

An Example of the Importance of Regulatory Flexibility to Small Business

Virginia Body Piercing Regulations

The Virginia State Board for Barbers and Cosmetology (“Board”), within the Department of Professional and Occupational Regulations, regulates businesses and individuals engaged in activities such as cutting and styling hair, performing manicures and pedicures and tattooing. In 2002, the Virginia General Assembly directed the Board to issue rules specifically for body-piercing practitioners and the salons where these services are provided.

In 2006, the Board proposed regulations to comply with the statute. The purpose of these regulations is to make body-piercing procedures and salons safe and sanitary. As a result, the new regulations contain the requirements for obtaining a license, license renewal and reinstatement, safety and sanitation procedures, and standards of professional conduct.

Under the Virginia Administrative Procedure Act (APA), a small business is defined as an entity employing less than 500 employees or that has gross annual sales of less than \$6 million. The Department of Planning and Budget and the agency determined that 770 jewelry stores and 260 department stores that offer piercing in Virginia employ less than 500 employees. They also found that all salons solely offering body-piercing services are small businesses. The Department of Professional and Occupational Regulations estimated that approximately 200 body piercing practitioners and facilities will need to become licensed.

The practice of body piercing consists of several different categories: general body-piercer; body-piercer “ear only;” body piercing salon; or body piercing “ear only” salon. Under the proposed rule, obtaining a license as a new body-piercer requires five hours of health education, payment of certain fees up to \$280, completion of an approved body-piercing apprenticeship program (which must include at least 1,500 hours of specific instruction), and a passing grade on the Board approved examination. Originally these pre-licensing conditions also pertained to “ear only” body-piercers.

Under the APA, the Department of Planning and Budget, in coordination with the agency, must prepare an economic impact analysis of the proposed regulation if it will have an adverse impact on small business. This analysis found that the proposed licensing requirements would be extremely costly for small businesses that offered the “ear only” piercing, but not other forms of body piercing. As a result of the cost, many small businesses that offered “ear only” piercing would no longer be able to do so.

The Virginia APA also requires agencies to prepare a regulatory flexibility analysis in which the agency must consider alternative regulatory solutions that will accomplish its objective while minimizing the adverse impact on small entities. In this case, to minimize the high cost of the proposed rule on small entities, the agency proposed a separate “ear only” license. The agency determined that it could still accomplish its goal of making the piercing procedures safe while at the same time establishing requirements for the “ear only” license that are less burdensome on small entities.

As result of this flexible alternative, small businesses engaged in “ear only” piercing in Virginia will be better able to comply with the licensing requirements without compromising safe and sanitary body piercing practices.