



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board for Barbers and Cosmetology - 41
VAC Chapter Number:	50
Regulation Title:	Tattooing and Body-piercing Regulations
Action Title:	Promulgation
Date:	March 24, 2003

This information is required pursuant to the Administrative Process Act (§ 2.2-4000 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Chapter 869 of the 2002 Acts of the Assembly mandated a separate licensing categories for tattooing and body-piercing practitioners as well as the parlors or salons where these services are provided under the Board for Barbers and Cosmetology. The regulations contain the requirements for obtaining a license, renewal and reinstatement, safety and sanitation procedures, and standards of professional conduct.

To comply with Chapter 869 of the 2002 Acts of the Assembly and fulfill the Board for Barbers and Cosmetology responsibility to promulgate regulations, new regulations are promulgated to ensure competence and integrity of all licensees and that the health and sanitary standards and safety are adequate in parlors, salons, schools, and other facilities where tattooing or body-piercing services are provided, and administer the regulatory program.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The proposed regulatory action to promulgate regulations governing the licensure and practice of tattooing and body-piercing under the Board for Barbers and Cosmetology is mandated by Chapter 869 of the 2002 Acts of the Assembly.

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 Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulations and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Board proposes to promulgate regulations, 18 VAC 41-50-10 et seq., governing the licensure and practice of tattooing and body-piercing as directed by Chapter 869 of the 2002 Acts of the Assembly.

The proposed regulatory action is necessary to ensure minimal competence of tattooing or body-piercing practitioners. This regulatory action will establish qualifications for licensure, standards of practice, requirements for maintaining licensure as a tattooer, tattoo parlor, tattooing school, body-piercer, body-piercing salon and body-piercing school in the Commonwealth of Virginia. This regulatory action will establish fees necessary to administer the licensure program.

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 licensees 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 parlors, salons and schools where tattooing or body-piercing services are being provided.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Proposed regulations, 18 VAC 41-50-10 et seq., contain provisions for the licensing of tattooers and body-piercers under the Board for Barbers and Cosmetology as directed by Chapter 869 of the 2002 Acts of the Assembly. In addition to establishing the requirements for licensure, these regulations will ensure competency and integrity of all licensees, provide for, and ensure that health and sanitation standards are adequate in facilities where these services are provided.

These regulatory requirements include: 1) definitions of words and terms relative to the practice of providing tattooing and body-piercing services that will ensure that licensees understand the scope and limitations of their profession; 2) general requirements for obtaining a license to provide services as a tattooer or body-piercer; 3) requirements for becoming a tattooing or body-piercing apprenticeship sponsor; 4) general requirements for obtaining a license to operate a tattoo parlor, body-piercing salon, tattoo school, or body-piercing school; 5) fees for initial, renewal, and reinstatement applications for tattooers, body-piercers, tattoo parlors, body-piercing salons, tattooing schools, and body-piercing schools; 6) sanitation and safety standards for parlors, salons, and schools that address disinfection and storage of implements, sanitation of equipment, and safety standards pertaining to the use of chemical products, the proper handling of blood spills, and client health guidelines; 7) measures to be taken to ensure that clients are qualified to receive tattooing or body piercing services in compliance with § 18.2371.3 of the Code of Virginia pertaining to minimum age; 8) requirements for obtaining certain disclosures and maintenance of records of notification to the client pertaining to risks associated with receiving tattooing and body-piercing services.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage of the proposed regulatory action is that it will establish the licensing requirements for the specialized practice of tattooing and body-piercing. The proposed regulatory action will be an advantage to the public in that it will provide clear and effective regulations to ensure competency and integrity and prevent deceptive or misleading practices by individuals providing tattooing and body-piercing services.

There are no disadvantages to the public or the Commonwealth with regards to regulations governing the licensure and practice of tattooing and body-piercing practitioners.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Fiscal Impact of Proposed Regulation

Summary:

The proposed regulations will create licensing requirements and categories for the practice of tattooing and body-piercing, under the authority of the Board for Barbers and Cosmetology. Regulation of this occupation will increase administrative and regulatory responsibilities of the Department of Professional and Occupational Regulation. The funding and FTE to support the fiscal impact of this new program are included in the Department's appropriation for FY04. The proposed regulations include fees that will provide revenue to support these operating costs.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Fiscal Impact:

	FY 2003	FY 2004	FY2005	FY2006
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Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 44	560 44	560 44	560 44

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	112,550	112,550	112,550
Total Fiscal Impact	0	112,550	112,550	112,550
FTE	0.00	2.00	2.00	2.00

Description of Costs:

One-Time: There are no one-time costs associated with the proposed regulations.

Ongoing: Ongoing costs include two classified positions, operating costs such as telephone, postage, printing, and supplies, and a facilities inspection program.

Cost to Localities: There are no projected costs to localities.

Description of Individuals, Businesses, or Other Entities Impacted:

Individuals – persons offering tattooing or body-piercing services for compensation

Businesses - tattoo parlors and body-piercing salons offering tattooing or body-piercing services

Estimated Number of Regulators: The Department expects to regulate approximately 700 individuals and facilities.

Projected Cost to Regulators: The cost to an individual regulator is expected to be \$55 per two-year period. The cost to facilities and schools will range from \$90 to \$120 per biennium.

Financial Projections Board for Barbers and Cosmetology - Tattoo and Body Piercing

Number of Regulators - 59,486 - Includes an estimated 700 tattooing and body-piercing practitioners and facilities.

Note: Fee increases effective July 1, 2002

Financial Status and Projections

1998-2000

2000-2002

2002-2004

2004-2006

Beginning Cash Balance	1,343,843	801,299	-87,020	88,392
Revenue	1,978,287	2,077,695	3,803,402	3,925,959
Expenditures:				
Board Expenditures	185,398	175,521	214,695	233,396
Board Administration	516,161	759,936	929,544	1,010,512
Examinations	39,621	47,788	58,454	63,545
Enforcement	166,210	235,912	288,565	313,700
Legal Services	10,121	20,700	25,320	27,525
Information Systems	549,260	615,132	752,422	817,961
Facilities/ Support Services	547,660	512,505	626,889	681,495
Agency Administration	495,217	582,560	712,580	774,649
Transfers/Other	11,183	15,960	19,522	21,223
Total Expenditures	2,520,831	2,966,014	3,627,990	3,944,007
Cash Balance	801,299	-87,020	88,392	70,344
Callahan Percentage	<u>31.8%</u>	<u>-2.9%</u>	<u>2.4%</u>	<u>1.8%</u>

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The Board proposes to promulgate regulations, 18 VAC 41-50-10 et seq., governing the licensure and practice of tattooing and body-piercing as directed by Chapter 869 of the 2002 Acts of the Assembly.

The proposed regulatory action is necessary to ensure minimal competence of tattooing and body-piercing practitioners. This regulatory action will establish qualifications for licensure, standards of practice and requirements for maintaining licensure as a tattooer, tattoo parlor, tattooing school, body-piercer, body-piercing salon and body-piercing school in the Commonwealth of Virginia. This regulatory action will establish fees necessary to administer the licensure program.

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 licensees 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 parlors, salons and schools where tattooing or body-piercing services are being provided.

18 VAC 41-50-10

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 41-50-20

Establishes the general requirements for licensure as a tattooer or body-piercer which includes applicant qualifications and eligibility to sit for board-approved examination.

18 VAC 41-50-30

Sets forth the requirements for obtaining a tattooer or body-piercer license by endorsement for applicants currently licensed to practice as a tattooer or body-piercer in another state or jurisdiction of the United States.

18 VAC 41-50-40

Sets forth that applicants for an initial tattooer or body-piercer license shall pass an examination issued by the board or by a designated testing service. This section also states that any candidate for failing to appear for an examination shall forfeit the examination fee.

18 VAC 41-50-50

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

18 VAC 41-50-60

Establishes the requirements for the administration of the tattooing and body-piercing examination to include the procedure for setting fees for examination and reexamination. This section also sets forth a standard of applicant conduct during the administration of an examination.

18 VAC 41-50-70

Sets forth the general eligibility requirements for applicants desiring to be a tattoo or body-piercing apprenticeship sponsor.

18 VAC 41-50-80

Establishes the requirements for obtaining a tattoo parlor or body-piercing 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 tattoo parlor or body-piercing salon in the event the facility closes.

18 VAC 41-50-90

Sets forth the requirements for obtaining a tattooing or body-piercing 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 tattooing or body-piercing school.

18 VAC 41-50-100

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

18 VAC 41-50-110

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

18 VAC 41-50-120

Prescribes the dates for renewal of tattooer, body-piercer, parlor, salon, and school licenses.

18 VAC 41-40-130

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 41-50-140

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 41-50-150

Sets forth the requirements for obtaining a license to operate a tattooing or body-piercing school.

18 VAC 41-50-160

Sets forth the general requirements for operating a tattooing or body-piercing school.

18 VAC 41-50-170

Prescribes that each tattooing and body-piercing school licensed by the board shall identify itself to the public as a teaching institution.

18 VAC 41-50-180

Establishes requirements for tattooing and body-piercing 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 41-50-190

Prescribes a timeframe upon which a licensed tattooing or body-piercing 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 41-50-200

Establishes the standards of practice for tattoo parlors, body-piercing salons and schools to include the proper display of all licenses and certifications issued by the board.

18 VAC 41-50-210

Sets forth the sanitation and safety standards for parlors, 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 sterilization areas where tattooing and body-piercing services are provided, the proper handling of blood spills, and client health guidelines.

18 VAC 41-50-220

Specifies in detail the responsibilities of tattooers and body-piercers pertaining to safety and sanitation measures to be taken while providing tattooing and body-piercing services.

18 VAC 41-50-230

Prescribes the measures to be taken to ensure that clients are qualified to receive tattooing or body-piercing services in compliance with § 18.2-371.3 of the Code of Virginia. This section also establishes the requirement to obtain certain disclosures and maintain records pertaining to notification to the client of the risks associated with receiving tattooing and body-piercing services.

18 VAC 41-50-240

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 to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The essential purpose of the proposed regulatory action is to comply with the statutory mandate to promulgate regulations governing the licensure and practice of tattooing and body piercing as directed by Chapter 869 of the 2002 Acts of the Assembly.

Other regulatory provisions would not provide for less burdensome alternatives.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No public comments were received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Board submits that the proposed regulations are clearly written and understandable for both the regulants and the public.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The regulations will be reviewed during the Board's normal course of regulatory review that shall in no case exceed three years from the effective date of these regulations. Fees are evaluated at the end of every biennium. If fee adjustments are necessary, the regulatory review

process is initiated. Otherwise, within 24 to 36 months of the effective date of these regulations, this matter will be placed on the Board's agenda for consideration.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 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.