

WEST VIRGINIA
SECRETARY OF STATE
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SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Board of Barbers and Beauticians TITLE NUMBER: 3

CITE AUTHORITY §30-27-1, W.Va. Code

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Rules and Regulations for Licensing Schools
of Barbering or Beauty Culture

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Edwin Roush, Executive Director

[PROPOSED]

TITLE 3

LEGISLATIVE RULES
BOARD OF BARBERS AND BEAUTICIANS

RULES AND REGULATIONS FOR LICENSING SCHOOLS
OF BARBERING OR BEAUTY CULTURE

SERIES 5

198_

Modifications Requested by the Legislative
Rule-Making Review Committee

[PROPOSED]
LEGISLATIVE RULES
BOARD OF BARBERS AND BEAUTICIANS

RULES AND REGULATIONS FOR LICENSING SCHOOLS
OF BARBERING OR BEAUTY CULTURE

3 CSR 5

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[PROPOSED]
TITLE 3
LEGISLATIVE RULES
BOARD OF BARBERS AND BEAUTICIANS

SERIES 5
RULES AND REGULATIONS FOR LICENSING SCHOOLS OF BARBERING AND
BEAUTY CULTURE

§3-5-1. General

1.1. Scope - ~~These legislative rules establish~~ This legislative rule establishes general rules for the licensing of schools of barbering or beauty culture.

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

1.3. Filing Date -

1.4. Effective Date -

~~1.5. Refiling Date - December 30, 1982.~~

1.5. Notice of Public Hearing - September 25, 1987.

1.6. Public Hearing - October 26, 1987.

1.7. Approval Date - This rule was approved by the West Virginia Board of Barbers and Beauticians on May 22, 1988.

§3-5-2. Application and Enforcement

2.1. Application - ~~These legislative rules apply~~ This rule applies to the owners and operators of schools of barbering or beauty culture.

2.2. Enforcement - Enforcement of ~~these legislative rules~~ this rule is vested in the West Virginia Board of Barbers and Beauticians.

~~Section 3. Relation to Other Regulations~~

~~These regulations will amend and supplement prior regulations promulgated by the Board dealing with and relating to the licensing of schools of barbering and beauty culture. All prior Rules and Regulations of the Board in conflict with the Rules and Regulations herein adopted are hereby repealed.~~

§3-5-3. Supersession and Repeal of Former Regulations - This rule supersedes and repeals Rules and Regulations for Licensing Schools of Barbering and Beauty Culture, West Virginia Legislative Rules, 3 CSR 5, filed August 15, 1968 and refiled December 30, 1982.

§3-5-4. Licensing Standards

4.1. **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 are 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 interest and protection of public health. Therefore, licenses shall ~~be issue~~ issued only when the applicant has proven to the satisfaction of the Board that: (a) The applicant is professionally competent, ~~(b) the applicant has been a resident of the State for at least five (5) years~~ ~~(b)~~ (c) the applicant is financially responsible, ~~(c)~~ (d) adequate physical facilities will be available for the school, and ~~(d)~~ (e) the applicant has contracted for the employment of ~~two-(2)~~ three (3) or more registered licensed regular 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 senior instructors.

4.2. **Professional Competency** - Each applicant must show and prove a background of training and 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.

4.3. **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 State Board of Barbers and Beauticians in the amount of ~~ten thousand-dollars,--(\$10,000)~~ fifty thousand dollars (\$50,000), to be held five (5) years from date of issuance 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 shall be made to the student, according to the number of hours of instruction lacking, if tuition has been prepaid. State or county schools not charging tuition to shall be exempt from the bonding requirement.

4.4. **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.

4.5. **Instructors** - ~~The applicant~~ school ~~must show the pre-~~ ~~posed employment--of~~ employ ~~at least two-(2)~~ three (3) registered licensed regular senior instructors by the--proposed school, and that there will be a minimum of one (1) instructor employed for each twenty (20) students, or reasonable average thereof: Pro- vided, that schools having a valid license as of the effective date of this rule shall employ a minimum of two (2) such instruc- tors.

§3-5-5. Applications for Licenses

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

- (a) The name of the applicant;
- (b) The place at which such applicant will conduct its operations and whether the same is owned or leased by the applicant;
- (c) If such applicant be an unincorporated copartnership or association, the name and addresses of the partners or governing board;
- (d) If such applicant be a corporation the names and resident addresses of its officers and directors;
- (e) A copy of a proposed floor plan of said 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) ~~Report~~ 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) ~~Background~~ 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) ~~Applicant's~~ An applicant's financial statement certified to by a qualified public accountant and a surety performance bond made payable to the West Virginia State Board of Barbers and Beauticians in the amount of ~~ten-thousand-dollars-(\$10,000)~~ fifty thousand dollars (\$50,000), to be held five (5) years from date of issuance to guarantee full instruction to students who enroll at the school except State or county schools not charging tuition shall not be required to purchase the performance bond.
- (j) A statement setting forth the applicant's general operating plan for the school;
- (k) A list of the names of the registered licensed regular senior instructors to be employed in the school;

(1) Copies of proposed: (1) Advertising to be used in opening of school, (2) student ~~contracts~~ contracts, and (3) daily and monthly time sheets to be used in recording student activities in the school.

5.2. 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.

5.3. Board Action - Upon the filing of an application and the payment of required investigative fee, if the Board shall find that the professional competency, business experience, character, financial responsibility and general fitness of the applicant, and of the members thereof if the applicant be a copartnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the proposed school will be operated professionally, honestly, fairly and efficiently within the purposes of the statutes, and if the Board shall find that the applicant will have adequate and sufficient facilities, and that the applicant has made arrangements for the employment of at least two (2) registered licensed regular senior instructors or, at least three (3) such licensed senior instructors for schools purchased or opened after the effective date of this rule, and that allowing such applicant to engage in the operation of a school of barbering or beauty culture in this State would be in the interest and protection of the public's safety, health and welfare, the Board shall thereupon issue and deliver a license to the applicant to conduct a school of barbering or beauty culture at the location specified in said application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended.

~~If the Board shall not so find, it shall not issue such license and shall notify the applicant of the denial.~~

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

If the application is denied, the Board shall within thirty (30) days thereafter file in its office a written decision and findings, with respect thereto containing the evidence and the reasons supporting the denial, and forthwith serve a copy thereof upon the applicant.

§3-5-6. Licenses

6.1. Contents of License and Posting Same - Such The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Such The license shall be kept conspicuously

posted in the place of business of the licensee and shall not be transferable or assignable.

6.2. **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 such license the applicant shall comply with all the provisions of the statutes and ~~the rules--and-regulations--promulgated-herein~~ this rule governing an original issuance of a license.

6.3. **Annual License Fee -** Every licensee shall on annually upon or before the first day of each--year January pay to the Board the sum of two hundred fifty dollars (\$250) as an annual license fee for the next succeeding fiscal year.

6.4. **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 such licensee is complying with the ~~Rules-and-Regulations~~ lawfully made rules of by the Board.

6.5. **Revocation or Suspension of License -** The board shall, upon ten (10) days notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke or refuse to renew any license issued hereunder if it shall find that:

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

(b) The licensee has violated knowingly any provision of the statutes or any rule ~~or-regulation~~ lawfully made by the Board under and within the authority of the statutes.

Any licensee may surrender any license by delivering to the Board written notice that it thereby surrenders such license, but such surrender shall not affect the civil or criminal liability of the licensee for acts committed prior to such surrender.

No revocation or 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.

Every license issued hereunder shall remain in full force and effect ~~until-the-same--shall--have--been~~ unless surrendered, revoked or suspended in accordance with the provisions of this ~~article, but rule and Article 27, Chapter 30 of the West Virginia Code:~~ 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 shall 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 the statutes or ~~any rule or regulation promulgated herein~~ this rule.

Whenever the Board shall revoke or suspend a license, it shall forthwith file in its office a written order to that effect, and findings with respect thereto, containing the evidence and the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof.

§3-5-7. Administrative Due Process - 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 Chapter 29A, Article 5, of the West Virginia Code.



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WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Room M-438, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

Senator Larry A. Tucker, Co-Chairman
Delegate Thomas A. Knight, Co-Chairman

December 6, 1988

M. E. Mowery, Counsel
Debra A. Graham, Associate Counsel
Marie Nickerson, Receiving Clerk

NOTICE OF ACTIONS TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Edwin Roush, Executive Director
Board of Barbers and Beauticians
4860 Brenda Lane, Guthrie Center
Charleston, WV 25312

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Rules and Regulations for Licensing Schools of
Barbering or Beauty Culture

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency _____
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. X
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Kay Howard, Dept. of Health
Nancy Smith, Little French Beauty Academy
Wayne Stonestreet, Esq.
Jerry Scott
Beauty by Shea

AMENDMENT TO RULE

Board of Barbers and Beauticians - Licensing schools of barbering or beauty culture, Series V

On page 4, by inserting a new section, designated section 3-5-7 to read as follows:

"§3-5-7. Repeal of rule - This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature." and

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

The Committee adopted the proposed amendment due to the fact that the rule is in bad shape and needs to be completely rewritten. The Committee approved the rule temporarily giving the Board a deadline by which the revision must be made.

The Committee deleted the five-year residency requirement based on what it believes to be the provision's unconstitutionality.