

Ch. 158, Stats. 1951, does not apply to barbering services performed in the state prison and state reformatory by inmates for other inmates and attendants pursuant to direction and control of the state department of public welfare; and the state board of health has no jurisdiction over prices charged for barbering services. 41 Atty. Gen. 378.

Practicing barbering at state institutions and restricting their practice to patients or inmates of such institutions are not subject to licensing requirements. 46 Atty. Gen. 211.

See note to 159.13, citing 50 Atty. Gen. 169.

**158.05 History:** 1935 c. 467; Stats. 1935 s. 158.05; 1947 c. 97, 332; 1949 c. 312; 1953 c. 516 s. 12 to 14; 1955 c. 449; 1965 c. 656; 1969 c. 366.

**158.06 History:** 1935 c. 467; Stats. 1935 s. 158.06; 1947 c. 97; 1953 c. 516 s. 15, 16; 1959 c. 200; 1969 c. 366 ss. 108, 117 (1) (a).

**158.09 History:** 1935 c. 467; Stats. 1935 s. 158.09; 1937 c. 348; 1937 c. 349 s. 2, 3; 1939 c. 513 s. 35; 1947 c. 97; 1953 c. 516 s. 17 to 19; 1963 c. 183; 1965 c. 292 s. 11(3); 1967 c. 111; 1969 c. 154; 1969 c. 276 s. 584 (1) (b); 1969 c. 366 s. 117 (1) (a).

Under 158.09 (2), Stats. 1949, the state board of health is authorized to adopt a rule providing that no portion of a barber's apprenticeship can be served while attending a full-time school for barbering, but in the absence of such a rule a student should not be denied credit for such work where he can show compliance with all existing rules and statutes. 39 Atty. Gen. 278.

The state board of health may issue a second permit to one previously possessing a permit and whose 5-year apprenticeship has expired. 54 Atty. Gen. 203.

Ch. 111, Laws 1967, amended 158.09 (1) to increase the educational requirements for apprentice barbers. 57 Atty. Gen. 201.

**158.10 History:** 1935 c. 467; Stats. 1935 s. 158.10; 1937 c. 349 s. 2, 3; 1947 c. 97; 1953 c. 516 s. 20 to 22; 1959 c. 200; 1963 c. 47; 1969 c. 154; 1969 c. 366 s. 117 (1) (a).

158.10 (4), Stats. 1951, relating to qualifications for a journeyman barber's license upon the basis of having a license from another state, does not extend to applicants from foreign countries. 41 Atty. Gen. 151.

**158.11 History:** 1935 c. 467; Stats. 1935 s. 158.11; 1947 c. 97; 1949 c. 312, 634; 1953 c. 516 s. 23 to 25; 1959 c. 200; 1969 c. 154; 1969 c. 366 s. 117 (1) (a).

**158.12 History:** 1935 c. 467; Stats. 1935 s. 158.12; 1937 c. 348; 1943 c. 257; 1947 c. 97; 1953 c. 516 s. 26, 27; 1959 c. 200; 1969 c. 154; 1969 c. 366 s. 117 (1) (a).

Under 158.12 (1) and (2), Stats. 1939, a holder of unexpired barber shop manager's and master barber's licenses is not entitled to a shop manager's license covering a new shop unless he has been actively engaged in barbering not less than 40 hours a week for at least one-half of the preceding 2-year period. 29 Atty. Gen. 422.

**158.124 History:** 1953 c. 516; Stats. 1953 s. 158.124; 1969 c. 154.

**158.13 History:** 1935 c. 467; Stats. 1935 s. 158.13; 1953 c. 516 s. 29 to 31; 1969 c. 366 s. 117 (1) (a).

**158.14 History:** 1935 c. 467; Stats. 1935 s. 158.14; 1953 c. 516; 1969 c. 366 s. 117 (1) (a).

**158.15 History:** 1935 c. 467; Stats. 1935 s. 158.15; 1937 c. 348; 1953 c. 516; 1969 c. 366 s. 117 (1) (a).

## CHAPTER 159.

### Cosmetology Law.

**159.01 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.01; 1927 c. 150; 1939 c. 431; 1943 c. 275 s. 44; 1951 c. 723 s. 2 to 7; 1969 c. 366.

One who engages in marcelling and otherwise caring for hair of her patrons at their homes is an itinerant cosmetician, and is required to be licensed. 14 Atty. Gen. 229.

Demonstrators for dealers in beauty parlor equipment and supplies practice cosmetic art if they demonstrate upon subjects and teach cosmetic art when they demonstrate equipment in actual use. 20 Atty. Gen. 583.

Canvassers selling on commission who demonstrate cosmetics by actual application are engaged in practice of cosmetic art. Persons not authorized to practice cosmetic art who, in soliciting orders for cosmetics, prepare or assist in preparation of statement of unhealthy condition of skin and scalp are engaged in diagnosing, in violation of the medical practice act. 21 Atty. Gen. 1135.

Manufacturers' representatives who demonstrate cosmetic preparations but make no charge for services rendered in making such demonstration do not practice cosmetic art within the meaning of 159.01 (1), Stats. 1947, and are therefore not required to be licensed under 159.13. 37 Atty. Gen. 388.

**159.02 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.02; 1927 c. 150; 1939 c. 457; 1951 c. 723; 1961 c. 399; 1969 c. 153, 154, 331; 1969 c. 366 s. 117 (1) (a).

Persons enrolled in a cosmetic school, and later graduated therefrom, who had not completed the period of apprenticeship and training required by 159.02 and 159.08 (b), Stats. 1937, when those statutes were amended in 1939, and whose school was not one having the certificate of registration required by 159.02, had no right to take the examination for cosmetologist under the statutes as they existed at the time of the amendments, and hence did not obtain any "vested rights" of which they could be unconstitutionally deprived by the fact that the amendments of 1939 prescribed new requirements in order to qualify for the examination. *Moratto v. Harper*, 237 W 295, 296 NW 902.

Authority to determine the equivalency of tenth-grade education under 159.02 (3), Stats. 1939, can be exercised only by agencies named in the statute. 28 Atty. Gen. 692.

Public vocational schools are not required to pay the annual license fee provided by 159.02 (7), Stats. 1939, for a certificate of registration to teach cosmetic art. 29 Atty. Gen. 314.

Students matriculated in a school of cosmetology on days other than the first Monday

and 4 days thereafter in each odd-numbered month, contrary to board of health's rule, are not entitled to student permits under 159.02 (8), Stats. 1939, and may be prosecuted for engaging in practice work under 159.15. School authorities misleading students as to legality of such matriculation may be prosecuted under 159.16. Student permits issued to such students heretofore, if any, may be revoked under 159.14. 29 Atty. Gen. 424.

A student transferring from one school of cosmetology to another must file an application in the second school under 159.02 (4), Stats. 1939. A student so transferring is entitled to credit for hours put in at the first school, notwithstanding the transfer may have been made on a date other than that fixed by a rule of the board for entering school, since the rule applies only to original entries. The 1500 hours of instruction required for graduation under 159.02 (3) need not all be earned in the same school although they must all be earned in schools registered by the board. 30 Atty. Gen. 107.

All schools teaching cosmetic art are subject to 159.02, Stats. 1947, as to minimum requirements and any school meeting such requirements may offer advanced courses subject to supervision and regulation by the state board of health under 159.03. However, advanced lectures and demonstrations may be offered to licensed operators without board supervision or regulation provided that no representation is made to the effect that the same constitutes a school of cosmetic art under ch. 159. 36 Atty. Gen. 543.

A rule of the state board of health that instructors in schools of cosmetology shall pass an examination which differs from that given applicants for managers' licenses, and that instructors may not practice cosmetology, is valid under 140.05 (3), 159.03 (1) and 159.02 (2), Stats. 1947. 37 Atty. Gen. 523.

Listing of schools of cosmetology under the heading "Beauty Parlors" in a classified telephone directory constitutes "advertising for patrons" in violation of 159.02 (5), Stats. 1951. 40 Atty. Gen. 257.

Under 159.02 (8), Stats. 1963, the state board of health may issue permits to students of cosmetology at Oregon school for girls if the board is convinced that despite their current status they are possessed of a good moral character and temperate habits. 53 Atty. Gen. 125.

**159.03 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.03; 1927 c. 150; 1939 c. 431; 1951 c. 723; 1959 c. 546; 1969 c. 366 s. 117 (1) (a).

On exercises of police power see notes to sec. 1, art. I; and on delegation of power see notes to sec. 1, art. IV.

160.22, Stats. 1941, authorizing any person aggrieved by an order of the board to commence an action in the circuit court to vacate the order on the ground that it is unlawful or unreasonable, does not apply to orders of the board made under ch. 159. *Toebe Academy of Beauty Culture v. Kelly*, 239 W 103, 300 NW 476.

Ch. 159, Stats. 1949, does not prohibit the sale of general merchandise in a beauty parlor, but such parlor may be closed under 159.03 (3) if an insanitary condition results, and the

state board of health has rule-making power with respect thereto in 159.03 (1). 38 Atty. Gen. 374.

Students and apprentices are ineligible to attend educational meetings, seminars, lectures or demonstrations conducted pursuant to 159.03 (4), Stats. 1961. 50 Atty. Gen. 228.

**159.05 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.05; 1927 c. 150; 1939 c. 431; 1951 c. 723; 1959 c. 546; 1961 c. 399; 1969 c. 276 s. 582 (13); 1969 c. 366.

**159.06 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.06; 1939 c. 431; 1951 c. 723 s. 13 to 16; 1969 c. 366 ss. 112, 117 (1) (a).

The statutes do not forbid the conduct of examinations for managers' and operators' licenses under 159.08, Stats. 1947, before completion of the other prerequisites to the issuance of a license. 37 Atty. Gen. 476.

**159.07 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.07; 1939 c. 431; 1951 c. 723.

**159.08 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.08; 1927 c. 150; 1939 c. 431; 1951 c. 723 s. 17 to 24; 1959 c. 546; 1961 c. 399; 1963 c. 480; 1969 c. 153, 154; 1969 c. 276 ss. 589 (1) (a), 604 (1); 1969 c. 366 s. 117 (1) (a), (j).

As used in 159.08 (4) (a), Stats. 1929, the words "who has completed the course prescribed by section 159.02 in a registered beauty school" imply that the entire period of training must be had in a registered beauty school. 29 Atty. Gen. 61.

Under 159.08 (6), Stats. 1961, the applicant must hold a current registration or license in another state. 50 Atty. Gen. 223.

On citizenship requirements for cosmetology operator's and manager's licenses see 55 Atty. Gen. 233.

**159.09 History:** 1939 c. 431; Stats. 1939 s. 159.09; 1951 c. 723; 1969 c. 154; 1969 c. 366 s. 117 (1) (a).

For discussion of 159.01 (1), Stats. 1961, relative to hair-washing or hair-drying equipment, in business establishments other than beauty salons, and licensing of same see 50 Atty. Gen. 196.

**159.10 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.09; 1939 c. 431; Stats. 1939 s. 159.10; 1951 c. 723; 1969 c. 366 s. 117 (1) (a).

**159.11 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.10, 159.11; 1927 c. 150; 1939 c. 431; Stats. 1939 s. 159.11; 1951 c. 723; 1959 c. 546; 1969 c. 154; 1969 c. 366 s. 117 (1) (a).

**159.12 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.12; 1927 c. 150; 1939 c. 431; 1951 c. 723; 1969 c. 153; 1969 c. 276 s. 584 (1) (b); 1969 c. 366 s. 117 (1) (a).

A contract of apprenticeship for beauty parlor apprentices which is in conflict with the beauty parlor statute, minimum wage law and beauty parlor code is invalid. 23 Atty. Gen. 747.

159.12 (2), Stats. 1947, requires that a circuit teacher teaching cosmetology apprentices in theoretical and scientific subjects must hold a Wisconsin manager's license. 36 Atty. Gen. 380.

**159.13 History:** 1925 c. 68 s. 2; Stats. 1925

s. 159.13; 1939 c. 431; 1951 c. 723; 1967 c. 119; 1969 c. 154; 1969 c. 366 s. 117 (1) (a).

Treatment of abnormal or pathological conditions of feet, such as corns, bunions, callouses and like, is within the exclusive province of licensed chiropodists and may not be undertaken by cosmetologists. 30 Atty. Gen. 45.

One who gives an occasional permanent wave to a friend at his home, without receiving or expecting any compensation, is not engaged in the practice of cosmetic art so as to require a license. 37 Atty. Gen. 544.

A licensed cosmetologist may not give body massages unless licensed under 147.185, Stats. 1949. Ch. 159 does not prohibit the giving of steam baths or body massages in beauty parlors. 38 Atty. Gen. 374.

A cosmetologist licensed under ch. 159, Stats. 1961, may cut hair irrespective of the sex of the customer. 50 Atty. Gen. 169.

**159.14 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.14; 1939 c. 431; 1951 c. 723; 1955 c. 696 s. 33; 1969 c. 366 s. 117 (1) (a).

**159.15 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.15; 1927 c. 150; 1939 c. 431; 1951 c. 723.

**159.16 History:** 1925 c. 68 s. 2; Stats. 1925 s. 159.16; 1927 c. 150; 1951 c. 723.

**159.17 History:** 1951 c. 723; Stats. 1951 s. 159.17.

## CHAPTER 160.

### Hotels, Restaurants and Vending of Foods and Beverages.

**160.01 History:** 1913 c. 648; Stats. 1913 s. 1408m—10 sub. 1; 1917 c. 129; 1923 c. 448 s. 130; Stats. 1923 s. 160.01; 1935 c. 14, 454; 1937 c. 321; 1939 c. 112; 1945 c. 35; 1957 c. 115; 1961 c. 42, 530; 1963 c. 270; 1965 c. 155; 1969 c. 366 ss. 113, 117 (1) (a).

Tourist cabins and cottages wherein sleeping accommodations are offered for pay to tourists or transients are tourist rooming houses within 160.01 (4), Stats. 1945, regardless of whether such cabins are rented by the day, week, month or season. 34 Atty. Gen. 240.

A tavern in which sandwiches are served to patrons by delivering such sandwiches from a sandwich shop requires a permit under the provisions of ch. 160. A permit is also required in the event the proprietor of the tavern purchases the sandwiches in wrapped form and resells them. 34 Atty. Gen. 355.

A summer camp operated by a club, church or other organization for educational and recreational purposes and which limits attendance to members, or a private camp for the same purpose which limits attendance to persons selectively chosen in advance are not "tourist rooming houses" within the meaning of this section. However, such camps are subject to the statute where sleeping accommodations are furnished for tourists or transients. 35 Atty. Gen. 449.

The statutes do not provide a criminal penalty for the act of signing a false or fictitious name to a guest register of a "tourist camp" or "tourist rooming house." 38 Atty. Gen. 311.

"Restaurant" as defined in 160.01 (2), Stats. 1951, does not include churches or clubs which occasionally serve meals to organizations pursuant to previous arrangements on terms not available to the public generally. 40 Atty. Gen. 201.

"Lunch" and "meal" are defined in 44 Atty. Gen. 289.

For discussion of the term "fraternal organizations" as used in 160.01 (2) and the need for permits to occasionally serve or sell meals see 48 Atty. Gen. 287.

Under ch. 160 the state board of health is authorized to license a mobile food stand as a restaurant and may limit the area of operation in the interest of public health and safety. 49 Atty. Gen. 196.

On license requirements relative to industry or private club or caterers serving food to persons drawn from the general public see 51 Atty. Gen. 42.

**160.02 History:** 1913 c. 648; Stats. 1913 s. 1408m—10 sub. 2; 1923 c. 448 s. 130; Stats. 1923 s. 160.02; 1935 c. 440; 1937 c. 112; Stats. 1937 s. 160.02, 160.16; 1943 c. 275 s. 45; 1945 c. 35; Stats. 1945 s. 160.02; 1953 c. 179; 1963 c. 46, 270, 421; 1969 c. 366 s. 117 (1) (a).

A restaurant license is not transferable from one place to another. Restaurants and portable hotels at fairs must be licensed. 3 Atty. Gen. 839.

Ice cream parlors, confectionary stores, etc., selling malted milk and refreshments in the nature of light lunches, are not required to be licensed as restaurants. 4 Atty. Gen. 1070.

The serving and selling of hermetically sealed sandwiches is subject to the restaurant permit law. 38 Atty. Gen. 345.

No restaurant permit is required under 160.02 (1) for preparation and sale of hot or cold food sold by the pound, quart, dozen, etc., by food stores, delicatessens, and catering establishments. A catering establishment which prepares, serves, or sells food, hot or cold, in the form of individual meals or lunches at stated prices for such meals or lunches, to transients or the general public, must have a restaurant permit. 44 Atty. Gen. 289.

A restaurant permit issued to cover a restaurant in a building cannot be extended to cover use of a mobile unit, which must have a restaurant permit to sell and serve lunch and meals to the general public. 51 Atty. Gen. 163.

Municipalities may regulate the sale of food and beverage by vending machines, if the ordinances do not conflict with but rather complement state legislation. 55 Atty. Gen. 268.

**160.025 History:** 1963 c. 270; Stats. 1963 s. 160.025; 1969 c. 366 s. 117 (1) (a).

**160.03 History:** 1913 c. 648; Stats. 1913 s. 1408m—10 sub. 3; 1923 c. 448 s. 130; Stats. 1923 s. 160.03; 1929 c. 138; 1945 c. 35; 1953 c. 179; 1961 c. 530; 1963 c. 224, 270; 1965 c. 310; 1969 c. 154; 1969 c. 366 s. 117 (1) (a).

**Revisor's Note, 1945:** The amendment is from 160.17. (Bill 70-S, s. 1).

A city health department with full-time personnel devoting their time to the activities of that department during normal office hours