



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

Agency Name:	Board for Barbers and Cosmetology - 41
VAC Chapter Number:	40
Regulation Title:	Wax Technician Regulations
Action Title:	Promulgation
Date:	March 24, 2003

Section 2.2-4006 of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency.

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

Chapter 797 of the 2002 Acts of the Assembly mandated a separate licensing category for wax technicians under the Board for Barbers and Cosmetology. The legislation mandated with conditions that the Board waive the examination requirements for licensure as a wax technician for any individual making application for licensure between July 1, 2002, and July 1, 2003 even though regulations were not in effect. The regulations contain the requirements for obtaining a license, safety and sanitation procedures, and standards of professional conduct.

Over 1000 wax technician licenses have been issued since July 1, 2002 to individuals practicing in Virginia with no regulations. Emergency action is justified in this case due to the “imminent threat to public health or safety” (§ 2.2-4011.A of the Administrative Process Act) which would result from the failure of the Board to have regulations in place on July 1, 2003.

After July 1, 2003, without regulations the Board will be unable to process applications for licensure due to the inability to determine the eligibility of the applicants. The statutes require licensure for individuals (§§ 54.1-703 and 54.1-704), shops and salons (§ 54.1-704.1), and schools (§ 54.1-704.2). All of the qualifications for licensure for all licenses issued by the Board are contained in regulations, therefore, eligibility cannot be determined without regulations.

The Board does not have authority to take enforcement action including safety and sanitation procedures, and standards of professional conduct in regard to the licenses issued between July 1, 2002 and July 1, 2003 until regulation are effective.

This action is based on the mandate of the 2002 General Assembly that the health, safety and welfare of the public would be endangered without the issuance of licenses and enforcement of regulations of this occupation.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

The legal authority to promulgate emergency regulations is in §§ 2.2-4011.A and 54.1-201.5 of the *Code of Virginia*:

Emergency regulations are promulgated under the general authority of Chapter 40 of Title 2.2 of the Code of Virginia. Section 2.2-4011(A) describes regulations that an agency finds are necessitated by an emergency situation:

§ 2.2-4011. Emergency regulations; publication; exceptions.

A. Regulations that an agency finds are necessitated by an emergency situation. For the purposes of this subsection, "emergency situation" means a situation (i) involving an imminent threat to public health or safety or (ii) in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § 2.2-4012, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. The regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional

emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with this article. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed with the Registrar within sixty days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4011>

Regulations are promulgated under the general authority of Chapter 2 of Title 54.1 of the Code of Virginia. Section 54.1-201(5) provides the Board the authority to promulgate regulations to administer the regulatory system:

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

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

5. 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.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-210>

The statement from the Office of the Attorney General certifying that the agency has the statutory authority to promulgate the emergency regulations and that it comports with applicable state and/or federal law is included.

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. 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 Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The Board proposes to promulgate regulations, 18 VAC 41-40-10 et seq., governing the licensure and practice of waxing as directed by Acts 2002, c. 797.

The proposed regulatory action is necessary to ensure minimal competence of waxing practitioners. This regulatory action will establish qualifications for licensure, standards of practice and requirements for maintaining licensure as a wax technician, waxing salon, waxing school, and wax technician instructors in the Commonwealth of Virginia. This regulatory action will establish fees necessary to administer the licensure of waxing practitioners, waxing salons, waxing schools, and wax technician instructors in the Commonwealth of Virginia.

As directed by the 2002 General Assembly, this regulatory action is required to protect the health, safety and welfare of citizens of the Commonwealth in that it will provide for and ensure that licensee have met qualifications that demonstrates competency that protects the health, safety and welfare of citizens of the Commonwealth and that health and sanitary standards and safety are adequate in shops, salons and schools where waxing services are being provided.

18 VAC 41-40-10

Defines the meaning of words and terms used within the chapter and establishes that all terms defined in § 54.1-700 et seq., of the Code of Virginia are incorporated into the chapter.

18 VAC 41-40-20

Establishes the general requirements for licensure as a wax technician to include applicant qualifications and eligibility to sit for board-approved examination.

18 VAC 41-40-30

Sets forth the requirements for obtaining a wax technician license or wax technician instructor certification by endorsement for applicants currently licensed to practice as a wax technician or wax technician instructor in another state or jurisdiction of the United States.

18 VAC 41-40-40

Provides exceptions to the training requirements for eligibility to sit for the wax technician examination.

18 VAC 41-40-50

Prescribes that applicants for an initial wax technician license shall pass both written and practical portions of an examination approved by the board. This section also states that any candidate for failing to appear for an examination shall forfeit the examination fee.

18 VAC 41-40-60

Sets forth the requirements for any applicant who does not pass a reexamination within one year of the initial examination.

18 VAC 41-40-70

Establishes the requirements for the administration of the wax technician examination to include the qualifications of wax technician examiners and wax technician chief examiners. This section also sets forth a standard of applicant conduct during the administration of an examination.

18 VAC 41-40-80

Sets forth the conditions under which a wax technician temporary license can be issued.

18 VAC 41-40-90

Provides the general requirements for obtaining a wax technician instructor certificate to include license, training, and examination qualifications.

18 VAC 41-40-100

Establishes the requirements for obtaining a waxing salon license in compliance with § 54.1-704.1 of the Code of Virginia. This section also specifies actions to be taken by an owner of a waxing in the event the facility closes.

18 VAC 41-40-110

Sets forth the requirements for obtaining a wax technician school license in compliance with § 54.1-704.2 of the Code of Virginia, and the qualifications for individuals providing instruction. This section also specifies actions to be taken by an owner in the event of a closing of a wax technician school.

18 VAC 41-40-120

Establishes the fees for initial, renewal and reinstatement applications for individuals, salons, and schools that are licensed or certified under this chapter.

18 VAC 41-40-130

Establishes that all fees are nonrefundable and shall not be prorated.

18 VAC 41-40-140

Prescribes the dates for renewal of wax technician, waxing salon, and waxing school licenses and wax instructor certificates.

18 VAC 41-40-150

Sets forth that the Department of Professional and Occupational Regulation will mail a renewal notice to the licensee or certificate holder outlining the procedures for renewal, however, failure to receive this notice shall not relieve the licensee or certification holder of the obligation to renew.

18 VAC 41-40-160

Establishes to criteria and procedures for reinstatement in the event that a licensee or certificate holder fails to renew their license or certification.

18 VAC 41-40-170

Sets forth the requirements for obtaining a license to operate a waxing school.

18 VAC 41-40-180

Sets forth the general requirements for operating a waxing school to include qualifications of instructors and minimum clock hours for waxing curricula.

18 VAC 41-40-190

Prescribes specific curriculum requirements for a wax technician training program.

18 VAC 41-40-200

Establishes that the curriculum and performance requirements for a wax technician training program.

18 VAC 41-40-210

Sets forth that each waxing school licensed by the board shall identify itself to the public as a teaching institution.

18 VAC 41-40-220

Establishes requirements for waxing schools to keep records of the hours and performances of students upon graduation, termination or withdrawal. This section also sets forth a retention period of five years for these records.

18 VAC 41-40-230

Prescribes a timeframe upon which a licensed waxing school shall provide a written report on the performances and hours of each of its students to the board in the event that the school closes.

18 VAC 41-40-240

Establishes the standards of practice for waxing salons and waxing schools to include the proper display of all licenses and certifications issued by the board.

18 VAC 41-40-250

Sets forth the sanitation and safety standards for salons and schools to include disinfection and storage of implements, sanitation of equipment, articles, tools, and products. This section also establishes safety standards pertaining to the use of chemical products, the proper handling of blood spills, and client health guidelines.

18 VAC 41-40-260

Establishes the grounds for license revocation or suspension, denial of application, renewal or reinstatement, or imposition of monetary penalties for licensees or certificate holders.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

There were no alternatives to promulgation of regulations governing the licensure and practice of waxing as directed by Chapter 797 of the 2002 Acts of the Assembly.

Regulations were determined to be the least burdensome to meet the purpose containing the requirements for obtaining a license, safety and sanitation procedures, and standards of professional conduct but not need to obtain a cosmetologist license.

Fees were established as equal and equitable for licensees under the Board for Barbers and Cosmetology

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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 proposed regulatory action is not expected to have any significant impact on families. An analysis of the proposed regulatory action assesses that there should be no potential impact on the institution of the family and family stability in that it should not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children;

should not 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; should not strengthen or erode the marital commitment; and may not increase or decrease disposable family income.