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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE SECRETARY OF STATE
SECRETARY OF STATE

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December 04, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Beth Marquart
Health, Division of
Capitol Complex
Building 3, Room 201

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Body Piercing Studio Business, 64CSR80**

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.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health

Subject: Body Piercing Studio Business, 64CSR80

PERTINENT DATES

Filed for public comment: July 28, 2000

Public comment period ended: August 28, 2000

Filed following public comment period: August 30, 2000

Filed LRMRC: August 30, 2000

Filed as emergency:

Fiscal Impact: None

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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 defines terms.

Section 3 relates to plan review, permits, hearing notices and orders. It requires the owner or operator of a body piercing studio business to submit plans and specifications for the construction, remodeling or conversion of the business to the Director for review and approval 35 days in advance. It prohibits a person from operating a body piercing studio business without a valid permit after July 1, 2001. An applicant is required to submit an application form along with a \$200 fee to the Director at least 15 days before beginning operations. It requires the Director to inspect the proposed facility prior to approving the application for a permit.

Permits are not transferrable and expire on June 30 each year. The Director may suspend or revoke a permit if a facility is being

maintained or operated in violation of this rule or for repeated or serious violations of the rule.

This section requires the Director to provide an operator with a written notice of violations following an inspection of a facility. It allows the Director to immediately suspend a permit without notice or hearing where an imminent hazard to the public exists.

Section 4 relates to inspections. It authorizes the Director to inspect facilities and requires that he or she inspect a facility at least once a year. It requires a facility owner to develop and ensure compliance with the Exposure Control Plan.

Section 5 contains facility requirements. Requirements are specified for floors, walls and ceilings, toilet facilities, lighting, water supplies and sewage.

Section 6 relates to temporary and mobile facilities. It states that temporary facilities include those for educational or convention purposes.

Section 7 relates to housekeeping standards. It sets forth requirements regarding disinfection of surfaces and equipment, cleaning rooms and sharps containers.

Section 8 relates to the Exposure Control Plan. It requires the owner of every body piercing facility to establish a plan describing how the applicable requirements of the rule are to be implemented. It sets forth minimum components of the Plan.

Section 9 requires all technicians to receive exposure control training that must be completed within one year of the effective date of the rule and updated at least every three years thereafter. It specifies the minimum elements of the training program.

Section 10 relates to approved sterilization equipment and monitoring methods. It requires instruments to be cleaned and packaged in sterilizer bags with a color change indicator and then sterilized in a sterilizer that meets specified requirements.

Section 11 relates to instrument sterilization and set up. It contains requirements regarding contaminated non-disposable equipment, sterilization of instruments and packaging into procedure set ups. The body piercer is required to wear new clean disposable

examination gloves when assembling instruments and supplies. The facility is to required retain records of sterilization procedures for at least 3 years.

Section 12 requires contaminated waste generated by a body piercing facility to be managed in accordance with the Division of Health's rule, Infectious Medical Waste, 64CSR56.

Section 13 relates to clients. It states that a person under the age of 18 may receive body piercing if he or she is accompanied by his or her parent or guardian. Minors may not receive nipple or genital piercing.

Section 14 relates to body piercing procedures. It requires a body piercer to discuss risks and responsibilities with the client and require the client to sign a consent form. It requires a body piercer to wash his or her hands and use new clean disposable gloves with every client, use freshly laundered linen for every client, use single use body piercing needles with every client, and properly cleaned sterilized instruments.

Section 15 requires each body piercing studio to keep a record of all body piercing procedures performed for a 3-year period and specifies the contents of the record. It also requires the facility to maintain signed copies of the Client Release Form and Aftercare Form.

Section 16 states that the penalty for violation of the rule is established in the statute.

Section 17 references the Division's rule for administrative due process.

Appendix A contains a public notice required to be posted at each facility.

AUTHORITY

Statutory authority: W.Va. Code, §16-37-4, which provides, in part, as follows:

(a) On or before the first day of July, two thousand, the department of health and human resources shall propose rules for legislative approval in accordance with the

provisions of article three, chapter twenty-nine-a of this code, which rules shall provide at a minimum:

(1) General physical requirements for facilities and equipment, including requirements for adequate ventilation and lighting;

(2) Record keeping requirements and forms;

(3) Written notification of the risks of body piercing procedures and minimum age requirements;

(4) Body piercing procedures, including, but not limited to, safety and sterilization procedures; the use of antimicrobial solutions, needles, single use instruments and other instruments; the exercise of standard precautions; and instructions on the care of the skin after body piercing procedures;

(5) Permitting requirements for operators and technicians, including fees for permits and renewals of permits sufficient to cover the costs of inspecting facilities and administering this article; and

(6) For the disposal of waste in compliance with the rules of the department of health and human resources regarding the disposal of medical wastes.

(b) The rules required by this section may also include provisions on training or educational requirements or materials; health screenings for technicians; and any other provisions considered necessary to protect the public or assure adequate health and safety.

(c) The rules may also include limitations or prohibitions on the performance of certain procedures, including, but not limited to, procedures referred to as cutting, branding and scarification, which are identified as posing a risk to the public health and safety...

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?

No. W.Va. Code §16-37-4 requires the rules at a minimum to provide permitting requirements for operators and technicians including fees for permits and renewals of permits. The proposed rule does not contain provisions relating to technician permits or fees for those permits.

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 PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.