

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

Form #2

Do Not Mark In This Box

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2009 JUN 30 AM 11:34

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: 30-1-8

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: Schedule of Fines

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 30<sup>th</sup>, 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.lahiggia@hthum@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: Schedule of Fines

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.higgins@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. Fines are deposited into the general fund.*

**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:

Schedule of Fines

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

N/A

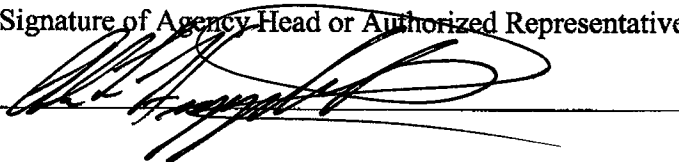
### MEMORANDUM

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.

Update language & laws pertaining to Board. Create sanitation guidelines that are important to public health and sanitation.

Date: 6/29/2009

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:** June 29, 2009

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

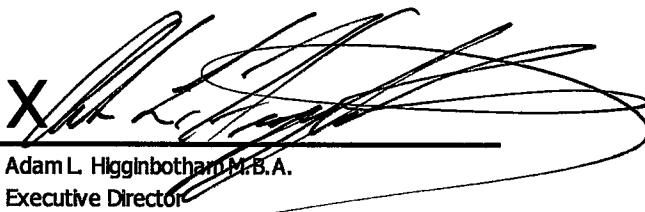
**From:** Adam L. Higginbotham, Director, Board of Barbers and Cosmetologists

**Re:** Schedule of Fines

**SUMMARY OF PROPOSAL**

This rule will continue to create rules needed to ensure the safety and sanitation of the shops for the general public.

The changes update the rules and terminology of the Board of Barbers and Cosmetologists.

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

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2009 JUN 30 AM 11:34

TITLE 3  
LEGISLATIVE RULE  
BOARD OF BARBERS AND COSMETOLOGISTS

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 7  
SCHEDULE OF FINES

§ 3-7-1. General

1.1. **Scope** - This legislative rule establishes a system of fines as adopted by the Board of Barbers and Cosmetologists.

1.2. **Authority** - W. Va. Code § 30-1-8

1.3. **Filing Date** - ~~March 26, 1999~~

1.4. **Effective Date** - ~~March 26, 1999~~

§ 3-7-2. Schedule of Fines

Any person licensed and/or licensed facility under the provisions of West Virginia Code §30-27-1 et seq is subject to the fines specified in this section for the following conduct, practices or acts:

2.1. Failing to post a shop license, practitioner license or booth certificate in a publicly visible place within a shop (posting of photocopies, reproductions and pocket identification cards will be cited as failure to post).

1st offense: Warning

2nd offense: \$50.00

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for assessment of a fine and/or the proposed revocation, suspension or refusal to issue a license;

2.2. Working with an expired license.

1st offense: \$100.00

2nd offense: \$500.00

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for assessment of a fine and any other penalties allowed by law including refusal to issue a license;

2.3. Practicing in a shop with an expired work permit/certificate.

1st offense: \$100.00 to the practitioner with the expired license and \$50.00 to the owner of the shop.

2nd offense: \$500.00 to the practitioner with the expired license and \$500.00 to the owner of the shop.

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for assessment of a fine and any other penalties allowed by law including refusal to issue their license;

2.4. Operating a shop with an expired shop license.

1st offense: \$200.00

2nd offense: \$500.00

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for assessment of a fine and any other penalties allowed by law including refusal to issue a shop license;

2.5. Operating a shop by a practitioner without first filing a shop application, paying the fee, and receiving a license.

1st offense: \$200.00

2nd offense: \$500.00

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for assessment of a fine and any other penalties allowed by law including refusal to issue a license;

2.6. Performing services as a practitioner while working in an unlicensed shop.

1st offense: \$200.00

2nd offense: \$500.00

3rd offense: \$1,000.00;

2.7. Performing services (when only temporary) in connection with an event such as, but not limited to, any fair, carnival bazaar, product or business promotion, weekend market or glamour photos without first obtaining a temporary license.

1st offense: Warning

2nd offense: \$200.00

3rd offense: \$500.00;

2.8. Practicing without Board authorization.

1st offense: \$300.00

2nd offense: \$500.00

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for assessment of a fine and/or the revocation, suspension or refusal to issue a license;

2.9. Performing services which the practitioner and/or shop is not licensed.

1st offense: \$400.00 to the practitioner and/or shop.

2nd offense: \$1,000.00 to the practitioner and/or shop.

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for assessment of a fine and/or the revocation, suspension or refusal to issue their licenses;

2.10. Practicing barbering, cosmetology, facial technology or manicuring without a license or with a license issued to another person.

1st offense: \$500.00

2nd offense: \$1,000.00

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for the assessment of a fine and any other penalties allowed by law including refusal to issue a license;

2.11. Operating a shop without a shop license by a person who is not licensed is a violation and shall incur the following penalties:

1st offense: \$500.00

2nd offense: \$1,000.00

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for the assessment of a fine and any other penalties allowed by law including refusal to issue a license;

2.12. Allowing an unlicensed person to practice in a licensed shop.

1st offense: \$500.00

2nd offense: \$1,000.00

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for the assessment of a fine and/or the proposed revocation, suspension or refusal to issue a shop license;

2.13. Altering a license, certificate, or authorization issued by the Board.

1st offense: \$500.00

2nd offense: \$1,000.00

3rd offense: The Board shall summon the person for the assessment of a fine and/or the proposed revocation, suspension or refusal to issue a license, certificate or authorization;

2.14. Failing to meet the specifications relating to exits and fire standards in a shop located in the basement or above the first floor of a home: Immediate suspension of the shop license until the violation is corrected;

2.15. Failing to identify a shop located in a home by means of a house number or a sign easily visible from the street.

1st offense: Warning

2nd offense: \$50.00

3rd offense: \$100.00

2.16. Failing to have a separate entry for a shop located in a home or to properly separate the shop from the living area of the home.

- 1st offense: Warning
- 2nd offense: \$50.00 for each violation
- 3rd offense: \$100.00 for each violation

2.17. Managing a shop in which cosmetology, barbering, manicuring or skin care is performed without a license.

- 1st offense: Warning.
- 2nd offense: \$100.00
- 3rd offense: \$200.00;

2.18. Failing to submit to an inspection by the Board or refusing to allow the Board to inspect the premises when the shop is open.

- 1st offense: \$300.00
- 2nd offense: \$500.00

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for the assessment of a fine and/or the proposed revocation or suspension of a certificate and/or shop license;

2.19. Failing as a booth renter to inform the Board within 30 days of a change of work location.

- 1st offense: ~~Warning~~ \$20.00
- 2nd offense: \$50.00
- 3rd offense: \$100.00;

2.20. Failing to notify the Board of a change of home address within 30 days of the change.

- 1st offense: Warning
- 2nd offense: \$50.00
- 3rd offense: \$100.00

2.21. Failing to apply for a shop license prior to taking over the operation of an existing shop.

- 1st offense: Warning
- 2nd offense: \$100.00
- 3rd offense: \$200.00;

2.22. Moving an existing shop from one location to another without first submitting to the Board an application and fee for the new location.

1st offense: \$200.00

2nd offense: \$500.00

3rd offense: The Board shall summon the practitioner or shop owner to appear before the Board for the assessment of a fine and/or the proposed revocation, suspension or refusal to issue a certificate and/or shop license;

2.23. Performing cosmetology, barbering, manicuring or skin care services by a student when not on the premises of the school in which he or she is enrolled.

1st offense: Warning and notify the school

2nd offense: \$150.00

3rd offense: \$300.00;

2.24. Failing to have adequate lighting in a ~~shop~~ licensed facility.

1st offense: Warning

2nd offense: \$50.00

3rd offense: \$100.00;

2.25. Failing to have a supply of both hot and cold running water on the premises of a ~~shop~~ licensed facility.

1st offense: Warning

2nd offense: \$100.00

3rd offense: \$300.00

2.26. Failing to have toilet facilities available which are "reasonably accessible" for ~~shop~~ a licensed facility employees.

1st offense: Warning

2nd offense: \$100.00

3rd offense: \$300.00

2.27. Failing to keep a toilet facility located on the premises of a ~~shop~~ licensed facility clean and sanitary.

1st offense: Warning

2nd offense: \$50.00

3rd offense: \$100.00;

2.28. Having frayed electrical wiring or overloading the electrical circuits in a ~~shop~~ licensed facility.

1st offense: Warning

2nd offense: \$50.00

3rd offense: \$100.00;

2.29. Failing to use clean towels or linens for each client.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;

2.30. Failing to store clean towels and linens in a clean area.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;

2.31. Failing to use a neck strip or a towel to prevent contact between the skin of a client's neck and a hair cloth or cape.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;

2.32. Failing to immediately deposit all used towels with chemical residue in a closed container.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00

2.33. Failing to ensure that all articles which come in contact with a client are either disinfected, cleaned or disposed of.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00

2.34. Failing to properly dispense powders, wave solutions, creams, semi-solid substances or other materials which come in contact with a client.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00

2.35. Failing to deposit all chemical waste materials in a closed container at the close of each business day or having a closed container available.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00

2.36. Failing to immediately deposit all non-chemical waste and refuse in covered containers.

1st offense: Warning  
2nd offense: \$50.00  
3rd offense: \$100.00;

2.37. Failing to keep any shop waste disposal container clean.

1st offense: Warning  
2nd offense: \$50.00  
3rd offense: \$100.00

2.38. Failing to have sealable plastic bags and sealable rigid containers available for use of blood or other bodily fluids, and sharp edged materials at all times services are being performed.

1st offense: Warning  
2nd offense: \$300.00  
3rd offense: \$500.00;

2.39. Failing to keep disinfecting solutions at adequate strength for immediate use at all times a ~~shop~~ licensed facility is in operation and free of foreign material.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;

2.40. Failing to discard a disposable emery board, sponge, buffer, or orangewood stick after use on a client or to give the emery board, sponge, buffer, or orangewood stick to the client.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;

2.41. Failing to cleanse and disinfect electrical or mechanical hair clipper blades after use on each client.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;

2.42. Failing in a shop or as a booth renter to provide one or more sanitizers adequate to the number of practitioners, usage requirements or volume of business.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;

- 2.43. Failing in a shop or as a booth renter to disinfect tools and implements.  
1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;
- 2.44. Failing to store disinfected or cleaned tools and implements separately from all others .  
1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;
- 2.45. Failing to keep roller-storage receptacles and their contents clean and free of foreign material.  
1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;
- 2.46. Failing to keep storage drawers for clean tools and implements clean and to use such drawers only for clean tools and implements.  
1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;
- 2.47. Failing to keep storage cabinets, work stations, vanities and the inside of microwave ovens or other such equipment clean.  
1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;
- 2.48. Failing to use a disposable cover on the head of a client who is trying on a hairpiece or to clean and label used hair goods as "used" prior to resale.  
1st offense: Warning  
2nd offense: \$50.00  
3rd offense: \$100.00;
- 2.49. Having pets in shops, other than fish in an aquarium.  
1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$300.00;

2.50. Failing to have washable, non-absorbent surfaces on all equipment in all areas of a shop in which hair design, facial technology or manicure services are performed.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$200.00;

2.51. Failing to keep a shop shampoo bowl or sink clean.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$200.00;

2.52. Failing to keep equipment in a shop, including upholstery fabrics, clean and in good repair.

1st offense: Warning  
2nd offense: \$50.00  
3rd offense: \$100.00;

2.53. Failing to have washable, non-absorbent floor surfaces in the area(s) of a shop in which hair design, facial technology or manicure services are performed.

1st offense: Warning  
2nd offense: \$100.00  
3rd offense: \$200.00

2.54. Allowing hair clippings to accumulate on a ~~shop~~ licensed facility floor or failing to dispose of hair clippings in a proper container.

1st offense: Warning  
2nd offense: \$50.00  
3rd offense: \$100.00;

2.55. Failing to keep ~~shop~~ a licensed facility's walls, floors, base boards, and ceiling clean and free of excessive spots, mildew, scuff marks, gathered dirt, mold, condensation or peeling paint.

1st offense: Warning  
2nd offense: \$50.00  
3rd offense: \$100.00;

2.56. Performing barbering, cosmetology, ~~facial technology~~ aesthetics or manicure services while suffering from a diagnosed communicable disease or condition in a transmittable form: Immediate suspension until the disease or condition is no longer communicable.

2.57. Treating any disease or knowingly serving any client suffering from a communicable disease or condition.

1st offense: \$250.00

2nd offense: \$500.00;

3rd offense: The Board shall summon the practitioner to appear before the Board for the assessment of a fine and/or the proposed revocation, suspension or refusal to issue a certificate and/or shop license

2.58. Performing barbering, cosmetology, facial technology or manicure services without washing one's hands prior to serving each client.

1st offense: Warning

2nd offense: \$25.00

3rd offense: \$50.00;

2.59. Failing to store chemicals safely to avoid fire, explosion and/or bodily harm to clients and practitioners.

1st offense: Warning

2nd offense: \$100.00

3rd offense: \$300.00;

2.60. Failing to mix chemicals in a dispensing area.

1st offense: Warning

2nd offense: \$100.00

3rd offense: \$300.00; and

2.61. Mixing chemicals near an open flame or other potential source of ignition.

1st offense: Warning

2nd offense: \$100.00

3rd offense: \$300.00

2.62 Failing to maintain a sanitary and clean facility free of insects.

1st offense: Warning

2nd offense: \$100.00

3rd offense: \$300.00

2.63 Failure to provide continuing education documentation from an approved venue by the Board.

1st offense: License not renewed plus pay all applicable late fees

2nd offense: License not renewed plus pay all applicable late fees and the board shall summon the practitioner to appear before the Board for assessment of a fine and any other penalties allowed by law including refusal to issue license.

2.64 Failure to renew Booth Rental Certificate annually.

1st offense: \$10.00 for individual \$50.00 for the establishment

2nd offense: \$50.00 for individual \$100.00 for the establishment

3rd offense: The board shall summon the practitioner and/or shop owner to appear before the Board for assessment of a fine and any other penalties allowed by law including refusal to issue license.

2.65 Failure for a shop or shop owner to provide proper/required documentation of an electrical inspection 30 days after conditional shop opening approval pending certain documentation.

Each Offense: Closure of shop until electrical certificate is provided

2.66 Failure for a shop owner and/or manger to provide a list of current booth renters to the Board office yearly with the shop renewal.

1st offense: Warning and license not renewed until list provided

2nd offense: \$100.00 and license not renewed until list provided

3rd offense: The board shall summon the practitioner and/or shop owner to appear before the Board for assessment of a fine and any other penalties allowed by law including refusal to issue license.

2.67 Failing to post individual license and/or photo identification card at the work station the individual is currently working.

1st offense: Warning

2nd offense: \$50.00

3rd offense: \$100.00

2.68 Failing to use a new drip tip for each use.

1st offense: Warning

2nd offense: \$50.00

3rd offense: \$100.00

2.69 Failing to discard files after each use.

1st offense: Warning

2nd offense: \$50.00

3rd offense: \$100.00

2.70 Failing to use clean towel (terry or paper) on manicure table for each client.

1st offense: Warning

2nd offense: \$50.00

3rd offense: \$100.00

2.71 Failing to keep manicure table and drawer clean and dust free.

1st offense: Warning

2nd offense: \$50.00

3rd offense: \$100.00

2.72 Failing to sweep floor after each haircut.

1st offense: Warning

2nd offense: \$50.00

3rd offense: \$100.00