



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Barbers and Cosmetology
Virginia Administrative Code (VAC) citation	18 VAC 41 - 70
Regulation title	Esthetics Regulations
Action title	Promulgate regulations for licensure of esthetics.
Document preparation date	September 1, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

To promulgate regulations governing the practice of esthetics as directed by Chapter 829 of the 2005 Acts of the Assembly.

To promulgate regulations and establish fees necessary to administer the licensure of the practice of esthetics, estheticians, master estheticians, esthetics spas, esthetics instructors, and schools of esthetics in the Commonwealth of Virginia to fulfill the Board's responsibility to protect the health, safety and welfare of the citizens of the Commonwealth.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Board for Barbers and Cosmetology is mandated to promulgate these proposed regulations in accordance with Chapter 829 of the 2005 Acts of the Assembly and § 54.1-201 of the code of Virginia.

CHAPTER 829

An Act to amend and reenact §§ 54.1-700 through 54.1-703 and 54.1-704.1 through 54.1-706 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-703.3, relating to the Department of Professional and Occupational Regulation; Board for Barbers and Cosmetology; regulation of estheticians.

[H 2510]

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-700 through 54.1-703 and 54.1-704.1 through 54.1-706 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-703.3 as follows:

§ 54.1-700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Barber" means any person who shaves, shapes or trims the beard; cuts, singes, shampoos or dyes the hair or applies lotions thereto; applies, treats or massages the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays or other preparations in connection with shaving, cutting or trimming the hair or beard, and practices barbering for compensation and when such services are not performed for the treatment of disease.

"Barbering" means any one or any combination of the following acts, when done on the human body for compensation and not for the treatment of disease, shaving, shaping and trimming the beard; cutting, singeing, shampooing or dyeing the hair or applying lotions thereto; applications, treatment or massages of the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays, or other preparations in connection with shaving, cutting or trimming the hair or a beard. The term "barbering" shall not apply to the acts described hereinabove when performed by any person in his home if such service is not offered to the public.

"Barber instructor" means any person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of barbering.

"Barbershop" means any establishment or place of business within which the practice of barbering is engaged in or carried on by one or more barbers.

"Board" means the Board for Barbers and Cosmetology.

"Body-piercer" means any person who for remuneration penetrates the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing" means the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing salon" means any place in which a fee is charged for the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing school" means a place or establishment licensed by the Board to accept and train students in body-piercing.

"Braiding salon" means any commercial establishment, residence, vehicle, or other establishment, place, or event wherein hair braiding is offered or practiced on a regular basis for compensation.

"Braiding school" means a place or establishment licensed by the Board to accept and train students and which offers a hair braiding curriculum approved by the Board.

"Cosmetologist" means any person who administers cosmetic treatments; manicures or pedicures the nails of any person; arranges, braids, dresses, curls, waves, cleanses, cuts, shapes, singes, waxes, tweezes, shaves, bleaches, colors, relaxes, straightens, or performs similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances unless such acts as adjusting, combing, or brushing prestyled wigs or hairpieces do not alter the prestyled nature of the wig or hairpiece, and practices cosmetology for compensation.

"Cosmetology" includes, but is not limited to, the following practices: administering cosmetic treatments; manicuring or pedicuring the nails of any person; arranging, braiding, dressing, curling, waving, cleansing, cutting, shaping, singeing, waxing, tweezing, shaving, bleaching, coloring, relaxing, straightening, or similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances, but shall not include such acts as adjusting, combing, or brushing prestyled wigs or hairpieces when such acts do not alter the prestyled nature of the wig or hairpiece.

"Cosmetology instructor" means a person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of cosmetology.

"Cosmetology salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein cosmetology is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Esthetician" means a person who engages in the practice of esthetics for compensation.

"Esthetics" includes, but is not limited to, the following practices of administering cosmetic treatments to enhance or improve the appearance of the skin: cleansing, toning, performing effleurage or other related movements, stimulating, exfoliating, or performing any other similar

procedure on the skin of the human body or scalp by means of cosmetic preparations, treatments, any nonlaser device, electrical, mechanical, or manual, for care of the skin; applying make-up or eyelashes to any person, tinting or perming eyelashes and eyebrows, and lightening hair on the body except the scalp; and removing unwanted hair from the body of any person by the use of tweezing, chemical, or mechanical means. However, "esthetics" is not a healing art and shall not include any practice, activity, or treatment that constitutes the practice of medicine, osteopathic medicine, or chiropractic. The terms "healing arts," "practice of medicine," "practice of osteopathic medicine," and "practice of chiropractic" shall mean the same as those terms are defined in § 54.1-2900.

"Esthetics instructor" means a licensed esthetician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of esthetics.

"Esthetics spa" means any commercial establishment, residence, vehicle, or other establishment, place, or event wherein esthetics is offered or practiced on a regular basis for compensation under regulations of the Board.

"Hair braider" means a person who engages in the practice of hair braiding on a regular basis for compensation.

"Hair braiding" means the braiding, twisting, wrapping, weaving, extending, or locking of natural human hair by hand or mechanical device, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

"Master esthetician" means a licensed esthetician who, in addition to the practice of esthetics, offers to the public for compensation, without the use of laser technology, lymphatic drainage, chemical exfoliation, or microdermabrasion, and who has met such additional requirements as determined by the Board to practice lymphatic drainage, chemical exfoliation with products other than Schedules II through VI controlled substances as defined in the Drug Control Act (§ 54.1-3400 et seq.), and microdermabrasion of the epidermis.

"Nail care" means manicuring or pedicuring natural nails or performing artificial nail services.

"Nail salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein nail care is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Nail school" means a place or establishment licensed by the board to accept and train students in nail care.

"Nail technician" means any person who for compensation manicures or pedicures natural nails, or who performs artificial nail services for compensation, or any combination thereof.

"Nail technician instructor" means a licensed nail technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of nail care.

"Physical (wax) depilatory" means the wax depilatory product or substance used to remove superfluous hair.

"School of cosmetology" means a place or establishment licensed by the Board to accept and train students and which offers a cosmetology curriculum approved by the Board.

"School of esthetics" means a place or establishment licensed by the Board to accept and train students and which offers an esthetics curriculum approved by the Board.

"Tattoo parlor" means any place in which tattooing is offered or practiced.

"Tattoo school" means a place or establishment licensed by the Board to accept and train students in tattooing.

"Tattooer" means any person who for remuneration practices tattooing.

"Tattooing" means the placing of designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.

"Wax technician" means any person licensed by the Board who removes hair from the hair follicle using a physical (wax) depilatory or by tweezing.

"Wax technician instructor" means a licensed wax technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of waxing.

"Waxing" means the temporary removal of superfluous hair from the hair follicle on any area of the human body through the use of a physical (wax) depilatory or by tweezing.

"Waxing salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein waxing is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Waxing school" means a place or establishment licensed by the Board to accept and train students in waxing.

§ 54.1-701. Exemptions.

The provisions of this chapter shall not apply to:

1. Persons authorized by the laws of the Commonwealth to practice medicine and surgery or osteopathy or chiropractic;
2. Registered nurses licensed to practice in the Commonwealth;
3. Persons employed in state or local penal or correctional institutions, rehabilitation centers, sanatoria, or institutions for care and treatment of the mentally ill or mentally deficient or for care and treatment of geriatric patients, as barbers, cosmetologists, wax technicians, nail technicians, hair braiders, *estheticians*, barber instructors, cosmetology instructors, wax technician instructors, ~~or~~ nail technician instructors, *or esthetics instructors* who practice only on inmates of or patients in such sanatoria or institutions;
4. Persons licensed as funeral directors or embalmers in the Commonwealth;
5. Gratuitous services as a barber, nail technician, cosmetologist, wax technician, hair braider, tattooer, ~~or~~ body-piercer, *or esthetician*;
6. Students enrolled in an approved school taking a course in barbering, nail care, cosmetology, waxing, hair braiding, tattooing, ~~or~~ body-piercing, *or esthetics*;
7. Persons working in a cosmetology salon whose duties are expressly confined to hair braiding or the shampooing and cleansing of human hair under the direct supervision of a cosmetologist or barber;
8. Apprentices serving in a barbershop, nail salon, waxing salon, cosmetology salon, ~~or~~ hair braiding salon, *or esthetics spa* licensed by the Board in accordance with the Board's regulations; ~~and~~
9. Schools of barbering, nail care, waxing, cosmetology, or hair braiding in public schools; *and*
10. *Persons whose activities are confined solely to applying make-up, including such activities that are ancillary to applying make-up.*

§ 54.1-702. Board for Barbers and Cosmetology; membership; officers; quorum.

A. The Board for Barbers and Cosmetology shall be composed of ~~eight~~ 10 members, ~~of whom~~ *as follows*: two members shall be licensed barbers, one of whom may be an owner or operator of a barber school; two members shall be licensed cosmetologists, at least one of whom shall be a salon owner and one of whom may be an owner or operator of a cosmetology school; ~~and~~ one member shall be a licensed nail technician or a licensed cosmetologist engaged primarily in the practice of nail care, each of whom shall have been licensed in their respective professions for at least three years immediately prior to appointment; one member ~~who~~ shall be either a licensed tattooer or a licensed body-piercer; *two members shall be licensed estheticians, at least one of whom shall be an esthetics salon owner and one of whom may be an owner, operator, or designated representative of a licensed esthetics school*; and two citizen members. The terms of Board members shall be four years. No member shall serve for more than two full successive

terms. The Board shall elect a chairman and a ~~vice chairman~~ *vice chairman*. A majority of the Board shall constitute a quorum.

B. The Governor shall appoint to the Board two estheticians who have practiced as an esthetician for at least five consecutive years immediately prior to appointment, effective July 1, 2005. The esthetician members shall not vote on any matters before the Board, except matters related to esthetics, until July 1, 2007.

Of the esthetician members initially appointed to the Board, one shall be appointed for a term of two years. Thereafter, all such appointments shall be for terms of four years, except that appointment to fill vacancies shall be for the unexpired terms.

§ 54.1-703. License required.

No person shall offer to engage in or engage in barbering, cosmetology, nail care, waxing, hair braiding, tattooing, ~~or~~ body-piercing, *or esthetics* without a valid license issued by the Board, except as provided in § 54.1-701.

§ 54.1-703.3. Waiver of examination; estheticians.

The Board shall waive the examination requirements for licensure as an esthetician or master esthetician for any individual who (i) makes application for licensure between July 1, 2007, and July 1, 2008; (ii) otherwise complies with Board regulations relating to moral turpitude; and (iii) meets any of the following conditions:

- 1. Has at least three years of documented work experience as an esthetician or a master esthetician that is deemed satisfactory by the Board;*
- 2. Has completed a training program that is deemed satisfactory by the Board; or*
- 3. Holds an unexpired certificate of registration, certification, or license as an esthetician or a master esthetician issued to him on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States, or the District of Columbia.*

§ 54.1-704.1. License required for barbershop, cosmetology salon, nail care salon, waxing salon, hair braiding salon, tattoo parlor, body-piercing salon, and esthetics spa.

No individual or entity shall operate a barbershop, cosmetology salon, nail care salon, waxing salon, hair braiding salon, tattoo parlor, ~~or~~ body-piercing salon, *or esthetics spa* without a valid license issued by the Board.

The provisions of this section shall not apply to a licensed barber, cosmetologist, nail technician, waxing technician, tattooer, ~~or~~ body-piercer, *or esthetician* who does not have an ownership interest in a licensed barbershop, cosmetology salon, nail care salon, waxing salon, hair braiding salon, tattoo parlor, ~~or~~ body-piercing salon, *or esthetics spa* in which he is employed.

§ 54.1-704.2. License required for schools of barbering, cosmetology, nail care, waxing, hair braiding, tattooing, body-piercing, or esthetics.

Except as provided in § 54.1-701, no person, firm or corporation shall operate or attempt to operate a school of barbering, cosmetology, nail care, waxing, hair braiding, tattooing, ~~or~~body-piercing, *or esthetics* unless licensed by the Board pursuant to its regulations.

§ 54.1-705. Inspections.

A. Inspectors and sanitarians of the State Department of Health, or an affiliated local health department, may inspect each barbershop, cosmetology salon, waxing salon, nail care salon, hair braiding salon, tattoo parlor, ~~and~~body-piercing salon, *and esthetics spa* in the Commonwealth regularly. Any infractions shall be immediately reported to the Health Department and the Director of the Department of Professional and Occupational Regulation for disciplinary action.

B. The Board may inspect barbershops, barber schools, cosmetology salons and schools, waxing salons and schools, nail care salons and schools, hair braiding salons and schools, tattoo parlors and schools, ~~and~~body-piercing salons and schools, *and esthetics spas and schools* for compliance with regulations promulgated by the Board.

C. The Board shall specify procedures for enforcement of compliance with the disease control and disclosure requirements of § 18.2-371.3, including unannounced inspections by appropriate personnel.

D. The Board or the Virginia Department of Health, or an affiliated local health department, may regulate the sanitary condition of the personnel, equipment and premises of tattoo parlors and body-piercing salons.

§ 54.1-706. Different requirements for licensure.

The Board shall have the discretion to impose different requirements for licensure for the practice of barbering, cosmetology, nail care, waxing, hair braiding, tattooing, ~~and~~body-piercing, *and esthetics*.

2. That the provisions of this act shall become effective on July 1, 2007, except that § 54.1-702 of this act shall become effective on July 1, 2005.

3. That the Board for Barbers and Cosmetology shall adopt final regulations to implement the provisions of this act to be effective on or before July 1, 2007.

<http://leg1.state.va.us/cgi-bin/legp504.exe?ses=051&typ=bil&val=hb2510&Submit=Go>

The Board for Barbers and Cosmetology is mandated to promulgate these proposed regulations in accordance with § 54.1-201 of the Code of Virginia..

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

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

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.
2. To examine, or cause to be examined, the qualifications of each applicant for certification or licensure within its particular regulatory system, including when necessary the preparation, administration and grading of examinations.
3. To certify or license qualified applicants as practitioners of the particular profession or occupation regulated by such board.
4. To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.
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. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.
6. To ensure that inspections are conducted relating to the practice of each practitioner certified or licensed by the regulatory board to ensure that the practitioner is conducting his practice in a competent manner and within the lawful regulations promulgated by the board.
7. To place a regulant on probation or revoke, suspend or fail to renew a certificate or license for just causes as enumerated in regulations of the board. Conditions of probation may include, but not be limited to the successful completion of remedial education or examination.
8. To receive complaints concerning the conduct of any person whose activities are regulated by the regulatory board and to take appropriate disciplinary action if warranted.
9. To promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

(1979, c. 408, § 54-1.28; 1983, c. 569; 1988, c. 765; 1993, c. 499; 2005, c. 383.)

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The Board proposes to promulgate regulations governing the licensure and practice of esthetics as directed by Chapter 829 of the 2005 Acts of the Assembly. The proposed regulatory action is necessary to ensure minimal competence of esthetics practitioners.

This regulatory action will establish qualifications for licensure, standards of practice, requirements for maintaining licensure, and fees necessary to administer the licensure of the practice of esthetics, estheticians, master estheticians, esthetics spas, esthetics instructors, and schools of esthetics in the Commonwealth of Virginia.

As directed by the 2005 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 spas and schools where tattooing or body-piercing services are being provided.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

There is no available alternative for the promulgation of regulations for the Board for Barbers and Cosmetology is mandated to comply with the statutory mandate to promulgate regulations governing the licensure and practice of esthetics as directed by Chapter 829 of the 2005 Acts of the Assembly.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action is not expected to have any significant impact on the institution of the family and family stability.