

BILL ANALYSIS

Senate Research Center

S.B. 1131
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As Filed

DIGEST

Recently, Houston television reported serious sanitation problems in area cosmetology salons. Problems have also been reported in San Antonio. Less than 10 years ago there were 32 salon inspectors in Texas; however, today there are only 16. Questions have arisen with regard to the use of contaminated instruments used to cut and clean nails, thus increasing the risk of acquiring AIDS, hepatitis and infection. This bill would increase the fees collected from cosmetology operators. In addition, S.B. 1131 revises the administrative penalty to enhance the penalties for violation of the Cosmetology Act.

PURPOSE

As proposed, S.B. 1131 increases the amount of fees collected from cosmetology operators, authorizes the Texas Cosmetology Commission to impose an administrative penalty against operators who violate the Cosmetology Act, and sets forth procedures regarding the assessment, collection, acceptance, and contestation of administrative penalties.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 10(d), Article 8451a, V.T.C.S., to provide that the applicant is entitled to an operator license if the applicant pays a \$70, rather than \$35, license fee. Makes a nonsubstantive change.

SECTION 2. Amends Section 11(d), Article 8451a, V.T.C.S., to provide that the applicant is entitled to a manicurist license if the applicant pays a \$70, rather than \$35, license fee. Makes a nonsubstantive change.

SECTION 3. Amends Section 12(d), Article 8451a, V.T.C.S., to provide that the applicant is entitled to an instructor license if the applicant pays a \$100, rather than \$50, license fee. Makes a nonsubstantive change.

SECTION 4. Amends Section 13(d), Article 8451a, V.T.C.S., to provide that the applicant is entitled to a specialty certificate if the applicant pays a \$70, rather than \$35, certificate fee. Makes a nonsubstantive change.

SECTION 5. Amends Section 13A(d), Article 8451a, V.T.C.S., to provide that the applicant is entitled to a facialist specialty license if the pays a \$70, rather than \$35, license fee. Makes a nonsubstantive change.

SECTION 6. Amends Section 19(c), Article 8451a, V.T.C.S., to provide that the applicant is entitled to a beauty shop license if the application shows compliance with the rules of the Texas Cosmetology Commission (commission) and the applicant pays a \$90, rather than a \$45, license fee. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Section 20(c), Article 8451a, V.T.C.S., to provide that the applicant is

entitled to a specialty shop license if the application shows compliance with the rules of the commission and the applicant pays a \$90, than a \$45, rather license fee. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Article 8451a, V.T.C.S., by adding Section 20B, as follows:

Sec. 20B. NONTRANSFERABILITY OF LICENSE. Provides that a license issued under this Act is not transferable.

SECTION 9. Amends Section 34(a), Article 8451a, V.T.C.S., to set forth new renewal fees for an operator or specialty license, instructor license, manicurist license, private beauty school license, and beauty or specialty shop license.

SECTION 10. Amends Section 40, Article 8451a, V.T.C.S., as follows:

Sec. 40. New heading: CRIMINAL PENALTIES.

SECTION 11. Amends Article 8451a, V.T.C.S., by adding Section 40A, as follows:

Sec. 40A. ADMINISTRATIVE PENALTY. (a) Authorizes the commission to impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.

(b) Authorizes the penalty for a violation to be in an amount not to exceed \$1,000. Provides that each day a violation continues or occurs is a separate violation for purposes for imposing a penalty.

(c) Sets forth guidelines regarding the amount of the penalty.

(d) Authorizes the executive director, on determination that a violation has occurred, to issue to the commission a report that states the facts on which the determination is based and the director's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Sets forth guidelines regarding written notice of the report.

(f) Sets forth guidelines for the person receiving the notice.

(g) Authorizes the commission, by order, if the person accepts the determination and recommended penalty of the executive director, to approve the determination and impose the recommended penalty.

(h) Sets forth guidelines applicable if the person requests a hearing or fails to respond timely to the notice.

(i) Requires the notice of the commission's order given to the person under Chapter 2001, Government Code, to include a statement of the right of the person to judicial review of the order.

(j) Sets forth requirements for the person applicable within 30 days after the date the commission's order becomes final as provided by Section 2001.144, Government Code.

(k) Authorizes, within the 30-day period, a person who acts under Subsection (j)(3) to stay the enforcement by taking certain actions or request the court to stay enforcement by taking certain actions.

(l) Authorizes the executive director, upon receipt of a copy of an affidavit under Subsection (k)(2) of this section, to file with the court, within five days after the date the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the

facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) Authorizes the executive director, if the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection of the amount of the penalty.

(n) Sets forth guidelines regarding judicial review of the order of the commission.

(o) Authorizes the court to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount, if the court sustains the occurrence of the violation. Requires the court to order that no penalty is owed, if the court does not sustain the occurrence of the violation.

(p) Sets forth provisions applicable when the judgment of the court becomes final.

(q) Requires a penalty collected under this section to be remitted to the comptroller for deposit in the general revenue fund.

(r) Provides that all proceedings under this section are subject to Chapter 2001, Government Code.

SECTION 12. Effective date: September 1, 1997.
 Makes application of this Act prospective.

SECTION 13. Emergency clause.