



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	41
<b>VAC Chapter Number:</b>	40
<b>Regulation Title:</b>	Board for Barbers and Cosmetology Rules and Regulations
<b>Action Title:</b>	Emergency
<b>Date:</b>	June 28, 2002

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.*

The 2000 General Assembly passed legislation combining the Board for Barbers and Board for Cosmetology ( See Acts 2000, c. 726). The legislation provided “That the regulations of the Board for Barbers and the Board for Cosmetology in effect on June 30, 2000, shall remain in effect until July 1, 2002, or until the Board for Barbers and Cosmetology adopts new regulations, whichever occurs first.” The combined Board will have failed to adopt new regulations by the July 1, 2002 date. Therefore, on July 1, 2002, no regulations will be in place. The regulations contain the requirements for obtaining a license, standards of conduct and inspection standards.

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, 2002. The health, safety and welfare of the public would be endangered without the issuance of licenses and enforcement of regulations which the

General Assembly determined were necessary for public protection when it initially enacted legislation requiring the regulation of these occupations.

### Licensing

- 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). The statutes referencing temporary licenses and schools specifically state that the licenses are to be issued in accordance with the Board's regulations and do not contain any provisions to determine eligibility. The statutes referencing individual licenses and shops and salons do not reference the regulations but simply state that a license is required, no provisions to determine eligibility are included. Section 54.1-201, containing the powers and duties of the Boards, gives the Board the authority to promulgate regulations and establish qualifications for licensure. All of the qualifications for licensure for all licenses issued by the Board are contained in regulation, therefore, eligibility cannot be determined without regulations. Eligibility requirements are contained in the emergency regulations as follows: individuals, beginning with 18 VAC 41-40-20; temporary licenses, 18 VAC 41-40-90; shops and salons, 18 VAC 41-40-120; schools 18 VAC 41-40-130).
- The Board will be unable to process applications for licensure due to the inability to collect fees. The statute provides the Board with the authority to levy and collect fees for licensure and to promulgate regulations necessary to effectively administer the regulatory system administered by the Board (§ 54.1-201). The fees are established through the regulatory process. Without regulations, the Board has no authority to collect the fees. Application fees are contained in 18 VAC 41-40-140 of the emergency regulations.
- The Board will be unable to renew licenses due to the inability to collect fees. The statute provides the Board with the authority to levy and collect fees for renewal and to promulgate regulations necessary to effectively administer the regulatory system administered by the Board (§ 54.1-201). The fees are established through the regulatory process. Without regulations, the Board has no authority to collect the fees. Renewal fees are contained in 18 VAC 41-40-140 of the emergency regulations.

### Enforcement

- The Board will not have authority to take disciplinary action after July 1, 2002. The authority to discipline is found in the emergency regulations at 18 VAC 41-40-280. This section also sets forth the types of activities that constitute prohibited conduct. No such language is found in the statutes.
- Inspections of licensed facilities will not be performed because the inspection is to determine compliance with the Board's regulations. (See Title 54.1, Chapter 7, Section 54.2-705). Sanitation and safety standards are contained in the emergency regulations at 18 VAC 41-40-270.

Examples of past disciplinary actions taken as a result of citizen complaints include:

- Imposition of a fine for cutting a half-inch gash in the skin of a customer's hand.
- Imposition of a fine for negligence because the customer received a severe paronychia infection with subsequent dermatitis from a cut while receiving nail services.
- The State of Georgia determined that it had issued licenses to cosmetologists based upon false documents. Some of the individuals issued a Georgia license obtained licenses in Virginia by reciprocity. Information received from Georgia resulted in the revocation of approximately 60 licenses in Virginia.
- Investigations of licensed shops and salons has led to the discovery of unlicensed individuals working in the shops and salons and the imposition of \$5,000 in fines and license revocation. The unlicensed individuals pose a threat to public safety because they have not demonstrated minimum competency to practice in a manner which ensures public safety as the General Assembly intended when requiring licensure of these occupations.

Commerce would be disrupted by the failure to issue licenses to newly qualified applicants and to renew existing licenses. The proposed regulations currently in the regulatory review process will be effective in November or December of this year. DPOR estimates that approximately 1,588 individuals and 287 businesses will apply for licensure and 11,604 individuals and 1,634 business will apply to renew licenses during the months of July through November. Therefore, the failure to adopt emergency regulations will result in approximately 15,112 individuals and businesses going out of business or engaging in criminal activity by practicing without a license (§ 54.1-111).

## 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.*

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§ 2.2-4011.A of the *Code of Virginia* - Emergency regulations; publication; exceptions. This provision defines "emergency situation" as a situation involving an imminent threat to public health or safety and gives the agency, in this case the Board, the authority to determine when an emergency exists.

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

§ 54.1-201.5 of the *Code of Virginia* - Powers and duties of regulatory boards. This provision describes the powers and duties of regulatory boards 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. The Board for Barbers and Cosmetology met on June 26, 2002 and voted to consider its regulations on an emergency basis due to immediate threat to the public's health and safety, to adopt the same regulations currently in the regulatory review process as emergency regulations, and for the Director of the Department of Professional and Occupational Regulation to immediately request approval of the emergency regulations by the Governor.

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

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 emergency regulations will change the VAC Chapter Number to 18 VAC 41-40-10 et seq. These regulations will contain provisions for both barbering and cosmetology as directed by Acts 2000,c.726, cl.3.; standardize and clarify requirements for licensure; 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; extend the temporary work permit period from 30 to 45 days to allow sufficient time for posting examination scores and avoid interruption of employment; and increase fees.

The text of the emergency regulations is identical to the text of the proposed regulations which have been approved by the Department of Planning and Budget, the Secretary of Commerce and Trade, and the Governor. In addition, the Office of the Attorney General issued a letter of assurance on the proposed regulations and stated that Board has the statutory authority to adopt emergency regulations and that it comports with applicable state and/or federal law.

The public will have the opportunity to comment on the approved proposed regulations during the 60-day public comment period which will begin upon publication in the *Register* after approval of the Governor. In addition, notice of the special Board meeting held on June 26, 2002 to act on this matter was publicized on DPOR’s website and the following organizations were notified of the meeting by telephone:

Ms. Regina Lundy, (757) 934-8720  
Regional Officer, Virginia State Beauticians Association  
Licensed Cosmetologist; Owner Angela’s Unisex Salon

Mr. Matt Roberts, (804) 382-6422  
Officer, Virginia Chapter of the National Cosmetology Association  
Licensed Nail Technician; Owner RMD Products Company Inc.,  
Licensed Nail Technician School  
Nail Care Products Manufacturer

Ms. Nancy King, (301) 351-3337  
President, Officer, or Representative of the following organizations and associations:

American Beauty Association  
Nail Manufacturers Counsel  
Esthetics Manufacturer’s Association  
Association of Electric File Manufacturers

No comments were received.

**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.*

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Failure to enact emergency regulations will result in the newly created Board for Barbers and Cosmetology having no regulations on July 1, 2002 to implement its statutory authority . See *Emergency Preamble* Section.

**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.

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The emergency regulatory actions are not anticipated to have any significant impact on Virginia's families.