

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

Form #3

**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: 30-27-6

AMENDMENT TO AN EXISTING RULE: YES NO

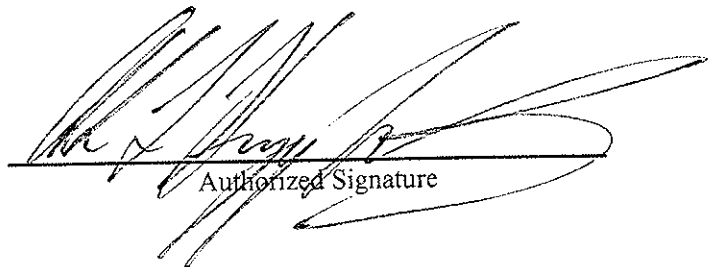
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11

TITLE OF RULE BEING PROPOSED: Continuing Education

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

FISCAL NOTE FOR PROPOSED RULES

Rule Title:

Continuing Education

Type of Rule:

 Legislative Interpretive Procedural

Agency:

Board of Barbers and Cosmetologists

Address:

1716 Pennsylvania Ave. Suite 7
Charleston, WV 25302

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.

The Board will have expenses in excess of \$47,000 to implement and perform this new rule. For the past 2 legislative audits (2002 and 2008) the Board has been cited for failure to implement continuing education. The main reason for the lack of implementation has been due to funding issues along with a low cash balance in the second to third quarter of each fiscal year.

The specific costs are in direct relation to personal service increase, mailings, informative notices about continuing education requirements, misc. preparation of the implementation, and other unforeseen expenses.

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	0.00	47,000.00	47,000.00
Personal Services	0.00	32,000.00	32,000.00
Current Expenses	0.00	15,000.00	15,000.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title:

Rule Title: Continuing Education

3. **Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

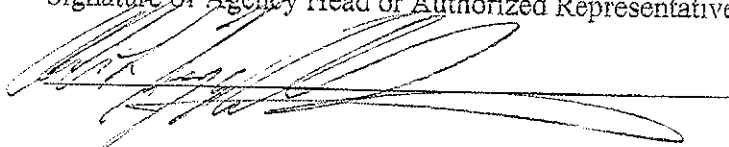
The above estimate is a minimum estimate. The actual cost of implementation is unknown. However, it is clear that the Board would need to hire additional staff, storage supplies would be needed, an informational campaign to educate the licensess about continuing education would be needed, and a host of additional micro-level expenses that are too many to mention or unforeseen expenses.

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.

Date: 7/30/2009

Signature of Agency Head or Authorized Representative





State of West Virginia
Board of Barbers and Cosmetologists
1716 Pennsylvania Avenue, Suite 7
Charleston, West Virginia 25302
Telephone: 304-558-2924
Fax: 304-558-3450

Joe Manchin III
Governor
Martha Yeager Walker
Secretary
Adam L. Higginbotham
Director

Date : July 30, 2009

To: Administrative Law Division of Secretary of State's Office

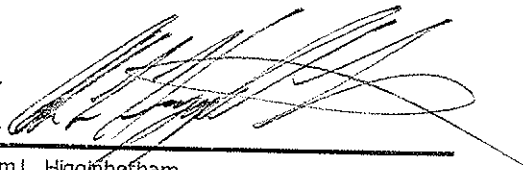
From: Adam L. Higginbotham, Director, Board of Barbers and Cosmetologists

Re: Continuing Education

SUMMARY OF PROPOSAL

The rule establishes Continuing Education requirements for licenses barbers, cosmetologists, manicurists, and aestheticians.

X



Adam L. Higginbotham
Executive Director

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: 7/30/2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Board of Barbers and Cosmetologists

1716 Pennsylvania Ave. Suite 7

Charleston, WV 25302

LEGISLATIVE RULE TITLE: _____

Continuing Education

1. Authorizing statute(s) citation _____
30-27-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
6/30/2009

b. What other notice, including advertising, did you give of the hearing?
Posted on web site.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
7/30/2009

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)

NA

- 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

1716 Pennsylvania Ave. Suite 7, Charleston, WV 25302

304-558-2924/304-558-3450/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)

- 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:

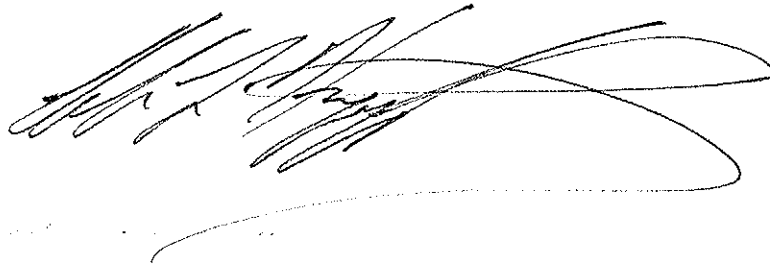
NA

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

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and flourishes.

Higginbotham, Adam L

From: Higginbotham, Adam L
Sent: Tuesday, July 07, 2009 11:50 AM
To: 'jimboinwv@yahoo.com'
Subject: RE: Proposed Changes for Cosmetologists

Mr. White:

Thank you for your comment concerning the number of continuing education hours the state should require. The Board will review your comment and other comments pertaining to the hour requirements to determine the best possible requirement. Should you or anyone else have any further questions, please feel free to contact the Board so that we can have as much information concerning the changes in the proposed rules before the deadline.

Sincerely,

Adam L. Higginbotham M.B.A.
Director
1716 Pennsylvania Avenue, Suite 7
Charleston, WV 25302
304-558-2924
adam.l.higginbotham@wv.gov

From: jimboinwv@yahoo.com [mailto:jimboinwv@yahoo.com]
Sent: Monday, July 06, 2009 10:58 PM
To: Higginbotham, Adam L
Subject: Proposed Changes for Cosmetologists

Mr Higginbotham,

I am writing to comment on the decision of having continuing hours for WV Cosmetologist. I personally believe the idea and decision is one that has needed implemented for years. I am glad to see this is finally a reality for WV. The concern I have personally is I DO NOT feel 4 hours are enough. I work with a hair color company and do education for areas including OH, WV, VA, and KY. Our classes are 3 hours in length. I will assume the way the information is written, if someone would attend a class that I do, at Beauty Alliance for example, they would then be required to take one more class that is 1 hour long. In surrounding states I think they have 6 a year. I feel by changing the hours to 6 that we as Cosmetologists would have to attend 2 classes a year. I'm not sure if this something to be considered, however I wanted to express my concern.

Thanks for the opportunity,

Jim White

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<font size="1" face="Verdana, Arial, Helvetica, sans-serif">Check me out!</font></a>
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TITLE 3

LEGISLATIVE RULES

WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

SERIES 11

CONTINUING EDUCATION

§3-11-1. General.

1.1. Scope. -- This legislative rule establishes requirements for continuing education to practice barbering, cosmetology, manicuring/nail technology, and aesthetics. All persons licensed by the Board to practice beauty culture must earn a minimum of four (4) hours of continuing education credits annually.

1.2. Authority. -- W. Va. Code §30-.27-6-9

1.3. Filing Date. --

1.4. Effective Date. --

§3-11-2. Definitions.

2.1. "Approved academic course" means a formal course of study offered by an accredited postsecondary educational institution as it relates to the barbering, Cosmetology, manicuring/nail technology, and aesthetics.

2.2. "Approved provider" means a local, state or national agency, organization or association recognized by the Board.

2.3. "Audit" means the selection of licensees for verification of satisfactory completion of continuing education during a specified time period; or the selection of approved providers for verification of adherence to continuing education approved provider requirements during a specified time period.

2.4. "Beauty Culture" means the act or practice of a profession as a barber, cosmetologists, nail technician, or aesthetician.

2.5. "Contact hour or continuing education activity" means an unit of measure as explained in section.

2.6. "Contact person" means a person submitting Request for Approval Form.

2.7. "Continuing education" means planned, organized learning activities engaged in following initial licensure and designed to maintain, improve, or expand beauty knowledge and skills or to develop new knowledge and skills related to beauty culture practice, education, or theory development.

2.8. "Continuing education activity" means a learning activity that is planned, organized and administered to enhance the professional knowledge and skills underlying the professional performance that the licensee uses to provide services the public. To qualify as continuing education, the activity must provide sufficient depth and scope of a subject area.

2.9. "Continuing education credit" means credit earned for completing a continuing education activity.

2.10."Continuing Education Provider License" means a licensed provider of continuing education.

2.11. "Documentation" means proof of participation in a continuing education activity.

2.12. "Formal offering" means an extension course, independent study, or other course which is offered, for college credit, by a recognized educational institution.

2.13. "Informal offering" means a workshop, seminar, institute, conference, lecture, or short term course, which is offered for credit in contact hours or continuing education units.

2.14. "Objectives" means what the participant will learn as a result of the educational activity. Objectives must be expressed in measurable and observable terms.

2.15. "Sponsor" means an organization that plans, organizes, supports, endorses, subsidizes and/or administers educational activities. Sponsors are responsible for the content, quality and integrity of the educational activity. Sponsors can include professional societies, academic institutions, individuals, corporations, or governmental agencies.

§3-11-3. Continuing Education.

3.1. Each applicant for renewal of a license, if the license is currently active, or reinstatement of a license if a license is suspended or on the inactive list, shall verify that he or she has satisfactorily completed four (4) contact hours of continuing education during the prescribed year reporting period.

Units of measurement for continuing education courses are as follows:

3.1.1. 30 to 49 minutes = 0.5 CE credits

50 to 74 minutes = 1 CE credits

75 to 99 minutes = 1.5 CE credits

100 minutes = 2 CE credits

Activities lasting less than 30 minutes will be no credit.

3.1.2 Writing a published article in a magazine directly related to the profession will constitute for (4) four hours of continuing education within the continuing education timeframe. A copy must be sent and/or maintained by the licensee until audited.

3.2. All licensed barbers, cosmetologists, nail technicians, and aestheticians with an active license to practice beauty culture in West Virginia shall complete and document a minimum of four (4) hours of continuing education every year as approved by this rule.

3.3. The Board shall not grant credit for identical continuing education activities submitted during any single year reporting period. Continuing education credits may not be accumulated for use in a future single year reporting period.

3.4. Continuing education documentation must be submitted along with license renewal.

§3-11-4. Exceptions to Continuing Education

Requirements.

4.1. The Board shall exempt from the continuing education requirements a licensee who qualifies for the exceptions set forth below.

4.1.1. A licensee with twenty-five (25) plus years experience as a licensed barber, cosmetologist, nail technician, or aesthetician in West Virginia shall be grandfathered into this rule and is not required to complete continuing education requirements.

4.1.2. Reciprocity applicants and newly licensed applicants are not required to show proof of continuing education until the first renewal period after initial West Virginia licensure.

4.1.3. A licensee who resides outside of West Virginia and who holds a current license to practice in a state other than West Virginia shall satisfy the continuing education requirements for West Virginia in order to renew his or her license in this state.

4.1.4. The Board may grant a waiver to a licensee who has a physical or mental disability or illness or who is providing direct care to a member of his or her immediate family during all or a portion of the reporting period. A waiver provides for an extension of time or exception from some or all of the continuing education requirements. Any licensee may request an application for a waiver from the Board. The Board shall approve or deny an application for waiver after review of the application. The Board shall not grant an exception from continuing education requirements for more than one (1) year reporting period, as set forth in this rule.

§3-11-5. Failure to Meet Requirements or

Exceptions to Requirements.

5.1. The Board may take the following actions if a licensee fails to meet the continuing education requirements or the conditions for exceptions for renewal.

5.2 The Board may place the licensee on inactive status without penalty and may waive the continuing education requirements, providing that the licensee notifies the Board in writing of his or her desire to have the Board place his or her license on inactive status before the last day of the reporting period.

5.3. The Board shall suspend the license of any person who fails to notify the Board, in writing, prior to the last day of the reporting period that he or she wishes to place his or her license on the inactive status.

§18-2-6. Reinstatement of a License on Inactive Status or Issuance of a Probational Temporary License.

6.1. A person wishing to reinstate a license from inactive status or from suspended status shall comply with the following requirements. The person shall:

6.1.1. make application for reinstatement of the license from inactive status or suspended status;

6.1.2. meet the continuing education requirements as set forth in this rule; and

6.1.3. pay the fee for reinstatement suspended license as specified in the Board's rule, Schedule of fees for services rendered,

6.2. A licensee who does not meet requirements provided under this section for license, is required to pass the national written examination for the specific field the licensee holds a license and pay all applicable fees.

§3-11-7. Audit of Licenses.

The Board may select any licensee who holds a current license to audit for compliance with continuing education requirements as set forth in this rule.

7.1. To comply with the audit request from the Board, a licensee shall submit legible copies of certificates of attendance at continuing education offerings.

7.2. The licensee shall submit the required documents within thirty (30) days of the date he or she receives notification of the audit. The Board may grant an extension of time for submission of the documents, on an individual basis, and in cases of hardship, providing the licensee makes a written request for an extension of time and provides justification for such the request.

7.3. Licensees shall keep certificates of attendance at continuing education offerings, letters verifying special approval for informal offerings from non-approved providers, transcripts of courses, and documentation of compliance with exceptions for a three (3) year period following submission of continuing education activities to the Board.

7.4. The Board shall notify the licensee of the satisfactory completion of the audit.

7.5. If a person fails to submit the audit information requested by the Board, the Board shall not renew any license the licensee holds with the Board before the audit is completed.

7.6. A licensee who fails to notify the Board of a current mailing address is not absolved from the audit requirements. The Board shall not renew a license before the audit is completed.

§3-11-8. Minimum Standards for Approved Providers.

8.1. The Board shall require that all providers of continuing education for beauty culture and related fields in the beauty industry obtain a Continuing Education Provider License, complete the applicable application, and pay all applicable fees.

8.2. The Board shall maintain a current list of approved providers which shall be available to the public upon request.

8.2.1. The Board shall notify providers who fail to meet the minimum acceptable provider standards, in writing, of specific deficiencies and give the providers a reasonable period of time to correct deficiencies.

8.2.2. The Board may remove an approved provider who does not correct deficiencies within the specified time period from the list of approved providers.

8.3. The providers shall provide a certificate or signature to the licensee indicating the following information:

8.3.1. Name of licensee that attended the continuing education class;

8.3.2. The date attended;

8.3.3. The amount of continuing education requirements; and

8.3.4. Contact information of the continuing education provider.

8.4 The providers shall provide a list to the State Board in a Microsoft Excel format in paper and disc form within 30 days of the continuing education class. The list shall include:

8.4.1. Name of licensee;

8.4.2. License number of licensee;

8.4.3. Location of class;

8.4.4. The date attended;

8.4.5. Name of continuing education class.

8.5. Proof of continuing education hours shall be provided through a printed certificate or a legibly signed and dated document.

8.6. The host of the continuing education shall be considered the provider with documentation of the speakers, trainings, events, shows, and other approved subjects being detailed on the continuing education provider application.

§3-11-9. Continuing Education Subjects/Events.

9.1. Continued education offerings shall consist of one or more of the following subject areas or events:

9.1.1. Product information or training;

9.1.2. Events, speakers, or shows by third party administrators held at beauty schools/conventions;

9.1.3. Tax, business, or computer training/courses held at a degree granting institution or continuing education provider;

9.1.4. Styling or application demonstrations;

9.1.5. Sanitation courses;

9.1.6. HIV/Aids awareness courses; and

9.1.7. West Virginia applicable state laws governing the Board of Barbers and Cosmetologists.

9.1.8. National Cosmetology Association (NCA), National Interstate Council of State Boards of Cosmetology (NIC), National Cosmetology Seminar, Aesthetic International Association, National Association of Barbering and Hairstyling, National Association of Barber Boards of American approved courses, seminars, and demonstrations or any other national association approved by the Board and submits applicable documentation and fees.

§3-11-10. Activities That Are Not Acceptable for Continuing Education Credit.

10.1. The following activities are not acceptable for continuing education credit:

10.1.1. job related practice;

10.1.2. the development and presentation of programs as part of the licensee's on-going job responsibilities;

10.1.3. the orientation and update of policies and procedures specific to the licensee's employing facility;

10.1.4. activities which are part of a licensee's usual job responsibility; and/or

10.1.5. in-house training from a regular employee of the facility.