

PROPOSED RULEMAKINGS

STATE BOARD OF COSMETOLOGY

[49 PA. CODE CH. 7]

Fees—Cosmetology

[43 Pa.B. 1855]

[Saturday, April 6, 2013]

The State Board of Cosmetology (Board) proposes to amend § 7.2 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would provide for an increase to the biennial license renewal fees for all licensees and would also increase certain application fees to cover the costs of processing applications.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The new application fees will be implemented immediately upon publication of the final-form rulemaking. It is anticipated that the new biennial renewal fees will be implemented with the license renewals that are due by January 31, 2015.

Statutory Authority

Section 16(d) of the act of May 3, 1933 (P. L. 242, No. 36) (63 P. S. § 522(d)), known as the Cosmetology Law (act), requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

Background and Need for Amendment

Under section 16(d) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the vast majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees.

In 2009, the Board voted to increase biennial renewal fees by 75% and to increase various application fees to cover the costs associated with processing the applications. However, due to circumstances beyond the Board's control, the regulations to implement those increases were not promulgated since that time.

Subsequently, at the July 9, 2012, Board meeting, representatives of the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2009-2010 through 2010-2011 and projected revenue and expenses through FY 2014-2015. As of the end of FY 2011-2012, the Board had incurred a deficit of over \$2 million. The BFO projected that, without an increase to the biennial renewal fee, the Board would incur a deficit of \$2,958,537 by the end of FY 2012-2013, a deficit of \$3,928,537.56 by the end of FY 2013-2014 and a deficit of \$4,968,537 by the end of FY 2014-2015, with no end in sight to the mounting deficits. Therefore, the BFO recommended that the Board raise fees to meet or exceed projected expenditures in compliance with section 16(d) of the act.

At the present fee level, the Board produces approximately \$6.15 million in revenue over a 2-year period. Conversely, the Board is budgeted to spend \$3.9 million in the current fiscal year and an estimated \$4.02 million in FY 2013-2014, or a deficit of over \$1.77 million during the biennial cycle. The disparity in the amount of revenue capable of being produced over a 2-year period and the amount that is being expended requires the Board to now implement a 90% fee increase to sustain the required level of operations and eliminate the projected deficits. As a result, the Board voted to increase the biennial renewal fees in this proposed rulemaking. The BFO anticipates that the proposed fees will enable the Board to recoup the existing deficits by the end of FY 2017-2018, avoid future deficits and place the Board back on solid financial ground.

Description of Proposed Amendments

Based upon the expense and revenue estimates provided to the Board, the Board proposes to amend § 7.2 to increase the biennial renewal fees for all classes of licensees. The biennial renewal fee for cosmetologists, nail technicians, estheticians and natural hair braiders will increase from \$35 to \$67. The biennial renewal fee for cosmetology and limited practice teachers will increase from \$55 to \$105. The biennial renewal fee for cosmetology and limited practice salons will incur an increase in from \$60 to \$114. Finally, biennial renewal of cosmetology school licenses will increase from \$150 to \$285. Approximately half of the licenses renew as of February 1 of even-numbered years (nail technicians, nail technology teachers, half of cosmetologists, cosmetology teachers and cosmetology schools) and half renew as of February 1 of odd-numbered years (estheticians, esthetics teachers, esthetician salons, nail technician salons, cosmetology salons, natural hair braiders, natural hair braiding teachers, natural hair braiding salons and half of cosmetologists). The Board anticipates that the regulations needed to implement the proposed increases in biennial renewal fees will be in place in time to go into effect for the 2015 renewals.

In addition, as a result of the review of the application fees conducted by the BFO, the Board proposes increases to the fees for the processing of applications for initial licensure of cosmetology and limited practice salons from the current level of \$55 to \$100. The proposed fee schedule would increase the fee for cosmetology schools from \$160 to \$180. Initial licensure of a salon or school requires an inspection by a Regulatory Enforcement Inspector, in addition to the time spent processing the application by Board staff. The existing fees are inadequate to cover the costs of processing the application and performing the inspection. In addition, the Board is proposing to increase the fees required to process a change in a salon license when an inspection is required from \$55 to \$85 and for reinspection of a salon or school from \$40 to \$85. Again, the existing fees are inadequate to cover the costs involved in processing the applications and performing the required inspections. In addition, it has been determined that the fee for processing a change to a salon license when an inspection is not required is also inadequate to

cover the cost of processing the change application. Therefore, the Board is proposing an increase from \$15 to \$30. Finally, the Board is proposing to increase the fees for processing an application for licensure by reciprocity from \$20 to \$60. Initial licensure by reciprocity is significantly more involved than licensure by examination and requires more staff time to process.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fees for all licensee classifications. There are currently about 131,335 licensees expected to renew their licenses during the 2015 and 2016 renewal cycles. In addition, applicants for various licenses will incur greater costs associated with processing applications and conducting inspections. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the proposed rulemaking will not create additional paperwork for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 25, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons should submit written comments, suggestions or objections regarding this proposed rulemaking to Cynthia Montgomery, Regulatory Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication in the *Pennsylvania Bulletin*.

MARY LOU ENOCHES,
Chairperson

Fiscal Note: 16A-4515. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 7. STATE BOARD OF COSMETOLOGY

GENERAL PROVISIONS

§ 7.2. Fees.

Fees charged by the Board are as follows:

	*	*	*	*	*
Licensure of cosmetology salon or limited practice salon					[\$55] \$100
Licensure of cosmetology school					[\$160] \$180
Licensure by reciprocity					[\$20] \$60
	*	*	*	*	*
Biennial renewal of nail technician license					[\$35] \$67
Biennial renewal of esthetician license					[\$35] \$67
Biennial renewal of cosmetologist license					[\$35] \$67
Biennial renewal of natural hair braider license					[\$35] \$67
Biennial renewal of cosmetology teacher or limited practice teacher license					[\$55] \$105
Biennial renewal of cosmetology salon or limited practice salon license					[\$60] \$114
Biennial renewal of cosmetology school license					[\$150] \$285
	*	*	*	*	*
Change in cosmetology salon or limited practice salon (inspection required)					[\$55] \$85
Change in cosmetology salon or limited practice salon (no inspection required)					[\$15] \$30

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Reinspection of cosmetology salon or limited practice salon or cosmetology school **[\$40]**
\$85

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