



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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**STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BARBERING AND COSMETOLOGY
BARBERING AND COSMETOLOGY : EXAMINING BOARD
EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 09-065)**

TO: Senator Jim Holperin, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 409 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the BARBERING AND COSMETOLOGY EXAMINING BOARD is submitting in final draft form rules relating to renewal, reinstatement, and continuing education.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

Thank you.

**STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 09-065
BARBERING AND COSMETOLOGY : (s. 227.19 (3), Stats.)
EXAMINING BOARD :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

The department estimates that this rule will require staff time in the Division of Enforcement, Division of Management Services, and the Office of Exams. The total one-time salary and fringe costs are estimated at \$26,172. The total on-going salary and fringe costs are estimated at \$40,228.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

This proposed rule-making creates continuing education requirements for licensure. The board has the authority under s. 454.12, Stats., to promulgate rules that establish continuing education requirements. Prior to developing the rule, the board made the determination that this rule-making was necessary to preserve the public health, safety and welfare by ensuring that both current and future licensees are regularly informed about changes in safety and sanitation guidelines, new trends in the profession and changes in laws regulating the profession.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on September 14, 2009.

The following individuals appeared:

Kathy Schauer, WCTC, Pewaukee, WI, spoke in favor of the proposed rules.

Julie Stubenrauch, Waukesha County Technical College, New Berlin, WI, appeared in support of the proposed rules.

Berrin Snyder, Great Clips, Oconomowoc, WI, appeared to obtain information only.

Lauri Thomas, Alexander Thomas Academy of Skin Care, appeared in opposition to the proposed rule.

Electronic comments were received from:

Liza Larson, Instructor, Milwaukee Area Technical College, Milwaukee, WI. Ms.

Larson had questions relating to the continuing education law requirements.

Ellen Bouchard, Instructor, Moraine Park Technical College, Fond du Lac, WI. Ms.

Bouchard also commented on approval of programs relating to law.

Cindy Peckenpaugh, Instructor, Madison Area Technical College, Downtown Campus.

Ms. Peckenpaugh had questions relating to the number of credits and finding approved courses.

Public hearing comments (verbal and written, as read into the record) related generally to the following:

1. Who could provide courses; product distribution companies, global organizations, etc.
2. The timing of implementation of the rules, particularly ensuring enough time to allow licensees to obtain the necessary credits.
3. Allowing providers, and not just allowing the board or the department, to teach the jurisprudence courses.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 4.a. Section BC 9.01 (1) refers to a form prepared by the department. The requirements of s. 227.14 (3), Stats., should be met.

Response: The form referred to in s. BC 9.01 (2) is the standard renewal application that is used by the department for renewing credentials.

Comment 5.c. Section BC 11.02 (1) refers to "programs" approved by the board for continuing education. However, the paragraphs following the introductory clause of sub. (1) only mention providers and state nothing about program content. Will programs by these providers be approved for purposes of s. BC 11.01 (2) (b) and (c) without any board review of program content? Clarification should be considered. Also, in s. BC 11.01 (2) (intro.), the phrase "shall be obtained as follows" should be replaced by the phrase "shall consist of all of the following."

Response: The programs that are presented by the entities listed are preapproved for continuing education credit in all areas except law. The board has to establish a curriculum every biennium for the law continuing education courses and approve the courses before they can be counted toward continuing education credit.

The last sentence in Comment 5.c. has been accepted.

All of the remaining recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

BC 9, 11 CR09-065 (Renewal, continuing education) Report to Leg 10-26-09

STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BARBERING AND COSMETOLOGY
BARBERING AND COSMETOLOGY : EXAMINING BOARD
EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 09-065)

PROPOSED ORDER

An order of the Barbering and Cosmetology Examining Board to renumber and amend BC 9.02; to repeal and recreate BC 9.01; and to create BC 9.02 and ch. BC 11, relating to renewal, reinstatement of license, and continuing education.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 454.12, Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 454.12, Stats.

Explanation of agency authority:

The Barbering and Cosmetology Examining Board is granted the authority under s. 454.12, Stats., to promulgate rules that establish continuing education requirements for licensure. Prior to developing the rule, the board made the determination that this rule-making was necessary to preserve the public health, safety or welfare.

Plain language analysis:

This proposed rule-making creates continuing education requirements for licensure. It also creates criteria for the approval of continuing education programs and the types of programs required to be taken for license renewal.

SECTION 1 repeals and recreates a provision that sets out the requirements for license renewal. There is no equivalent provision in the current rule. The requirements for renewal of a license are that the applicant must complete a form prescribed by the department, submit a fee determined by the department, and have fulfilled the continuing education requirements within the biennial period immediately preceding application.

SECTION 2 renumbers and amends a provision that allows the board to require an applicant for reinstatement of their license to take an examination. An applicant for reinstatement is someone whose license has been expired for 5 or more years.

SECTION 3 creates a provision relating to late license renewals and makes it consistent with current statutory language regarding how initial and renewal license fees are determined.

SECTION 4 creates ch. BC 11 that establishes continuing education requirements for license renewal and criteria for the approval of continuing education courses. There are currently no requirements for continuing education for any licensee under the Barbering and Cosmetology Examining Board.

Chapter BC 11 creates a requirement that applicants for renewal licenses must have obtained 12 credits of continuing education during the 2-year period immediately preceding the license renewal date. A licensee must obtain the following types and number of credit hours: 2 credit hours reviewing the laws governing their profession; 4 credit hours in safety, sanitation and infection control; and 6 credit hours directly related to the provision of services allowed under the applicant's license. One hour of instruction equals one continuing education credit hour. One hour of teaching equals one continuing education credit hour and a maximum of 4 credit hours may be obtained by teaching in a biennium. Applicants are exempt from the continuing education requirement for their first license renewal. Licensees who have held an active Wisconsin license for 30 or more years are only required to obtain 6 credit hours within a biennium. They must obtain 2 credit hours in reviewing the laws governing their profession and 4 credit hours in safety, sanitation and infection control.

Chapter BC 11 also provides that if a licensee fails to complete the continuing education requirement prior to renewal, the first credit hours obtained after the renewal date will be applied to the preceding biennium. Those credit hours may not be counted in any other biennium.

Each licensee is required to obtain a certificate of completion from the program provider for each continuing education course completed. The licensee must keep the certificates for 5 years and provide a copy of them to the department for auditing of compliance.

Chapter BC 11 also gives the board the ability to grant a waiver, partial waiver or postponement of the continuing education requirement in cases of hardship.

The rule specifies that the following are approved as continuing education programs: programs provided by a state licensed school, workshops presented by a state or national professional organization, and programs presented by a state licensed instructor. In addition, the board may approve other programs that offer significant professional educational benefits for licensees that are presented by a university, technical college, or product distribution company.

Licenseses will be required to have 6 continuing education credit hours to renew licenses at the March 1, 2011 renewal date. Two of those shall be in law and 4 in safety, sanitation and infection control. Licenseses will be required to have 12 continuing education credit hours to renew licenses at the March 13, 2013 renewal date.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Illinois:

Continuing education requirements are as follows: Ten hours are required for estheticians, 14 hours for cosmetologists, and 10 hours for nail technicians for each biennial renewal. There are no requirements for barbers.

Iowa:

Continuing education requirements are 8 hours each for barbers, cosmetologists, nail technicians, and estheticians. www.idph.state.ia.us

Michigan:

There are no continuing education requirements for barbering or cosmetology. www.michigan.gov/dleg

Minnesota:

Cosmetologists, manicurists, and estheticians must provide documentation that they have practiced for a certain amount of hours in the previous 3 year period or have taken an approved 40 hour refresher course. This requirement does not exist for barbers. These professions do not have continuing education requirements. www.bceboard.state.mn.us

Summary of factual data and analytical methodologies:

The comparison information with the rules in adjacent states was obtained directly from contact with those states and a review of their rules. The comparison to the adjacent states demonstrates that the proposed rules are substantially consistent with the rules in those states. In addition, the Barbering and Cosmetology Examining Board examined models of continuing education from national organizations related to their profession, as well as from other Wisconsin regulatory boards.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

Internet research, as well as telephone surveys were conducted regarding the availability and costs related to continuing education in the cosmetology profession. Continuing education credits are available at an average cost range of \$10-\$25 per credit hour, and are available in a wide array of modes (online, video correspondence, workshops, etc.). That data was compared with the requirements outlined in the proposed rules and based thereon, appears that while individual licensees will see a slight increase in the cost associated with doing business as a result of these rules, the rules will have no significant impact on a substantial number of small businesses.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that this rule will require staff time in the Division of Enforcement, Division of Management Services, and the Office of Exams. The total one-time salary and fringe costs are estimated at \$26,172. The total on-going salary and fringe costs are estimated at \$40,228.

Effect on small business:

These proposed rules were reviewed by the department’s Small Business Review Advisory Committee which determined that the rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at hector.colon@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0495; email at pamela.haack@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 E. Washington Ave., Room 152, P.O. Box

8935, Madison, Wisconsin 53708-8935, or by email to pamela.haack@wisconsin.gov. Comments must be received on or before September 25, 2009, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. BC 9.01 is repealed and recreated to read:

BC 9.01 License renewal. To renew a license a licensee shall, on or before March 31 of every odd-numbered year, file with the department all of the following:

- (1) An application for renewal on a form prescribed by the department.
- (2) The fee determined by the department under s. 440.03 (9) (a), Stats.
- (3) Certification on the application for renewal that the licensee has, during the biennial period immediately preceding application, completed the continuing education requirements in s. BC 11.01.

SECTION 2. BC 9.02 is renumbered BC 9.03 and is amended to read:

BC 9.03 Reinstatement of license. If the application for renewal is 5 years or more after the expiration of the applicant's last license, the board in its discretion may require as a condition of renewal that the applicant successfully pass the examination required in s. BC 7.03.

SECTION 3. BC 9.02 is created to read:

BC 9.02 Late renewal. If the application for renewal is filed less than 5 years after the expiration of the applicant's last license, the applicant shall comply with the continuing education requirements in s. BC 11.01, and pay the late renewal fee in s. 440.08 (3) (a), Stats.

SECTION 4. Chapter BC 11 is created to read:

CHAPTER BC 11

CONTINUING EDUCATION

BC 11.01 Continuing education requirements for license renewal. (1) Except as provided in sub. (3), every licensee shall complete 12 continuing education credit hours during the 2-year period immediately preceding the license renewal date of March 31 of every odd-numbered year.

(2) The 12 credit hours of continuing education shall consist of all of the following:

(a) Two credit hours reviewing the laws governing licensees and establishments.

(b) Four credit hours in safety, sanitation and infection control.

(c) Six credit hours directly related to the provision of services that are permitted under the license held by the licensee.

(3) (a) A licensee is not required to obtain continuing education credit hours until the biennium after the licensee's first license renewal.

(b) A licensee who has held an active Wisconsin license for 30 or more years shall obtain 6 credit hours of continuing education during the 2-year period immediately preceding the license renewal date of March 31 of every odd-numbered year. The licensee shall obtain the credit hours listed in sub. (2) (a) and (b).

(c) Except as provided in par. (a), a licensee shall obtain 6 credit hours of continuing education to qualify for a license renewal on March 31, 2011. The licensee shall obtain the credit hours listed in sub. (2) (a) and (b).

(4) If a licensee fails to complete the continuing education requirement within a 2-year licensing period, continuing education credit hours acquired on or after April 1 of any odd-numbered year will be first applied to the preceding 2-year period until the requirement is fulfilled. Those credit hours will not apply to any other period.

(5) The board may grant a waiver, partial waiver or postponement of the continuing education requirements in cases of hardship.

(6) One hour of instruction equals one continuing education credit hour.

(7) One hour of teaching equals one continuing education credit hour. A maximum of 4 credit hours may be obtained by teaching in any 2-year period.

(8) Licensees shall obtain a certificate of completion from the program provider for each continuing education course completed. The licensee shall retain the certificates for 5 years and shall submit them to the department for audit purposes when the department requests them.

(9) Continuing education credit hours may be obtained through independent study and online courses that are approved under s. BC 11.02.

BC 11.02 Programs approved for continuing education credit hours. (1) Except as provided in sub. (3), the following programs are approved by the board for continuing education credit hours:

(a) Programs that are provided by a school that is licensed by a state.

(b) Workshops that are approved by a state or national professional organization.

(c) Programs presented by an instructor who is licensed by a state.

(d) Programs presented by the board or the department.

(2) The board may approve other programs that offer significant professional educational benefits for licensees that are presented by a university, technical college, or product distribution company.

(3) The board shall approve programs for the 2 credit hours reviewing the laws governing licensees and establishments. The board shall create a curriculum for the law program every biennium and shall approve programs that comply with the curriculum for the current biennium.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Chairperson
Barbering and Cosmetology
Examining Board

BC 9, 11 CR09-065 (Renewal, continuing education) Draft to Leg 10-26-09



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **09-065**

AN ORDER to renumber and amend BC 9.02; to repeal and recreate BC 9.01; and to create BC 9.02 and chapter BC 11, relating to renewal, reinstatement of license, and continuing education.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

08-17-2009 RECEIVED BY LEGISLATIVE COUNCIL.

09-11-2009 REPORT SENT TO AGENCY.

RS:DD

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-065

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

Section 454.12 (2), Stats., gives the board authority to impose continuing education requirements “by rule, if necessary to preserve the public health, safety or welfare.” Presumably, the board made that determination before it developed the proposed rule. A statement to that effect would be appropriate.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section BC 9.01 (1) refers to a form prepared by the department. The requirements of s. 227.14 (3), Stats., should be met.

b. Can reference to the “state board examination” in s. BC 9.03 be cross-referenced to the appropriate section in ch. BC 7?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Will the certification required under s. BC 9.01 (3) be part of the renewal application form under sub. (1)? The board may wish to clarify.

b. Section BC 9.02 only refers to filing of the renewal application and payment of applicable fees as required for late renewal. Presumably, certification of continuing education requirements is also required.

c. Section BC 11.02 (1) refers to "programs" approved by the board for continuing education. However, the paragraphs following the introductory clause of sub. (1) only mention providers and state nothing about program content. (Will programs by these providers be approved for purposes of s. BC 11.01 (2) (b) and (c) without any board review of program content?) Clarification should be considered. Also, in s. BC 11.01 (2) (intro.), the phrase "shall be obtained as follows" should be replaced by the phrase "shall consist of all of the following."