



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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**18 VAC 41-20 Barbering and Cosmetology Regulations**  
**18 VAC 41-70 Esthetics Regulations**  
**Department of Professional and Occupational Regulation**  
**Town Hall Action/Stage: 5963/9638**  
July 15, 2022

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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 (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.<sup>1</sup>

### **Summary of the Proposed Amendments to Regulation**

The Board for Barbering and Cosmetology (Board) proposes to revise its current requirement that salons, shops, spas, and schools maintain a separate bathroom exclusively for clients by allowing these facilities to share a bathroom with other businesses under certain conditions.

### **Background**

This action results in part from a petition that esthetics facilities be allowed to use bathroom space that is not exclusively available to clients, as long as the bathroom is geographically close to the facility.<sup>2</sup> The regulations for esthetics facilities as well as facilities for barbers, cosmetologists, nail technicians, and wax technicians currently state that, "For facilities newly occupied after January 1, 2017, the bathroom shall be maintained exclusively for clients'

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> See <https://townhall.virginia.gov/L/ViewPetition.cfm?petitionId=355>. The Board rejected the petition as written because it excluded barbers, cosmetologists, nail technicians, and wax technicians.

use.”<sup>3</sup> Subsequently, the Board decided to amend 18 VAC 41-70 *Esthetics Regulations* and 18 VAC 41-20 *Barbering and Cosmetology Regulations* so that facilities would also be allowed to use a bathroom shared with other businesses in the same building as long as it is within 200 feet of the entrance and adheres to all sanitation standards in the regulation.<sup>4</sup>

The Department of Professional and Occupational Regulation (DPOR) explained that the current requirement of an exclusive bathroom was added due to two related concerns that arise in shopping mall settings: first, that clients may leave the salon with chemicals in their hair to access a bathroom, causing the cosmetologist to lose control of the service for extended periods of time; and second, that salons may not be able to ensure that sanitation and safety requirements are met if the bathroom is shared by multiple businesses. DPOR staff selected the 200 feet limit to provide a “reasonable, but specific alternative” to the language used in the petition for rulemaking (“geographically close”) so as to mitigate concerns about clients going too far with chemicals in their hair. DPOR explained that the proposed change is a compromise as the Board attempts to balance the economic cost against the safety benefits of the current rule.

### **Estimated Benefits and Costs**

The proposed amendments would benefit individuals seeking to open new salons, shops, spas, or schools by providing greater flexibility regarding the sites they might consider. Existing salons, shops, spas, schools that have opened since January 1, 2017 and incurred any additional cost of maintaining an exclusive bathroom for their clients may also benefit from having additional options if they decide to relocate their business. DPOR reports that facilities often lease space prior to understanding the Board’s requirements and have reported expenses of approximately \$5,000 to \$15,000 arising from renovations necessary to comply with the regulatory requirement.<sup>5</sup> Further, DPOR issued an average of 934 new facility licenses between 2017 and 2021,<sup>6</sup> thus the potential exists for a substantial amount of cost avoidance in the future depending on the number of facilities that undertake renovations.

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<sup>3</sup> Identical language appears in section 270 *Sanitation and safety standards for shops, salons, and schools* of both chapters. The word “exclusively” here is intended to distinguish between bathrooms used only by the facility as opposed to bathrooms that might be shared with other businesses, not to exclude use by the facility’s staff.

<sup>4</sup> See the minutes of the Board’s March 14, 2022 meeting: [https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\134\32617\Minutes\\_DPOR\\_32617\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\134\32617\Minutes_DPOR_32617_v2.pdf). The Board amended the proposed language at its July 11, 2022 meeting based on DPB recommendations to increase clarity.

<sup>5</sup> See Agency Background Document (ABD) page 4: [https://townhall.virginia.gov/L/GetFile.cfm?File=134\5963\9638\AgencyStatement\\_DPOR\\_9638\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=134\5963\9638\AgencyStatement_DPOR_9638_v2.pdf).

<sup>6</sup> Data provided by DPOR to DPB via email dated June 23, 2022.

## **Businesses and Other Entities Affected**

The proposed amendments primarily benefit new shops, salons, spas, and schools that are looking at potential locations and have yet to sign a lease and/or undertake any renovations to add a bathroom to their facility. DPOR reports that there are currently 8,000 licensed facilities that fall under the barber-cosmetology and esthetics regulations.<sup>7</sup> Of these, 4,891 facilities have been newly licensed since the current bathroom requirement went into effect in 2017.<sup>8</sup> They would be particularly affected by the proposed amendments to the extent that they might save money by relocating to a site with a shared bathroom, if they choose to do so.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>9</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposed amendments would make the regulatory requirements more flexible and is likely to generate significant cost savings for businesses. Thus, an adverse impact is not indicated.

### **Small Businesses<sup>10</sup> Affected:<sup>11</sup>**

DPOR reports that nearly all of the 8,000 licensed facilities are small businesses.<sup>12</sup> As stated above, the proposed amendments would benefit regulants, including small businesses. A

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<sup>7</sup> DPOR reports that as of April 1, 2022, there are 884 barber shops, 73 barber schools, 5,086 cosmetology salons, 158 cosmetology schools, 57 esthetics schools, 824 esthetics spas, 715 nail salons, 43 nail technician schools, 144 waxing salons, and 16 waxing schools. See ABD, page 7.

<sup>8</sup> DPOR email to DPB dated June 23, 2022.

<sup>9</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>10</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, 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.”

<sup>11</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) 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, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 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 shall be notified.

<sup>12</sup> ABD, page 7.

reduction to the cost of required renovations could also contribute to increased entry in these industries and more facilities opening.

### **Localities<sup>13</sup> Affected<sup>14</sup>**

The proposed amendments would not affect any locality in particular, nor would they introduce costs for local governments. Consequently, an adverse economic impact is not indicated for localities.

### **Projected Impact on Employment**

The proposed amendments would not affect employment directly. The proposed amendments may indirectly increase employment by shops, salons, spas, and schools if, for example, not having to add a bathroom (or repurposing an existing bathroom) allows those businesses to add a chair for an additional professional to provide services. Increased entry into the industry by new facilities could also have a modest impact on increasing employment.

### **Effects on the Use and Value of Private Property**

Lowering the costs of opening new barber, cosmetology, and esthetics facilities would increase the value of those businesses. The proposed amendments would reduce renovation costs for new facilities, but do not affect real estate development costs in general.

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<sup>13</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>14</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.