Virginia Department of Planning and Budget

Economic Impact Analysis

18 VAC 41-20 – Barbering and Cosmetology Regulations
Department of Professional and Occupational Regulation
March 7, 2014

Summary of the Proposed Amendments to Regulation

As a result of a periodic review, the Board of Barbers and Cosmetologists (Board) proposes to make many substantive and clarifying changes to its regulations. Specifically, the Board proposes to:

1) Add a definition for "responsible management" and specify that responsible management must be in good standing if already licensed in Virginia or any other political jurisdiction and must provide a physical address (rather than a post office box) to the Board,
2) Change criminal background reporting requirements,
3) Require that individuals apply for licensure within five years of taking their licensure exam,
4) Allow the Board to decline to issue licenses, temporary permits and temporary instructor permits if grounds exist that would allow the Board to deny licensure (criminal activity, disciplinary action from this Board or any other, etc.),
5) Require that voided licenses be returned to the Board within 30 days of them being voided,
6) Require schools that are licensed by the Board have copies of any agreements that allow them to use necessary equipment that is owned by another entity,
7) Require schools licensed by the Board to periodically provide student rosters,
8) Require a 2x2 headshot of students attending any school licensed by the Board be attached to their student record files,

9) Require all shops, salons and schools licensed by the Board to have a bathroom with hot and cold running water in their facility and

10) Ban pets from facilities licensed by the Board.

Result of Analysis

Benefits likely exceed costs for some proposed regulatory changes; for some changes, there is insufficient information to ascertain whether benefits will outweigh costs. One proposed change as written is far more expensive than it need be. Costs likely outweigh benefits for at least one proposed change.

Estimated Economic Impact

Current regulations are not written so that the Board receives information about criminal convictions or past Board disciplinary actions for individuals whose businesses are licensed as limited liability corporations (LLC). This means that owners of a licensed business that is disciplined and loses its license can incorporate a new business and apply for a license and the Board would not know about past disciplinary actions against, essentially, the same entity. Because of situations such as this, the Board now proposes to add a definition for "responsible management" to include owners and officers of LLC's and also proposes to require that such entities be in good standing with this Board as well as any others where they might be licensed. This action will allow the Board to track owners of licensed businesses and deny licensure to businesses that have been disciplined, and lost their licenses, in the past. This change is likely to benefit the public as it will keep businesses that have been disciplined in the past from opening up under a new name but likely with the same unsafe or unethical practices that lost them their license in the first place.

Current regulations require that applicants for licensure disclose, and provide corroborating paperwork, to the Board for all misdemeanor and felony convictions. Board staff reports, however, that most misdemeanor convictions would normally not be considered grounds for denial of licensure. This means that currently applicants for licensure are spending time and money to gather paperwork from whatever jurisdictions they need to, including jurisdictions very far away from Virginia, and that the Board is spending time unnecessarily looking at paperwork for legal infractions that have no bearing on whether the applicant is likely to provide safe and ethical services to their clients. To address these issues, the Board now proposes to limit the

scope of convictions that applicants must report to misdemeanors involving moral turpitude that occur within three years of application for licensure and all felony convictions regardless of when they occurred. Affected applicants for licensure will benefit from this as they will not have to incur expenses for gathering paperwork associated with older misdemeanors or misdemeanors that do not involve moral turpitude, which may only be available if they physically go to the courthouses where convictions occurred. The Board will also benefit from not being inundated with paperwork that is unlikely to affect the licensing decisions they make.

Currently, individuals may apply for licensure any time after they complete training requirements and pass the licensure exam without time limits. The Board feels that practical methodology in fields licensed by the Board change enough over time that individuals who passed their licensure exam a long time before they actually apply for licensure may no longer be competent to practice. As a consequence, the Board proposes to specify that individuals must apply for licensure no longer than five years after they take the licensure exam. Any individuals applying for licensure past that timeframe will have to pay to take the licensure exam again (currently this costs $155). The benefits of this change will only outweigh the costs if changes within fields licensed by the Board are significant enough to render individuals incompetent to practice without refreshing their knowledge and retaking the exam. There is insufficient information to ascertain whether this would be the case.

Board staff reports that currently the Board requires applicants for licensure to disclose past crimes and disciplinary actions but that current regulations do not allow the Board to deny licensure because of the information disclosed. The Board now proposes to add language to these regulations that will allow the Board to deny the issuance of licenses, temporary permits and temporary instructor permits if they believe that any information disclosed to the Board would deem the applicant unfit or unsuited to practice in fields that are licensed by the Board. This change will likely benefit the public as it will allow the Board to decline to license individuals that have, for instance, a past history of injury to clients in other jurisdictions.

Current regulations require that the Board be notified within 30 days if a Board issued business license is voided for any reason (the business has been sold, responsible management has changed, etc.) and also requires that the voided license be returned to the Board but does not specify when. Because the Board is concerned that holders of these licenses will pass them to

other entities that might fraudulently set up shop with them, the Board now proposes to require that voided licenses be returned to the Board within 30 days of the change that voided them. To the extent that it is complied with, this change will greatly benefit the public as it will stop the offering of services that would be performed fraudulently under a license that does not belong to the individual(s) offering those services.

The Board proposes several other regulatory changes to prevent possible fraudulent activity at licensed schools. Specifically the Board proposes to require schools that do not own equipment necessary for teaching to have copies of agreements that allow them to access equipment owned by other entities for their students to use; schools will also be required to periodically provide the Board with student rosters. These changes will allow Board staff to verify that students will have access to the equipment needed to learn Board required skills and that schools are not making up student files only when they are inspected by the Board. Board staff reports that these changes will likely cost less than $25 per year in compliance costs. These costs are likely outweighed by the benefits that will likely accrue to students who will be more likely to be guaranteed to have access to equipment necessary for their education.

The Board also proposes to require that student files include a 2x2 head and shoulder photo of the student. Board staff reports that this will be required to combat rampant testing fraud and will allow the identity of students taking licensure exams to be verified. While this change is likely to benefit the public, because fewer individuals would presumably be licensed without actually passing the licensure exam, the cost of compliance for this requirement as written will likely be far higher than it needs to be. 2x2 (passport size) photos cost between $8 and $12[1] whereas larger, more conventionally sized photos, are far cheaper. A 4x6 photo print, for instance, can be printed for as little as $0.09 at Walmart. Compliance costs for this requirement could be very easily significantly reduced if the Board changed the proposed language to require a photo that was **at least** 2x2 rather than exactly 2x2.

Current regulations require that licensed shops, salons and schools have “a fully functional bathroom in the same building with a working toilet and sink”. Some enforcement agents have allowed salons in malls to count the mall bathrooms as meeting this requirement and some enforcement agents have said that mall bathrooms do not meet this requirement. Board

[1] An internet search revealed prices for passport photos ranging from $7.99 at Walmart to $11.99 at CVS.

staff reports that the Board is concerned that allowing mall bathrooms to meet regulatory requirements will have client wandering far afield of licensed facilities… possibly in the middle of chemical hair treatments of various kinds. Board staff reports that the Board feels it would be safer for clients if salons are required to have bathrooms within their shops. The Board now proposes to add language to these regulations that requires licensed facilities have bathrooms that are "maintained exclusively for client use". Board staff estimates that there are approximately 15 to 30 licensed shops that are located in malls and do not have bathroom facilities within the confines of their shops that would have to either move or build a bathroom in order to comply with this proposed regulatory change. Board staff further estimates that building a bathroom in shops that do not have them can cost between $2,000 and $10,000. Given the high cost of requiring shops to meet a stricter standard than is sometimes allowed now, costs for this proposed change likely outweigh the benefits of increased convenience for clients and possibly avoiding chemical burns if clients go to use the mall bathroom and stay away longer than they should or longer than is advised.

Finally, the Board proposes to add new language to these regulations that would ban animals from licensed shops. This ban was suggested by the Board to forestall any instances where animal fur or waste from dogs or cats might be a hazard to the public or where a customer or stylist at a salon might be bitten. Board staff does not have specific complaints that any of these things have happened but there is certainly some risk of them happening. Staff did provide an article that reported on a little girl being bitten in a restaurant[2]. Currently, some shops have resident animals and some salon owners likely bring their animals to work with them because that is the most convenient option for caring for them. Given research on the therapeutic and calming effects pets can have on people,[3] it is likely that some pets serve to help calm and relax customers in some salon settings (and so might be considered part of those salons' business model). Shop owners who currently keep pets in their shops will likely incur some implicit or explicit costs if this proposed change is adopted. Individuals might have to rearrange their work schedules to travel and care for their animals if they have to leave them at home or may have to

[2] http://www.nbc12.com/story/16069624/man-complains-after-daughter-bitten-by-dog

[3] As reported in http://www.npr.org/blogs/health/2012/03/09/146583986/pet-therapy-how-animals-and-humans-heal-each-other and http://www.npr.org/2012/07/04/156116450/office-stress-dogging-you-try-punching-in-with-fido

hire either a pet walker or the services of a pet daycare. Individual salon owners may also have to rearrange their business model to one that does not include the presence of animals and that would be less optimal for them. Without complaint information and estimates of the exact worth (or cost avoidance) of having animals in salons/shops, there is insufficient information to accurately weigh the benefits of this proposed change against the costs. It is worth noting, however, that individuals who do not like animals are free to use the services of salons/shops that are already pet free by the owner's choice and that shop owners have incentive to make sure animals in their shops are well behaved since they are likely to lose customers if their animals are ill behaved and are civilly liable for the actions of those animals. Also of note is the fact that cats and dogs are allowed in places like nursing homes and hospitals that are expected to be considerably more sterile than facilities licensed by the Board.

Businesses and Entities Affected

The Department of Professional and Occupational Regulation (DPOR) reports that the Board currently licenses 58,421 individuals and 7,349 shops and schools in the Commonwealth. All of these entities, as well as future licensees, will be affected by these proposed changes. Most, if not all, shops and schools would likely qualify as small businesses.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment

A new proposed requirement that individuals apply for licensure within five years of taking their licensure exam may increase costs for these individuals (as they would have to study for and retake their exam) and may slightly decrease the probability of them becoming licensed and working in fields licensed by the Board. Board staff believes from anecdotal evidence that such a situation would be extremely rare.

Effects on the Use and Value of Private Property

Proposed changes such as requiring in-shop client bathrooms where shops currently are allowed to be in regulatory compliance by being in a large facility (such as a mall) that has bathroom accommodations are likely to greatly increase costs, and lower profits, for affected

shops. Banning pets from licensed facilities may increase costs for licensed business owners who have such pets.

Small Businesses: Costs and Other Effects

Proposed requirements that impact bathroom facilities will likely increase costs for affected small businesses. Several proposed requirements, such as having to periodically provide student rosters and have 2x2 headshots attached to student files, are likely to increase costs either for schools or for both schools and their students. Banning pets from licensed facilities may increase costs for licensed business owners who have such pets.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The Board would likely be able to decrease costs for regulated entities by allowing photos that were larger than 2x2 for student files. If the Board chooses not to impose the proposed new bathroom requirements and the proposed ban on pets in licensed facilities, costs associated with these changes would be completely mitigated. This would lower costs and reduce the level of intrusion into how salon owners choose to harmonize their business and home lives.

Real Estate Development Costs

Proposed changes such as requiring in-shop client bathrooms where shops currently are allowed to be in regulatory compliance by being in a larger facility (such as a mall) that has bathroom accommodations are likely to increase the cost of building new malls that will have barber shops or salons as tenants.

Legal Mandate

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,

- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the *Virginia Register of Regulations* for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

AMH
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