in the opening of the school, (2) Student contracts, and (3) Daily and monthly time sheets to be used in recording student activities in the school.

3.2. **Time of Filing** - Application for a license shall be filed with the Board at least sixty (60) days prior to the Board meeting at which the application is requested to be considered.

3.3. **Board Action** - Upon the filing of an application and the payment of the required investigative fee, the Board shall issue a license if it finds that the applicant has and will comply with the provisions of these rules, and the operation of the school would be within the best interests of the public's safety, health and welfare. This license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended by the Board.

3.4. The Board shall approve or deny every application for licensure within ninety (90) days from the applicant's filing of all required information.

3.5. If the application is denied, the Board shall within thirty (30) days, thereafter, file in its office, a written decision and findings of fact with respect to the evidence and reasons supporting the denial, and immediately serve a copy of the decision upon the applicant.

§ 3-3-4. **Licenses**

4.1. **Contents and Display of License** - The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee; if the licensee is a partnership or association, the names of the members thereof; if a corporation, the date and place of its incorporation. The license shall be kept conspicuously posted in the place of business and is not transferable or assignable.

4.2. **Issuance of More than One License to Same Licensee** - Not more than one (1) place of business shall be maintained under the same license but the Board may issue more than one (1) license to the same licensee: Provided, that for each license the applicant shall comply with all the provisions of this rule governing the original issuance of a license.

4.3. **Investigation of Business** - The licensee shall keep, and make available to the Board upon request, such books, accounts and records as will enable the Board to determine whether the licensee is complying with the rules of the Board.

4.4. **Revocation or Suspension of License** - The board shall, upon ten (10) days notice to the licensee stating the contemplated action and the general the grounds therefor, revoke or refuse to renew any license issued under these rules if it finds that:

(a) The licensee has failed to pay the annual fee or to comply with any demand, ruling or requirement of the Board made pursuant to and within the authority of the Board;

(b) The licensee has knowingly violated any provision of the W. Va. Code § 30-27-1 et seq. or any rule promulgated by the Board.

4.5. Any licensee may surrender his or her license by delivering the license to the Board with a written notice that he or she thereby surrenders such license. Surrender of a license shall not affect the civil or criminal liability of the licensee for acts committed prior to such surrender.

4.6. No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any student enrolled in licensee's school.

4.7. Every license issued hereunder shall remain in full force and effect unless surrendered, revoked or suspended in accordance with the provisions of this rule and W. Va. Code § 30-27-1 et seq.: Provided, that the Board shall have authority on its own initiative to reinstate suspended licenses or to issue

new licenses to a licensee whose license or licenses have been revoked if no fact or condition then exists which clearly would have warranted the Board in refusing originally to issue a license under this rule.

4.8. Whenever the Board revokes or suspends a license, it shall immediately file in its office a written order to that effect along with findings of fact containing the evidence and reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof.

§ 3-3-5. Administrative Due Process

5.1. Those persons adversely affected by the enforcement of this rule shall have the right to request a contested case hearing in a manner pursuant to the provisions of West Virginia Code § 29A-5-1 et seq.

§ 3-3-6. Severability

6.1. If any provision of this rule, or the application thereof, to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this rule which can be given effect without the invalid provision or application, and to this end, the provisions of this rule are severable.