

Clearinghouse Rule 23-055

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to **repeal** SPS 50.110 (4), (9), and (10), 50.300 (3) and Table 50.300-2, 50.330 (3) (b), 50.340 (1) (b) and (Note), 50.421, 50.422, 50.423, 50.424, and 65.02; to **amend** SPS 50.100 and (Note), 50.230 (3) and (4), 50.231 (3), 50.300 (1g) and (1r), 50.330 (4), 50.400 (3), 50.401, 60.02 (1), and 65.01; to **repeal and recreate** SPS 50.110 (20), 50.212, 50.310 (3) (a), 50.340 (2), and 50.420; and to **create** 50.340 (1) (a) (Note 2), relating to barbering licensure, continuing education and practice outside of a licensed establishment.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 440.62 (5) (a), 440.63, 440.64, 454.06, 454.12, 454.13, 454.22 (2), 454.23 (4) to (6), 454.24 (2) and (4), 454.25 (1) (ag) and (ar) and (b), (4), and (5), 454.26 (3) (a), 454.265, and 454.27 (1).

Statutory authority: Sections 227.11 (2) (a), 440.62 (5) (b) 2., and 454.25 (1) (ag), Stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats., states: “Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation...”

Section 440.62 (5) (b) 2., Stats., states: “The department shall promulgate rules prescribing the subjects required to be included in courses of instruction at schools of barbering and establishing minimum standards for courses of instruction and instructional materials and equipment at schools of barbering.”

Section 454.25 (1) (ag), Stats., states: “The department shall promulgate rules permitting the use of a chemical process in the practice of barbering outside of a licensed establishment, except that the department may not promulgate any rule that restricts the use of a chemical process in cutting or styling hair in the practice of barbering.”

Related statute or rule: Wisconsin Administrative Code, chs. Cos 1 to Cos 10.

Plain language analysis: Chapters SPS 50 and 60 to 65 currently contain the administrative code relating to the practice of barbering.

2017 Wisconsin Act 81 eliminated continuing education requirements for barbers yet allowed the department to require continuing education for a licensee as part of the disciplinary process. 2017 Wisconsin Act 81 eliminated the required 4,000 hours of experience for applicants who have a credential in another jurisdiction and apply for a Wisconsin reciprocal license. Under the Act, a currently licensed out-of-state applicant is now required to complete a one-hour course educating them on the Wisconsin statutes and administrative rules that apply to their practice. The Act also requires notification to all current Wisconsin license holders of any changes to the statutes and rules relating to barbering prior to the renewal of a barbering license.

Wisconsin Act 82 eliminated the barbering manager license and allowed for the practice of barbering outside of a licensed establishment under certain circumstances. The Act also eliminated the requirement that an individual providing practical instruction in barbering hold a barbering or cosmetology instructor license; the requirement now only reflects the instructor be licensed as a barber or cosmetologist.

As a result of these changes, the Department of Safety and Professional Services is updating the rules governing the practice of barbering based upon passage of 2017 Wisconsin Act 81 and 2017 Wisconsin Act 82 to make them consistent with current industry, regulatory, and academic practices.

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

None.

Comparison with rules in adjacent states:

Illinois: In Illinois, barbers, barbering schools, and barbering establishments are regulated by the Illinois Department of Financial and Professional Regulation. [225 ILCS 410, Illinois Administrative Code title 68 §§ 1175.200-375; 1300-1335] Illinois does not require barbers to complete continuing education.

Illinois licenses barbers by reciprocity if the applicant holds a license that is “the same or substantially similar to” the license issued in Illinois. There are no specific requirements for hours of experience or state exams. [Ill. Admin. Code tit. 68 § 1175.220]

Illinois licenses barber teachers, barber teacher licenses expire on July 31 of each odd numbered year, and it appears that a license is required to provide instruction in Illinois barbering schools. [Ill. Admin. Code tit. 68 §§ 1175.205; 300-375]

Illinois licenses barbering establishments but does not appear to license managers or require a licensed manager to obtain an establishment license. [Ill. Admin. Code tit. 68 §§ 1175.1300-1335]

Illinois allows certain barbering practices outside of a traditional licensed shop or salon, but generally requires a registration for each location where services are provided. [Ill. Admin. Code tit. 68 § 1175.1300]

Iowa: In Iowa, barbers are regulated by the Iowa Board of Barbering. [645 Iowa Administrative Code chs. 21-25] Iowa requires barbers to complete three hours of continuing education per biennium, with a minimum of one hour in the area of Iowa barbering laws and administrative regulations. [645 Iowa Admin. Code ch. 24]

Iowa allows reciprocal licensure for any individual who has held an active license in another qualifying jurisdiction for at least 12 months during the past 24 months, provides verification from every state in which the applicant has been licensed as a barber, completes one hour of instruction on Iowa barbering laws and administrative rules and sanitation, and passes a national written and practical examination. [645 Iowa Admin. Code § 21.5]

Iowa licenses barbering instructors and instructors are generally required to renew their license every two years. [645 Iowa Admin. Code ch. 21] All instructors in Iowa must have an instructor license. [645 Iowa Admin. Code § 23.9]

Iowa barbering establishments are licensed and may be licensed as either a stationary or mobile barber shop. [645 Iowa Admin. Code § 21.11] The rules do not require a licensed manager but do require that anyone who directly supervises barbers be licensed either as a barber or a cosmetologist. [Iowa Code § 158.10]

Iowa licensed barbers may not practice barbering in any place other than a licensed barber shop, barber school, or salon, except “under extenuating circumstances arising from physical or mental disability or death of a customer.” [Iowa Code § 158.13]

Michigan: Michigan barbers are regulated by the Michigan Licensing and Regulatory Affairs Bureau of Professional Licensing and overseen by the Michigan State Board of Barbers. Michigan does not require barbers to complete continuing education.

Michigan allows reciprocal licensure for individuals who has held a license in another jurisdiction for one out of the three years immediately preceding the date of applications if the requirements for licensure are substantially equivalent but may deny licensure if the applicant has been disciplined or has disciplinary action pending. [Michigan Compiled Laws § 1108]

Michigan licenses barber instructors, licenses are required for all instructors, and licenses must be renewed every two years. [Mich. Comp. Laws § 339.1109; 1110]

Michigan barbering establishments must be licensed, though there do not appear to be restrictions on who may own an establishment or a requirement for a licensed manager. [Mich. Comp. Laws § 339.1111]

Michigan licensed barbers may not practice barbering outside of licensed establishments except to a patient in a hospital, nursing home, home for the aged, or similar facility, or to a person in the person's home if it is impractical or unsafe for the person to travel due to frailty, age, injury. [Mich. Comp. Laws § 339.1117]

Minnesota: Minnesota barbers are regulated by the Minnesota Board of Barber Examiners. Minnesota does not require barbers to complete continuing education.

Minnesota allows reciprocal licensure without examination for individuals who hold a current credential in another US jurisdiction with substantially the same requirements as Minnesota. Reciprocal licensure with examination is available for individuals who do not have a current credential but provide verified evidence of at least 1500 hours of verified barber education within the previous four years that meets substantially the same requirements as those required in Minnesota statutes. [Minn. Stat. §154.11]

Minnesota licenses barbering instructors, licenses are required for all instructors, and licenses must be renewed every year. [Minn. Stat. §§ 154.01 (e), 154.15]

Minnesota barbering establishments must be licensed, and all establishments must be under the direct supervision and management of a registered barber. [Minn. Stat. § 154.01 (d)]

Minnesota excludes from the definition of barbering, and therefore from requirements relating to performance of services only in licensed establishments, persons who perform barbering services for charitable purposes and without compensation in nursing homes, shelters, missions, individual homes, or other similar facilities. [Minn. Stat. § 154.04]

Summary of factual data and analytical methodologies:

The methodology used for developing the proposed rule included reviewing previous Wisconsin legislation.

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

The rule was posted on the department's website for 14 days to solicit economic impact comments from small businesses. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person: Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-267-7139; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dana Denny, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing, to be held on a date to be determined, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 50.100 and (Note) are amended to read:

SPS 50.100 Authority and scope. Pursuant to subch. II of ch. 454, Stats., this chapter applies to licensing of barbers, ~~barbering managers~~, and barbering establishments.

Note: Under section 454.22 (1) of the Statutes, "No person may engage in barbering unless the person is one of the following:

- (a) A licensed barber.
- ~~(b) A licensed barbering manager.~~
- (c) An apprentice in barbering under s. 454.26.
- (d) A student in a barbering course of instruction.
- (e) A person who holds a temporary permit to practice barbering granted by the department under s. 454.23 (7).
- (f) A licensed cosmetologist.
- ~~(g) A licensed cosmetology manager.~~
- (h) An apprentice in cosmetology under s. 454.10.
- (i) A student in a cosmetology course of instruction.

(j) A person who holds a temporary permit to practice cosmetology granted by the cosmetology examining board under s. 454.06 (10).

SECTION 2. SPS 50.110 (4), (9), and (10) are repealed.

SECTION 3. SPS 50.110 (20) is repealed and recreated to read:

SPS 50.110 (20) "Manager" means a person who meets the criteria established in s. 454.25 (5), Stats.

SECTION 4. SPS 50.212 is repealed and recreated to read:

SPS 50.212 Practice outside of a licensed establishment. A person authorized to practice barbering under s. 454.22(1), may provide barbering services outside of a licensed establishment if all the following are true:

(1) The person owns, manages, is employed by, or is affiliated with an establishment that is licensed to provide services under ss. 454.08 (2) (a) or 454.25 (2), Stats.

(2) The person brings to the outside service location their active credential certificate, or a copy, provided to them under s. 454.23 (4), Stats.

(3) The person complies with all practice standards, equipment, and sanitation requirements provided in this chapter when providing barbering services outside of a licensed establishment.

(4) The services provided do not involve the use of a chemical process, with the exception of a chemical process in cleansing, cutting or styling hair.

Note: Section 454.21, Stats., states:

454.21 Limitations and Exceptions. Barbering does not include any of the following:

(1) A service performed by a person licensed, certified, or registered under the laws of this state as a physician, physician assistant, nurse, or funeral director if the service is within the scope of the license, certificate, or registration.

(2) A service performed in a correctional institution, hospital, or licensed nursing home under the supervision of a person responsible for inmate or patient care.

(3)

(a) A service performed preparatory to a live public performance or appearance, whether in-person or through broadcast media, including the Internet.

(b) A service performed in the course of the production of any digital or analog recording of a moving or still image intended for public release or broadcast, including through the Internet.

SECTION 5. SPS 50.230 (3) and (4) are amended to read:

SPS 50.230 (3) In the absence of a manager, maintain and provide appropriate records for apprentices, temporary permit holders, and barbers, including employment records, to enable apprentices or barbers to meet the requirements of s. 440.63 (3) (a) 2. or 454.23 (2), Stats., for credentialing as an instructor, or barber,~~or manager,~~ respectively. Owners shall maintain these records for a minimum of 5 years.

~~(4) Employ at least one licensed barber or cosmetologist as a full-time manager who shall have direct authority over the operations of the establishment. ~~If the manager of an establishment leaves employment or becomes otherwise unavailable, an owner may continue to operate the establishment for no more than 90 days without a manager. The owner shall notify the department that the manager is no longer employed or has become otherwise unavailable within 10 business days following the manager's last day of employment.~~~~

SECTION 6. SPS 50.231 (3) is amended to read:

SPS 50.231 (3) The manager shall, for a minimum of 5 years, maintain and provide appropriate records for apprentices, temporary permit holders, and barbers, including employment records, to enable apprentices or barbers to meet the requirements of s. 440.63 (3) (a) 2., 454.23 (2), Stats., for credentialing as an instructor, or barber,~~or manager,~~ respectively.

SECTION 7. SPS 50.300 (1g) and (1r) are amended to read:

SPS 50.300 (1g) APPROVED SCHOOLS. An applicant for licensure as a barber ~~or a barbering manager~~ may receive instruction in a school licensed under s. 440.62 (3) (ag), Stats., exempted under s. 440.61, Stats., or accredited by any of the following:

(1r) GENERAL. Schools that provide instruction to students for a barber's ~~or barbering manager's~~ license shall develop curricula for instruction which are based on the applicable syllabus approved by the department. A school may not deviate from the hours listed for subjects in the appropriate syllabus included in this section.

SECTION 8. SPS 50.300 (3) and Table 50.300-2 are repealed.

SECTION 9. SPS 50.310 (3) (a) is repealed and recreated to read:

SPS 50.310 (3) (a) The establishment owner with whom an apprentice contracts shall employ a licensed barber or licensed cosmetologist who has completed at least 2,000 hours of professional practice to train and supervise the apprentice. An apprentice shall only work under the supervision of a licensed barber or a licensed cosmetologist.

SECTION 10. SPS 50.330 (3) (b) is repealed.

SECTION 11. SPS 50.330 (4) is amended to read:

SPS 50.330 (4) PASSING SCORES. The passing score of the examinations for licensure as a barber ~~or manager~~ shall be based on the department's determination of the level of examination performance needed for minimum competence in the profession.

SECTION 12. SPS 50.340 (1) (a) (Note 2) is created to read:

SPS 50.340 (1) (a) Note: Application forms are available on the department's website at dsps.wi.gov, or by request from the Department of Safety and Professional Services, P.O. Box 8935, Madison, Wisconsin 53708, or call (608) 266-2112.

SECTION 13. SPS 50.340 (1) (b) and (Note) are repealed.

SECTION 14. SPS 50.340 (2) is repealed and recreated to read:

SPS 50.340 (2) RECIPROCITY GENERALLY. Pursuant to s. 454.27, Stats., the department may grant a license to practice barbering without examination to a person from another state or territory of the United States or another country who holds a current license in the other jurisdiction to perform services that are substantially the same as those performed by a licensed barber in this state, pays the appropriate fee as indicated in s. 440.05, Stats., and one of the following applies:

(a) The applicant completes a one-hour department approved course on Wisconsin statutes and administrative code relating to barbering practice, has never been disciplined by the licensing authority of another jurisdiction, and is not currently a party to disciplinary proceedings in another jurisdiction.

(b) The department has entered into a written reciprocal agreement with the licensing authority of another state, after determining that the education and services practiced are substantially equivalent to those in Wisconsin.

SECTION 15. SPS 50.400 (3) is amended to read:

SPS 50.400 (3) Certification on the application for renewal that the licensee has, ~~during the biennial reporting period immediately preceding application, complied with any applicable continuing education requirements in s. SPS 50.420~~ reviewed the digest under s. 454.267, Stats.

SECTION 16. SPS 50.401 is amended to read:

SPS 50.401 Late renewal. If the application for renewal is filed after the deadline in s. SPS 50.400 but less than 5 years after the expiration of the applicant's last license, the applicant shall ~~comply with the continuing education requirements in s. SPS 50.420, and~~ pay the late renewal fee in s. 440.08 (3) (a), Stats., in addition to the renewal fee under s. SPS 50.400 (2).

SECTION 17. SPS 50.420 is repealed and recreated to read:

SPS 50.420 Continuing education. To ensure competency, the department may require specific remedial continuing education requirements for any licensee as part of a disciplinary process.

SECTION 18. SPS 50.421 is repealed.

SECTION 19. SPS 50.422 is repealed.

SECTION 20. SPS 50.423 is repealed.

SECTION 21. SPS 50.424 is repealed.

SECTION 22. SPS 60.02 (1) is amended to read:

SPS 60.02 (1). “Aesthetician,” “aesthetics,” “barber,” “barbering,” ~~“barbering manager,”~~ “cosmetologist,” “cosmetology,” ~~“cosmetology manager,”~~ “electrologist,” “electrology,” “establishment,” “manicuring,” “manicurist,” “practical instruction,” “school,” “specialty school,” “student,” “theoretical instruction,” and “training hour” have the meanings given under s. 440.60, Stats.

SECTION 23. SPS 65.01 is amended to read:

SPS 65.01 Application requirements for an initial instructor’s certificate. The department shall issue an instructor's certificate in the fields of barbering, cosmetology, aesthetics, manicuring, or electrology to any person who meets the requirements of s. 440.63 (3), Stats. Application shall be made on a form supplied by the department, and except as provided in s. 45.44, Stats., shall be submitted with the fee required by s. 440.05 (1), Stats.

SECTION 24. SPS 65.02 is repealed.

SECTION 25. EFFECTIVE DATE. 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.

(END OF TEXT OF RULE)
