

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

Form #3

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

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

AGENCY: Board of Barbers and Cosmetologists TITLE NUMBER: 3

CITE AUTHORITY: 30-27-1, 30-27-5, 30-27-15

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Operation of Barber, Beauty Shops, and Schools of Barbering and Beauty Culture

IF NO, SERIES NUMBER OF 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.


Authorized Signature

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Operation of Barber, Beauty Shops, and Schools of Barbering and Beauty Culture

Rule Title: _____

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.

NA

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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Operation of Barber, Beauty Shops, and Schools of Barbering and Beauty

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

NA

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 is to update the language, clarifies operations, and adds operation functions.

Date: 7/30/2009

Signature of Agency Head or Authorized Representative





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 : July 30, 2009

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

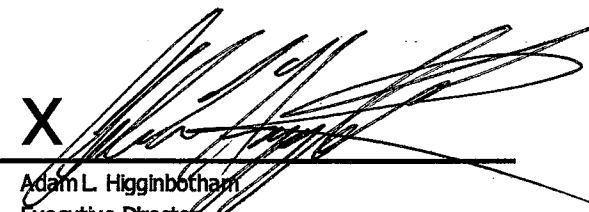
From: Adam L. Higginbotham, Director, Board of Barbers and Cosmetologists

Re: Operation of Barber, Beauty Shops and Schools of Barbering and Beauty Culture

SUMMARY OF PROPOSAL

The changes to this rule update the terminology, clarify operations, and adds operation functions.

X


Adam L. Higginbotham
Executive Director

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TITLE 3
LEGISLATIVE RULES
BOARD OF BARBERS AND COSMETOLOGISTS

SECRETARY OF STATE
STATE OF WEST VIRGINIA

SERIES 5

OPERATION OF BARBER, BEAUTY, NAIL, AND AESTHETIC SHOPS/SALONS,
AND SCHOOLS OF BARBERING AND BEAUTY CULTURE

§ 3-5-1. General

1.1. Scope - This legislative rule governs the sanitary requirements of the operation of barber, and beauty, nail and aesthetic shops/salons and schools of barbering and beauty culture as adopted by the Board of Barbers and Cosmetologists (hereinafter Board).

1.2. Authority - W. Va. Code § ~~30-27-10~~30-27-5. Related - W. Va. Code § ~~30-27-1~~ 30-27-15 and 30-27-17, 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 "Operation of Barber and Beauty Shop and Schools of Barbering and Beauty Culture", 3 CSR 3, filed December 7, 1990, and effective July 1, 1991.~~

§ 3-5-2. Sanitation and Operation Requirements

2.1. All barber, and beauty, nail and aesthetic shops/salons or schools of barbering and beauty culture must have cross, or approved, air ventilation before opening.

2.2. All shop's or school's respective toilets and adjoining rooms used in connection therewith must be kept clean, sanitary, well lighted and ventilated at all times. The use of chunk alum, powder puffs and styptic pencils in any such shop or school is prohibited. No pets such as cats, dogs, birds, etc., shall be kept in or allowed to inhabit shops or the entrance to such shops or schools.

2.3. Each barber, cosmetologist, aesthetician, nail technician/manicurist, instructor and student shall thoroughly cleanse his or her hands with soap and water immediately before serving any patron.

2.4. Each patron must be served with clean, freshly laundered linen which is kept in a closed cabinet used for that purpose alone. All linens immediately after being used shall be placed in a receptacle used for that purpose alone.

2.5. A freshly laundered towel or paper neck strip must be placed around the neck of every patron so that the chair cloth or shampoo apron does not come in contact with the patron's skin.

2.6. The wiping of hands or instruments of any kind on linen being used is prohibited.

2.7. The headrests of all barber chairs must possess an attachment allowing a change of paper for each customer. Used shaving papers must be deposited in a receptacle used for that purpose alone.

2.8. All barber, and beauty, nail and aesthetic shops/salons must be equipped with hot and cold running water piped to hot and cold water faucets of a lavatory. For purposes of this rule, a lavatory is that plumbing fixture commonly used for hand washing. An individual lavatory shall be provided for each barber chair in all barber shops, and shall be located in the working area of each barber chair. Waste water must be drained through proper plumbing facilities into the public sewer system. ~~The use of steamers, sterilizers, bowls or receptacles of any kind into which to put hot towels, or hot water, is prohibited.~~

2.9. All rooms used for barber, and beauty, nail and aesthetic shops/salons must be equipped with all implements, supplies, sterilizers, linen and all other equipment and requisites necessary to perform any or all of the services usually rendered in barber or beauty shops. Shops located in residences must have a private entrance, proper and separate toilet facilities and must be confined strictly to rooms used exclusively for barbering or beauty culture services.

2.10. Every barber or cosmetologist who uses hair brushes must have at least six (6) in use. After each brush is used, it must be thoroughly washed and immersed in an approved disinfectant solution, dried and placed in a cabinet sterilizer until used again.

2.11. Every barber or cosmetologist must have at least twelve (12) combs in use. Every comb must be washed and thoroughly sterilized after each use. ~~Every barber must have at least two (2) neck dusters in use, and each must be kept clean at all times.~~

2.12. All razors, scissors, tweezers, needles, blades and other instruments shall be thoroughly cleaned and disinfected by immersion in an approved disinfecting solution, after they have been in use, and such tools, instruments and appliances shall, when not in use, be kept in a dry cabinet sterilizer. Massage cups, glass applicators and metallic accessories must be detached after each use and thoroughly washed, disinfected and then placed in a dry sterilizer. The bottom blade of all clippers shall be sponged with a small pledget of cotton that has been dipped in an approved disinfectant before each use.

2.13. Waving fluid, or other liquid preparations, must be applied to the hair only through a sanitary dispenser, or by

dripping, pouring, or spraying on the hair.

2.14. All rollers must be cleaned and sterilized after each patron and, when not in use, kept in a closed cabinet used for that purpose only.

2.15. The advertised price of a permanent wave must include a shampoo and all other preparations necessary prior to giving the wave, and every act necessary to complete the permanent wave excluding a haircut. The manager of each shop will be held responsible for seeing that the shop has on hand at all times all supplies required to give each individual permanent wave advertised, by name, by that particular shop.

2.16. Each barber, aesthetician, nail technician/manicurist, or cosmetologist and student barber, aesthetician, nail technician/manicurist, or cosmetologist shall be held responsible for keeping his or her individual chair, work stand, mirror, drawers, individual sterilizers and entire booth or stand clean and neat during working hours. Each such barber, aesthetician, nail technician/manicurist, or cosmetologist practicing in any capacity must keep his or her entire personal appearance clean and neat, and above reproach at all times.

2.17. Every barber, aesthetician, nail technician/manicurist, or cosmetologist must have adequate cabinet space for storing tools and accessories only. Each barber or cosmetologist must have an approved, compartment-type, individual dip sterilizer, which must be of sufficient size to allow combs to be completely submerged. Dip sterilizers may be made of glass, or other noncorrosive materials, and must contain, at all times, an adequate fresh supply of an approved disinfectant. Combs, brushes and other implements shall be washed in soap and water prior to being placed in the dip sterilizer, and shall be dried before being placed in the cabinet sterilizer.

2.18. No person practicing barbering or beauty culture, in any capacity, is permitted to remove warts, moles or skin blemishes. Cosmetologists and aestheticians can perform extraction of skin blemishes. No person may attempt to treat any disease of the skin or scalp. Persons desiring, or in need of treatment of any disease, must be referred to a licensed physician.

2.19. Floors and base boards must be kept clean and free from hair, marks and where possible, mopped each day. Where cuspidors are used, they must be cleaned at least once a day, and a disinfectant solution left in them at all times.

2.20. Any member of the Board, Executive Director of the Board, or its agents may enter and inspect and investigate any barber, and beauty, nail and aesthetic shops/salons or school of barbering or beauty culture during business hours to check any part of the premises in order to ascertain whether or not any part of these rules are being violated, and to fine or take any other action necessary to properly enforce the law.

2.21. A copy of this rule must be framed and posted in a conspicuous place in every barber, ~~and~~ beauty, nail and aesthetic shops/salons and school of barbering or beauty culture. Licenses must be framed and posted ~~near each barber and beauty chair or work stand.~~ at each work station at which the individual is currently working.

2.22. Failure on the part of the owner, manager or employees to comply with this rule is a violation of law and sufficient cause for the Board to revoke, or decide not to renew any applicable license.

2.23. For the purposes of this rule, an approved disinfectant means a one-thousandth (1/1000) solution of quaternary ammonium salts of high germicidal activity, or its equivalent.

2.24. All barber, beauty, nail and aesthetic shops/salons and beauty shops or schools opened after the effective date above must have an inspection completed by a licensed electrician stating the electrical wiring within the shop is adequate to the proposed usage of the facility.

2.25. No barber, beauty, nail and aesthetic shops/salons may have equipment primarily used for a service that is governed by this board that the shop or its licensed workers are not licensed to operate.

2.26 All barber, beauty, nail and aesthetic shops/salons and shop owners and/or managers must present annual records of all booth renters on July 1st of each year. The record should include: name of renter, renter's license number, name of salon, salon's license number, and length of current rental or lease agreement.

2.27 All barber, beauty, nail and aesthetic shops/salons and beauty shops and school ceilings, ceiling tiles, floors, flooring tiles, base boards, and walls shall be in good repair without signs of excessive dirt, water marks or stains, suspect mold or mildew, or any damage that is considered a threat to public safety and/or sanitation.

§ 3-5-3. Duty to Carry Out Rules, Reporting and Complaints

3.1. It shall be the duty of the proprietors of all barber, ~~and~~ beauty, nail and aesthetic shops/salons, barber or beauty schools, and all licensed barbers, cosmetologists, aestheticians, nail technicians/manicurists, students, and others to assist in carrying out the provisions of this rule by reporting any violation to the Board or any of its duly authorized agents.

3.2. Complaints may be presented to an inspector at the time of inspection or may be mailed to the Board. Complaints will be investigated as promptly as possible.

§ 3-5-4. Administrative Due Process

4.1. 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 W. Va. Code § 30-27-20

et seq.

~~§ 3-5-5.~~ Severability

~~5.1. 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.~~

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 7/30/2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Board of Barbers and Cosmetologists

1716 Pennsylvania Ave. Suite 7

Charleston, WV 25302

LEGISLATIVE RULE TITLE: _____
Operation of Barber, Beauty Shops, and Schools of Barbering and Beauty Culture

1. Authorizing statute(s) citation _____
30-27-5, 30-27-15, 30-27-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
6/30/2009

b. What other notice, including advertising, did you give of the hearing?
Posted on web site.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
7/30/2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

NA

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Adam L. Higginbotham, Director

1716 Pennsylvania Ave. Suite 7, Charleston, WV 25302

304-558-2924/304-558-3450/adam.l.higginbotham@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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.

NA

b. Date of hearing or comment period:

NA

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

NA

d. Attach findings and determinations and reasons:

Attached NA

A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned below the text of item d.