

BOARD OF BARBERS

Five-year-review Report: A.A.C. Title 4, Chapter 5, Articles 1-5

October 2015

Five-year-review Report

A.A.C. Title 4. Professions and Occupations

Chapter 5. Board of Barbers

INTRODUCTION

The mission of the Arizona Board of Barbers is to preserve the public health and welfare through the development and enforcement of adequate sanitation procedures, rules, and laws governing barbers and barbering establishments. The Board accomplishes its mission by communicating with licensees regarding proper sanitation methods and changes in the law; administering barbering examinations; investigating consumer complaints regarding unlawful activities; and taking effective measures to resolve complaints, including holding hearings, levying fines, and suspending or revoking licenses.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-304(A)(1)

1. Specific statute authorizing the rule:

R4-5-101: A.R.S. § 32-304(A)(1)

R4-5-102: A.R.S. § 32-328

R4-5-103: A.R.S. § 32-328

R4-5-104: A.R.S. § 32-304(A)(1)

R4-5-105: A.R.S. § 32-304(A)(1)

R4-5-106: A.R.S. § 32-328

R4-5-107: A.R.S. §§ 32-304(B)(2) and 32-325(C)(5)

R4-5-108: A.R.S. § 41-1073

R4-5-201: A.R.S. § 32-324

R4-5-202: A.R.S. § 32-322

R4-5-203: A.R.S. § 32-323

R4-5-204: A.R.S. § 32-327

R4-5-301: A.R.S. § 32-326

R4-5-302: A.R.S. § 32-304(A)

R4-5-303: A.R.S. §§ 32-326, 32-351, and 32-355(A)(6) and (9)

R4-5-304: A.R.S. §32-304(A)

R4-5-401: A.R.S. § 32-325

R4-5-402: A.R.S. § 32-325

R4-5-403: A.R.S. § 32-304

R4-5-404: A.R.S. §§ 32-304(A)(1) and 32-325

R4-5-405: A.R.S. § 32-325

Exhibit 1: A.R.S. §§ 32-322 and 32-325

Exhibit 2: A.R.S. §§ 32-323 and 32-325

R4-5-406: A.R.S. §§ 32-304(A)(1) and 32-325

R4-5-407: A.R.S. §§ 32-304(A)(7) and 32-325(B)

R4-5-408: A.R.S. § 32-304

R4-5-409: A.R.S. § 32-304

R4-5-410: A.R.S. §§ 32-304 and 32-325

R4-5-411: A.R.S. §§ 32-304 and 32-325

R4-5-501: A.R.S. § 32-354

R4-5-502: A.R.S. § 41-1092.09

2. Objective of the rule including the purpose for the existence of the rule:

R4-5-101: Definitions. The objective of this rule is to make the rules clear and understandable by defining terms used in rule or statute. This facilitates use of the rules.

R4-5-102: Fees and Service Charges. The objective of this rule is to establish the fees charged by the Board for various licensing activities and other services. This increases efficiency in the licensing process by enabling applicants to submit the correct fee.

R4-5-103: Fee Payment. The objective of this rule is to indicate the methods of fee payment acceptable to the Board and the procedure for determining whether a fee is paid timely. This increases efficiency in the licensing process by enabling applicants to submit fees timely and in the correct manner.

R4-5-104: Safety and Sanitation Provisions. The objective of this rule is to establish standards for safety and sanitation. This enables the Board to fulfill its statutory responsibility to protect public health and safety.

R4-5-105: Disinfectants: Approval; Usage Guidelines. The objective of this rule is to protect customers of barbering services by establishing approved disinfectant, sanitation, or sterilization products or methods. This enables the Board to fulfill its statutory responsibility to protect public health and safety.

R4-5-106: Change of Ownership or Location. The objective of this rule is to enable the Board to remain informed of the ownership and location of each licensed shop and school. This enables the Board to fulfill its statutory responsibility to protect public health and safety by conducting timely inspections.

R4-5-107: Inspections. The objective of this rule is to provide information regarding the Board's procedure for inspecting schools and shops. This enables the Board to fulfill its statutory responsibility to protect public health and safety by conducting timely inspections.

R4-5-108: Licensing Time-frames. The objective of this rule is to establish the time frame within which the Board will act on each license application received. This provides certainty to an applicant regarding when the Board will make a decision on an application.

R4-5-201: Examinations. The objective of this rule is to establish procedures the Board follows in administering licensing examinations. This enables an applicant to prepare for the examination.

R4-5-202: Barber License Application. The objective of this rule is to establish the information and documents an applicant for licensure, whether by examination or reciprocity, must provide to the Board. This increases efficiency in the licensing process by enabling applicants to submit a complete application.

R4-5-203: Instructor License Application. The objective of this rule is to establish the information an applicant for an instructor license must provide to the Board. This increases efficiency in the licensing process by enabling applicants to submit a complete application.

R4-5-204: License Renewal. The objective of this rule is to specify the process for renewing a license issued by the Board. This increases efficiency in the licensing process by enabling applicants to submit a complete and timely renewal application.

R4-5-301: Shop License Application. The objective of this rule is to prescribe the information that must be provided to the Board with an application for a shop license. This increases efficiency in the licensing process by enabling applicants to submit a complete application.

R4-5-302: Shop Premises and Basic Equipment. The objective of this rule is to specify the minimum equipment requirements for a licensed shop. This enables the Board to fulfill its statutory responsibility to protect public health and safety by ensuring shops have equipment necessary to provide barbering services in a safe and sanitary manner.

R4-5-303: Shop Supervision. The objective of this rule is to specify the minimum requirements for supervision of a licensed shop. This enables the Board to fulfill its statutory responsibility to protect public health and safety by ensuring shops are properly supervised.

R4-5-304: Shop Mobile Units. The objective of this rule is to specify the additional requirements for obtaining a shop license for a mobile unit. This enables the Board to fulfill its statutory responsibility to protect public health and safety by ensuring that mobile shops meet minimum standards.

R4-5-401: Barber School Application. The objective of this rule is to prescribe the application form an applicant for a school license is required to submit to the Board. This increases efficiency in the licensing process by enabling applicants to submit a complete application.

R4-5-402: Notification of Changes. The objective of this rule is to ensure the Board has current information regarding a licensed school. This enables the Board to communicate timely with a licensee.

R4-5-403: Use of "Accredited," "Approved," or Similar Terms. The objective of this rule is to protect the public from false or misleading advertising. This enables the Board to fulfill its statutory responsibility.

R4-5-404: School Premises and Basic Equipment. The objective of this rule is to specify the minimum equipment required on the premises of a school. This enables the Board to fulfill its statutory responsibility to protect public health and safety by ensuring schools have equipment necessary to teach barbering in a safe and sanitary manner.

R4-5-405: School Operations and Enrollment. The objective of this rule is to protect barber trainees by specifying minimum requirements for operating a licensed school and enrolling trainees. This enables the Board to fulfill its statutory responsibility to protect the public.

Exhibit 1: Required Age and Education Notice to a Barber Trainee. The objective of this rule is to ensure that a barber trainee is aware of the Board's age and education requirements for obtaining a barber license. This enables the Board to fulfill its statutory responsibility to protect the public and increases efficiency in the licensing process by ensuring potential students are aware of the licensing requirements before enrolling.

Exhibit 2: Required Age and Education Notice to a Barber Trainee. The objective of this rule is to ensure that an instructor trainee is aware of the Board's age and education requirements for obtaining an instructor license. This enables the Board to fulfill its statutory responsibility to protect the public and increases efficiency in the licensing process by ensuring potential students are aware of the licensing requirements before enrolling.

R4-5-406: Student Training and Supervision. The objective of this rule is to protect students by establishing minimum standards for training and supervision. This enables the Board to fulfill its statutory responsibility to protect the public.

R4-5-407: School Curriculum. The objective of this rule is to establish minimum curricular requirements for a licensed school. This enables the Board to fulfill its statutory responsibility to protect the public.

R4-5-408: School Records. The objective of this rule is to protect students by requiring the owner of a licensed school maintain records of the students' progress and provide regular progress reports to the Board. This enables the Board to fulfill its statutory responsibility to protect the public.

R4-5-409: School Closure. The objective of this rule is to protect students by requiring the owner of a licensed school provide notice to each student when a school closes and forward student records to the Board. This enables the Board to fulfill its statutory responsibility to protect the public.

R4-5-410: Multiple-location Schools. The objective of this rule is to specify special requirements for a school that operates at multiple locations. This increases efficiency in the licensing process by informing licensees who operate at multiple locations that a separate license is required for each location.

R4-5-411: Offsite Training Facility. The objective of this rule is to provide minimum requirements for a licensed school to provide training in a shop rather than at a school location. This enables the Board to fulfill its statutory responsibility to protect the public.

R4-5-501: Hearing Procedures. The objective of this rule is to indicate the Board conducts hearings according to the procedures at A.R.S. Title 41, Chapter 6, Article 10. This enables a party to prepare for a hearing.

R4-5-502: Rehearing and Review of Decision. The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

The Board concluded, based on a five-year-review report of these rules approved by Council on September 14, 2010, that the rules would be more effective if amended to be consistent with industry standards and Board procedures. The amendments identified as needed in 2010 and made in the Notice of Final Rulemaking approved by Council on October 6, 2015, include:

- Clarifying important concepts such as “certified hour” and “change of ownership;”
- Clarifying that the fee for late renewal is not a penalty;
- Updating infection control procedures to be consistent with industry standards;
- Establishing procedures for dealing with exposure to blood or other body fluids;
- Establishing standards for protecting the health and safety of barbering patrons;
- Clarifying that a license to operate a shop or school is not transferable to another person or location;
- Amending the Board's operating procedure to ensure an initial inspection is made before a license to operate a shop is issued;
- Clarifying that applicants for licensure by reciprocity are required to take an Arizona-specific examination;
- Adding citizenship requirement to application and notice required for all students;
- Adding a requirement that a school that closes provide notice to enrolled students; and
- Clarifying requirements for handling student records when a student transfers or graduates or withdraws.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

Several of the rules contain inconsistencies with statute or other rules. All of the inconsistencies were corrected in the Notice of Final Rulemaking approved by Council on October 6, 2015. Among the inconsistencies were the following:

- R4-5-102. In subsections (A)(4) and (A)(5)(e), the phrase "late-renewal penalty" was used. However, the phrase used in A.R.S. § 32-328 is "late renewal fee." In statute, the word "penalty" is reserved for the Board charge for submission of an insufficient-funds check.
 - R4-5-202, R4-5-301, and R4-5-401. These rules are not consistent with both the federal Personal Responsibility and Work Opportunity Act and A.R.S. § 1-501, which require that it determine whether an applicant is a U.S. citizen or lawfully present in the U.S.
 - R4-5-203. Under A.R.S. § 32-323, it is not necessary that an applicant for an instructor license have training to be an instructor. As a result, the information requested under subsections R4-5-203(A)(6) through (A)(8) is beyond the Board's statutory authority.
 - R4-5-204. As written, the only requirement to renew a license is to pay the renewal fee. However, both the federal Personal Responsibility and Work Opportunity Act and A.R.S. § 1-501 require the Board to determine whether an applicant for license renewal is a U.S. citizen or lawfully present in the U.S.
 - R4-5-402. Subsections (1) through (3) require that a school owner provide notice if certain information changes. However, there is no requirement in rule or statute that these items of information be provided initially. Subsection (7) requires notice if the school opens an additional location. However, opening an additional location requires more than notice. It requires an application for a separate license.
5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

The Board enforces all of the rules in a manner that is consistent with statute.

6. Clarity, conciseness, and understandability of the rule:

The Board determined several of the rules could be made more clear, concise, and understandable and made the corrections in the Notice of Final Rulemaking approved by the Council on October 6, 2015. Among the clarifications made were the following:

- R4-5-106. A change in ownership or location of a licensed shop or school requires that a new license be obtained. As a result, the rule should clarify that the required notice must be provided before rather than after a change in ownership or location.

- R4-5-108. As written, R4-5-108(B)(4) suggests that only denial of a school license is an appealable agency action. However, under A.R.S. § 41-1076(2), denial of any license is an appealable agency action.
 - R4-5-401. A.R.S. § 32-325(C)(1) requires that a licensed school be operated under the general supervision of a licensed instructor but the school application does not require that the licensed instructor responsible for providing general supervision be identified. A.R.S. § 32-325 has other requirements, such as an area appropriate in size and a student-instructor ratio of not more than 20 to 1, for which the license application requires no information.
 - R4-5-404. Subsection (B)(3) needs to clarify that the chair required for a patron must be a barber chair.
 - R4-5-405. In subsection (B), the phrase "shop quality" is not clear.
 - R4-5-408. Subsection (C) requires that a school owner maintain a permanent file for each student but does not specify how long the file must be maintained. Subsection (D)(2)(a) refers to "chief instructor" but the statutory phrase is "supervising instructor."
 - R4-5-410. The information in this Section more appropriately belongs in R4-5-202.
7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:
The Board received no written criticisms of the rules during the last five years, including analyses regarding whether the rules are based on valid scientific or reliable principles or methods.
8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

The Board issues licenses to individual barbers, instructors of barbering students, barber shops, and barber schools. The economic, small business, and consumer impact statement prepared when the Board's rules were made in 2005 correctly identified these individuals and entities as bearing the burden of and benefitting from the licensing and regulatory provisions in the Board's rules and correctly identified the economic impacts of the rules.

There are currently 6,269 licensed barbers in Arizona; 95 licensed instructors; 1,666 licensed shops; and 26 licensed schools. The Board acted on all applications within its time-frames. During FY2015, the Board collected \$391,200 in fees and was appropriated \$318,294. Ten percent of the fees collected go to the state's general fund. The Board has 3.8 FTEs.

All of the licensed individuals and entities bear the cost of becoming qualified and taking the steps necessary for licensure. For a shop or school, depending on the size of the shop or school, this may include the costs for equipment. All licenses are renewed annually or biannually. Individuals and entities pursue licensure because they perceive that their benefits outweigh their costs.

During FY2015, the Board received or initiated 413 complaints against licensees. It is the Board's philosophy to work with licensees to correct issues rather than pursuing disciplinary action. As a result, only 11 complaints went to hearing. Most of the complaints leading to discipline deal with unlicensed personnel or shops or unsanitary conditions in a shop or school.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

Yes. The Board completed the course of action indicated in the Board's 2010 5YRR in the Notice of Final Rulemaking approved by the Council on October 6, 2015.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons

regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

It is statute that requires barbers, instructors, and operators of schools or shops be licensed and establishes the minimum qualifications for each. Statute also requires that a license be regularly renewed and fees be paid. The rules establish a form that must be completed to make application. Completing and submitting this form has a cost but the cost is minimal and generally results in authorization to do business in Arizona, which is a significant benefit.

It is statute that requires the Board to establish sanitary and safety requirements for schools and shops and sanitary and safety standards for the practice of barbering. The requirements and standards established by the Board involve costs. However, they result in the very significant benefit of protecting public health and safety.

In making the rules, the Board determined the benefits outweigh the costs and impose the least burden and costs on those regulated by the rules consistent with protecting public health and safety.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

No federal law is applicable to the subject matter of the rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

None of the rules was made after July 29, 2010.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

No course of action is necessary. When the Notice of Final Rulemaking approved by the Council on October 6, 2015, goes into effect on December 8, 2015, the rules reviewed for this report will cease to exist.