

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

Form #3

Do Not Mark In This Box

2011 JUL 29 10:41:11

**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: 30-27-1

AMENDMENT TO AN EXISTING RULE: YES NO

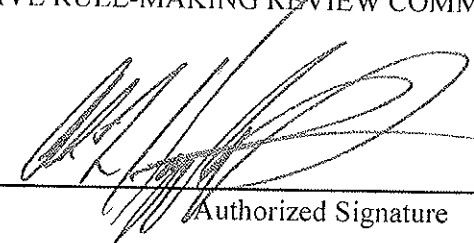
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

Legislative Rule-Making

Review Committee

TITLE 3
LEGISLATIVE RULES
BOARD OF BARBERS AND COSMETOLOGISTS

SERIES 3

RULES AND REGULATIONS FOR LICENSING SCHOOLS
OF BARBERING AND BEAUTY CULTURE

§ 3-3-1. General

- 1.1. Scope - This legislative rule establishes general rules for the licensing of schools of barbering and beauty culture by the West Virginia Board of Barbers and Cosmetologists (hereinafter Board).
- 1.2. Authority - W. Va. Code § 30-27-1, et seq. Related - W. Va. Code § 30-27-1, et seq.
- 1.3. Filing Date - ~~April 13, 2010~~
- 1.4. Effective Date - ~~July 1, 2010~~

§ 3-3-2. Licensing Standards

- 2.1. 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 is 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 best interest and protection of public health. Therefore, licenses shall be issued only when the applicant has proven to the satisfaction of the Board that:
 - (a) The applicant is professionally competent,
 - (b) Financially responsible,
 - (c) Adequate physical facilities will be available for the school,
 - (d) The applicant has employed ~~or contracted with~~ at least 2 3 licensed ~~master~~ instructors and such additional licensed instructors as necessary to meet the instructor-to-student ration requirements of 3CSR4 (Title 3, Legislative Rule of the Board of Barbers and Cosmetologists, Series 4, Operational Standards for Schools Barbering and Beauty Culture).
- 2.2. Professional Competency - Each applicant must provide evidence of their background of training or experience in barbering or beauty culture and/or education and/or business management, 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.

- 2.3. 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 Board of Barbers and Cosmetologists in the amount of (\$100,000~~50,000~~), to be renewed annually for five (5) consecutive years. The Board may, by not less than 3/4 majority vote of its membership, accept other alternate forms of security, payable to the West Virginia Board of Barbers and Cosmetologists in the amount of (\$100,000~~50,000~~) per school 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, or other form of security, shall be made to the student if that student has prepaid, according to the number of hours of instruction lacking. State or county schools not charging tuition shall be exempt from the bonding requirement.
- 2.4. 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)~~ 30 students at all times and that the proposed school will be properly fitted and equipped.

§ 3-3-3. Applications for Licenses

- 3.1. General Form and Content - Applications for a license shall be in writing, notarized, and on forms provided by the Board.
- The application shall contain at least the following:
- 3.1.1. The name of the applicant(s);
 - 3.1.2. The place at which the applicant(s) will conduct its operations and whether the property is owned or leased by the applicant;
 - 3.1.3. If such applicant(s) is a partnership or association, the name and addresses of the partners or governing board;
 - 3.1.4. If the applicant(s) is a corporation, the names and resident addresses of its officers and directors;
 - 3.1.5. A copy of a proposed floor plan of the school, which arrangement shall have at least two (2) classrooms for each profession taught and a room for clinical and demonstration work;
 - 3.1.6. A list of the equipment proposed to be installed;

- 3.1.7. 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;
- 3.1.8. The background of all persons connected with the Applicant(s) as either owner(s), manager or instructor relative to: (1) Training and experience in barbering or beauty culture, and (2) business and managerial training, experience or ability;
- 3.1.9. An applicant's profit/loss_statement certified to by a licensed public accountant and a surety performance bond instituted consistent with the provisions of subsection 2.3 of this rule;
- 3.1.10. A statement setting forth the applicant's general operating plan for the school;
- 3.1.11. A list of the names of the licensed ~~master instructors and~~ instructors to be employed in the school;
- 3.1.12. Copies of proposed: (1) Advertising to be used in the opening of the school, (2) Student contracts, and (3) Daily and monthly time sheets to be used in recording student activities in the school.
- 3.1.13. A statement by the applicant that the school is handicapped accessible.
- 3.2. 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.
- 3.3. Board Action - Upon the filing of an application and the payment of the required investigative fee, the Board shall issue a license if it finds that the applicant(s) has/have and will comply with the provisions of these rules, and the operation of the school would be within the best interests of the public's safety, health and welfare. This license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended by the Board.
- 3.4. The Board shall approve or deny every application for licensure within ninety (90) days from the applicant's filing of all required information.
- 3.5. If the application is denied, the Board shall within thirty (30) days, thereafter, file in its office, a written decision

and findings of fact with respect to the evidence and reasons supporting the denial, and immediately serve a copy of the decision upon the applicant.

- 3.6 Applicants who acquire or relocate an existing school must meet the requirements set forth in this section.
- 4.1. **Contents and Display of License** - The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee; if the licensee is a partnership or association, the names of the members thereof; if a corporation, the date and place of its incorporation. The license shall be kept conspicuously posted in the place of business and is not transferable or assignable.
- 4.2. **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 license the applicant shall comply with all the provisions of this rule governing the original issuance of a license.
- 4.3. **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 the licensee is complying with the rules of the Board, and submit to interviews, inspections, investigations, and applicable fines.
- 4.4. **Revocation or Suspension of License** - The Board may, upon ten (10) days notice to the licensee stating the contemplated action and the general grounds suspend, revoke or refuse to renew any license issued under these rules if it finds that:
 - 4.4.1. The licensee has failed to pay the annual fee or to comply with any demand, ruling or requirement of the Board made pursuant to and within the authority of the Board;
 - 4.4.2. The licensee has knowingly violated any provision of the W. Va. Code § 30-27-1 et seq. or any rule promulgated by the Board.
 - 4.4.3. A licensee, owner, administrator, manager, director, or other key interest party is convicted of a felony or misdemeanor relating to the school or its operation.
- 4.5. Any licensee may surrender his or her license by delivering the license to the Board with a written notice that he or she thereby surrenders such license. Surrender of a license shall not affect the civil or criminal liability of the licensee for acts committed prior to such surrender.

- 4.6. No revocation, 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.
- 4.7. Every license issued hereunder shall remain in full force and effect unless surrendered, revoked or suspended in accordance with the provisions of this rule and W. Va. Code § 30-27-1 et seq.: 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 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 this rule.
- 4.8. Whenever the Board revokes or suspends a license it shall immediately file in its office a written order to that effect along with findings of fact containing the evidence and reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof.

§ 3-3-5. Administrative Due Process

- 5.1. 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 West Virginia Code § 29A-5-1 et seq.



Earl Ray Tomblin
Governor

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

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f: 304.558.3450
www.wvbbs.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 28th, 2011

Subject: 3CSR3 Rule Submission

On behalf of the Board of Barbers and Cosmetologists, I submit 3CSR3, Rules and Regulations for Licensing Schools and Barbering and Beauty Culture.

This rule removes the term master instructor and replaces it with the word instructor since the master instructor program was eliminated.

Additionally, this rule lowers the bonding requirements from \$100,000 to \$50,000.

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: Rules and Regulations for Licensing Schools of Barbering and Beauty Culture

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

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 _____

No comments received X

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

No public hearing

- 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

- 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

- 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

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: Rules and Regulations for Licensing Schools of Barbering and Beauty Culture

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 change will no have fical impact.

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			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rules and Regulations for Licensing Schools of Barbering and Beauty Culture

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.

NA

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.

NA

Date: 6/13/2011

Signature of Agency Head or Authorized Representative

