

**SUBJECT:** Regulating barbers and cosmetologists under TDLR

**COMMITTEE:** Government Reform — committee substitute recommended

**VOTE:** 6 ayes — Uresti, Otto, Frost, Gonzales, Hunter, Veasey  
0 nays  
1 absent — Y. Davis

**SENATE VOTE:** On final passage, April 26 — 31-0 on Local and Uncontested Calendar

**WITNESSES:** (*On House companion bill, HB 1436 by Hamric:*)  
For — Erin Colwell, Lone Star Cosmetology Association; Linda Colwell, United Career Training; Richard Perry, Careers Unlimited Beauty School; Charlie Schnabel, Lone Star Cosmetology Association  
  
Against — Jobeth Gleichner, Texas Industrial Vocational Association, Cosmetology Instructors in Public Schools; Linda Holcombe, Texas Industrial Vocational Association  
  
On — Ronald Brown, Glenn Parker, Texas State Board of Barber Examiners; William Kuntz, Texas Dept. of Licensing and Regulation; Luis Macias, Texas Workforce Commission; Sandra Vice, Texas State Auditor's Office (*Registered but did not testify*: Chloe Lieberknecht, Sunset Advisory Commission; Michael Yokie, Texas State Auditor's Office)

**BACKGROUND:** The Texas Cosmetology Commission (TCC) is responsible for the licensing of approximately 151,500 individuals and 26,570 entities. The State Board of Barber Examiners (TSBBE) regulates approximately 13,150 individuals and 8,000 entities. The Texas Department of Licensing and Regulation (TDLR) currently regulates more than 220,000 licensees falling into 22 different professions.

The barber and cosmetology boards underwent Sunset review in 1991 and

were continued by the 72nd Legislature. If not continued by the 79th Legislature, the boards will be abolished September 1, 2005.

DIGEST:

CSSB 411 would abolish TCC and TSBBE and create the Advisory Board on Cosmetology and Advisory Board on Barbering under TDLR. These advisory boards would advise TDLR on policy issues. The TDLR commission would serve as the rulemaking authority for rules pertaining to barbering and cosmetology, while the department would administer both the statutes and rules pertaining to these professions. The bill would make technical and conforming changes to reflect this transfer of duties and powers.

**Advisory board structure.** Each advisory board would consist of five members appointed by the presiding officer of the commission at TDLR. These members would serve staggered six-year terms that would expire on odd-numbered years. The commission would approve appointment of the presiding officers of the advisory boards for two-year terms. The boards would advise the commission and TDLR on the education and curricula for applicants, the content of examinations, and proposed rules and standards on technical issues relating to their respective professions. They also would answer any additional questions from the commission and TDLR.

The Advisory Board on Barbering would include two class A barbers who did not hold shop permits, two barbershop owners who did hold barbershop permits, and one member who held a permit to operate a barber school. The Advisory Board on Cosmetology would include a license holder for a beauty shop that was part of a chain of beauty shops, a license holder for a beauty shop that was not a part of a chain of beauty shops, one member who held a private beauty culture school license, and two members who each held operator licenses. The associate commissioner for occupational education and technology of the Texas Education Agency or the associate commissioner's authorized representative would serve as an ex officio member of the commission without voting privileges.

**School curriculum and examinations.** The commission would provide a minimum curriculum for licensed schools. The commission could retain student records only during the time required by state law. CSSB 411 would allow TDLR to create rules regarding administration of examinations that would require written examinations and could include

practical examination requirements. Additional stipulations would be required for barber examinations, and an early examination provision would allow TDLR to approve requests for certain applicants to take an exam after 1,000 hours of instruction. Practical exams could be administered by TDLR, an approved contractor, or a registered examination proctor.

**Licenses, certificates, and permits.** TDLR would develop application forms for licenses, certificates, and permits allowing the issuance of duplicates if the applicant paid a fee. The bill would set forth provisions for obtaining a provisional certificate or license for individuals currently licensed in another jurisdiction as well as for reciprocal certificates, licenses, or permits for those who held one of these documents in another state or country with substantially equivalent requirements.

**Sanitation requirements.** The commission would establish sanitation rules to prevent the spread of infectious or contagious diseases. Instruments used for barbering and cosmetology service would have to be sanitized using an autoclave unless an approved disposable supply or instrument was used. The owner or manager of a business or school would be required to provide a federal Food and Drug Administration-approved autoclave to be used in accordance with the manufacturer's instructions. A shop would have to post a copy of the commission's sanitation rules.

**Inspections.** For a fee set by the commission, TDLR would inspect schools, shops, and facilities for compliance before these establishments commenced operation and could reinspect them if not initially approved. The commission could inspect a business or any other place in which a licensee was suspected to be practicing in violation of regulations. It also would have to inspect each facility that held a license, certificate, or permit at least once every two years and could conduct additional inspections on a schedule based upon risk assessment. An inspector who discovered a violation would provide written notice and file a complaint with the executive director.

**Enforcement.** Consumers would be provided information to direct complaints toward TDLR, and the department would inform consumers if

it lacked the jurisdiction to handle a complaint. TDLR would track and make available certain information on complaints.

CSSB 411 would provide for the use of informal settlement conferences. It also would provide for denial and revocation of certificates, licenses, or permits for specified reasons as well as injunctive relief if the holder of one of these documents committed a violation that posed a serious threat to public health. TDLR could deny an applicant's request for renewal if that individual had not paid a required administrative penalty. A civil penalty of not more than \$25 per day for a barber or barbershop owner or \$1,000 per day for a school could be issued in addition to any other criminal penalties. TDLR would not be required to provide an appeal bond, and the attorney general would represent TDLR in enforcement actions.

**Provisions pertaining to cosmetologists.** An applicant for a shampoo apprentice permit no longer would be required to submit a certificate of health. Not later than the 10th day before the expiration date of a certificate or license, the holder could be placed on inactive status by paying a fee and following specified procedures. Individuals on inactive status would not be required to meet continuing education requirements and could not practice. An individual could return to active status by following specified procedures and paying a fee. The bill would remove certain notification requirements when a student enrolled, withdrew, or graduated from a beauty school and would require a private beauty culture school to notify TDLR when a student was eligible to take an examination.

**Provisions pertaining to barbers.** The bill would eliminate caps on the required fees for issuance of a barber or teacher certificate; manicurist or technician license; student, school, or manicurist specialty shop permit; renewal of a license or certificate, including for those individuals in the armed forces; or examination.

Shop permits would expire on the second anniversary of the date of issuance. Barber school permits would expire on the first anniversary of the date of issuance. Not later than the third day after opening, the owner or manager of a barbershop or specialty shop would have to submit an application and fee to TDLR for an appropriate permit. A barbershop permit would be issued to the owner of the barbershop only if the shop met minimum health standards.

Schools providing training to obtain class A barber certificates would have

to have one qualified instructor for every 25 students on the premises. Monthly progress reports regarding barber students would have to be maintained at the school rather than submitted to TDLR, and the school would have to notify TDLR when a student was eligible to take an examination. The minimum age for application for a manicurist license would be raised from age 16 to age 17.

**General provisions.** The bill would repeal certain sections of Occupations Code, ch. 1601 and ch. 1602, pertaining to the regulation of barbers and cosmetologists under their independent board structure. The boards would continue to exist until January 1, 2006, in order to transfer duties and powers to TDLR. By this same date, all property, funds, obligations, and FTE positions would be transferred to TDLR. All rules of the boards would continue in effect until superseded by new TDLR rules. The bill would provide specific dates and processes for accounting privileges and information to be transferred to TDLR, which would take effect only if finally passed by a two-thirds record vote of the membership of each house. Unless otherwise provided, this bill would take effect September 1, 2005.

SUPPORTERS  
SAY:

CSSB 411 appropriately would abolish TSBBE and TCC and place the regulation of barbers and cosmetologists under TDLR.

**Transfer of regulatory powers to TDLR.** TCC and TSBBE have failed to effectively carry out their regulatory duties, which places the public at risk. TCC has a considerable backlog of annual inspections as well as enforcement actions with no resolution.

Both TCC and TSBBE have undergone audits conducted by the State Auditor's Office (SAO), which has cited several concerns, including alleged gross fiscal mismanagement on the part of the TCC. In light of findings that reflect a failure on the part of both agencies to properly carry out their regulatory duties, the Sunset Advisory Commission recommended the transfer of authority over barber and cosmetologist licensing to TDLR. The SAO report found that TCC incorrectly assessed penalty amounts for 484 violations and did not collect more than \$2.8 million of the administrative penalties assessed. Such mismanagement both reduces revenue to the state and reduces the likelihood of licensees complying with state laws. The SAO report on TSBBE also cited major deficiencies, including improper issuance of licenses and inadequate enforcement authority. The ultimate mission of regulating barbers and

cosmetologists is to ensure public safety, and this best could be done under the authority of a well managed agency such as TDLR.

TDLR is a highly efficient agency that quickly would resolve the operational deficiencies that currently exist in the regulation of barbers and cosmetologists. The Legislature has recognized TDLR as the state's model for occupational licensing, continuously adding new programs and relying on the agency's licensing expertise to help with start-up programs. The agency's umbrella structure has proven effective in regulating over 20 other professions, and this agency structure allows for the sharing of advanced technology and other resources. Thirty-seven other states use an umbrella structure to regulate barbers and cosmetologists, and this would align with similar efforts within the state to consolidate occupational and health-licensing agencies. Placing the regulatory duties previously performed by TCC and TSBBE under the authority of TDLR would save the state \$1.3 million per year.

**Enhancing public health including requiring autoclaves.** CSSB 411 would require TDLR to develop a risk-based inspection procedure and to inspect each facility at least every two years, and more frequently if a facility had problems complying with sanitation requirements. This would save money and enhance safety by focusing resources on inspecting the facilities that required the most attention — those that violated sanitation rules.

CSSB 411 would protect consumers from bacterial and staph infections that can be transmitted from one client to another when manicuring instruments are not cleaned appropriately. Under current law, the items must be sterilized, but many salons use a liquid disinfectant that may not completely kill all infective agents if the instruments are removed too quickly or the disinfectant is watered down. An autoclave works perfectly every time because it sterilizes with pressurized steam, and items cannot be removed prematurely.

The cost of using an autoclave is small compared to the human cost of infection and other blood-borne diseases that could be transmitted. Manicuring is a relatively high-margin business, and a shop owner should be able to afford the \$350 to \$1,000 one-time cost of an autoclave.

**Simplifying requirements to obtain a barbershop permit.** CSSB 411

would help prospective barbershop owners, particularly in rural areas. A number of people would like to open barbershops but live in towns so small that there is no place to gain the required one-year experience through an apprenticeship. Even though some of these people have the maturity and funding to open a barbershop, many choose not to move to unfamiliar towns just to gain the experience necessary to meet the permitting requirements. While certification and experience are necessary for someone who wishes to perform the work of a barber — i.e., cutting hair — these requirements should not stand in the way of a person who merely wishes to own a barbershop. CSSB 411 would ensure that such people were not hindered by unnecessary certification requirements.

**Practical exam.** The practical exam was developed to create a state standard to ensure consistency in the profession. It also proves a student has mastered sanitation issues and that the student has achieved a minimal level of competency in the profession. Potential licensees should be able to demonstrate their ability to perform the duties required of their job. Licensees must sanitize instruments between clients and may eventually use various chemicals in working with their clients as well. A person should not be licensed who has not demonstrated the ability to handle dangerous chemicals or perform duties to the level that a client would expect of a professional. In addition, the practical exam enhances reciprocity should a licensee choose to practice out of state.

OPPONENTS  
SAY:

**Transfer of regulatory powers to TDLR.** TCC and TSBBE should remain independent agencies. Combining the two agencies under TDLR would jeopardize public health. Regardless of TDLR's intention to appropriately cross-train its investigators, these investigators would not possess the critical expertise learned through first-hand industry experience. TDLR must divide its attention among more than 20 professions, and occupational umbrella agency structures can be highly bureaucratic, underfunded, understaffed, and unresponsive. Additionally, TDLR has no prior experience administering practical exams such as the

one required for the 22,000 cosmetology students seeking to obtain their licenses.

Any regulatory failures on the part of TCC or TSBBE were due to the fact that for many years the agencies did not receive funding sufficient to purchase much-needed technology or to hire enough staff to accommodate the large number of professionals they license. Decreased funding and

FTEs under TDLR only would exacerbate these issues. Adding regulatory duties to TDLR for 165,000 more individuals and 34,500 more entities nearly would double the agency's licensing responsibilities, and it is not equipped to handle such a sudden burden.

**Requiring autoclaves.** Some manicure shops may be able to afford an autoclave, but many will find it difficult. Disinfectant costs only a few pennies per manicure, but an autoclave would be a significant investment for most small shops.

The problem is with shops not complying with current law. Some nefarious shops use window-washing fluid instead of a disinfectant because it is cheaper and is the same blue color as the required disinfectant, while others dilute the disinfectant or take their instruments out too quickly. New, more burdensome requirements for all shops would not convince the bad actors to comply. The state should increase penalties for not complying with current law, rather than create a new requirement. More investigations and penalties would do more to improve public safety.

**Simplifying requirements to obtain a barbershop permit.** While strictly speaking it is not necessary for the owner of a barbershop to be a skilled barber, some experience in this area would help a new owner run a successful business and hire the appropriate staff. An apprenticeship gives valuable business experience to prospective owners, placing them for 12 months in an environment where they can see firsthand what it takes to successfully own and run a barbershop. Some of the younger barber school graduates, for example, do not have the basic bookkeeping and customer service skills necessary to run a successful business. These schools teach practical lessons in cutting hair but do not focus enough on business knowledge, which is best learned as a junior employee in a working barbershop.

**Practical exam.** Regulation of barbers and cosmetologists focuses on enforcement of hygiene and sanitation requirements. Because the practical exam does not focus on these issues, it does not enhance public health and only becomes an added cost to licensees. Practicals focus on the stylistic practice of barbering and cosmetology, and the barber practical does not even require that applicants demonstrate how to sanitize their instruments. In addition, the 1,500 hours of schooling required for licensure are sufficient to ensure an applicant's ability to practice.



Removing the requirement for a practical would not hinder a Texas licensee's ability to practice in another state. An individual wishing to practice in another state simply could pay the cost to take the practical in that state and obtain a license immediately thereafter. It is unfair to impose this added requirement and cost to all licensees for the benefit of a few who choose to relocate, especially given that the practical does not convey any public health benefits.

NOTES:

The House committee substitute differs from the Senate-passed bill in that it would:

- require TDLR to do risk-based inspections for reasonable cause, not probable cause;
- remove a provision allowing TDLR to appoint committees to help regulate barbers and cosmetologists;
- remove a provision requiring certain applicants to submit an application to TDLR not later than the 10th day before an exam;
- reinstate current law requiring the written exam to be validated independently or purchased from a national testing service;
- remove a requirement that examination applications for barbers must be sworn;
- remove a provision specifying details of the cosmetology exam;
- make barbershop owners subject to civil penalties;
- provide for less specific duties of the advisory boards;
- change the age requirement for licensed manicurists to age 17 instead of age 16;
- add uniformity to the requirements for barbershop permits and barber specialty shop permits;
- simplify the requirements to obtain a barbershop permit;
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- remove the requirement that a barbershop must be supervised by a class A barber;
- allow 25 students per teacher in a barber school;
- add an ex officio non-voting representative to the cosmetology advisory committee;
- rely on TDLR's authority to pass rules relating to sanitation;

- require the transfer of both agencies' functions to TDLR by January 1, 2006, instead of September 1, 2006; and
- provide an immediate effect provision for transferring processes for accounting privileges and information to TDLR.

The fiscal note projects an estimated net impact positive impact of approximately \$2.4 million to general revenue-related funds in fiscal 2006-07. This savings would result from a reduction of 19.5 FTEs, reduced travel costs, reduced inspection costs due to risk-based assessments, and an elimination of costs associated with contracting for a licensing system.

The companion bill, HB 1436 by Hamric, et al., was reported favorably, as substituted, by the Government Reform Committee on April 20.

HB 1304 by Wong, which would require barbers and cosmetologists to disinfect and sterilize their nondisposable instruments with an autoclave or a dry heat, ultraviolet, or board-approved sterilizer, has passed both houses and been sent to the governor. HB 2627 by P. Moreno, which would repeal the requirement that a barbershop permit holder have to hold a class A barber certificate and have practiced barbering for at least 12 months and instead require the person to own the barber shop, passed the House on May 9 and was reported favorably, without amendment, by the Senate Business and Commerce Committee on May 20.