

Report From Agency

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.

Licensees 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. Licensees 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