



Fast Track Proposed Regulation Agency Background Document

Agency name	Board for Barbers and Cosmetology
Virginia Administrative Code (VAC) citation	18VAC41-20
Regulation title	Board for Barbers and Cosmetology Regulations
Action title	Amend 18VAC41-20-280 attempted to obtain
Date this document prepared	December 29, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The proposed amendment to the existing regulation would make the attempted obtainment of a license, certificate, or permit by false or fraudulent representation grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty. The amendment is needed to keep the Board for Barbers and Cosmetology Regulations consistent with the Board's Tattooer Regulations and Esthetics Regulations, which already contain the said language proposed herein.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On May 9, 2011, the Board for Barbers and Cosmetology adopted the language to amend the Board for Barbers and Cosmetology Regulations, specifically, 18VAC41-20-280(A)3.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

§54.1-201.5 of the *Code of Virginia* states that the Board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The amendment is needed to keep the Board for Barbers and Cosmetology Regulations consistent with the Board's Tattooer Regulations and Esthetics Regulations, which already contain the said language proposed herein. Additionally, as the regulation's language currently stands, if an applicant attempts to obtain a license, certificate, or permit by false or fraudulent representation, the Board does not possess the authority to deny the application of the applicant. The proposed language would allow the Board to initiate proceedings in accordance with the Administrative Process Act (§2.2-4000 et seq.), against an applicant who attempted to obtain a license, certificate, or permit by false or fraudulent representation. Under the current language of the regulations, even when the applicant is suspected of having attempted to obtain a license, certificate, or permit by false or fraudulent representation, the Board must issue the license, before it can initiate proceedings against the applicant (now a licensee). This poses a substantial risk to the health, safety or welfare of citizens.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast track process is being used to make amendments to the Board's regulation language for consistency with the Board's Tattooer Regulations and Esthetics Regulations. It is not expected to be controversial, as it is anticipated that regulants of the Board would favor ensuring those who apply for licensure do not do so through false or fraudulent representation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The proposed amendment to the existing regulation would make the attempted obtainment of a license, certificate, or permit by false or fraudulent representation grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.

Individuals or entities that attempted to obtain a license, certificate, or permit by false or fraudulent representation would be subject to license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty in accordance with Administrative Process Act (§2.2-4000 et seq.).

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The advantage to the public is a reduction in the potential risk of a licensee providing services to the public, who may have obtained their license, certificate, or permit by false or fraudulent representation. No disadvantages noted.

The primary advantage to the agency is having a regulation to address incidences of individuals who attempted to obtain a license, certificate, or permit by false or fraudulent representation, which ultimately protects the health, safety, and welfare of citizens. There are no disadvantages noted.

There are no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed changes are not applicable to any federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are particularly affected by the proposed language.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

One potential alternative is simply not to amend the regulation to include ‘attempted to obtain.’ However, leaving the regulation as it is currently written would not be consistent with protecting the public’s health, safety or welfare. Not making the proposed amendment would limit the Board’s ability to address potential fraudulent activity. The proposed amendment is not expected to have any adverse impact on small business.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	(a) Fund Source: NGF (0900) (b) One-Time: No one-time costs are expected as a result of this regulatory change. Ongoing: No ongoing costs are expected as a result of this regulatory change.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	No change is anticipated
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	The revised regulation applies to individuals applying for a Barber, Cosmetology, or Nail Technician related license from the Board for Barbers and Cosmetology.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity,	It is estimated approximately 4,500 entities (768 small businesses) will be affected. This number represents the number of applications for licensure for licenses within the Board for Barbers and

<p>including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Cosmetology Regulations.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There is no anticipated cost to the regulants.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Increased ability to protect the health, safety and welfare of the public by having a specific regulation to address the attempted obtainment of a license, certificate, or permit by false or fraudulent representation.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

One potential alternative is simply not to amend the regulation to include ‘attempted to obtain.’ However, leaving the regulation as it is currently written would not be consistent with protecting the public’s health, safety or welfare. Not making the proposed amendment would limit the Board’s ability to address potential fraudulent activity. The proposed amendment is not expected to have any adverse impact on small business.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No family impact has been identified.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18VAC41-20-280(A)3		The licensee, certificate holder, permit holder or applicant obtained, renewed or reinstated a license, certificate, or permit by false or fraudulent representation.	The licensee, certificate holder, permit holder or applicant <u>attempted to obtain</u> , obtained, renewed or reinstated a license, certificate, or permit by false or fraudulent representation. Currently, there is no regulatory action that can be taken to address an individual who attempted to obtain.