

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #4

FILED

Dec 21 1 03 PM '98

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: BOARD OF BARBERS AND COSMETOLOGISTS TITLE NUMBER: 3

CITE AUTHORITY WEST VIRGINIA CODE 30-1-8

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 7

TITLE OF RULE BEING PROPOSED: SCHEDULE OF FINES

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.

  
\_\_\_\_\_  
Authorized Signature

\$4.00

**TITLE 3  
LEGISLATIVE RULES  
BOARD OF BARBERS AND COSMETOLOGISTS**

**FILED**

**SERIES 7**

DEC 21 1 03 PM '98

**SCHEDULE OF FINES**

OFFICE OF THE CLERK OF THE SENATE  
SECRETARY OF STATE

**§ 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** -

1.4. **Effective Date** -

**§ 3-7-2. Schedule of Fines**

Any person licensed 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

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.

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.  
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 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 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.  
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 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, or orangewood stick after use on a client or to give the emery board, sponge, 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 sanitizer 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 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 walls and ceiling clean and free of excessive spots, mildew, condensation or peeling paint.  
1st offense: Warning  
2nd offense: \$50.00  
3rd offense: \$100.00;
- 2.56. Performing barbering, cosmetology, facial technology 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



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DEC 21 2 07 PM '98

**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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December 13, 1998

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NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Larry Absten  
Board of Barbers & Cosmetologists  
1716 Pennsylvania Ave., Suite 7  
Charleston, WV 25302

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Schedule of Fines, 3CSR7**

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.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** Board of Barbers and Cosmetologists

**Subject:** Schedule of Fines, 3CSR7

PERTINENT DATES

Filed for public comment: June 10, 1998  
Public comment period ended: July 10, 1998  
Filed following public comment period: July 17, 1998  
Filed LRMRC: July 17, 1998  
Filed as emergency:

Aug 3 10 24 AM '98  
OFFICE OF THE ATTORNEY GENERAL  
SECRETARY OF STATE  
FILED

Fiscal Impact: Fiscal note did not indicate anticipated revenue from the fines.

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 sets forth fines for 61 specific offenses. The fines are dependent on whether or not it is the first, second or third offense. The "fines" range from a warning by the Board or from \$50 to \$1,000.

AUTHORITY

Statutory authority: W.Va. Code, §30-1-8, which provides, in part, as follows:

- (a) Every board referred to in this chapter is authorized to suspend or revoke the license of any person who has been convicted of a felony or who has been found

to have engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct. Where any person has been so convicted of a felony or has been found to have engaged in such conduct, practices or acts, every board referred to in this chapter is further authorized to enter into consent decrees, to reprimand, to enter into probation orders, to levy fines not to exceed one thousand dollars per day per violation, or any of these, singly or in combination...

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ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.

18 legislative rule-making review committee and refiled in  
19 the state register on the twenty-first day of December, one  
20 thousand nine hundred ninety-eight, relating to the board  
21 of barbers and cosmetologists (schedule of fines, 3 CSR 7),  
22 is authorized, with the following amendment:

23 'On page eight, subsection 2.49, after the words "other  
24 than" by inserting the words "tropical birds as allowed by  
25 law, animals employed to assist individuals with disabili-  
26 ties, or'.

**§64-9-14. Board of veterinary medicine.**

1 (a) The legislative rule filed in the state register on the  
2 third day of August, one thousand nine hundred ninety-  
3 eight, under the authority of section nine, article ten-a,  
4 chapter thirty, of this code, modified by the board of  
5 veterinary medicine to meet the objections of the legisla-  
6 tive rule-making review committee and refiled in the state  
7 register on the twenty-seventh day of October, one thou-  
8 sand nine hundred ninety-eight, relating to the board of  
9 veterinary medicine (certified euthanasia technicians, 26  
10 CSR 5), is authorized.

11 (b) The legislative rule filed in the state register on the  
12 third day of August, one thousand nine hundred ninety-  
13 eight, under the authority of section four, article ten,  
14 chapter thirty, of this code, modified by the board of  
15 veterinary medicine to meet the objections of the legisla-  
16 tive rule-making review committee and refiled in the state  
17 register on the twenty-seventh day of October, one thou-  
18 sand nine hundred ninety-eight, relating to the board of  
19 veterinary medicine (schedule of fees, 26 CSR 6), is autho-  
20 rized.

**§64-9-15. Board of examiners in counseling.**

1 The legislative rule filed in the state register on the  
2 thirty-first day of July, one thousand nine hundred ninety-  
3 eight, authorized under the authority of section five,  
4 article thirty-one, chapter thirty, of this code, relating to  
5 the board of examiners in counseling (licensing, 27 CSR 1),  
6 is authorized.

**§64-9-16. Office of the treasurer.**