

BILL ANALYSIS

Senate Research Center
82R20496 SLB--F

C.S.S.B. 1170
By: Carona
Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the 2005 legislative session, the Board of Barber Examiners and the Texas Cosmetology Commission were dissolved and their duties were assigned to the Texas Department of Licensing and Regulation (TDLR). Since that time few updates have been made to modernize the statutes.

Chapters 1601 (Barbers), 1602 (Cosmetologists), and 1603 (Regulation of Barbering and Cosmetology), Occupations Code, pertain to barbers and cosmetologists. C.S.S.B. 1170 harmonizes barbering and cosmetology statutes by allowing both barbering and cosmetology to be taught in public schools. It alters the school size requirements to allow for more schools in rural areas. In response to request from licensees, it replaces the term "facialists" with the more nationally recognized term "esthetician." C.S.S.B. 1170 also creates crossover provisions where licensed cosmetologists, after training and examination, could become licensed barbers (and be able to shave) and where barbers, after training and examination, could become cosmetologists. C.S.S.B. 1170 also requires TDLR to conduct a study that analyzes the performance of barbers schools and beauty culture schools, including the payment of refunds and recommendations for improvements to the process for the payment of refunds to eligible students.

C.S.S.B. 1170 amends current law relating to the regulation of barbers and cosmetologists.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Texas Commission of Licensing and Regulation in SECTION 2 (Section 1601.253, Occupations Code), SECTION 4 (Section 1601.261, Occupations Code), and SECTION 12 (Section 1602.254, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1601.001(a), Occupations Code, by adding Subdivision (1-a), to define "barber school."

SECTION 2. Amends Section 1601.253, Occupations Code, by adding Subsection (c), as follows:

(c) Requires the Texas Commission of Licensing and Regulation (TCLR) to adopt rules for the issuance of a Class A barber certificate to a person who holds an operator license under Chapter 1602 (Cosmetologists). Requires the Texas Department of Licensing and Regulation (TDLR) to issue the certificate to an applicant who:

(1) holds an active operator license under Chapter 1602;

(2) completes at least 300 hours of instruction in barbering that includes barber history and shaving through a TCLR-approved training program in a barber school;

(3) passes the examination required under Subsection (a); and

(4) submits to TDLR an application on a form prescribed by TDLR, and the required fee.

SECTION 3. Amends Section 1601.254, Occupations Code, as follows:

Sec. 1601.254. New heading: ELIGIBILITY FOR BARBER INSTRUCTOR LICENSE. (a) Authorizes a person holding a barber instructor license to perform any act of barbering and instruct a person in any act of barbering.

(b) Requires an applicant, to be eligible for a barber instructor license, rather than requires an applicant for a teacher's certificate, to:

(1) be at least 18 years of age;

(2) have a high school diploma or a high school equivalency certificate;

(3) hold a current Class A barber certificate, rather than be a Class A barber;

(4) have completed a course consisting of 750 hours of instruction in barber courses and methods of teaching in a barber school or at least one year of work experience as a licensed Class A barber; and have completed 500 hours of instruction in barber courses and methods of teaching in a TCLR-approved training program, have completed 15 semester hours in education courses from an accredited college or university within the 10 years preceding the date of the application, or have obtained a degree in education from an accredited college or university; and

(5) pass the required examination.

Deletes existing text requiring an applicant to be eligible for a barber instructor license to have completed at least five years' experience as a practicing barber in a barbershop, two years of which occurred in the two years preceding the application date, and submit the required examination fee with the application.

Deletes existing Subdivision (b) requiring an applicant to submit a new application and fee for each examination taken by the applicant and providing that fees paid are not refundable.

Deletes existing Subdivision (c) requiring TDLR to issue a teacher's certificate to an applicant who passes the appropriate examination, and pays the required certificate fee.

SECTION 4. Amends Subchapter F, Chapter 1601, Occupations Code, by adding Sections 1601.261, 1601.262, 1601.263, as follows:

Sec. 1601.261. ELIGIBILITY FOR SHAMPOO APPRENTICE PERMIT. (a) Authorizes a person holding a shampoo apprentice permit to perform only barbering as defined by Section 1601.002(1)(I).

(b) Requires TDLR to issue a shampoo apprentice permit to an applicant who is at least 16 years of age.

(c) Provides that a shampoo apprentice permit expires on the second anniversary of the date of issuance and may not be renewed.

(d) Requires TCLR to adopt rules as necessary to administer this section. Prohibits TCLR from requiring an applicant to complete any hours of instruction at a barber training program as a prerequisite for the issuance of a shampoo apprentice permit, or pay a fee for a shampoo apprentice permit.

(e) Authorizes a facility licensed under this chapter to employ a person who holds a shampoo apprentice permit to perform shampooing or conditioning services and requires the facility to pay the person at least the federal minimum wage as provided by Section 6, Fair Labor Standards Act of 1938 (29 U.S.C. Section 206).

Sec. 1601.262. ELIGIBILITY FOR BARBER TECHNICIAN/MANICURIST SPECIALTY LICENSE. (a) Authorizes a person holding a barber technician/manicurist specialty license to perform only barbering as defined by Sections 1601.002(1)(C) through (G) (relating to performing or offering or attempting to perform for compensation certain services defined as barbering).

(b) Requires an applicant, to be eligible for a barber technician/manicurist specialty license to:

(1) submit an application on a form prescribed by TDLR;

(2) pay the required fee; and

(3) either:

(A) hold both an active barber technician license and an active manicurist license; or

(B) meet the requirements of Subsection (c).

(c) Requires an applicant who qualifies under Subsection (b)(3)(B) to:

(1) be at least 17 years of age and have completed the seventh grade or its equivalent; and

(2) have completed 900 hours of instruction in a barber technician/manicurist curriculum in a TCLR-approved training program; or 600 hours of instruction in a manicure curriculum and 300 hours of instruction in a barber technician curriculum in a TCLR-approved training program.

Sec. 1601.263. ELIGIBILITY FOR BARBER TECHNICIAN/HAIR WEAVING SPECIALTY LICENSE. (a) Authorizes a person holding a barber technician/hair weaving specialty license to perform only barbering as defined by Sections 1601.002(1)(C) (relating to cleansing stimulating, or massaging), (D) (relating to beautification), (G) (relating to performing or offering or attempting to perform for compensation certain services defined as barbering), and (H) (relating to weaving a person's hair).

(b) Requires an applicant, to be eligible for a barber technician/hair weaving specialty license, to:

(1) submit an application on a form prescribed by TDLR;

(2) pay the required fee; and

(3) either:

(A) hold both an active barber technician license and an active hair weaving specialty certificate of registration; or

(B) meet the requirements of Subsection (c).

(c) Requires an applicant who qualifies under Subsection (b)(3)(B) to:

(1) be at least 17 years of age and have completed the seventh grade or its equivalent; and

(2) have completed 600 hours of instruction in a barber technician/hair weaving curriculum in a TCLR-approved training program; or 300 hours of instruction in a hair weaving curriculum and 300 hours of instruction in a barber technician curriculum in a TCLR-approved training program.

SECTION 5. Amends Section 1601.352, Occupations Code, as follows:

Sec. 1601.352. APPLICATION FOR BARBER SCHOOL PERMIT. Deletes existing designation of Subsection (a). Requires an applicant for a barber school permit to provide to TDLR adequate proof of financial responsibility, submit an application on a form prescribed by TDLR, satisfy the facility and equipment requirements of Section 1601.353, and pay the required fee. Deletes existing text requiring an applicant for a barber school permit to demonstrate to TDLR that the school meets the requirements of this subchapter for issuance of a permit.

Deletes existing Subsection (b) requiring TDLR, before issuing a barber school permit, to determine that the applicant is financially sound and capable of fulfilling the applicant's commitments for training.

SECTION 6. Amends Section 1601.353, Occupations Code, as follows:

Sec. 1601.353. REQUIRED FACILITIES AND EQUIPMENT. Deletes existing designation of Subsection (a). Authorizes TDLR to approve an application for a permit for a barber school if the school:

(1) is located in:

(A) a municipality with a population of more than 50,000 that has a building of permanent construction containing at least 2,000 square feet, rather than 2,800 square feet, of floor space, including classroom and practical areas, covered in a hard-surface floor-covering of tile or other suitable material; or

(B) a municipality with a population of 50,000 or less that has a building of permanent construction containing at least 1,000 square feet of floor space, including classroom and practical areas, covered in a hard-surface floor-covering of tile or other suitable material;

(2) has the following equipment including:

(A) at least 10 students workstations that include a chair that reclines, a back bar, and a wall mirror, rather than 20 modern barber chairs, including a cabinet and mirror for each chair;

(B) a sink behind every two workstations, rather than a sink behind every two barber chairs;

(C) a liquid sterilizer for each workstation, rather than a liquid sterilizer for each barber chair;

(D) adequate lighting for each room;

(E) at least 10 classroom chairs and other materials necessary to teach required subjects; and

(F) access to permanent restrooms and adequate drinking fountain facilities; and

(3) meets any other requirement set by TCLR.

Deletes existing text requiring a barber school to have a building of permanent construction divided into certain departments, rooms, spaces, and restrooms. Deletes existing text requiring the barber school to have an adequate number of latherers, vibrators, and hair dryers for student use, a blackboard, anatomical charts of the head, neck, and face, one barber chair in the class theory room, and at least one medical dictionary and a standard work on human anatomy. Deletes existing text requiring that there be at least one drinking facility on each floor and at least one fire extinguisher. Deletes existing Subsection (b) requiring an applicant for a barber school permit to submit to TCLR certain information and fees.

SECTION 7. Amends Section 1601.402(b), Occupations Code, to require a Class A barber; barber technician; instructor, rather than teacher; manicurist; or other licensed specialist to renew the person's certificate or license on or before the expiration date.

SECTION 8. Amends Section 1601.405(a), Occupations Code, to make a conforming change.

SECTION 9. Amends Section 1601.560, Occupations Code, as follows:

Sec. 1601.560. INSTRUCTOR-TO-STUDENT RATIO. (a) Requires a barber school to have at least one instructor for every 25 students on the school's premises, rather than requiring a barber school that provides training leading to issuance of a Class A barber certificate, in addition to the teacher required by Section 1601.355(b) (requiring each barber school for which a permit is sought to have at least one teacher who has a teacher's certificate and is capable and qualified to teach to the students the required curriculum of the school, and requiring that the teacher demonstrate certain criteria and skills to TCLR), to have at least one qualified instructor, holding a Class A certificate, for every 25 students on the school's premises. Deletes existing text authorizing a teacher to serve as an instructor in practical work in addition to holding a position as a theory teacher.

(b) Requires a barber school to have at least one instructor for every three student instructors on the school's premises, rather than prohibiting a barber school from enrolling more than one student teacher for each certified teacher who teaches at the school. Requires a student instructor, rather than a student teacher, to concentrate on developing teaching skills, and prohibits a student instructor from being booked with customers.

SECTION 10. Amends Section 1601.602, Occupations Code, as follows:

Sec. 1601.602. New heading: REVOCATION OF STUDENT INSTRUCTOR'S BARBER CERTIFICATE. Provides that a violation of Section 1601.560(b) by a student instructor, rather than student teacher, is a ground for the revocation of the student instructor's barber certificate, rather than the person's student teacher barber license.

SECTION 11. Amends Section 1602.002(a), Occupations Code, to redefine, in this chapter, "cosmetology."

SECTION 12. Amends Section 1602.254, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires an applicant, to be eligible for an operator license, to meet the requirements of Subsection (c) or:

(1) be at least 17 years of age;

(2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(3) have completed 1,500 hours of instruction in a licensed beauty culture school, or 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by TCLR in a vocational cosmetology program in a public school.

(c) Requires TCLR to adopt rules for the issuance of an operator license under this section to a person who holds a Class A barber certificate. Requires TCLR to issue the license to applicant who:

(1) holds an active Class A barber certificate;

(2) completes 300 hours of instruction in cosmetology through a TCLR-approved training program in a cosmetology school;

(3) passes the examination required under Section 1602.262 (Issuance of License or Certificate); and

(4) submits to TDLR:

(A) an application on a form prescribed by TDLR; and

(B) the required fee.

SECTION 13. Amends Section 1602.255(b), Occupations Code, as follows:

(b) Requires an applicant, to be eligible for an instructor license, to:

(1) be at least 18 years of age;

(2) have a high school diploma or a high school equivalent certificate, rather than have completed the 12th grade, or its equivalent;

(3) hold an operator license under this chapter;

(4) have:

(A) completed 750 hours of instruction in methods of teaching, rather than a course consisting of 750 hours of instruction, in cosmetology courses and methods of teaching, in a licensed private beauty culture school, or a vocational training program of a publicly financed postsecondary institution;

(B) completed at least:

(i) one year, rather than two years, of verifiable experience as a license cosmetology operator, and

(ii) 500 hours, rather than 250 hours, of instruction in cosmetology in a TCLR-approved training program; or

(C) completed 15 semester hours in education courses through an accredited college or university within the 10 years before the date of application; or

(D) obtained a degree in education from an accredited college or university; and

(5) pass the examination required under Section 1602.262.

Makes nonsubstantive changes.

SECTION 14. Amends Section 1602.257, Occupations Code, as follows:

Sec. 1602.257. New heading: ELIGIBILITY FOR ESTHETICIAN SPECIALTY LICENSE. (a) Authorizes a person holding an esthetician specialty license, rather than a facialist specialty license, to perform only the practice of cosmetology defined in Sections 1602.002(a)(6) through (9) (providing that cosmetology means the practice of performing or offering to perform for compensation certain services).

(b) Requires an applicant, to be eligible for an esthetician specialty license, rather than a facialist specialty license, to:

- (1) be at least 17 years of age;
- (2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and
- (3) have completed 750 hours of instruction in esthetics specialty, rather than a facialist specialty, through a TCLR-approved training program.

SECTION 15. Amends Subchapter F, Chapter 1602, Occupations Code, by adding Section 1602.261, as follows:

Sec. 1602.261. ELIGIBILITY FOR MANICURIST/ESTHETICIAN SPECIALTY LICENSE. (a) Authorizes a person holding a manicurist/esthetician specialty license to perform only the practice of cosmetology defined in Sections 1602.002(a)(6) (relating to cleansing, stimulating, or massaging), (7) (relating to beautification), (8) (relating to administering facial treatments), (9) (relating to removing to superfluous hair), (10) (relating to treating to a person's nails), (11) (relating to cleansing, stimulating, or massaging).

(b) Requires an applicant, to be eligible for a manicurist/esthetician specialty license, to:

- (1) submit an application on a form prescribed by TDLR;
- (2) pay the required fee; and
- (3) either:
 - (A) hold both an active manicurist specialty license and an active esthetician specialty license, or
 - (B) meet the educational requirements of Subsection (c).

(c) Requires an applicant who qualifies under Subsection (b)(3)(B) to:

- (1) either have obtained a high school diploma or a high school equivalency certificate, or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and
- (2) have completed:

(A) 1,200 hours of instruction in a manicure/esthetics specialty curriculum in a TCLR-approved training program, or

(B) 600 hours of instruction in a manicure curriculum and 750 hours of instruction in an esthetics curriculum in TCLR-approved training programs.

SECTION 16. Amends Section 1602.262, Occupations Code, as follows:

Sec. 1602.262. ISSUANCE OF LICENSE OR CERTIFICATE. (a) Entitles an applicant for a license under this chapter to the license if the applicant, rather than entitles an applicant for an operator license, instructor license, manicurist specialty license, or facialist specialty license to the license if the applicant:

- (1) meets the applicable eligibility requirements;
- (2) passes the applicable examination;
- (3) pays the required fee;
- (4) has not committed an act that constitutes a ground for denial of the license; and
- (5) submits an application on a form prescribed by TDLR.

Makes nonsubstantive changes.

(b) Entitles an applicant for a specialty certificate to the certificate if the applicant:

- (1) meets the eligibility requirements;
- (2) pays the required fee;
- (3) has not committed an act that constitutes a ground for denial of the certificate; and
- (4) submits an application on a form prescribed by TDLR.

Makes a nonsubstantive change.

SECTION 17. Amends Section 1602.267(c), Occupations Code, to provide that a shampoo apprentice permit expires on the second anniversary, rather than the first anniversary, of the date of issuance and is prohibited from being renewed.

SECTION 18. Amends Section 1602.303(b), Occupations Code, as follows:

(b) Requires that an application for a private beauty culture school license be accompanied by the required license fee and inspection fee and meet certain requirements, including that the application contain a statement that the building is of permanent construction and is divided into at least two separate areas for instruction in theory, and one area for clinic work; contains a minimum of 2,000, rather than 3,500 square feet of floor space if the building is located in a municipality with a population of more than 50,000, or 1,000 square feet of floor space if the building is located in a municipality with a population of 50,000 or less; has access to permanent restrooms and adequate drinking fountain facilities, rather than separate restrooms for male and female students; and contains or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 10 students, rather than 50 students.

SECTION 19. Amends Section 1602.451(a), Occupations Code, to require the holder of a private beauty culture school license to, among certain requirements, maintain on duty, rather than maintain on its staff and on duty during business hours, one full-time licensed instructor for each 25 students in attendance.

SECTION 20. Amends Section 1603.255, Occupations Code, as follows:

Sec. 1603.255. EARLY EXAMINATION. Authorizes TDLR to allow for the early written examination of a student who has completed the following number of hours of instruction in a TDLR-approved training program, rather than authorizes TDLR, on written request by a student, to provide for the early written examination of an applicant for a Class A barber certificate, a teacher's certificate, or an operator license who has completed at least 1,000 hours of instruction, in a TDLR-approved training program:

- (1) 1,000 hours for a student seeking a Class A barber certificate or operator license in a private barber or cosmetology school; or
- (2) 900 hours for a student seeking a Class A barber certificate or operator license in a publicly funded barber or cosmetology school.

SECTION 21. Amends Sections 1603.352(a), (b), and (c), Occupations Code, as follows:

(a) Requires a person who holds a license, certificate, or permit issued under this chapter, Chapter 1601, or Chapter 1602 and who performs a barbering service described by Section 1601.002(1)(E) or (F) or a cosmetology service described by Section 1602.002(a)(10) or (11), before performing the service, to clean, disinfect, and sterilize with an autoclave or dry heat sterilizer or sanitize with an ultraviolet sanitizer, in accordance with the sterilizer or sanitizer manufacturer's instructions, each metal instrument, including metal nail clippers, cuticle pushers, cuticle nippers, and other metal instruments, used to perform the service.

(b) Provides that the owner or manager of a barber shop, barber school, beauty shop, specialty shop, beauty culture school, or other facility licensed under this chapter, Chapter 1601, or Chapter 1602, is responsible for providing an autoclave, a dry heat sterilizer, or an ultraviolet sanitizer for use in the shop or school as required by Subsection (a). Deletes existing text requiring that an autoclave or a dry heat, ultraviolet, or other TDLR-approved sterilizer used as required by Subsection (a) be listed with the United States Food and Drug Administration.

(c) Requires that each sterilized or sanitized instrument be stored in accordance with the manufacturer's instructions.

SECTION 22. Repealers: Sections 1601.001(a)(5) (defining "license" in this chapter), Section 1601.354 (Prerequisites for Graduation), and 1601.355 (Supervision and Teaching Requirements), and 1602.403(b), Occupations Code.

SECTION 23. (a) Requires TDLR to conduct a study that analyzes the performance of barber schools under Subchapter L (Operation of Barber School), Chapter 1601, Occupations Code, and beauty culture schools under Subchapter J (Operation of Beauty Culture School), Chapter 1602, Occupations Code, including the payment of refunds and recommendations for improvements to the process for the payment of refunds to eligible students.

(b) Requires TDLR, in conducting the study, to consult with:

- (1) the Advisory Board on Barbering;
- (2) the Advisory Board on Cosmetology;
- (3) national accrediting organizations for barbers and cosmetologists;

(4) representatives of barber schools and beauty culture schools; and

(5) barbers, cosmetologists, and other interested parties.

(c) Requires TDLR, not later than September 1, 2012, to report the results of the study to the:

(1) House Committee on Licensing and Administrative Procedures; and

(2) Senate Committee on Business and Commerce.

(d) Provides that this section expires September 1, 2013

SECTION 24. Provides that the changes in law made by this Act apply only to an application for the issuance or renewal of a license or certificate that is filed with TDLR on or after the effective date of this Act. Provides that an application for the issuance or renewal of a license or certificate that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(b) Requires the TCLR to adopt rules necessary to implement the changes in law made by this Act not later than March 31, 2012.

SECTION 25. Effective date: September 1, 2011.