

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

Form #3

Do Not Mark In This Box

REC-11  
2011 JUL 29 AM 4:18  
SECRETARY OF STATE  
ADMINISTRATIVE LAW DIVISION

**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: 30-27-11a

AMENDMENT TO AN EXISTING RULE: YES  NO

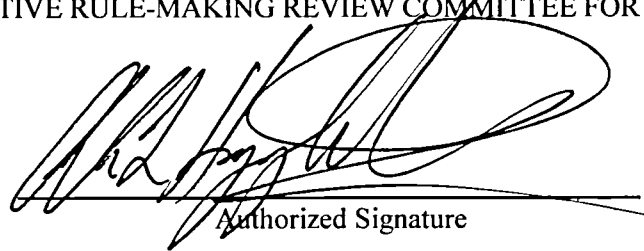
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 8

TITLE OF RULE BEING PROPOSED: Shampoo Assistants

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

3CSR8

TITLE 3  
LEGISLATIVE RULES  
BOARD OF BARBERS AND COSMETOLOGISTS

SERIES 8

SHAMPOO ASSISTANTS

RECEIVED  
2011 JUL 29 AM 10:18  
CLERK OF THE SENATE  
STATE OF WEST VIRGINIA

**§ 3.8.1. General**

- 1.1. **Scope-** This legislative rule establishes the minimum requirements for shampoo assistants.
- 1.2. **Authority-** W. Va. Code 30-27-11a
- 1.3. **Filing Date-**
- 1.4. **Effective Date-**

**§ 3.8.2. Definition of Shampoo Assistant**

“Shampoo Assistant” means any person who engages in the practice of shampooing and rinsing hair, removing rollers or permanent rods, cleanses or performs other sink-related functions that do not require the skill of a licensee.

**§ 3.8.3 Qualifications for Shampoo Assistants**

- 3.1. Is at least sixteen years of age;
- 3.2. Is of good moral character;
- 3.3. Is in high school or has a high school diploma, a GED, or has passed the “ability to benefit test” approved by the United State Department of Education;
- 3.4. Has paid the applicable fee;
- 3.5. Has a certificate of health from a licensed physician;
- 3.6. Is a citizen of the United States or is eligible for employment in the United States;
- 3.7. Has passed a 3 clock hour board approved in-person or online sanitation course consisting of the purpose and importance of sanitation and the sanitation process;
- 3.8. Has submitted an application verifying the requirements within this section; and
- 3.9. Has fulfilled any other requirement specified by the board.

**§ 3.8.4. Permit Requirements for Shampoo Assistants**

4.1. Shampoo assistants can only perform services within the defined term of shampoo assistant in this rule.

4.2. It is unlawful for any person to shampoo or offer to shampoo without first obtaining a license or a permit from the Board.

4.3. Every shampoo assistant shall display his or her permit or permit renewal at the station the individual is currently working and shall exhibit the license to the board or its authorized representative.

4.4. In addition to the permit, each individual must possess a United States or state government issued photograph identification card and shall exhibit to the board or its authorized representative.

4.5. Shampoo permits are valid for one (1) year and must be renewed annually on or before July 1<sup>st</sup> of each year.

4.6. Shop owners and/or managers are responsible for ensuring that shampoo permit holders follow all provisions under the jurisdiction of the board.

**§ 3-8-5. Revocation of Permit**

5.1. The permit of a shampoo may be revoked or suspended by the Board for any reason specified in W. Va. Code § 30-27-1 et seq.

**§ 3-8-6. Administrative Due Process**

7.1. Those persons adversely affected by the enforcement of this rule have the right to request a hearing in a manner pursuant to the provisions of W. Va. Code § 30-27-1 et seq.



Earl Ray Tomblin  
Governor

State of West Virginia  
**Board of Barbers and Cosmetologists**  
1201 Dunbar Avenue  
Dunbar, WV 25064

p: 304.558.2924  
f: 304.558.3450  
www.wvbbc.org

*Director*  
Adam L. Higginbotham

*Board Members*  
Michael Belcher    Justina Gabbert  
Sarah Hamrick    Susan Poveromo  
Jim Ryan          Rick Stache

**MEMORANDUM**

To:            Natalie E. Tennant  
                 Secretary of State

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

Date:           July 28, 2011

Subject:       3CSR8 Final Filing

A handwritten signature in black ink, appearing to read "Adam L. Higginbotham", written over the printed name in the memorandum.

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On behalf of the Board of Barbers and Cosmetologists, I submit 3CSR8, Shampoo Assistants.

This new rules establishes rules and requirements for shampoo assistants. This is a follow up rule to the shampoo assistant code addition passed by the Legislature in 2011.

**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: 7/28/2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Board of Barbers and Cosmetologists  
1201 Dunbar Avenue  
Dunbar, WV 25064  
304-558-2924

LEGISLATIVE RULE TITLE: Shampoo Assistants

1. Authorizing statute(s) citation 30-27-11a

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
6/15/2011

b. What other notice, including advertising, did you give of the hearing?  
website  
\_\_\_\_\_  
\_\_\_\_\_

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
07/18/2011

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

Attached     X                          No comments received

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

No public hearing

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- 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  
1201 Dunbar Avenue  
Dunbar, WV 25064  
304-558-2924  
adam.l.higginbotham@wv.gov

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- 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)

NA

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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

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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

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Shampoo Assistants

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Board of Barbers and Cosmetologists

Address: 1201 Dunbar Avenue  
Dunbar, WV 25064

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.

This rule creation will develop nearly 500 jobs across the State.

The implementation costs consist of mailings, software upgrades, and public awareness and is estimated at \$2,000.

The generated revenue is estimated at \$7,500 per year for the Board.

**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<br>(use "-") | Next Increase/Decrease<br>(use "-") | Fiscal Year<br>(Upon Full Implementation) |
| <b>1. Estimated Total Cost</b>     | 2,000.00                               | 500.00                              | 500.00                                    |
| Personal Services                  |  |                                     |   |
| Current Expenses                   |  |                                     |   |
| Repairs & Alterations              |  |                                     |   |
| Assets                             |  |                                     |   |
| Other                              |  |                                     |   |
| <b>2. Estimated Total Revenues</b> | 7,500.00                               | 7,500.00                            | 7,500.00                                  |

Shampoo Assistants

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

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

The agency cost of \$2,000 in the initial year is for software upgrades, mailings, and public awareness campaign.

Once the initial year of implementation is complete, mailing and paper costs will average nearly \$500.00.

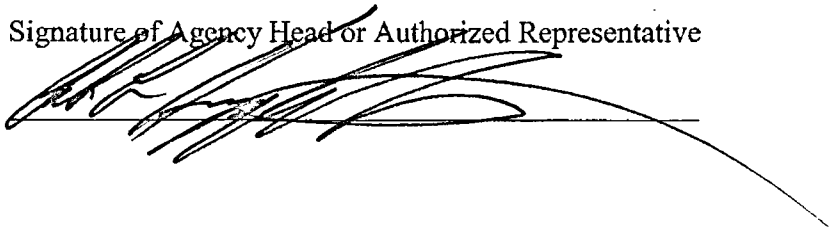
### MEMORANDUM

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 has potential to create nearly 500 jobs within 24 months.

Date: 6/13/2011

Signature of Agency Head or Authorized Representative

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and difficult to decipher.

Page 1 of 4

July 13, 2011

West Virginia Board of Barbers & Cosmetologists  
1201 Dunbar Avenue  
Dunbar, WV 25064

Attn: Adam Higginbotham, Director

Re: Proposed Changes

Dear Mr Higginbotham:

I am submitting this response in reference to the proposed changes in the Cosmetology Course and the addition of Shampoo Assistant.

I have many years of experience and am very knowledgeable in all facets of the cosmetology industry. I attended beauty school in 1966 and worked for years in a salon. In the early 1980's I began employment in a WV school of cosmetology, where I remained for the next 20 years. My philosophy was always that each time I could learn something new it would be to my advantage, so I became familiar with all aspects of the school industry. I worked in the Financial Aid Department, I maintained all records for all students, including tracking hours, all state board reports, student permits, state board exams, graduation, licensure and placement records. I also was an Accreditation Specialist, assuring the school remained in compliance with all rules and criteria set forth by our accrediting agency, including preparing all documents for submission for on site visits by the accrediting agency. I developed policy and procedures manuals as well as course outline manuals for the students. I also set up curriculum, and kept it updated each time there was a textbook change, for all courses, breaking the hours down for theory, demonstration, practice and clinic (the state board curriculum was only broken down for theory and practical, and did not take into consideration the textbook changes, nor break the hours down for demonstration and practice). During this 20 year period, we also opened an additional five (5) schools, one (1) in WV and four (4) in Kentucky. I set up the courses for these schools as well as the accreditation requirements. As you can see, I have a long and diverse resume of skills, which I feel more than qualifies me to respond to the desired changes set forth by the WV Board of Cosmetology.

*I will first address the changes in the Cosmetology Course, as follows:*

- (1) In my opinion, the person(s) that developed the new curriculum is not familiar with teaching, how courses are taught, and the hours that should be required for each theory subject, demonstration, practice and clinic are broken down. The proposed curriculum is only broken down for theory and practical.
- (2) In order to meet Federal Financial Aid requirements, students are scheduled to attend school between 30/35 hours per week. The proposed curriculum has a total of 740 hours for theory and 1054 (should be 1060, error made in hours) for practice. Breaking down this proposed new curriculum, the students would be required to attend theory class approximately 14 hours per week, leaving approximately 20 hours per week for demonstration, practice and/or clinic work. I have

- (3) obtained a copy of a Kentucky 1800 clock hour cosmetology curriculum breakdown. Theory is taught for 450 hours, Kentucky Law 45 hours (state board requirement), which leaves 1305 hours for demonstration, practice and/or clinic. This is approximately 9 ½ hours per week for theory and approximately 25 hours per week for demonstration, practice and/or clinic.
- (4) In addition, the new proposed cosmetology curriculum has designated 500 hours for Aesthetics and 297 hours for Nail Technology, leaving only 1003 hours for teaching the cosmetology portion. WV has a separate 600 hour/400 hour course and licensing for those wishing to become an Aesthetician or a Nail Technician. During my 20 years in the cosmetology school industry, the vast majority of those students wishing to become a Cosmetologist *were definitely not interested in studying aesthetics or nail technology (only that part which was included in the cosmetology course)*. We did offer an Advanced Skin Care and Advanced Nail Class for those that wished to also perform these services in the salon.

I have recently spoken with numerous licensed Cosmetologists, asking them if they were to be enrolling in school today, would it make a difference to them if they were forced to study aesthetics and nail technology.....their response was *"I would then probably not go to cosmetology school"* and this is exactly what will happen if this proposed curriculum is forced upon the schools.

If haircoloring were to be added to the Barber Permanent Wave Course, students could then attend this course instead of the cosmetology course where they would be forced to study for a course in which they had no interest.

The Cosmetology Course has *always* been 2000 clock hours. We always took great pride that our students had more hours than other states, thus, better educated and qualified. If it has worked for so many years at 2000 hours, why would anyone now want it changed to 1800 clock hours. *I have spoken to most of the WV school owners and they certainly do not approve this change.....this would mean changes in their financial aid requirements as well as many other changes.*

In my opinion, it would not make a great deal of difference to go from 2000 to 1800 clock hours. However, the hours should be broken down in a manner which would be less hours for theory and more hours for demonstration, practice and/or clinic. *Most definitely 44% of the total hours **should not be designated for aesthetics and nail technology.....this does not leave enough hours for the study of cosmetology.*** However, on the other hand, as the old says goes *"If it ain't broken, why fix it"*

*Response to changes in the Barber Course as follows:*

- (1) If this were not such a serious proposal, it would be almost comical. It is beyond the comprehension of anyone that teaches barbering that someone could think this course can be taught in 800 hours. This again gets back to the person(s) that is/are suggesting this astronomical decrease in hours has never been in the barbering school classroom.
- (2) Upon review of the states that offer a Barbering Course, the vast majority of them have 1500 clock hours, some with even more hours, up to 2100. Only a couple of states have less than 1000 clock hours. The ***proposed 800 hour Barbering Course is not a national standard.***

***Therefore, there must be another reason for wanting to make such a drastic, ridiculous change in this course.***

- (3) In my opinion, it would be almost impossible for the Barbering Course to be taught in 800 clock hours. If it needs to be changed at all, I would recommend that it be not less than 1500 clock hours.
- (4) This change would also result in a drastic changes in charges for the Barbering Course, however, it would take a great deal of manpower hours to make all the necessary changes in all documents, computer software, financial aid guidelines, etc.

At this time, there is only one (1) Barber School in the State of WV to offer barbering to those interested in becoming barbers. In all probability, if these proposed changes go through, it will force the closure of this school. With the terrible economy in our state, would this really be the best move?

*Response to adding "Shampoo Assistant", as follows:*

- (1) There are many students completing the 2000 clock hour cosmetology that do not know how to offer the client a good shampoo, therefore it would be totally impossible for anyone to take an online course and become a shampoo assistant. The shampoo is one of the most important services that you can offer your client, and the technique cannot be learned from a textbook or an online course. This is a hands on training with no substitute. The proposal has stated that the addition of Shampoo Assistant will offer many jobs, however, this is NOT true. I have spoken to many cosmetologists, all of which have advised they would not allow an untrained person to shampoo their clients.
- (2) In addition, if a "Shampoo Assistant" even with the proper training were to become licensed in WV, I can guarantee that, before long, the shampoo assistant would take on more responsibility, such as applying color. Therefore, if a course were to be offered for an assistant, the course should be taught in a school of cosmetology and be a minimum of 150 hours, which could include color application. This type of assistant would be much more beneficial to the busy salon.

In closing, as I stated in the beginning of this letter, I feel that my many years of varied experience in the cosmetology industry more than qualifies me to respond to these proposed changes and I sincerely hope that my responses will be taken into consideration before any changes are made to courses offered by the WV cosmetology schools and the barber school.

Also, each person that will be making a decision should take into consideration whether they would like a well trained operator, be it a cosmetologist or barber, or one that has received sub standard training, which will happen if these changes are approved.

A copy of this response has been forwarded to those persons listed below.

Page 4 of 4

Sincerely,

Patricia Stewart Blodgett  
PO Box 16  
Barboursville, WV 25504  
304-733-6453

Copy: Natalie Tennant, WV Secretary of State  
Earl Ray Tomblin , WV Governor  
Judy Hall, Charleston School of Beauty Culture  
Roberta Saunders, Beckley Beauty Academy  
Angela Pollicana, Clarksburg Beauty School  
Toni Madia, Mountaineer Beauty School  
All Members of WV Legislative Rule Making Committee  
Senator Evan Jenkins



Earl Ray Tomblin  
Governor

State of West Virginia  
**Board of Barbers and Cosmetologists**  
1201 Dunbar Avenue  
Dunbar, WV 25064

p: 304.558.2924  
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www.wvbbs.org

*Director*  
Adam L. Higginbotham

*Board Members*  
Michael Belcher    Justina Gabbert  
Sarah Hamrick    Susan Poveromo  
Jim Ryan            Rick Stache

Patricia Stewart Blodgett  
PO BOX 16  
Barboursville, WV 25504

July 25, 2011

Dear Patricia Stewart Blodgett:

Thank you for your letter explaining your concern over some of the improvements that the Board thinks will help the industry. I hope this letter satisfies the questions that you have asked.

The reason the curriculum is broken down only by theory and practical is due to the Board not feeling that each step of the education process should be dictated by the Board. By generalizing theory as any type of non-hands-on practice and practical as any hands-on practice, the Board hopes to allow the schools to have more room for creative teaching in lieu of achieving a specific number of demonstrations or model work.

The next issue that you raise is against the requirements of aesthetic training and nail training as an integral part of the cosmetology program. Since cosmetologists can perform aesthetic and nail services on clients and the current law allows this scope of practice by cosmetologists, it is important that aesthetic and nail curriculums are equally integrated into the cosmetology program to insure that the general public receives competent services from the licensees the Board oversees within the scope of practice.

I do feel that your comment concerning current cosmetologists not enrolling in school today if they had to learn aesthetic and nail services is inaccurate. With the current law and trends in the current industry, cosmetologists must have equal understanding and training in hair, aesthetic, and nail services. I can approach the Board on your behalf to satisfy your comment by requesting a separate license just for hair services that would not include aesthetic or nail services. Thus, it would create a new license for individuals just wanting to perform hair services.

The next issue that you bring up for discussion is the barbering program changes. After reviewing some of your comments and others, the Board decided to develop a single barber program that will contain 1200 hours of training. This will help the State's barbers be close to the national average and also comparable in scope of practices as other states.

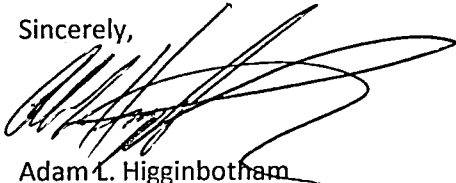
As for your comment concerning the Board's need to think of the "manpower" needed to make these proposed changes for the schools, my response is that these changes are for the greater number of West Virginia citizens seeking to learn a profession in a reasonable amount of time and in a way to protect the citizens seeking professional services in this State.

For your final comment concerning the shampoo assistant rule, I strongly disagree with you that this rule will not create jobs. To say that all estimated 3000 shops in the State of West Virginia will strongly oppose this rule and not hire shampoo assistants is farfetched. Our legislators fought hard to ensure that the shampoo assistant bill passed during the 2011 legislative session to create jobs. It is estimated that this rule will create an estimated 500 jobs within 18 months of implementation and spark interest in the cosmetology and/or barbering field.

Finally, the need for training in a school to shampoo is not feasible. There should be on-the-job training for shampoo assistants offered by the employer after four hours of sanitation training has been achieved. To ask an individual to attend school for nearly two months to learn how to shampoo hair is not the type of job creation this State needs.

In conclusion, I thank you for your comment and hope that I have answered all your questions or issues that you have raised with the Board.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam L. Higginbotham", written over a horizontal line.

Adam L. Higginbotham  
Director