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& **REGULATION**

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**South Dakota Barber
License Laws & Administrative Rules**

SDCL 36-14, SDCL 36-1C, and ARSD 20:39

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CHAPTER 36-14
BARBERS AND BARBERSHOPS

Section

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36-14-48	Repealed.
36-14-49	Repealed.
36-14-50	Repealed.
36-14-51	Repealed.

36-14-1. Acts constituting practice of barbering. Any one or any combination of the following practices when done for compensation, or without payment for the public generally, upon the upper part of the human body for cosmetic purposes, and not for the treatment of physical or mental ailments, shall constitute the practice of barbering:

- (1) Shaving or trimming the beard or cutting the hair;
- (2) Giving facial and scalp massages or treatment with oils, creams, lotions, or other preparations either by hand or mechanical appliances;
- (3) Singeing, shampooing, or dyeing the hair or applying hair tonics;
- (4) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to the scalp, face, neck, or upper part of the body.

36-14-2. Board of Barber Examiners – Members – Terms of office – Qualifications – Removal – Vacancies. The Governor shall appoint a Board of Barber Examiners which shall include three professional members. The term of each is three years commencing on the thirty-first day of October. The appointee's term expires on October thirtieth in the third year of appointment. Any member's term ending June 30, 2013, or thereafter is extended to October thirtieth in the year the term is to expire. No member may serve more than three consecutive full terms. However, appointment to fill an unexpired term is not considered a complete term for this purpose. Each of these members shall be a practical barber who has followed the occupation of barber in this state for at least five years immediately preceding the barber's appointment. The Governor may remove a member for cause and shall fill all vacancies. Any member appointed to fill a vacancy shall serve the remainder of the unexpired term. The Governor may stagger the terms to enable the board to have different terms expire each year.

36-14-2.1. Lay member of board – Appointment and term of office. The membership of the Board of Barber Examiners shall include one lay member who is a user of the services regulated by the board. The term, lay member who is a user, refers to a person who is not licensed by the board but, where practical, uses the service licensed. The term shall be liberally construed to

implement the purpose of this section. The Governor shall appoint the lay member. The lay member shall have the same term of office and is subject to the same limits and conditions as other members of the board.

36-14-3. Quorum of board. A majority of the Board of Barber Examiners, in meeting duly assembled, may perform and exercise all the duties and powers devolving upon the board.

36-14-4. Officers of board – Seal – Duties and bond of secretary-treasurer. The Board of Barber Examiners shall elect a president and a secretary-treasurer. It shall adopt and use a common seal. The secretary-treasurer shall keep a record of all proceedings of the board and shall report to the president, all moneys collected, at least once a month. The secretary-treasurer shall give such bond as the board may require, with sufficient sureties, to be approved by the board, for the faithful performance of his duties.

36-14-4.1. Board continued within Department of Labor and Regulation – Records and reports. The Board of Barber Examiners shall continue within the Department of Labor and Regulation, and shall retain all its prescribed functions, including administrative functions. The board shall submit such records, information, and reports in the form and at such times as required by the secretary of labor and regulation, except that the board shall report at least annually.

36-14-5. Employment of personnel by board. The Board of Barber Examiners may employ inspectors, clerks, and other assistants, as the board deems necessary to carry out the provisions of this chapter.

36-14-6. Inspection of shops and schools by board. Any member of the Board of Barber Examiners, or its agents or assistants, shall have authority to enter upon and to inspect any barbershop or barber school at any time during business hours.

36-14-7. Monthly deposit of money into treasury – Special account – Continuous appropriation – Limit on expense. All money coming into the custody of the Board of Barber Examiners each calendar month shall be paid by the board to the state treasurer on or before the tenth day of next month. The state treasurer shall credit the money to the Board of Barber Examiners' account in the general fund, which account is hereby created. The money in the Board of Barber Examiners' account is hereby continuously appropriated to the board for the purpose of paying the expense of administering and enforcing the provisions of this chapter. However, the total expense incurred may not exceed the total money collected by the board under the provisions of this chapter.

36-14-7.1. General Coursework – Credit – Promulgation of Rules. Notwithstanding any other provision of this chapter, the board shall allow an approved school of barbering to apply credit earned by a student for general coursework in areas not limited to the practice of barbering that is completed in other programs or institutions to the course of instruction required in § 36-14-17.

The board may promulgate rules, pursuant to chapter 1-26, establishing criteria for accepting and applying the credit allowable under this section.

36-14-8. Repealed.

36-14-9. Promulgation of rules. The Board of Barber Examiners may promulgate reasonable rules, pursuant to chapter 1-26, for the administration of the provisions of this chapter and to prescribe sanitary requirements for barbershops and barber schools.

36-14-10. Repealed.

36-14-11. Certificate of registration required. No person may practice barbering without having a certificate of registration issued by the Board of Barber Examiners.

36-14-12. Persons exempt from requirements of chapter. The provisions of this chapter shall not apply to the following persons, while in the proper discharge of their professional duties:

- (1) Persons authorized by the law of this state to practice medicine and surgery;
- (2) Employees in state penal and charitable institutions;
- (3) Registered nurses;
- (4) Persons authorized by the law of this state to practice cosmetology.

The provisions of this section shall not be construed to authorize any of the persons exempted by subdivisions (1) to (3), inclusive, of this section to shave or trim the beard or cut the hair of any adult male person for cosmetic purposes.

36-14-13. Registration and licensing of barbers – Qualifications. Any person who meets the following requirements is entitled to a license or certificate of registration as a registered barber.

- (1) Is at least eighteen years old;
- (2) Submits an application in compliance with § 36-14-18;
- (3) Completes fifteen hundred hours of education or equivalent credit hours in a barber college or school approved by the board; and
- (4) Passes the written test and practical barber demonstration certified by the board.

36-14-13.1. Repealed.

36-14-13.2. Repealed.

36-14-14. Qualifications for transfer of license or registration from another state or country. Any person who is at least eighteen years of age may transfer a barber license or registration to this state if the applicant has:

- (1) A license or certificate of registration as a barber from another state or country that has substantially the same requirements for licensing or registering barbers as required by this chapter; or
- (2) Can prove by affidavits that the applicant has practiced as a barber in another state or country for at least five years.

After a qualified applicant pays the required fee, the Board of Barber Examiners shall issue a certificate of registration to practice barbering. If an applicant applying to transfer a barber license or registration to this state from another state or country that requires less than fifteen hundred hours of instruction as a prerequisite to licensing, the applicant shall receive an additional fifty hours of credit for each month the applicant has practiced as a licensed barber in the other state or country. This credit shall be applied toward the required fifteen hundred hours of instruction required by § 36-14-17.

36-14-15. Repealed.

36-14-16. Repealed.

36-14-17. Curriculum required for approval of barber school. No school of barbering shall be approved by the Board of Barber Examiners unless it requires as a prerequisite to graduation a course of instruction of not less than nine months with a minimum of fifteen hundred hours, such

course of instruction to include the following subjects: scientific fundamentals for barbering, hygiene, bacteriology as applied to barbering, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin and hair, massaging and manipulating the muscles of the upper body, haircutting, shaving, and arranging, dressing, coloring, bleaching, and tinting the hair.

36-14-18. Contents of application for examination or registration – Photographs. Each applicant for an examination or initial registration as a barber pursuant to § 36-14-14 shall make application to the Board of Barber Examiners on forms prepared and furnished by the board, setting forth, under oath, the particular qualifications of the applicant. An applicant by examination shall furnish to the board two five-by-three-inch photographs of the applicant, one of which shall be returned to the applicant and presented to the board when the applicant appears for examination. The application shall be accompanied by the required fee.

36-14-19. Time, place, and scope of examinations – Issuance of certificates – Employment pending examination. The Board of Barber Examiners shall conduct examinations not less than two times each year at such time and place as the board may determine. The examinations shall include both a practical demonstration and a written test, which shall embrace the subjects taught in schools of barbering approved by the board. If the provisions of this chapter have been complied with, the board shall issue the proper certificate of registration to the applicant. However, the board may permit a student to be employed at the barber profession from the time the student has completed schooling until the next examination.

36-14-20. Display of certificates. Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair.

36-14-21. Repealed.

36-14-22. Annual renewal of certificates – Expiration. Each registered barber who continues in active practice or service, shall annually, on or before the first day of July, renew the barber's certificate of registration and pay the required fee. Each certificate of registration, unless renewed, annually expires on June thirtieth.

36-14-23. Repealed.

36-14-24. Fees required of barbers and barber schools. The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a certificate of registration to practice barbering may not exceed one hundred dollars and for the issuance of the certificate, may not exceed fifty dollars. All fees shall be set by the board by rules promulgated pursuant to chapter 1-26. For the annual renewal of a certificate of registration to practice barbering, no more than eighty dollars, and for the restoration of an expired certificate, no more than twenty dollars, plus no more than fifteen dollars penalty for each expired year. The fee to be paid for a permit to operate a barber school or college shall be set by rule promulgated pursuant to chapter 1-26 and may not be more than one hundred fifty dollars annually.

36-14-25. Restoration of lapsed certificate. A registered barber who does not continue in active practice or service may have the barber's certificate of registration restored at any time within three years, by paying the required restoration fee.

36-14-26. Record of proceedings relative to certificates – Contents – Public inspection.

The Board of Barber Examiners shall keep a record of its proceedings relative to the issuance, refusal, renewal, suspension, and revocation of certificates of registration, which record shall contain the name, place of business, and the residence of each registered barber and the date and number of the barber's certificate of registration. This record shall be open to public inspection at all reasonable times.

36-14-27. License required for shop – Supervision by registered barber – Petty offense – Application – Fee.

It is a petty offense for any person to operate a barbershop unless it has been licensed by the Board of Barber Examiners and it is at all times under the direct supervision and management of a registered barber. Application shall be made on forms prepared and furnished by the Board of Barber Examiners annually before the first day of July. The fee to accompany such license shall be set by rule promulgated pursuant to chapter 1-26 and may not be more than fifty dollars annually for each shop, plus a fee of no more than ten dollars, for each chair.

36-14-28. Inspection before issuance of shop license – Fee. No shop license may be issued to any person for any new shop wanting to commence operation, or for any shop changing hands, or changing location, until the shop has passed an inspection of the premises and equipment. The inspection shall be made by the Board of Barber Examiners pursuant to the rules promulgated by the board pursuant to chapter 1-26. The fee for the original inspection may not exceed one hundred twenty-five dollars, as established by the board by rule promulgated pursuant to chapter 1-26, and shall be submitted along with the application for license and license fee.

36-14-29. Display of shop license – Transfer prohibited – Expiration. The license required by § 36-14-27 shall be conspicuously displayed in the barbershop and no license shall be transferable from person to person, location to location, or to a new operator at the same location. All such licenses shall expire on the last day of June in each year.

36-14-30. Annual inspection of shops. All barbershops after original inspection pursuant to § 36-14-28 shall be inspected annually by the Board of Barber Examiners, but the board may not charge a fee for the annual inspection. However, if the shop does not pass the annual inspection and the inspector has to go back to the shop for a second or subsequent inspection, the Board of Barber Examiners may charge the shop owner for the cost of such inspection.

36-14-31. Mobile shop license fee – Annual inspection – Place of operation. The operator of a mobile barbershop shall pay a license fee required by § 36-14-27 annually for each mobile shop operated. Such mobile barbershop after original inspection pursuant to § 36-14-28 shall be inspected annually by the State Board of Barber Examiners. No mobile barbershop may be operated in a municipality or unincorporated town in which there is a licensed barbershop.

36-14-32. Grounds for refusal, suspension, or revocation of certificates. The Board of Barber Examiners may refuse to issue or renew, or may suspend or revoke, any certificate of registration for any of the following causes:

- (1) Conviction of a felony;
- (2) Malpractice or incompetency;
- (3) Continued practice by a person knowingly having an infectious or contagious disease;
- (4) Advertising by means of knowingly false or deceptive statements;
- (5) Advertising, practicing, or attempting to practice under a trade name other than one's own;
- (6) Drunkenness, or addiction to the use of habit-forming drugs;

- (7) Immoral or unprofessional conduct;
- (8) The commission of any of the offenses described in § 36-14-36.

36-14-33. Procedure for refusal, suspension, or revocation of certificate.

The Board of Barber Examiners shall not suspend or revoke, nor refuse to issue, or renew, any certificate of registration, except in compliance with chapter 1-26.

36-14-34. Omitted.

36-14-35. Appeal from Board of Examiners. An appeal from the decision of the Board of Barber Examiners may be taken as provided by chapter 1-26.

36-14-36. Acts declared petty offenses. The commission of any of the following acts is a petty offense:

- (1) The practice of barbering without a certificate of registration;
- (2) Permitting any person in one's employ, supervision, or control to practice as a barber, unless that person has a certificate of registration;
- (3) Obtaining a certificate of registration by fraudulent misrepresentation;
- (4) Failing to display the certificate of registration as required by this chapter;
- (5) Using any room or place for barbering which is also used for residential or business purposes, unless a substantial partition of ceiling height separates the portion used for residential or business purposes. The practice of cosmetology or the sale of hair tonics, lotions, creams, cutlery, toilet articles, cigars, or tobacco, may not be construed to mean business purposes;
- (6) Failing or refusing to use separate and clean towels for each person served or to discard or launder each towel after once being used; or
- (7) Failing or refusing to supply clean hot and cold water in a quantity necessary to conduct any barbershop in a sanitary manner; failing or refusing to have water and sewerage connections with a water and sewage system, where the latter is available; or failing or refusing to maintain a receptacle for hot water of a capacity of less than five gallons.

36-14-37. Violation of chapter as petty offense. Any violation of the provisions of this chapter is a petty offense.

36-14-37.1. Injunction for enforcement of chapter – Election of remedies. The Board of Barber Examiners may commence actions for injunction for violation of this chapter or rules promulgated hereunder as an alternate to criminal proceedings. The commencement of one proceeding by the board constitutes an election.

36-14-38. Repealed.

36-14-39. Repealed.

36-14-40. Repealed.

36-14-41. Repealed.

36-14-42. Repealed.

36-14-43. Repealed.

36-14-44. Repealed.

36-14-45. Repealed.

36-14-46. Repealed.

36-14-47. Repealed.

36-14-48. Repealed.

36-14-49. Repealed.
36-14-50. Repealed.
36-14-51. Repealed.

CHAPTER 36-1C

UNIFORM COMPLAINT AND DECLARATORY RULING PROCEDURES

Section

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36-1C-16	Appeal of declaratory ruling.

36-1C-1. Definitions.

Terms used in this chapter mean:

- (1) "Administrator," the executive director, executive secretary, or other person designated as being responsible for a professional or occupational licensing's board, commission, or agency operation;
- (2) "Agency," a professional or occupational licensing board, commission, or agency set forth in title 36;
- (3) "Complaint," an allegation of a violation of the laws or rules of a professional or occupational licensing board, commission, or agency set forth in title 36;
- (4) "Investigative committee," one or more persons employed or contracted by a professional or occupational licensing board, commission, or agency set forth in title 36 to review and investigate complaints;
- (5) "License," any certification, license, permit, or other authorization related to the practice of any profession or occupation regulated under title 36.

36-1C-2. Complaints – Jurisdiction.

Any person claiming that a licensee or an applicant for a license under title 36 has engaged in or is engaging in conduct constituting grounds for disciplinary action, as enumerated in the laws or rules of the agency, may file with the agency a written complaint. The agency shall require the complaining party to file a complaint stating the name of the applicant or licensee against whom the complaint is made and setting out, in full detail, the conduct that is alleged to be in violation and may prescribe the form on which a written complaint is made.

The administrator shall request the complainant provide additional information if the complaint does not state a claim within the jurisdiction of the agency.

Failure of the complainant to comply with this section is basis for the administrator to reject the complaint without further action.

36-1C-3. Receipt of complaint – Time to respond – Failure to respond.

Upon receipt of a properly submitted complaint within the agency's jurisdiction, the administrator shall serve a copy of the complaint by mail or electronic mail upon the applicant or licensee complained against.

The applicant or licensee complained against shall send a response to the complaint to the administrator of the agency within twenty business days after service of the complaint on the applicant or licensee. Upon receipt of the response of the applicant or licensee, or upon expiration of the time for the applicant or licensee complained against to respond, the administrator shall assign an investigative committee to determine if the complaint has probable cause and constitutes grounds for disciplinary action or lacks probable cause and should be dismissed.

The twenty business days may be extended by the administrator for good cause.

Failure to respond to the complaint is grounds for disciplinary action.

36-1C-4. Investigation – Dismissal permitted.

Upon completion of the investigation, the investigating committee shall recommend to the agency whether the complaint should be dismissed for lack of probable cause, resolved by informal disposition, or settled by a formal hearing. The failure of an applicant or licensee to comply with the investigation is grounds for denial of the application or disciplinary action.

An agency may allow the investigative committee to dismiss a complaint. Any dismissal by the investigative committee must be reported to the agency at its next scheduled meeting or within thirty days, whichever is shorter.

An investigative committee includes the agency's legal counsel.

36-1C-5. Option to authorize limited administrative fines for specified violations.

The agency may authorize the administrator to impose an administrative fine upon proof of a violation of specified statutes or rules without additional prior approval. Any action taken pursuant to this section shall be reported to the agency at its next scheduled meeting or within thirty days, whichever is shorter.

Any administrative fine issued under this section may be appealed by requesting a contested case under chapter 1-26. Notice of appeal must be submitted to the administrator within twenty calendar days of service of the fine.

Any fine issued under this section may not exceed five hundred dollars.

36-1C-6. Informal disposition – Notice.

The agency may accept an informal disposition regarding a violation of the laws or rules under the agency's jurisdiction. The agreed upon disposition must be in writing and is subject to the approval of the agency.

Failure to comply with the terms of an informal disposition is grounds for disciplinary action or allows the agency to institute or reinstitute formal proceedings.

The administrator shall notify, in writing, any complaining party of the results of the informal disposition of a complaint and the action taken, if any.

36-1C-7. Formal complaint.

If an alleged violation has probable cause constituting grounds for disciplinary action, the legal counsel for the agency may commence formal proceedings by serving a formal complaint by mail or electronic mail upon the applicant or licensee complained against.

The formal complaint must include the name of the applicant or licensee complained against, and a statement of facts setting forth the nature of the violations being charged that constitute grounds for disciplinary action.

36-1C-8. Response to formal complaint.

The applicant or licensee shall file an answer with the administrator within twenty calendar days after service of the complaint admitting, denying, qualifying, or explaining all facts alleged in the formal complaint and all defenses of the applicant or licensee or mitigating factors.

36-1C-9. Notice of hearing.

After the receipt of the response in § 36-1C-8, the agency's counsel shall file a notice of hearing pursuant to § 1-26-17. The notice of hearing must be served no later than twenty calendar days prior to the hearing date.

The agency may continue the date of the hearing as necessary. The agency's counsel shall serve notice of any new date by electronic mail to the applicant or licensee's address on file with the agency. If the applicant or licensee does not have electronic mail, communication shall be sent to the mailing address on file with the agency.

36-1C-10. Appearance required of applicant or licensee.

The applicant or licensee appearing before the agency at a formal hearing shall appear in person unless otherwise waived by the agency. If an applicant or licensee fails to appear, the hearing may proceed without the applicant or licensee.

36-1C-11. Board or commission member disqualified.

If an alleged violation against an applicant or licensee is filed by a member of the agency's board or commission, or if a member of the agency's board or commission participates in the investigation of a violation by an applicant or licensee, that agency's board or commission member is disqualified from participating in the final decision rendered by the agency board or commission.

36-1C-12. Written waiver of procedures.

An applicant for a license or licensee may, in writing, waive any procedure granted to the applicant or licensee under this chapter.

Notwithstanding any other provision of law, nothing in this chapter shall be construed to limit an agency's authority for emergency action under § 1-26-29.

36-1C-13. Promulgation of rules.

The Departments of Agriculture and Natural Resources, Health, Labor and Regulation, and Social Services shall promulgate rules, pursuant to chapter 1-26, to make any consistent addition to the procedures in this chapter in order to comply with any federal statutes, rules, and regulations regarding a profession or occupation within their respective department.

36-1C-14. Petition for declaratory ruling.

A person seeking a ruling as to the applicability to that person of a law, rule, or order of an agency under title 36 may file with the agency a petition for declaratory ruling in substantially the following form:

Pursuant to the provisions of SDCL 1-26-15, I, (name of petitioner), of (address of petitioner), am (title or capacity of petitioner), and do hereby petition the professional or occupational board or commission of (state name of body) for its declaratory ruling in regard to the following:

(1) The statutes or rules or order in question is: (here identify and quote the pertinent statute, rule, or order.):

(2) The facts and circumstances that give rise to the issue to be answered by the professional or occupational board or commission's declaratory ruling:

(3) The precise issue to be answered by the professional or occupational board or commission's declaratory ruling:

Dated at (city and state), this _____ day of _____, _____.

(Signature of Petitioner)

36-1C-15. Action on petition.

Upon receipt of the petition, the administrator may request from the petitioner any information that may be required for the issuance of its ruling. At the agency's next regularly scheduled meeting following the receipt of the petition or following receipt of requested information, or within ninety days, whichever is shorter, the agency shall issue its declaratory ruling and serve a copy of it by mail or electronic mail upon the petitioner.

36-1C-16. Appeal of declaratory ruling.

Any person seeking a declaratory ruling hereunder, is considered aggrieved if, within thirty days of the agency's declaratory ruling, a request is made for the agency to conduct a formal hearing. The hearing must be held at the earliest convenience of the agency following the receipt of the request. A hearing under this section is a contested case under chapter 1-26.

**ARTICLE 20:39
BARBERS**

Chapter

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CHAPTER 20:39:01
ADMINISTRATION

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20:39:01:01. Meetings – Quorum. Annual meetings of the board for the election of officers for the ensuing year and the transaction of other business shall be held within one month after new members are appointed by the Governor. Meetings shall be held on call of the president or on written request of two or more members of the board.

Source: SL 1975, ch 16, § 1; 6 SDR 106, effective May 12, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-4.

20:39:01:02. President's duties – President's absence. The president shall preside at all meetings and shall perform such other duties as the board may direct. A majority of the board may designate a board member to act in the president's absence.

Source: SL 1975, ch 16, § 1; 6 SDR 106, effective May 12, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-4.

20:39:01:03. Secretary-treasurer's duties – Records. The secretary-treasurer shall have charge of the business and transactions of the board. The secretary-treasurer shall assemble and present to the board an annual report of the board's receipts and expenditures and a complete statement of the board's work during the year.

Source: SL 1975, ch 16, § 1; 6 SDR 106, effective May 12, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-4, 36-14-8.

Cross-Reference: Local bank accounts must be approved by state auditor and state treasurer, SDCL 4-4-3.

20:39:01:04. Petition for new rules. Superseded.

Commission Note: SDCL 1-26-13 provides a statutory procedure to use for petitioning an agency for amendments to its rules, thus effectively superseding this section.

20:39:01:05. Response to petition. Upon receipt of a petition for a change in rule, the secretary-treasurer shall immediately mail one copy to each board member and set a meeting within 25 days to act on the petition.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 1-26-13.

Commission Note: A portion of this rule was superseded by SDCL 1-26-13 which provides a statutory procedure for petitioning an agency for change in its rules. This section has been modified to conform to the change.

20:39:01:06. Request for decision from board. A party with a contested case before the board may request a final order terminating administrative action and declaring the rights and liabilities of the parties thereto by delivering a demand to the secretary-treasurer in person or by certified mail. The secretary-treasurer must either issue the order or issue an explanation of the procedures to be followed before the secretary-treasurer can issue the order within three weeks after receipt of the demand.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-9.

20:39:01:07. Petition for declaratory ruling. To initiate proceedings for declaratory rulings on the applicability of a statute or rule, a person may file with the board a verified complaint stating the action requested and the factual basis. On the filing of the complaint the board shall fix a date for hearing on the complaint and shall give notice of the hearing to all interested persons. If the parties likely to be affected are diffuse in nature, the board shall hold a contested hearing and issue its decision in the form of a new proposed rule. It shall then hold another hearing pursuant to SDCL 1-26-4 to promulgate the rule. Written notice of the final determination of the board concerning a contested case held under this section shall be given to all persons who have requested it.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-9.

CHAPTER 20:39:02
INFECTION CONTROL REQUIREMENTS

Section

20:39:02:01	Physical plant infection control requirements.
20:39:02:02	Equipment and infection control requirements.
20:39:02:03	Required infection control practices for barber shops and barber schools.
20:39:02:04	Practices prohibited in barber shops and barber schools.
20:39:02:05	Specific sanitation requirements for barber schools.

20:39:02:01. Physical plant infection control requirements. Each barber shop and barber school shall observe the following infection control requirements in its physical plant:

- (1) The buildings and quarters must at all times be kept clean, well painted, adequately ventilated, and amply lighted;
- (2) The floors shall be maintained in good repair and be either tiled or covered with linoleum or comparable floor covering;
- (3) All barber chairs shall be maintained in sound mechanical condition. Upholstery of the chair may not be ripped or otherwise opened to expose the material inside. The chairs must be placed center to center, and each chair must occupy at least 35 square feet of floor space.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 46 SDR 64, effective November 25, 2019.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-9.

20:39:02:02. Equipment and infection control requirements. Each barber shop and barber school shall be equipped with the following equipment:

- (1) One wet disinfectant and one dry cabinet disinfectant for each barber chair, together with the compounds generally associated with their use;
- (2) One mirror for each barber chair, not less than 30 inches in diameter;
- (3) In a barber shop, one properly working sink for each two barber chairs; and
- (4) If hair brushes are used, there shall be a minimum of four brushes per barber chair. Hair brushes shall be cleaned and disinfected after each customer use.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 46 SDR 64, effective November 25, 2019.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-9.

20:39:02:03. Required infection control practices for barber shops and barber schools. Each barber shop and barber school shall observe the following infection control practices:

- (1) Chairs, walls, floors, and windows shall be kept clean at all times. Barber chairs shall be cleaned by wiping each day. Sinks must be cleaned and disinfected, if used, after each customer. Mirrors shall be washed at least once each business day;
- (2) Items that cannot be disinfected are considered single-use, and must be disposed of immediately after use in a closed waste container;
- (3) Multi-use items must be thoroughly washed in soap and hot water, rinsed with clean warm water, and disinfected according to disinfectant manufacturer instructions. Contact points of all non-immersable equipment and metal implements must be disinfected by wiping or spraying with a board-approved disinfectant. After being disinfected multi-use items must be stored in clean, closed, and labeled containers between use. The use of any multi-use article, tool, or product which cannot be cleaned and disinfected is prohibited; and
- (4) For blood exposure involving a client or licensee, the following steps must be followed:
 - (a) If the client is bleeding: Stop service; put gloves on; if appropriate, assist client to sink and rinse the injured area under running water; pat dry with a new, clean, disposable towel; offer or apply antiseptic and an adhesive bandage; place all single-use items in a bag and place in a trash receptacle; remove all implements from station and properly clean and disinfect the implements; clean and disinfect work area; remove and dispose of gloves; wash hands; return to service;
 - (b) If the licensee is bleeding: Stop service; explain the situation and excuse yourself from service; if appropriate, rinse injured area under running water; pat dry with a new, clean, disposable towel; apply antiseptic and an adhesive bandage; put gloves on; place all single-use items in a bag and place in a trash receptacle; remove all implements from the work area and properly clean and disinfect the implements; clean and disinfect work area; remove and dispose of gloves; wash hands; if necessary, cover injured area with a protective finger cot or new glove; return to service.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 46 SDR 64, effective November 25, 2019.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-9.

20:39:02:04. Practices prohibited in barber shops and barber schools. A barber or barber school student may not engage in any of the following practices:

- (1) Allowing the use of the head rest of any barber chair under the control of the barber or barber school student unless the head rest is covered by a towel that has been washed since its last use or by a clean, new paper;
- (2) Knowingly servicing a person afflicted with a contagious or infectious disease; or
- (3) Allowing the use or possession on the work premises of styptic pencils, lump alum, or powder puffs.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 76, effective November 1, 2017; 46 SDR 64, effective November 25, 2019.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-9.

20:39:02:05. Specific sanitation requirements for barber schools. Each barber school shall observe the following sanitation requirements:

- (1) Each school must be equipped with one high-frequency apparatus for each 10 students; one ultra-violet and one infra-red ray lamp for each 20 students; one hair dryer for each 20 students; one massage machine with applicators; one stimulax type vibrator for each 10 students; one scalp steamer for each 20 students; one white, one red, and one blue dermal light; and one high power microscope for bacteria and hair study;
- (2) Each school must maintain a supply of linens, jackets, or uniforms for instructors and students;
- (3) A school may not permit smoking in the workrooms or classrooms of the school by either instructors or students;
- (4) Each school shall provide clean, airy cloakrooms, a separate lecture room, and space for a manager's office;
- (5) Each student shall be supplied with a hamper for soiled towels and one wastepaper container. One towel cabinet shall be provided for each two students. Each school shall provide one electric latherizer for each two students enrolled in the senior department.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-9.

CHAPTER 20:39:03
SCHOOLS AND INSTRUCTORS

Section

20:39:03:01	General requirements for initial approval of barber schools.
20:39:03:01.01	Transferred.
20:39:03:02	Equipment requirements.
20:39:03:03	Inspections of school.
20:39:03:04	Length and annual renewal of school license.
20:39:03:05	Educational materials requirements for licensed barber schools.
20:39:03:06	Curriculum requirements for classroom education.
20:39:03:07	Student barber practice.
20:39:03:08	Credit for general coursework earned in related educational programs.
20:39:03:09	Credit for hours from other institutions.
20:39:03:10	Instructor requirements for initial licensure.
20:39:03:11	Instructor requirements and responsibilities.
20:39:03:12	Substitute instructors.
20:39:03:13	Student barber practice.
20:39:03:14	Distance learning.

20:39:03:01. General requirements for initial approval of barber schools. Each barber school shall meet the following requirements to receive board approval:

- (1) The applicant completes and submits the application form with all attachments;
- (2) The application is accompanied by the fee required in this chapter;
- (3) The applicant is in good standing with any other agencies the applicant may be licensed by;
- (4) The school passes an inspection ensuring that the school meets all the applicable requirements of this chapter; and
- (5) The application is accompanied by the fee required in this chapter.

Source: SL 1975, ch 16, § 1; 6 SDR 106, effective May 12, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 76, effective November 1, 2017; 46 SDR 64, effective November 25, 2019; 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-6, 36-14-17, 36-14-24.

20:39:03:01.01 Transferred to § 20:39:03:12.

20:39:03:02. Equipment requirements. Each barber school shall possess the following equipment:

- (1) An instruction board or blackboard in the lecture room;
- (2) A set of enlarged anatomic charts showing nerves, muscles, blood vessels, bones of the head and neck, structure of the hair, and skin structure;
- (3) A minimum of one properly working sink for each four students present and performing services at any time;
- (4) At least one barber chair for each student present and performing services on a client; and
- (5) Time-keeping system to track student hours.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 76, effective November 1, 2017; 46 SDR 64, effective November 25, 2019; 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-17.

20:39:03:03. Inspections of school. Two unannounced inspections shall be made of each school per calendar year. The inspection report shall be given to the instructor in charge and present during each inspection.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 76, effective November 1, 2017; 46 SDR 64, effective November 25, 2019; 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-6, 36-14-17.

20:39:03:04. Length and annual renewal of school license. A barber school license is valid for a period of one year expiring on June 30. To renew a license, the school shall apply to the board by May 1. The renewal application shall contain a statement that the school has complied with SDCL 36-14 and this article during the previous year.

The renewal application shall be accompanied by the school's curriculum and textbook list for review and approval by the board.

Source: SL 1975, ch 16, § 1; 6 SDR 106, effective May 12, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 76, effective November 1, 2017; 46 SDR 64, effective November 25, 2019; 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-17.

20:39:03:05. Educational materials requirements for licensed barber schools. Each barber school licensed by this board shall:

- (1) Supply each student with or require each student to obtain the textbooks necessary to learn the subjects in the school's curriculum; and

- (2) Supply each student with or require each student to obtain a tool kit containing thinning shears, cutting shears, changeable straight razor, box of blades for straight razor, styling and taper combs, spray bottle for water, mannequin head, electric clippers and attachments, electric trimmer, styptic powder, barber smock or apron, and cape for client protection.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 76, effective November 1, 2017; 46 SDR 64, effective November 25, 2019; 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-9, 36-14-17.

20:39:03:06. Curriculum requirements for classroom education. Each barber school offering a complete barber program, totaling 1500 hours, shall meet the following minimum curriculum requirements:

- (1) General infection control; implements and equipment; first aid; blood exposure standards: 100 hours;
- (2) Professional standards and development; effective communication; business practices; and state laws and rules: 70 hours;
- (3) Scientific fundamentals, including hygiene; bacteriology; anatomy; chemistry; electricity; diseases of the skin and hair; massaging and manipulating the muscles of the upper body: 220 hours;
- (4) Principles of hair design, scalp care, shampooing, haircutting and hairstyling: 430 hours;
- (5) Chemical hair services, including chemical texture services; and hair coloring: 280 hours;
- (6) Shaving, including care and use of a straight-edge razor: 130 hours; and
- (7) Skin sciences, including physiology and histology of the skin; skin care products; chemistry, ingredients and selection: 70 hours.

In addition to the hours set forth in this section, each student must receive an additional 200 hours of education. The additional hours of education may be in areas that the school determines are necessary to supplement the basic course requirements for an individual student.

Barber students must spend 150 hours in classrooms, demonstrations, and practice before performing service on any client of the school. A school must teach 1,200 hours of practical work and 300 hours of theory, classroom instruction, and demonstrations.

A school may not require a student to work, be instructed, or earn credit for more than eight hours in a day. However, a school may offer students the option to earn credit for more than eight hours in a day.

A student may receive a maximum of 32 hours for educational field trips if the trip has been approved by the executive director. For approval the school must complete a field trip form and attach a lesson plan. The students must be accompanied by an instructor. A minimum of one licensed instructor shall accompany students.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 76, effective November 1, 2017; 46 SDR 64, effective November 25, 2019; 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-17.

20:39:03:07. Student barber practice. Repealed.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 47 SDR 8, effective August 3, 2020.

20:39:03:08. Credit for general coursework earned in related educational programs. A licensed cosmetologist, nail technician, or esthetician seeking a barber certificate may be granted maximum credit for related hours and curriculum earned in another educational program as shown below:

- (1) General infection control; implements and equipment; first aid; blood exposure standards: 90 hours;
- (2) Professional standards and development; effective communication; business practices; and state laws and rules: 60 hours;
- (3) Scientific fundamentals, including hygiene; bacteriology; anatomy; chemistry; electricity; diseases of the skin and hair; massaging and manipulating the muscles of the upper body: 200 hours;
- (4) Principles of hair design, scalp care, shampooing, haircutting and hairstyling: 300 hours;
- (5) Chemical hair services, including chemical texture services; and hair coloring: 280 hours;
- (6) Shaving, including care and use of a straight-edge razor: 130 hours; and
- (7) Skin sciences, including physiology and histology of the skin; skin care products; chemistry, ingredients and selection: 70 hours.

Source: 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-7.1, 36-14-9.

Law Implemented: SDCL 36-14-7.1, 36-14-17.

20:39:03:09. Credit for hours from other institutions. Any individual seeking credit for coursework completed at an institution not teaching the practice of barbering, shall submit an official transcript from that institution.

For education earned in a credit hour program, each credit hour is equal to 30 clock hours.

Source: 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-7.1.

Law Implemented: SDCL 36-14-7.1.

20:39:03:10. Instructor requirements for initial licensure. To receive an instructor license, the applicant shall:

- (1) Possess a South Dakota barber certificate of registration;
- (2) Complete at least one year of licensed barber experience;
- (3) Complete at least 500 hours of instructor training to include methods of teaching, student barber services, and clinic floor management, of which 100 hundred hours must be instructing experience in a licensed barber school under the direct supervision of a licensed barber instructor; and

- (4) Passage of a board-approved instructor theory examination.

Source: 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-9.

20:39:03:11. Instructor requirements and responsibilities. All instructors employed at a school must:

- (1) Check clients receiving services from a student before, during, and after the performance of the services;
- (2) Be readily identifiable at all times while instructing;
- (3) Supervise students. Each instructor may directly supervise a maximum of 15 students at any one time, except an instructor may teach any number of students in the theory classroom; and
- (4) Be present during any demonstration. A person qualified and trained in a particular profession for special instruction of students in the field of that person's specialty may demonstrate services to students. A demonstrator shall be readily identifiable as a demonstrator at all times of the demonstration.

Source: 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-9.

20:39:03:12. Substitute instructors. A barber school licensed by the board may hire a substitute instructor if:

- (1) The individual is a registered barber in this state;
- (2) The substitute instructor instructs 80 hours or less during a calendar year; and
- (3) The barber school notifies the board office as soon as the emergency need arises with the name of the substitute instructor and the hours the substitute will be instructing.

A substitute instructor may not be otherwise employed by the school.

Source: 4 SDR 8, effective August 21, 1977; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 46 SDR 64, effective November 25, 2019; transferred from § 20:39:03:01.01, 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-9(2).

Law Implemented: SDCL 36-14-9.

20:39:03:13. Student barber practice. Student barber practice must meet the following conditions:

- (1) Each school shall place a sign, either on the front window or extending above the front door, giving the name of the school and stating that it is a school or college of barbering;
- (2) No school may advertise that the school is a barber shop;
- (3) No commissions in any form may be paid by the school to students; and
- (4) A sign must be displayed inside the school near the entrance indicating that all work done in the school is done by students.

Source: 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-9, 36-14-17.

20:39:03:14. Distance learning. Students may earn a maximum of 300 hours of theory and classroom demonstrations through distance learning. The distance learning plan must be submitted to the board for approval. All distance learning must be completed using a format that will allow direct supervision of a student by an instructor.

Source: 47 SDR 8, effective August 3, 2020.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-17.

CHAPTER 20:39:04
EXAMINATIONS

Section

20:39:04:01	Number and location of examinations.
20:39:04:02	Location of examinations – Notice.
20:39:04:03	Passing scores for barber and instructor examinations.

20:39:04:01. Number and location of examinations. The board shall administer examinations for barber and instructor certificates at a location designated by the board.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 76, effective November 1, 2017.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-13, 36-14-19.

20:39:04:02. Location of examinations – Notice. The board shall, by notice posted one month in advance of each examination in the office of Department of Labor and Regulation, prescribe the location and date of each barber examination.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 76, effective November 1, 2017.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-13, 36-14-19.

20:39:04:03. Passing scores for barber and instructor examinations. Each applicant for registered barber and instructor shall pass a practical and written examination with a minimum score on each examination of 75 percent.

Source: 6 SDR 106, effective May 12, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 76, effective November 1, 2017.

General Authority: SDCL 36-14-9.

Law Implemented: SDCL 36-14-13, 36-14-17.

CHAPTER 20:39:05
FEES REQUIRED

Section

20:39:05:01	Renewal fee for barber certificate of registration.
20:39:05:02	Renewal fee for apprentice barber certificate of registration.
20:39:05:03	Fee to operate a barber school.
20:39:05:04	Fee to operate a barber shop.

20:39:05:01. Renewal fee for barber certificate of registration. For the annual renewal of a certificate of registration to practice barbering the fee is \$75. For the restoration of an expired certificate the fee is \$15, plus \$12 penalty for each expired year, plus the annual license fee.

Source: 6 SDR 106, effective May 12, 1980; 12 SDR 159, effective April 10, 1986; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 21 SDR 214, effective June 20, 1995; 33 SDR 212, adopted May 15, 2007, effective July 1, 2007.

General Authority: SDCL 36-14-9, 36-14-24.

Law Implemented: SDCL 36-14-22, 36-14-24.

20:39:05:02. Renewal fee for apprentice barber certificate of registration. Repealed.

Source: 6 SDR 106, effective May 12, 1980; 12 SDR 159, effective April 10, 1986; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 21 SDR 214, effective June 20, 1995; 33 SDR 212, adopted May 15, 2007, effective July 1, 2007; 44 SDR 76, effective November 1, 2017.

20:39:05:03. Fee to operate a barber school. The fee to operate a barber school or college is \$150 annually.

Source: 6 SDR 106, effective May 12, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 36-14-9, 36-14-24.

Law Implemented: SDCL 36-14-9, 36-14-24.

20:39:05:04. Fee to operate a barber shop. The fee to operate a barber shop is \$50 annually plus \$10 for each barber chair.

Source: 6 SDR 106, effective May 12, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 21 SDR 214, effective June 20, 1995; 33 SDR 212, adopted May 15, 2007, effective July 1, 2007.

General Authority: SDCL 36-14-9, 36-14-27.

Law Implemented: SDCL 36-14-27.