

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

Form #2

Do Not Mark In This Box

FILED

2009 JUN 30 AM 11:33

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Board of Barbers and Cosmetologists TITLE NUMBER: 3

RULE TYPE: Legislative CITE AUTHORITY: 30-27-1

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 RULE BEING PROPOSED: _____

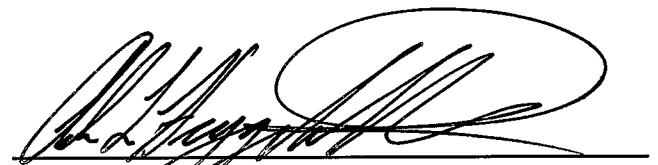
TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 30th, 2009 AT 8:30am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

1716 Pennsylvania Ave Suite 7
Charleston, WV 25302

adam.l.higginbotham@wv.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations for Licensing Schools of Barbering and Beauty Co.
 Type of Rule: Legislative Interpretive Procedural
 Agency: Board of Barbers and Cosmetologists
 Address: 1716 Pennsylvania Ave. Suite 7
Charleston, WV 25302
 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.

N/A

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	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title:

Rule Title:

Rules and Regulations for Licensing Schools of Barbering and Beauty Culture

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

N/A

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.

This rule change will have no fiscal impact. The changes to this rule update and clarify the current rule.

Date: *6/29/2009*

Signature of Agency Head or Authorized Representative

Alan L. Haggard



Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Adam L. Higginbotham
Director

State of West Virginia
Board of Barbers and Cosmetologists

1716 Pennsylvania Avenue, Suite 7
Charleston, West Virginia 25302
Telephone: 304-558-2924
Fax: 304-558-3450

Date: June 29, 2009

To: Administrative Law Division of Secretary of State's Office

From: Adam L. Higginbotham, Director, Board of Barbers and Cosmetologists

Re: Rules and Regulations for Licensing Schools of Barbering and Beauty Culture

SUMMARY OF PROPOSAL

This rule change updates the terminology and clarifies the rules and regulations for licensing schools of barbering and beauty culture.

X


Adam L. Higginbotham M.B.A.
Executive Director

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TITLE 3
LEGISLATIVE RULES
BOARD OF BARBERS AND COSMETOLOGISTS
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
SERIES 3

RULES AND REGULATIONS FOR LICENSING SCHOOLS
OF BARBERING AND BEAUTY CULTURE, COSMETOLOGY, NAIL
TECHNOLOGY, AND AESTHETICS

§ 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 - ~~May 11, 1992~~

1.4. Effective Date - ~~July 1, 1992~~

1.5. 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, cosmetology, nail technology, and/or aesthetics~~ 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,
- (b) financially responsible, ~~and~~
- (c) adequate physical facilities will be available for the school, ~~and~~
- (d) That the applicant has contracted or the employment of ~~two (2)~~ three (3) 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)~~ two (2) or more licensed master instructors.

2.2. Professional Competency - Each applicant must provide evidence of ~~his or her~~ their background of training or experience in ~~barbering or beauty culture education and business management, 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)~~ (\$100,000), 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 dollars (\$50,000)~~ (\$100,000) 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) barbering and/or cosmetology students and/or 15 aesthetician and/or nail technicians/manicurists, if applicable 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. notarized, and on forms provided 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:

- 3.1.1. The name of the applicant(s);
- 3.1.2. The place at which the applicant(s) will conduct its operations and whether the property is owned or leased by the applicant;
- 3.1.3. If such applicant(s) is a partnership or association, the name and addresses of the partners or governing board;
- 3.1.4. If the applicant(s) is a corporation, the names and resident addresses of its officers and directors;
- 3.1.5. A copy of a proposed floor plan of the school, which arrangement shall have at least ~~two (2) classrooms~~ one classroom for

each subject taught and a room for clinical and demonstration work;

- 3.1.6. A list of the equipment proposed to be installed;
- 3.1.7. 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;
- 3.1.8. The background of all persons connected with the Applicant(s) as either owner(s), manager or instructor relative to: (1) Training and experience in barbering or beauty culture, and (2) business and managerial training, experience or ability;
- 3.1.9. An applicant's ~~financial~~ profit/loss statement certified to by a ~~qualified licensed~~ public accountant and a surety performance bond instituted consistent with the provisions of subsection 2.3 of this rule;
- 3.1.10. A statement setting forth the applicant's general operating plan for the school;
- 3.1.11. A list of the names of the licensed master instructors and Instructors to be employed in the school;
- 3.1.12. 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.
- 3.1.13. Be handicapped accessible.

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(s) has/have 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.

3.6 The process, applicable fees, and required documentation for buying an existing school and/or relocating a current school shall be the same as indicated in 3-3-3. 3.1-3.5 of this rule.

§ 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, and submit to interviews, inspections, investigations, and applicable fines.

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 therefore, revoke or refuse to renew any license issued under these rules if it finds that:

4.4.1. 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;

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

4.4.3. Felony or misdemeanor conviction in direct or indirect actions by the school owner, administrators, managers, board of directors, or key interested parties.

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~~