

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-146
SENATE BILL 1384**

AN ACT AMENDING THE LAWS REGULATING THE PRACTICE OF BARBERING AND AUTHORIZING THE STATE BOARD OF BARBER EXAMINERS TO ASSESS CIVIL PENALTIES FOR VIOLATIONS OF THE LAWS OR RULES REGULATING THE PRACTICE OF BARBERING.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 86A-4 reads as rewritten:

"§ 86A-4. State Board of Barber Examiners; appointment and qualifications; term of office; removal.

(a) The State Board of Barber Examiners is established to consist of five members appointed by the Governor. Four shall be licensed barbers; the other shall be a person who is not licensed under this Chapter and who shall represent the interest of the public at large.

(b) No member appointed to the Board on or after July 1, 1981, shall serve more than three complete consecutive three-year terms, except that each member shall serve until the member's successor is appointed and qualifies.

No person who has been employed by the North Carolina State Board of Barber Examiners and has been removed for just cause shall be appointed within five years of the removal to serve as a Board member.

(c) The Governor may remove any member for good cause shown and may appoint members to fill unexpired terms.

(d) Notwithstanding subsections (a) and (b) of this section, a licensed barber who holds an officer position on the National Association of Barber Boards of America may be appointed by the Governor to serve on the Board as the 'public at large' member for the three-year term beginning July 1, 2004, if the Governor determines that there is not a public member willing to serve on the Board for this three-year term."

SECTION 1.(b) This section expires July 1, 2007.

SECTION 2. G.S. 86A-5(a) reads as rewritten:

"(a) The Board has the following powers and duties:

(1) To see that inspections of barbershops and schools are conducted to determine compliance with sanitary regulations. The Board may appoint inspectors as ~~necessary~~;necessary.

(2) To adopt sanitary regulations concerning barber schools and shops and procedural rules in accordance with the guidelines established in ~~G.S. 86A-15~~;G.S. 86A-15.

(3) To review the barber licensing laws of other states and to determine which are the substantive equivalent of the laws of North Carolina for purposes of ~~G.S. 86A-12~~;G.S. 86A-12.

(4) To conduct examinations of applicants for certificate of registration as registered barber, registered apprentice and barber school instructor.

(5) To employ and fix the compensation of personnel that the Board deems necessary to carry out the provisions of this Chapter.

(6) To assess civil penalties pursuant to G.S. 86A-27."

SECTION 3. G.S. 86A-6 reads as rewritten:

"§ 86A-6. Office; seal; officers and executive ~~secretary~~;director; funds.

The Board shall maintain a suitable office in Raleigh, and shall adopt and use a common seal for the authentication of its orders and records. The Board shall annually elect its own officers, and in addition, may elect or appoint a full-time executive ~~secretary-director~~ who shall not be a member of the Board, and whose salary shall be fixed by the Board. The executive ~~secretary-director~~ shall turn over to the State Treasurer to be credited to the State Board of Barber Examiners all funds collected or received under this Chapter, the funds to be held and expended under the supervision of the Director of the Budget, exclusively for the enforcement and administration of the provisions of this Chapter. Nothing herein shall be construed to authorize any expenditure in excess of the amount available from time to time in the hands of the State Treasurer derived from fees collected under the provisions of this Chapter and received by the State Treasurer pursuant to the provisions of this section."

SECTION 4. G.S. 86A-9 reads as rewritten:

"§ 86A-9. Board to conduct examinations not less than four times each year.

The Board shall conduct examinations of applicants for certificates of registration to practice as registered barbers and registered apprentices, not less than four times each year, at such times and places as will prove most convenient and as the Board may determine. The Board may adopt rules establishing procedures for the administration of examinations."

SECTION 5. G.S. 86A-17(b) reads as rewritten:

"(b) A registered barber whose certificate of registration has expired may have the certificate restored immediately upon paying all lapsed renewal fees and the required late fee and furnishing a health certificate if required by the ~~Board; provided, however, a Board.~~ Where a registered barber's certificate of registration has expired for a period greater than six months, the Board may impose civil penalties pursuant to G.S. 86A-27. A registered barber whose certificate has expired for a period of five years shall be required to take the clinical examination prescribed by the State Board of Barber Examiners and otherwise comply with the provisions of this Chapter before engaging in the practice of barbering. No registered barber who is reissued a certificate under this subsection shall be required to serve an apprenticeship as a prerequisite to reissuance of the certificate."

SECTION 6. Chapter 86A of the General Statutes is amended by adding a new section to read:

"§ 86A-20.1. Enjoining illegal practices.

The Board, the Department of Health and Human Services, or any county or district health director may apply to the superior court for an injunction to restrain any person from violating the provisions of this Chapter or the Board's rules. Actions under this section shall be brought in the county where the defendant resides or maintains his or her principal place of business or where the alleged acts occurred."

SECTION 7. G.S. 86A-22 reads as rewritten:

"§ 86A-22. Licensing and regulating barber schools and colleges.

The North Carolina State Board of Barber Examiners may approve barber schools or colleges in the State, and may prescribe rules and regulations for their operation. The Board shall adopt rules establishing criteria for barber schools and colleges to maintain their accreditation. No barber school or college shall be approved by the Board unless the school or college meets all of the following requirements:

- (1) Each school shall provide a course of instruction of at least 1528 hours.
- (2) Each school shall ~~have at least two instructors, except that nonprofit schools shall have at least one instructor for every 20 enrolled students. Each instructor must hold a valid instructor's certificate issued by the Board. At least one instructor must be on the premises of a barber school during regular instruction hours.~~ employ at least two instructors for the first 40 enrolled students and employ at least one additional instructor for every additional 20 enrolled students. Schools

that are organized as nonprofits and have obtained a ruling from the Internal Revenue Service recognizing their tax-exempt status shall have at least one instructor for every 20 enrolled students. No school, whether for profit or nonprofit, shall provide practical training and theoretical training simultaneously unless at least two instructors are present.

- (3) An application for a student's permit, on a form prescribed by the Board, must be filed with the Board before the student enters school. No student may enroll without having obtained a student's permit.
- (4) Each student enrolled shall be given a complete course of instruction on the following subjects: hair cutting; shaving; shampooing, and the application of creams and lotions; care and preparation of tools and implements; scientific massaging and manipulating the muscles of the scalp, face, and neck; sanitation and hygiene; shedding and regrowth of hair; elementary chemistry relating to sterilization and antiseptics; instruction on common skin and scalp diseases to the extent that they may be recognized; pharmacology as it relates to preparations commonly used in barbershops; instruction in the use of electrical appliances and the effects of the use of these on the human skin; structure of the skin and hair; nerve points of the face; the application of hair dyes and bleaches; permanent waving; marcelling or hair pressing; frosting and streaking; and the statutes and regulations relating to the practice of barbering in North Carolina. The Board shall specify the minimum number of hours of instruction for each subject required by this subsection.
- (5) Each school shall file an up-to-date list of its students with the Board at least once a month. If a student withdraws or transfers, the school shall file a report with the Board stating the courses and hours completed by the withdrawing or transferring student. The school shall also file with the Board a list of students who have completed the amount of work necessary to meet the licensing requirements.
- (6) Each school shall comply with the sanitary requirements of G.S. 86A-15.
- (7) a. Each school shall provide a guaranty bond unless the school has already provided a bond or an alternative to a bond under G.S. 115D-95.
The North Carolina State Board of Barber Examiners may revoke the approval of a school that fails to maintain a bond or an alternative to a bond pursuant to this subdivision or G.S. 115D-95.
- b. When application is made for approval or renewal of approval, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the school will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of a school's approval, bankruptcy, foreclosure, or the school ceasing to operate.

The bond shall be in an amount determined by the Board to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for a school shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the school. The bond amount shall also be at least ten thousand dollars (\$10,000).

Each application for approval shall include a letter signed by an authorized representative of the school showing in detail the calculations made and the method of computing the amount of the bond pursuant to this subpart and the rules of the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

- c. An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the Board and approval of one of the guaranty bond alternatives set forth in this subpart. With the approval of the Board, an applicant may file with the clerk of the superior court of the county in which the school will be located, in lieu of a bond:
 1. An assignment of a savings account in an amount equal to the bond required (i) which is in a form acceptable to the Board; (ii) which is executed by the applicant; and (iii) which is executed by a state or federal savings and loan association, state bank, or national bank, that is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (iv) for which access to the account in favor of the State of North Carolina is subject to the same conditions as for a bond in subpart b. above.
 2. A certificate of deposit (i) which is executed by a state or federal savings and loan association, state bank, or national bank, which is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (ii) which is either payable to the State of North Carolina, unrestrictively endorsed to the Board; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the Board; or in the case of a nonnegotiable certificate of deposit, is assigned to the Board in a form satisfactory to the Board; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subpart b. above."

SECTION 8. G.S. 86A-24(b) reads as rewritten:

"(b) An apprentice license expires on May 31 of each year. Every holder of an apprentice license shall annually renew the apprentice license by the expiration date and pay the required renewal fee. An apprentice license issued under this Chapter is automatically suspended by operation of law after failure to renew the apprentice

license by the expiration date. An apprentice whose apprentice license has expired may have the certificate restored immediately upon paying all lapsed renewal fees and the required late fee. The certificate of registration of an apprentice is valid only so long as the apprentice works under the supervision of a registered barber. The registered barber shall remain present on the premises of the barbershop at all times while the apprentice is working. No apprentice shall operate a barbershop."

SECTION 9. G.S. 86A-26 reads as rewritten:

"§ 86A-26. Barbering among members of same family.

This Chapter shall not prohibit a member of a family from practicing barbering on a member of his or her family. For purposes of this section, 'a member of his or her family' means a spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild."

SECTION 10. Chapter 86A of the General Statutes is amended by adding a new section to read:

"§ 86A-27. Civil penalties; disciplinary costs.

(a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty not in excess of five hundred dollars (\$500.00) per offense for the violation of any section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Board shall consider the following factors:

- (1) The nature, gravity, and persistence of the particular violation.
- (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
- (3) Whether the violation was willful and malicious.
- (4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Chapter and rules adopted by the Board.

(d) Costs. – The Board may in a disciplinary proceeding charge costs, including reasonable attorneys' fees, to the licensee against whom the proceedings were brought."

SECTION 11. G.S. 86A-25 reads as rewritten:

"§ 86A-25. Fees collectible by Board.

The State Board of Barber Examiners shall charge fees not to exceed the following:

Certificate of registration or renewal as a barber.....	\$30.0050.00
Certificate of registration or renewal as an apprentice barber	30.0050.00
Barbershop permit or renewal.....	30.0050.00
Examination to become a registered barber.....	50.0085.00
Examination to become a registered apprentice barber	50.0085.00
Late fee for restoration of an expired barber certificate within first year after expiration	20.0035.00
Late fee for restoration of an expired barber certificate after first year after expiration but within five years after expiration.....	40.0070.00
Late fee for restoration of an expired apprentice certificate within first year after expiration	20.0035.00
Late fee for restoration of an expired apprentice certificate after first year after expiration but within three years of first issuance of the certificate	25.0045.00
Late fee for restoration of an expired barbershop certificate	25.0045.00
Examination to become a barber school instructor.....	95.00165.00
Student permit.....	15.0025.00
Issuance of any duplicate copy of a license, certificate, or permit	7.5010.00
Barber school permit or renewal.....	75.00130.00

Late fee for restoration of an expired barber school certificate	50.00 <u>85.00</u>
Barber school instructor certificate or renewal	50.00 <u>85.00</u>
Late fee for restoration of an expired barber school instructor certificate within first year after expiration.....	25.00 <u>45.00</u>
Late fee for restoration of an expired barber school instructor certificate after first year after expiration but within three years after expiration.....	50.00 <u>85.00</u>
Inspection of newly established barbershop	70.00 <u>120.00</u>
Inspection of newly established barber school	125.00 <u>220.00</u>
Issuance of a registered barber or apprentice certificate by certification.....	70.00 <u>120.00</u>
Barbers 70 years and older certificate or renewal.....	No charge-charge
<u>Reasonable charges for certified copies of public documents</u>	
<u>Reasonable charges for duplication services and material."</u>	

SECTION 12. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2004.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:40 p.m. this 29th day of July, 2004