

TITLE 3
LEGISLATIVE RULES
BOARD OF BARBERS AND COSMETOLOGISTS

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 3

RULES AND REGULATIONS FOR LICENSING SCHOOLS
OF BARBERING AND BEAUTY CULTURE

§ 3-3-1. General

1.1. Scope - This legislative rule establishes general rules for the licensing of schools of barbering and beauty culture by the West Virginia Board of Barbers and Cosmetologists (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 Cosmetologists 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 Cosmetologists 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 Cosmetologists 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 Cosmetologists, 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 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.

6574

Bill B&B, Licensing -- 3-3

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H. B. 4239

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the

Committee on Government Organization then the
Judiciary

10 A BILL to amend and reenact section five, article nine, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 board of barbers and beauticians to promulgate legislative
14 rules relating to licensing schools of barbering and beauty
15 culture.

16 Be it enacted by the Legislature of West Virginia:

17 That section five, article nine, chapter sixty-four of the
18 code of West Virginia, one thousand nine hundred thirty-one, as
19 amended, be amended and reenacted, to read as follows:

20 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS
21 TO PROMULGATE LEGISLATIVE RULES.

22 §64-9-5. Board of barbers and beauticians.

23 (a) The legislative rules filed in the state register on the
24 tenth day of June, one thousand nine hundred eighty-eight,

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1 modified by the board of barbers and beauticians to meet the
2 objections of the legislative rule-making review committee and
3 refiled in the state register on the eighth day of December, one
4 thousand nine hundred eighty-eight, relating to the board of
5 barbers and beauticians (minimum curriculum for schools of
6 barbering), are authorized with the amendment set forth below:

7 On page 9, by inserting a new section, designated section
8 3-6-14, to read as follows:

9 "§3-6-14. Repeal of rule -- This rule will automatically be
10 repealed on July 1, 1991, unless extended prior to that date by
11 an act of the Legislature."

12 (b) The legislative rules filed in the state register on the
13 tenth day of June, one thousand nine hundred eighty-eight,
14 modified by the board of barbers and beauticians to meet the
15 objections of the legislative rule-making review committee and
16 refiled in the state register on the eighth day of December, one
17 thousand nine hundred eighty-eight, relating to the board of
18 barbers and beauticians (qualifications, training, examination
19 and registration of instructors in barbering and beauty culture),
20 are authorized with the amendment set forth below:

21 On page 6, by inserting a new section, designated section
22 3-2-9, to read as follows:

23 "§3-2-9. Repeal of rule -- This rule will automatically be
24 repealed on July 1, 1991, unless extended prior to that date by
25 an act of the Legislature."

1 (c) The legislative rules filed in the state register on the
2 tenth day of June, one thousand nine hundred eighty-eight,
3 modified by the board of barbers and beauticians to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the eighth day of December, one
6 thousand nine hundred eighty-eight, relating to the board of
7 barbers and beauticians (operation of barber shops and schools of
8 barbering), are authorized with the amendment set forth below:

9 On page 5, by inserting a new section, designated section
10 3-3-6, to read as follows:

11 "§3-3-6. Repeal of rule -- This rule will automatically be
12 repealed on July 1, 1991, unless extended prior to that date by
13 an act of the Legislature."

14 (d) The legislative rules filed in the state register on the
15 tenth day of June, one thousand nine hundred eighty-eight,
16 modified by the board of barbers and beauticians to meet the
17 objections of the legislative rule-making review committee and
18 refiled in the state register on the eighth day of December, one
19 thousand nine hundred eighty-eight, relating to the board of
20 barbers and beauticians (curriculum and minimum requirements,
21 subjects and hour schedule, rules and regulations for schools of
22 beauty culture operation in West Virginia: joint barbers and
23 beauticians license), are authorized with the amendments set
24 forth below:

1 On page 7, by inserting a new section, designated section
2 3-1-11, to read as follows:

3 "§3-1-11. Repeal of rule -- This rule will automatically be
4 repealed on July 1, 1991, unless extended prior to that date by
5 an act of the Legislature."

6 (e) The legislative rules filed in the state register on the
7 tenth day of June, one thousand nine hundred eighty-eight,
8 modified by the board of barbers and beauticians to meet the
9 objections of the legislative rule-making review committee and
10 refiled in the state register on the eighth day of December, one
11 thousand nine hundred eighty-eight, relating to the board of
12 barbers and beauticians (operation of beauty shops and schools of
13 beauty culture), are authorized with the amendments set forth
14 below:

15 On page 4, by inserting a new section, designated section
16 3-4-6, to read as follows:

17 "§3-4-6. Repeal of rule -- This rule will automatically be
18 repealed on July 1, 1991, unless extended prior to that date by
19 an act of the Legislature."

20 On page 4, by inserting a new subsection, designated
21 subsection 3.25, to read as follows:

22 "3.25. Notwithstanding any law to the contrary or
23 interpretation of law to the contrary, any licensed beautician
24 may trim beards or mustaches."

1 (f) The legislative rules filed in the state register on the
2 tenth day of June, one thousand nine hundred eighty-eight,
3 modified by the board of barbers and beauticians to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the eighth day of December, one
6 thousand nine hundred eighty-eight, relating to the board of
7 barbers and beauticians (licensing schools of barbering or beauty
8 culture), are authorized with the amendments set forth below:

9 On page 2, subsection 4.1, by deleting subdivision (b) and
10 relettering the remaining subdivisions.

11 And,

12 On page 6, by inserting a new section, designated section
13 3-5-8, to read as follows:

14 "§3-5-8. Repeal of rule -- This rule will automatically be
15 repealed on July 1, 1991, unless extended prior to that date by
16 an act of the Legislature."

17 (g) The legislative rules filed in the state register on the
18 tenth day of August, one thousand nine hundred ninety, modified
19 by the board of barbers and beauticians to meet the objections of
20 the legislative rule-making review committee and refiled in the
21 state register on the seventh day of December, one thousand nine
22 hundred ninety, relating to the board of barbers and beauticians
23 (licensing of schools of barbering and beauty culture), are
24 authorized with the amendment set forth below:

1 On page 6, by inserting a new section, designated section
2 3-5-8, to read as follows:

3 "§3-5-8. Repeal of rule -- This rule will automatically be
4 repealed on July 1, 1992, unless extended prior to that date by
5 an act of the Legislature."

6 (h) The legislative rules filed in the state register on the
7 tenth day of August, one thousand nine hundred ninety, modified
8 by the board of barbers and beauticians to meet the objections of
9 the legislative rule-making review committee and refiled in the
10 state register on the seventh day of December, one thousand nine
11 hundred ninety, relating to the board of barbers and beauticians
12 (qualifications, training, examination and registration of
13 instructors in barbering and beauty culture), are authorized with
14 the amendment set forth below:

15 On page 6, by inserting a new section, designated section
16 3-2-9, to read as follows:

17 "§3-2-9. Repeal of rule -- This rule will automatically be
18 repealed on July 1, 1992, unless extended prior to that date by
19 an act of the Legislature."

20 (i) The legislative rules filed in the state register on the
21 tenth day of August, one thousand nine hundred ninety, modified
22 by the board of barbers and beauticians to meet the objections of
23 the legislative rule-making review committee and refiled in the
24 state register on the seventh day of December, one thousand nine
25 hundred ninety, relating to the board of barbers and beauticians

1 (minimum curriculum for schools of barbering), are authorized
2 with the amendment set forth below:

3 On page 7, by inserting a new section, designated section
4 3-6-14, to read as follows:

5 "§3-6-14. Repeal of rule -- This rule will automatically be
6 repealed on July 1, 1992, unless extended prior to that date by
7 an act of the Legislature."

8 (j) The legislative rules filed in the state register on the
9 tenth day of August, one thousand nine hundred ninety, modified
10 by the board of barbers and beauticians to meet the objections of
11 the legislative rule-making review committee and refiled in the
12 state register on the seventh day of December, one thousand nine
13 hundred ninety, relating to the board of barbers and beauticians
14 (curriculum and minimum requirements, subjects and hour schedule,
15 rules and regulations for schools of beauty culture operation in
16 West Virginia; joint barbers and beauticians license), are
17 authorized with the amendment set forth below:

18 On page 7, by inserting a new section, designated section
19 3-1-11, to read as follows:

20 "§3-1-11. Repeal of rule -- This rule will automatically be
21 repealed on July 1, 1992, unless extended prior to that date by
22 an act of the Legislature."

23 (k) The legislative rules filed in the state register on the
24 tenth day of August, one thousand nine hundred ninety, modified
25 by the board of barbers and beauticians to meet the objections of

1 the legislative rule-making review committee and refiled in the
2 state register on the seventh day of December, one thousand nine
3 hundred ninety, relating to the board of barbers and beauticians
4 (operation of barber and beauty shops and schools of barbering
5 and beauty culture), are authorized with the amendment set forth
6 below:

7 On page 4, by inserting a new section, designated section
8 3-3-6, to read as follows:

9 "§3-3-6. Repeal of rule -- This rule will automatically be
10 repealed on July 1, 1992, unless extended prior to that date by
11 an act of the Legislature."

12 (1) The legislative rules filed in the state register on the
13 thirteenth day of August, one thousand nine hundred ninety-one,
14 relating to the board of barbers and beauticians (licensing
15 schools of barbering and beauty culture), are authorized.

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17 NOTE: The purpose of this bill is to authorize the Board of
18 Barbers and Beauticians to promulgate legislative rules relating
19 to licensing schools of barbering and beauty culture.

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21 Strike-throughs indicate language that would be stricken from
22 the present law, and underscoring indicates new language that
23 would be added.



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

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(304) 348-2522

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December 27, 1991

Debra A. Graham
Counsel, LRMRC
Capitol Complex
Charleston, West Virginia 25305

Dear Debra,

This letter is being prepared in order to chronologically track the procedure by which the West Virginia Board of Barbers and Beauticians has utilized in order to have the Legislative Rule-Making Review Committee approve the Board's proposed rules, series 1 through 6.


The Board filed the proposed legislative rules for public comment on June 17, 1991. The public comment period ended July 22, 1991, with no comments having been received by the Board. The comment period ended on July 22, 1991.

The Proposed rules, series 1 through 6 were then filed by the Board with the Secretary of State's Office on July 22, 1991, and subsequently filed with your office on August 12, 1991 for review. At your request, the Board proceeded to revise the rules, series 1 through 6, in order to create a more organized set of rules. The rules that were reorganized were intended to be "modified" versions of the proposed rules and not offered as new proposed rules. There were no substantive changes to the rules, only a reorganization of the subject matter in order to make the rules more easily understandable and to allow the general public the opportunity to find information within the rules in an logical order.

These rules which were intended to modify the proposed rules were filed with the LRMRC on August 12, 1991. Due to the mass reorganization of the rules, the titles of the rules had changed. (thereby creating possible confusion for persons wanting to receive a copy of the rules from the Secretary of State's Office and prompting the preparation of this letter) The rules that were submitted for public comment contained the exact same subject matter as the revised or modified rules.

These revised or modified rules were reviewed by the LRMRC on December 9, 1991 and were approved pending very minor modifications relating to grammar. These changes were made and the final rule was submitted on the date of this letter, December 1991.

Very truly yours,


Albert C. Dunn, Jr.
Assistant Attorney General

cc: Judy Cooper
Larry Absten



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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

TO: Larry W. Absten

AGENCY: Board of Barbers & Cosmetologists

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 15, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 3 TITLE: 3 Board of Barbers & Cosmetologists

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: [Signature]

TITLE OF PERSON SIGNING: Director

DATE: 10/22/92

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.