



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

18 VAC 41-50 Tattooing Regulations
18 VAC 41-60 Body-Piercing Regulations
Department of Professional and Occupational Regulation
Town Hall Action/Stage: 4846 / 8921
April 13, 2020

Summary of the Proposed Amendments to Regulation

The Board for Barbers and Cosmetology (Board) proposes to: 1) add the responsible management system for tracking ownership of tattooing and body piercing businesses, 2) alter the short-term tattooer license structure, 3) increase requirements for tattooing and permanent cosmetic tattooing school instructors, 4) amend curriculum requirements and increase minimum number of hours of instruction in tattooing schools and permanent cosmetic tattooing schools, 5) allow additional transferring of credit between schools, 6) enable master permanent cosmetic tattooing programs to be established, 7) address the release of tattoo school records, and 8) make other amendments for improved clarity.

Background

18 VAC 41-50 *Tattooing Regulations* was first promulgated in 2006¹ and 18 VAC 41-60 *Body-Piercing Regulations* was first promulgated in 2007.² This is the first comprehensive review and update of both these regulations since then. An economic impact analysis report for this action at the proposed stage was completed on August 24, 2018.³ After receiving considerable feedback after the publication of the proposed stage from industry stakeholders as well as from two new Board members who each possess a tattooing license, the Board has now issued a revised proposed stage with additional proposed changes for 18 VAC

¹ See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=1114>

² See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=1496>

³ See https://townhall.virginia.gov/L/GetFile.cfm?File=134\4846\8291\EIA_DPOR_8291_v2.pdf

41□50 *Tattooing Regulations*. This report addresses the cumulative proposed amendments in the revised proposed stage from the current regulations in effect.⁴

Estimated Economic Impact

Responsible Management

The Board proposes to add the requirement that applicants for tattoo parlor, event tattoo parlor,⁵ permanent cosmetic tattoo salon, tattooing school, permanent cosmetic tattooing school, body piercing salon, or body piercing ear only salon, disclose the names of the firm’s responsible management. The proposed regulation defines responsible management as:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

The applicant and all members of the responsible management would be required to be in good standing as a licensed shop or salon in Virginia and all other jurisdictions where licensed, and disclose any disciplinary action taken in Virginia and all other jurisdictions. This would allow the Board to better identify when individuals previously disciplined by the Board are attempting to re-enter the profession. To the extent that this reduces the likelihood that individuals who have harmed the public re-enter the tattooing and body piercing professions without the Board’s knowledge, the proposed responsible management requirement may be beneficial. The direct cost of disclosing names would likely be minimal.

⁴ The agency background document for the revised proposed stage includes a table called “Detail of Changes Made Since the Previous Stage,” which describes the changes between the proposed and revised proposed stages. See https://townhall.virginia.gov/L/GetFile.cfm?File=134\4846\8921\AgencyStatement_DPOR_8921_v1.pdf

⁵ The Board proposes to change the current name “Limited term tattoo parlor” to “event tattoo parlor” in order to better reflect the purpose of the license.

Short-term Tattooer License

The current regulation contains a limited term tattooer license that is effective for five consecutive days prior to the expiration date. A person may obtain a maximum of five limited term tattooer licenses within a calendar year, and a maximum of two limited term tattooer licenses within 30 consecutive days.

Tattoo parlor owners at times find having guest tattooers to be good for business. According to the Department of Professional and Occupational Regulation (DPOR), potential guest tattooers from out-of-state and the potential hosts of the guest tattooers have often found the five-day licensing period inadequate to sufficiently justify traveling to Virginia. Also according to the agency, out-of-state tattooers coming to Virginia for tattoo conventions and the licensee hosts of the convention have found the need to reapply for licensure and pay the licensing fee multiple times each year to be onerous. The Board proposes to eliminate the current five-day limited-term tattooer license and replace it with a two-week guest tattooer license. A person could obtain a maximum of five guest tattooer licenses within a calendar year, and there would be no 30 consecutive day limit.

Both the existing and revised proposed tattooing regulation contain the same fee for all individual licenses: \$75 through August 31, 2020, and \$105 for September 1, 2020, and after. Under the current regulation, a tattoo parlor could only host a guest tattooer for at most ten days in a month, and that would involve two separate applications and \$210 in fees.⁶ Under the revised proposed regulation, a tattoo parlor could host a guest for 14 days in a month with one application at \$105 in fees, or 28 days in a month with two applications and \$210 in fees.

As mentioned above, the limited term tattooer license that is effective for only five consecutive days has discouraged Virginia tattoo parlors from having out-of-state guest tattooers. The proposed two-week guest tattooer license would likely alleviate that problem by providing sufficient time for the guest tattoo artist to practice and make the trip worthwhile. Additionally, the 14-day license could potentially cover multiple tattooing conventions and encourage greater participation at Virginia conventions as well.

⁶ This is using fees as of September 1, 2020 and after as listed in the current, proposed, and revised proposed regulations.

Tattooing and Permanent Cosmetic Tattooing School Instructors

DPOR reports that there have been numerous complaints concerning tattoo instructors teaching ability. Consequently, the Board proposes to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level. As for cost, DPOR has indicated that it would accept online courses that may cost about \$150 in fees, and 24 hours (spread over six weeks) in time.⁷ The required course may improve the quality of teaching, but the extent to which improvement would occur is not clear.

Further, the Board proposes to increase the minimum number of years of experience as practitioners in order to qualify to be an instructor from three years to five years. According to DPOR, the purpose of increasing the experience requirement from three years to five years is to improve the education outcomes of tattoo school students. The Board received significant feedback from the industry that tattoo school instruction was inadequate to create minimally competent practitioners. The Board received feedback from tattooers that it takes at least five years of practicing in the profession to become skillful enough to teach others. It was said that the first several years in the practice do not afford enough experience to adequately prepare an individual to instruct others in the nuances of the profession. This proposal to increase the minimum amount of experience may have a positive impact on teaching quality, but it also may make it more difficult for schools to find certified instructors.

School Training Hours and Curriculum

According to DPOR there have also been many complaints concerning the abilities of tattooing school graduates. The Board has come to believe that the extensive list of topics that the regulation requires to be addressed within tattooing school and permanent cosmetic tattooing school instruction cannot be adequately done in the current minimum number of clock hours listed in the regulation. It currently states that the curriculum requirements shall be taught over a minimum of 750 hours and 90 hours respectively, for tattooing schools and permanent cosmetic tattooing schools. Thus, the Board proposes to increase the minimums to 1,000 hours and 200 hours respectively. DPOR does not anticipate any objection to these changes. To the extent that

⁷ For example, as of April 13, 2020, the ed2go course Teaching Adult Learners indicated a \$149 fee and 24 hours of course time over 6 weeks. See <https://www.ed2go.com/courses/teacher-professional-development/child-development/ilc/teaching-adult-learners>

tattooing schools and permanent cosmetic tattooing schools have been covering their curriculums in fewer than the proposed minimum number of hours, the proposed increase in minimum number of hours may increase costs for the schools in terms of instructor pay and facility usage. If the additional instruction time results in an increase in competency for the students, the students may have better job prospects and there may be improved health and safety for their future clients.

The current regulation includes “needles” as a topic within the required tattooing school curriculum. The Board proposes to specify that within needles, the following be addressed: 1) groupings, 2) properties, and 3) making. The Board believes this would increase the likelihood that schools will adequately address all three subtopics.

The current definition of "permanent cosmetic tattooer" in the regulation is “any person who for compensation practices permanent cosmetic tattooing known in the industry as basic permanent cosmetic tattooing, including but not limited to eyebrows, eyeliners, lip coloring, lip liners, or full lips.” The Board proposes to add microblading to the definition. According to DPOR, microblading is a new technique for tattooing eyebrows that is driving much of the growth in the permanent makeup industry. The Board also proposes to add microblading to the required permanent cosmetic tattooing school curriculum.

School Transferred Credit

The current regulation states that approved tattooing schools may conduct an assessment of a student's competence in the theory and practical requirements for tattooing and, based on the assessment, give a maximum of 350 hours of credit. According to DPOR, this would only be for previous coursework. The Board proposes to raise the maximum amount of credit that can be awarded to 700 hours. Proposed new language would also state that the school make the assessment based on a review of the student's transcript and the successful completion of a Board-approved competency examination administered by the school. This would be potentially beneficial for students who may not have to repeat course topics that they have previously learned in previous coursework.

The current regulation does not address permanent cosmetic tattooing schools awarding credit for previous coursework. According to DPOR, up until late 2019 the Board did not permit the awarding of such credit. Starting in late 2019, the Board began to allow permanent cosmetic

tattooing schools to award credit for previous coursework. The Board now proposes to specify in the regulation that approved permanent cosmetic tattooing or master permanent cosmetic tattooing programs may conduct an assessment of a student's competence in the respective profession and, based on the assessment, give credit towards the credit hours requirements. Additionally, the proposed language would state that the school make the assessment based on a review of the student's transcript and the successful completion of a board-approved competency examination administered by the school. Again, allowing the granting of credit for previous relevant coursework can potentially be beneficial for students in saved time and perhaps fees.

Master Permanent Cosmetic Tattooing Programs

Only master permanent cosmetic tattooers may for compensation practice advanced permanent cosmetic tattooing, including permanent eye shadow and breast and scar repigmentation or camouflage. According to DPOR, these services are growing in demand, but there has not been a formal training curriculum in place, and individuals have had a hard time finding training in these services. Further, one permanent cosmetic tattooing school sought approval from the Board to offer a master permanent cosmetic tattooing program, but the Board indicated that it could not be approved since the regulation did not include requirements for such a program.⁸ The Board proposes new curriculum requirements and other requirements that would enable master permanent cosmetic tattooing programs to be established. This would be beneficial for both individuals seeking master permanent cosmetic tattooer licensure, and for schools that wish to offer such a program. People seeking permanent cosmetic tattooing services such as permanent eye shadow and breast and scar repigmentation or camouflage may benefit as well with a greater supply of people legally qualified to offer such services.

Tattooing School Records

DPOR has heard frequent complaints that tattooing schools are withholding progress documentation from their students. In response, the Board proposes to require that schools, within 21 days of a student's request, produce documentation and performances completed by that student. This provision would assist students in obtaining their records, which are needed for licensure applications.

⁸ Source: DPOR

Businesses and Entities Affected

The proposed amendments potentially affect the 706 tattooers, 264 tattoo parlors, 13 tattooing instructors, 5 tattoo schools, 516 permanent cosmetic tattooers, 12 master permanent cosmetic tattooers, 31 permanent cosmetic tattoo instructors, 176 permanent cosmetic tattooing salons, 16 permanent cosmetic tattooing schools, 127 body piercers, 90 body piercing salons, 368 “ear-only” body piercers, and 67 body piercer ear only salons licensed by the Board.⁹ The proposal to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level would also affect providers of such courses.

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. The proposal to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level increases the cost of becoming an instructor. The proposal to increase the minimum practitioner experience requirement to become an instructor from three years to five years eliminates the opportunity for licensed tattooers and licensed permanent cosmetic tattooers with three or four years of experience to earn income through teaching at tattooing schools and permanent cosmetic tattooing schools, respectively. The proposed increase in minimum number of instruction hours would likely increase costs for schools that are not already meeting the minimum. Thus, adverse impact is indicated.

Small Businesses¹⁰ Affected:

Types and Estimated Number of Small Businesses Affected

The proposed amendments affect 264 tattoo parlors, 5 tattoo schools, 176 permanent cosmetic tattooing salons, 16 permanent cosmetic tattooing schools, 90 body piercing salons, and 67 body piercer ear only salons, most or all of which likely qualify as small businesses. Private providers of courses on teaching techniques, most of which are likely small businesses, are also potentially affected.

⁹ Data source: Department of Professional and Occupational Regulation

¹⁰ 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.”

Costs and Other Effects

The proposed replacement of the five-day limited term tattooer license with a 14-day guest limited term tattooer license may result in additional out-of-state guest tattooists and increased revenue for some small tattoo parlors.

The proposal to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level would increase demand for and likely increase revenue for small firms that provide these courses.

At the same time, this proposal paired with the proposal to increase the minimum required experience as a practitioner to qualify for certification as an instructor, would reduce the potential supply of instructors for tattooing schools and permanent cosmetic tattooing schools. The reduced supply of instructors and proposed increase in minimum number of instructional hours may increase cost for some of the small tattooing schools and permanent cosmetic tattooing schools.

The proposed curriculum requirements and other requirements that would enable master permanent cosmetic tattooing programs to be established, would likely result in new such programs, given the interest in providing and receiving such instruction that has been expressed. The revenue of existing small permanent cosmetic tattooing schools that add master programs in response to the proposal may subsequently increase.

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities¹¹ Affected¹²

The proposed amendments do not appear to disproportionately affect particular localities, nor produce costs for local governments.

¹¹ “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.

¹² § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Projected Impact on Employment

The proposal to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level may moderately increase employment at providers of such courses.

Effects on the Use and Value of Private Property

The proposed replacement of the five-day limited term tattooer license with a 14-day guest limited term tattooer license may improve business for some tattooing salons and increase participation at tattooing conventions. The value of these businesses may commensurately increase.

The proposal to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level would increase demand for and perhaps increase the value of private providers of such courses.

This same proposal, paired with the proposal to increase the minimum required experience as a practitioner to qualify for certification as an instructor, would reduce the potential supply of instructors for tattooing schools and permanent cosmetic tattooing schools. The reduced supply of instructors and proposed increase in minimum number of instructional hours may increase cost and reduce the value of some of the tattooing schools and permanent cosmetic tattooing schools.

The proposed curriculum requirements and other requirements that would enable master permanent cosmetic tattooing programs to be established, would likely result in new such programs, given the interest in providing and receiving such instruction that has been expressed. The value of existing permanent cosmetic tattooing schools that add master programs in response to the proposal may subsequently increase.

The proposed amendments do not appear to affect real estate development costs.

Legal Mandates

General: The Department of Planning and Budget 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). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report 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.

Adverse impacts: 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 within the 45-day period.

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.