



**Virginia
Regulatory
Town Hall**

**Notice of Intended Regulatory Action
Agency Background Document**

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| Agency Name: | Department of Professional and Occupational Regulation |
| VAC Chapter Number: | 18 VAC 40-20-10 et seq., and 18 VAC 55-22-10 et seq. |
| Regulation Title: | Board for Barbers Rules and Regulations, and Board for Cosmetology Rules and Regulations |
| Action Title: | Repeal existing regulations for Board for Barbers and Board for Cosmetology |
| Date: | March 9, 2001 |

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The repeal of existing regulations governing the licensure and practice of barbering under 18 VAC 40-20-10 et seq. Board for Barbers Rules and Regulations.

The repeal of existing regulations governing the licensure and practice of cosmetology under 18 VAC 55-22-10 et seq. Board for Cosmetology Rules and Regulations.

The repeal of existing regulations in order to promulgate regulations governing the licensure and practice of barbering and cosmetology as directed by Acts 2000, c. 726, cl. 3.; to promulgate regulations sub-regulating the licensure and practice of waxing and haircutting in the Commonwealth of Virginia; to promulgate regulations necessary to provide for and ensure that health and sanitary standards and safety are adequate in shops, salons, schools, and other facilities where barbering and cosmetology are practiced; to provide for a fee increase; and to review several provisions and simplify them thereby ensuring that the Board is meeting its

statutory mandate to ensure minimal competence of all licensees without burdensome requirements.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

Section 54.1-201 of the Code of Virginia states that the Board "shall promulgate regulations necessary to carry out the purposes of this chapter."

§ 54.1-201. Powers and duties of regulatory boards.

The powers and duties of regulatory boards shall be as follows:

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.
2. To examine, or cause to be examined, the qualifications of each applicant for certification or licensure within its particular regulatory system, including when necessary the preparation, administration and grading of examinations.
3. To certify or license qualified applicants as practitioners of the particular profession or occupation regulated by such board.
4. To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.
5. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 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. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.
6. To ensure that inspections are conducted relating to the practice of each practitioner certified or licensed by the regulatory board to ensure that the practitioner is conducting his practice in a competent manner and within the lawful regulations promulgated by the board.
7. To revoke, suspend or fail to renew a certificate or license for just causes as enumerated in regulations of the board.

8. To receive complaints concerning the conduct of any person whose activities are regulated by the regulatory board and to take appropriate disciplinary action if warranted.
9. To promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

(Section 54.1-201 of the Code of Virginia is available at the following website address:
[http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201.](http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201))

To promulgate regulations governing the licensure and practice of barbering and cosmetology as directed by Acts 2000, c. 726, cl. 3.

Code of Virginia, Title 54.1,
Chapter 7.

Barbers and Cosmetology

Sec.

54.1-700. Definitions.

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54.1-704.2. License required for schools of barbering, cosmetology and nail care.

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§ 54.1-700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Barber" means any person who shaves, shapes or trims the beard; cuts, singes, shampoos or dyes the hair or applies lotions thereto; applies, treats or massages the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays or other preparations in connection with shaving, cutting or trimming the hair or beard, and practices barbering for compensation and when such services are not performed for the treatment of disease.

"Barbering" means any one or any combination of the following acts, when done on the human body for compensation and not for the treatment of disease, shaving, shaping and trimming the beard; cutting, singeing, shampooing or dyeing the hair or applying lotions thereto; applications, treatment or massages of the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays, or other preparations in connection with shaving, cutting or trimming the hair or a beard. The term "barbering" shall not apply to the acts described hereinabove when performed by any person in his home if such service is not offered to the public.

"Barber instructor" means any person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of barbering.

"Barbershop" means any establishment or place of business within which the practice of barbering is engaged in or carried on by one or more barbers.

"Board" means the Board for Barbers and Cosmetology.

"Cosmetologist" means any person who administers cosmetic treatments; manicures or pedicures the nails of any person; arranges, dresses, curls, waves, cleanses, cuts, shapes, singes, waxes, tweezes, shaves, bleaches, colors, relaxes, straightens, or performs similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances unless such acts as adjusting, combing, or brushing prestyled wigs or hairpieces do not alter the prestyled nature of the wig or hairpiece, and practices cosmetology for compensation.

"Cosmetology" includes, but is not limited to, the following practices: administering cosmetic treatments; manicuring or pedicuring the nails of any person; arranging, dressing, curling, waving, cleansing, cutting, shaping, singeing, waxing, tweezing, shaving, bleaching, coloring, relaxing, straightening, or similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances, but shall not include such acts as adjusting, combing, or brushing prestyled wigs or hairpieces when such acts do not alter the prestyled nature of the wig or hairpiece.

"Cosmetology instructor" means a person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of cosmetology.

"Cosmetology salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein cosmetology is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Nail care" means manicuring or pedicuring natural nails or performing artificial nail services.

"Nail salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein nail care is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Nail school" means a place or establishment licensed by the board to accept and train students in nail care.

"Nail technician" means any person who for compensation manicures or pedicures natural nails, or who performs artificial nail services for compensation, or any combination thereof.

"Nail technician instructor" means a licensed nail technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of nail care.

"School of cosmetology" means a place or establishment licensed by the Board to accept and train students and which offers a cosmetology curriculum approved by the Board.

§ 54.1-701. Exemptions.

The provisions of this chapter shall not apply to:

1. Persons authorized by the laws of this Commonwealth to practice medicine and surgery or osteopathy or chiropractic;
2. Registered nurses licensed to practice in this Commonwealth;
3. Persons employed in state or local penal or correctional institutions, rehabilitation centers, sanatoria, or institutions for care and treatment of the mentally ill or mentally deficient or for care and treatment of geriatric patients, as barbers, cosmetologists, nail technicians, barber instructors, cosmetology instructors, or nail technician instructors who practice only on inmates of or patients in such sanatoria or institutions;
4. Persons licensed as funeral directors or embalmers in this Commonwealth.
5. Gratuitous services as a barber, nail technician or cosmetologist;
6. Students enrolled in an approved school taking a course in barbering, nail care or cosmetology;
7. Persons working in a cosmetology salon whose duties are expressly confined to the shampooing and cleansing of human hair under the direct supervision of a cosmetologist or barber;
8. Apprentices serving in a barbershop, nail salon or cosmetology salon licensed by the Board in accordance with the Board's regulations; and
9. Schools of barbering, nail care or cosmetology in public schools.

§ 54.1-702. Board for Barbers and cosmetology; membership; officers; quorum.

A. Except as provided in subsections B and C, the Board for Barbers and Cosmetology shall be composed of seven members, of whom two members shall be licensed barbers, one of whom may be an owner or operator of a barber school; two members shall be licensed cosmetologists, one of whom may be an owner or operator of a cosmetology school; and one member shall be a licensed nail technician or a licensed cosmetologist engaged primarily in the practice of nail care, each of whom shall have been licensed in their respective professions for at least three years immediately prior to appointment, and two citizen members . The terms of Board

members shall be four years. No member shall serve for more than two full successive terms. The Board shall elect a chairman and a vice-chairman. A majority of the Board shall constitute a quorum.

B. Appointments to the Board of Cosmetology which expire on March 14, of 2000, 2001 and 2002, shall be extended to June 30 of the same year of expiration.

C. All members of the Board for Barbers and the Board for Cosmetology with unexpired terms, as of July 1, 2000, shall continue as members of their respective boards and shall complete their terms of appointment. Two positions on the Board for Cosmetology shall expire on June 30, 2001, and three positions shall expire on June 30, 2002. Two positions on the Board for Barbers shall expire on June 30, 2001, and one position shall expire on June 30, 2002.

D. The Governor shall appoint to the Board for Barbers and Cosmetology one licensed nail technician and two citizen members effective July 1, 2000; one licensed barber, who may be an owner or operator of a barber school, effective July 1, 2001; one licensed barber effective July 1, 2002; and two licensed cosmetologists, one of whom may be an owner or operator of a cosmetology school, effective July 1, 2002.

§ 54.1-703. License required.

No person shall offer to engage in or engage in barbering, cosmetology or nail care without a valid license issued by the Board, except as provided in § 54.1-701.

§ 54.1-704. Temporary licenses.

The Board may issue a temporary license to any person who is eligible for examination. Persons issued a temporary license shall be subject to the regulations of the Board.

The Board shall promulgate regulations consistent with this section to permit individuals to be granted temporary licenses for a specified period of time.

§ 54.1-704.1. License required for barbershop, cosmetology salon and nail care salon.

No individual or entity shall operate a barbershop, cosmetology salon or nail care salon without a valid license issued by the Board.

The provisions of this section shall not apply to a licensed barber, cosmetologist or nail technician who does not have an ownership interest in a licensed barbershop, cosmetology salon or nail care salon in which he is employed.

§ 54.1-704.2. License required for schools of barbering, cosmetology and nail care.

Except as provided in § 54.1-701, no person, firm or corporation shall operate or attempt to operate a school of barbering, cosmetology or nail care unless licensed by the Board pursuant to its regulations.

§ 54.1-705. Inspections.

Inspectors and sanitarians of the State Department of Health, or an affiliated local health department, may inspect each barbershop, cosmetology salon and nail care salon in the Commonwealth regularly. Any infractions shall be immediately reported to the Health Department and the Director of the Department of Professional and Occupational Regulation for disciplinary action. The Board may inspect barbershops, barber schools, cosmetology salons and schools, and nail care salons and schools for compliance with regulations promulgated by the Board.

§ 54.1-706. Different requirements for licensure.

The Board shall have the discretion to impose different requirements for licensure for the practice of barbering, cosmetology and nail care.

(Section 54.1-700 et seq. of the Code of Virginia is available at the following website address: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-700>)

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The regulations are essential to comply with state mandates and to increase the efficient and economical performance of an important governmental function by adopting the least burdensome alternatives allowed by state law.

The Board proposes to repeal 18 VAC 40-20-10 et seq. Board for Barbers Rules and Regulations. (For the text to be repealed, refer to Attachment 1 of this package.)

The Board proposes to repeal 18 VAC 55-22-10 et seq. Board for Cosmetology Rules and Regulations. (For the text to be repealed, refer to Attachment 2 of this package.)

The Board proposes to promulgate regulations governing the licensure and practice of barbering and cosmetology as directed by Acts 2000, c. 726, cl. 3.; to promulgate regulations sub-regulating the licensure and practice of waxing and haircutting; to promulgate regulations necessary to provide for and ensure that health and sanitary standards and safety are adequate in shops, salons, schools, and other facilities where barbering and cosmetology are practiced; to provide for a fee increase and to review several provisions and simplify them thereby ensuring

that the Board is meeting its statutory mandate to ensure minimal competence of all licensees without burdensome requirements.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

Failure to repeal 18 VAC 40-20-10 et seq. and 18 VAC 55-22-10 et seq. and to promulgate new regulations will result in the newly created Board for Barbers and Cosmetology maintaining two sets of Rules and Regulations. One set of regulations for the barber profession and one set of regulations for the cosmetology profession.

Other regulatory provisions would not provide for less burdensome alternatives.

Family Impact Statement

Please provide a preliminary analysis of the potential 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.

The contemplated changes are expected to have no impact on families.