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TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

Proposed Rule LSA Document #05-137

DIGEST

Amends 820 IAC 5-1-20 concerning license application requirements for tanning facilities. Amends 820 IAC 6-1-2 and 820 IAC 6-1-5 concerning approved cosmetology educators. Adds 820 IAC 7 to establish fees for issuance or renewal of cosmetology school licenses, cosmetology instructor licenses, esthetics instructor licenses, electrology instructor licenses, cosmetology salon licenses, electrology salon licenses, esthetic salon licenses, manicurist salon licenses, cosmetologist licenses, master cosmetologist licenses, electrologist licenses, esthetician licenses, manicurist licenses, shampoo operator licenses, and tanning facility licenses; to establish fees for examinations for licensure to practice as a cosmetology instructor, esthetics instructor, electrology instructor, cosmetologist, master cosmetologist, electrologist, esthetician, manicurist, or shampoo operator; to establish fees for temporary permits; to establish fees for verification of license status to another state or jurisdiction; and to establish fees for issuance and renewal of approval as a cosmetology educator. Repeals 820 IAC 2-2-2. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

1. Estimated Number of Small Businesses Affected by Industry Sector Number:

NAICS 611511	Cosmetology Schools	79
NAICS 812112	Beauty Salons	8,204
NAICS 812113	Nail Salons	819
NAICS 812199	Other Personal Services (tanning salons)	1,621
NAICS 61143	Professional and Management	152
Development Training (continuing education providers)		

2. Estimated Administrative Costs:

The Indiana Professional Licensing Agency (IPLA) provides administrative services to 39 boards, commissions, and committees. These boards, commissions, and committees are charged with regulating a wide range of professionals and entities. The statutes include both standard setting and regulatory authority. By statute, IPLA consolidates budget requests and is urged to consolidate and coordinate operations of the various boards, commissions, and committees where feasible in order to provide efficient and cost effective services. The boards, committees, and commissions are required to establish fees sufficient to cover the cost of operations, both direct and indirect. Fees are deposited into the general fund from which IPLA receives an appropriation.

It is difficult to determine whether fees equal the direct and indirect costs of each board, commission, and committee because IPLA is statutorily required to consolidate functions and budgets where possible. Renewal fee revenues fluctuate depending on the renewal cycle for a profession. In addition, fees are assessed for a variety of functions, and the amounts collected from year to year will vary.

The operations of the cosmetology board are labor intensive with both inspections of facilities and the administration of examinations. Examinations are administered by staff for approximately two weeks out of every month. The board is in the early stages of outsourcing the administration of the examinations. For many years, the maximum statutory examination fee was \$25, which is insufficient to generate enough revenue to utilize a professional examination service. The increase in cost will be more than compensated for by increased benefits including not only a savings of staff time but, also, in the ability to provide applicants with the ability to take the examinations at sites located around the state with almost immediate availability of results. The time for obtaining a license will be shortened.

The board consists of 7 members. The board meets at least 11 times per year in Indianapolis. The board is staffed by a board director, assistant board director, and five case managers. These individuals also staff two other boards. In addition, there are four cosmetology inspectors. The inspectors inspect cosmetology salons, esthetic salons, electrology salons, tanning salons, manicure salons, cosmetology schools, barber shops, and barber schools. In addition to regular inspections, they may at times assist in the investigation of consumer complaints. There is one supervisor of the investigators who is also responsible for inspections and investigations conducted by other IPLA boards and commissions.

The total number of licensees for all cosmetology board license types in 2004 was 59,918. There are approximately 79 cosmetology

schools and 10,639 salons and tanning facilities, all of which must be routinely inspected. The time required for an inspection varies by the size of the facility and the services provided by the facility. There are currently 152 registered continuing education providers. Individual licensees must obtain 16 hours of continuing education every four years.

The board proposes to automate the registration process for continuing education providers. These changes will provide timelier application review, automated renewal, and an on-line database that practitioners can access to find authorized continuing education providers.

Staff salaries and benefits (1/3 director, assistant director, 5 case managers)

\$99,580

Inspector salaries and benefits (four inspectors)

\$167,349

Additional expenses for board members:

Eleven board meetings per year (7 board members)

Per diem

\$2,446 annually

Travel and subsistence

\$12,229 annually

Aside from salaries and benefits for staff, expenses include printing, postage, supplies, equipment, telephone, mileage for the inspectors' automobiles, web-hosting, etc. IPLA revenue is also used to support the operations of other state agencies with which it does business such as IDOA, ATG, SBA, and IOT.

3. Estimated Total Annual Economic Impact on Small Businesses

Fees for tanning facilities were set by statute and the board is not recommending increases in the amount of these fees. Cosmetology salon fees are low in proportion to what is assessed to tanning facilities. Salon fees need to be increased to cover the cost of inspections and the cost of administration.

Fees for individual licenses have, up until July 1, 2005, been set by statute. The change in the law will allow the cosmetology examiners to increase their fees to both support the operations of the board and to make Indiana's fees comparable with what is charged in sister states.

Fees have not been assessed for temporary permits, having been previously prohibited by statute. The prohibition has been repealed. The processing of an application for a temporary permit utilizes agency resources. The agency should recoup these expenses.

For schools, salons, tanning facilities, and continuing education educators (providers), the annual estimated economic impact is as follows:

	Current Revenue	Projected Revenue
Schools	\$2,800	\$3,500
Cosmetology Salons*	\$93,920	\$271,300
Tanning Facilities	\$174,400	\$174,400
CE Educators	\$0	\$26,800
*all types		

4. Justification of Requirements or Costs

Pursuant to IC 25-1-8-2, fees shall not be less than are required to pay all of the costs, both direct and indirect, of the operation of the cosmetology board. In 2005, the General Assembly enacted SEA 139 (P.L.194-2005) to give the Indiana Professional Licensing Agency and the boards, commissions, and committees it serves the authority to set fees by rule that had previously been set by statute. This change was considered imperative in order for the boards and commissions to keep up with the rising costs of national examinations and other expenses associated with operating a licensing board. However, it should be emphasized that the proposed rule changes will not increase or decrease the number of individuals or small businesses already affected by the current regulations.

5. Explanation of Determination

The board sought to set fees at the minimum levels needed in order to comply with IC 25-1-8-2.

6. Supporting Data, Studies, or Analyses

The agency used the following data in determining the fiscal impact of the rule:

The board conducted a comparison of fees assessed in various states. The following states were surveyed: Idaho, Iowa, Kentucky, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin. Not all of these states issue each type of license. The current application fee for cosmetology schools is \$400. The proposed rule increases this fee to \$500. The average application fee in the surveyed states is \$510.50. The current renewal fee for cosmetology schools is \$400 every four years. The proposed rule increases this fee to \$500 every four years or \$125 per year. The average annual renewal fee in the surveyed states is \$136.

The current application fee for a tanning facility is \$200. The current renewal fee for a tanning facility is \$200 every two years. The board is not increasing these fees.

The current application fee for cosmetology salons, manicuring salons, electrology salons, and esthetic salons is \$40. The renewal

fee for each of these business entities is \$10 per year. These fees are insufficient to cover the cost of providing services for salons. The current application fee for individual licenses is \$40. The average individual application fee in the states surveyed is \$65. The agency based its conclusions on the following assumptions:

Currently, a staff of seven employees works for the State Board of Cosmetology Examiners. These employees also staff the Barber and Funeral Boards. An additional four employees serve as inspectors and are on the road. In addition, other IPLA employees provide services to the Cosmetology Board and the thirty-eight other boards and commissions served by the IPLA. These include executive staff, legal, IT, HRD, receptionists, mail room, etc. Aside from salaries and benefits for staff, expenses include printing, postage, supplies, equipment, telephone, mileage for the inspectors' automobiles, web-hosting, etc. IPLA revenue is also used to support the operations of other state agencies with which it does business such as IDOA, ATG, SBA, and IOT.

820 IAC 2-2-2

820 IAC 6-1-5

820 IAC 5-1-20

820 IAC 7

820 IAC 6-1-2

SECTION 1. 820 IAC 5-1-20 IS AMENDED TO READ AS FOLLOWS:

820 IAC 5-1-20 License application required

Authority: IC 25-8-15.4-23

Affected: IC 25-8-15.4

Sec. 20. To obtain a license to operate a tanning facility, a person must do the following:

(1) File an application with the board on a form prescribed by the board. Such information shall include the following:

(A) The name, address, and telephone number of the following:

(i) The tanning facility.

(ii) The owner of the tanning facility.

(iii) If the licensee is a corporation, all shareholders owning **at least** five percent (5%) ~~or greater~~ who own a sunlamp product.

(iv) If the licensee is a partnership, all partners of a business who own a sunlamp product.

(v) All settlors, trustees, and beneficiaries of trusts who own a sunlamp product.

(B) If the facility is mobile, the location, by address, at which the facility will be parked during the hours it is open for business.

(C) A signed and dated certification that the applicant has read and understands the requirements of this rule.

(D) All additional information requested by the ~~department~~ **board** to substantiate that the proposed facility can reasonably be expected to provide access to sunlamp products without causing a health or safety hazard to its customers.

(2) Pay ~~a the fee of two hundred dollars (\$200):~~ **set by the board in 820 IAC 7.**

~~(3) Each person operating a tanning facility on the effective date of this rule shall apply for a permit no later than sixty (60) days following the effective date of this rule:~~

~~(4) (3) Each person establishing or acquiring a tanning facility after the effective date of this rule shall:~~

~~(A) apply to the board for a license; and~~

~~(B) obtain such the license; prior to~~

before operating the facility.

~~(5) (4) The owner shall maintain and make available for inspection written records that must include the:~~

~~(A) manufacturer;~~

~~(B) year and month of manufacture;~~

~~(C) model number;~~

~~(D) serial number; and~~

~~(E) type;~~

of each sunlamp product located within the facility.

(State Board of Cosmetology Examiners; 820 IAC 5-1-20; filed Mar 17, 1992, 10:20 a.m.: 15 IR 1378; filed Sep 17, 1998, 3:55 p.m.: 22 IR 457; readopted filed Jul 17, 2001, 9:57 a.m.: 24 IR 4236) NOTE: Transferred from the Indiana State Department of Health (410 IAC 6-13-20) to the State Board of Cosmetology Examiners (820 IAC 5-1-20) by P.L.142-1995, SECTION 33, effective July 1, 1995.

SECTION 2. 820 IAC 6-1-2 IS AMENDED TO READ AS FOLLOWS:

820 IAC 6-1-2 Application for approval as cosmetology educator

Authority: IC 25-8-3-23

Affected: IC 25-8

Sec. 2. **(a)** Educational institutions, organizations, or individuals applying for board approval as an approved cosmetology educator shall submit the following information:

- (1) Name, address, telephone number, **electronic mail address (if any)**, and facsimile (FAX) number (if any) of the applicant.
- (2) If the applicant is a:
 - (A) partnership, the names and addresses of the partners;
 - ~~(3) If the applicant is a~~ **(B)** corporation, the names and addresses of the officers and directors; **and**
 - ~~(4) If the applicant is a~~ **(C)** limited liability company, the names and addresses of the members and managers.

(b) Educational institutions, organizations, or individuals applying for board approval as an approved cosmetology educator shall submit the fee required under 820 IAC 7. *(State Board of Cosmetology Examiners; 820 IAC 6-1-2; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3466; readopted filed Jul 18, 2002, 12:21 p.m.: 25 IR 4221)*

SECTION 3. 820 IAC 6-1-5 IS AMENDED TO READ AS FOLLOWS:

820 IAC 6-1-5 Renewal of cosmetology educator approval

Authority: IC 25-8-3-23

Affected: IC 25-8-15-2

Sec. 5. Board approval of a cosmetology educator under IC 25-8-15-2 expires on December ~~31~~ **15** of each odd-numbered year. In order to renew board approval, an approved cosmetology educator under IC 25-8-15-2 must submit ~~a letter to the following:~~

- (1) An application for renewal in the form and manner provided by the board.**
- (2) The requesting such renewal by December 1 of that year: fee required under 820 IAC 7.**

(State Board of Cosmetology Examiners; 820 IAC 6-1-5; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3467; readopted filed Jul 18, 2002, 12:21 p.m.: 25 IR 4221)

SECTION 4. 820 IAC 7 IS ADDED TO READ AS FOLLOWS:

ARTICLE 7. FEES

Rule 1. Fees Applicable to Licensure; Verification; Duplicate Licenses

820 IAC 7-1-1 Application/issuance fees

Authority: IC 25-1-8-2; IC 25-8-4

Affected: IC 25-8

Sec. 1. The board shall charge and collect the following application/issuance fees for licenses:

(1) Cosmetologist	\$50
(2) Master cosmetologist	\$50
(3) Electrologist	\$50
(4) Esthetician	\$50
(5) Manicurist	\$50
(6) Shampoo operator	\$50
(7) Cosmetology instructor	\$50
(8) Esthetics instructor	\$50
(9) Electrology instructor	\$50
(10) Cosmetology school	\$500
(11) Cosmetology salon	\$50
(12) Electrology salon	\$50
(13) Esthetic salon	\$50
(14) Manicurist salon	\$50
(15) Tanning facility	\$200
(16) Cosmetology continuing education educator	\$200

(State Board of Cosmetology Examiners; 820 IAC 7-1-1)

820 IAC 7-1-2 Examination fees

Authority: IC 25-1-8-2; IC 25-8-4

Affected: IC 25-8

Sec. 2. An applicant for licensure by examination shall pay the examination or reexamination fee assessed by the professional examination service that administers the examination directly to the professional examination service. *(State Board of Cosmetology Examiners; 820 IAC 7-1-2)*

820 IAC 7-1-3 Temporary permit fee

Authority: IC 25-1-8-2; IC 25-8-4

Affected: IC 25-8

Sec. 3. The board shall charge and collect the following fees for temporary permits:

(1) Cosmetologist	\$10
(2) Master cosmetologist	\$10
(3) Electrologist	\$10
(4) Esthetician	\$10
(5) Manicurist	\$10
(6) Shampoo operator	\$10

(State Board of Cosmetology Examiners; 820 IAC 7-1-3)

820 IAC 7-1-4 Renewal fees

Authority: IC 25-1-8-2; IC 25-8-4

Affected: IC 25-8

Sec. 4. (a) The board shall charge and collect the following renewal fees every four (4) years for licenses:

(1) Cosmetologist	\$100
(2) Master cosmetologist	\$100
(3) Electrologist	\$100
(4) Esthetician	\$100
(5) Manicurist	\$100
(6) Shampoo operator	\$100
(7) Cosmetology instructor	\$100
(8) Esthetics instructor	\$100
(9) Electrology instructor	\$100
(10) Cosmetology school	\$500
(11) Cosmetology salon	\$150
(12) Electrology salon	\$150
(13) Esthetic salon	\$150
(14) Manicurist salon	\$150
(15) Tanning facility	\$200

(b) The board shall charge and collect a three hundred dollar (\$300) renewal fee biennially for a cosmetology continuing education educator license. *(State Board of Cosmetology Examiners; 820 IAC 7-1-4)*

820 IAC 7-1-5 Fee for verification of a license to another state

Authority: IC 25-1-8-2; IC 25-8-4

Affected: IC 25-8

Sec. 5. The board shall charge and collect a ten dollar (\$10) fee for verification of a license to another state or jurisdiction. *(State Board of Cosmetology Examiners; 820 IAC 7-1-5)*

820 IAC 7-1-6 Fee for a duplicate permit

Authority: IC 25-1-8-2; IC 25-8-4

Affected: IC 25-8

Sec. 6. The board shall charge and collect a ten dollar (\$10) fee for the issuance of a duplicate license. *(State Board of Cosmetology Examiners; 820 IAC 7-1-6)*

SECTION 5. 820 IAC 2-2-2 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 28, 2005 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Room W064, Indianapolis, Indiana the State Board of Cosmetology Examiners will hold a public hearing on proposed amendments concerning license application requirements for tanning facilities, concerning approved cosmetology educators, and new rules to establish fees for issuance or renewal of cosmetology school licenses, cosmetology instructor licenses, esthetics instructor licenses, electrology instructor licenses, cosmetology salon licenses, electrology salon licenses, esthetic salon licenses, manicurist salon licenses, cosmetologist licenses, master cosmetologist licenses, electrologist licenses, esthetician licenses, manicurist licenses, shampoo operator licenses, and tanning facility licenses; to establish fees for examinations for licensure to practice as a cosmetology instructor, esthetics instructor, electrology instructor, cosmetologist, master cosmetologist, electrologist, esthetician, manicurist, or shampoo operator; to establish fees for temporary permits; to establish fees for verification of license status to another state or jurisdiction; to establish fees for issuance and renewal of approval as a cosmetology educator; and to repeal 820 IAC 2-2-2.

The State Board of Cosmetology Examiners has the authority to promulgate rules establishing the fees for examination, application, issuance, renewal, reinstatement, replacement or duplicate licenses, verification of licenses, or temporary permits for cosmetology professionals, continuing education providers, cosmetology schools, cosmetology salons, manicuring salons, esthetician salons, and electrology salons. This proposed rule establishes the fees in compliance with the statutory changes in SEA 139 (P.L. 194-2005). This proposed rule will have costs to entities.

Copies of these rules are now on file at the Indiana Professional Licensing Agency, Indiana Government Center-South, 402 West Washington Street, Room W072 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Frances L. Kelly
Executive Director
Indiana Professional Licensing Agency