By: _____ S.B. No. 411

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of barbers and cosmetologists by the Texas Board of Barbering and Cosmetology and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TEXAS BOARD OF BARBERING AND COSMETOLOGY

SECTION 1.01. Title 9, Occupations Code, is amended by adding Chapter 1603 to read as follows:

CHAPTER 1603. TEXAS BOARD OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Board" means the Texas Board of Barbering and Cosmetology.

(2) "Executive director" means the executive director of the board.

(b) Unless the context clearly indicates otherwise, the definitions in Chapters 1601 and 1602 apply to this chapter.

Sec. 1603.002. APPLICATION OF SUNSET ACT. (a) The Texas Board of Barbering and Cosmetology is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter, Chapter 1601, and Chapter 1602 expire September 1, 2009.

(b) In the review of the board by the Sunset Advisory

Commission, as required by this section, the commission shall limit its review to the appropriateness of recommendations made by the commission to the 79th Legislature. In the Sunset Advisory Commission's report to the 81st Legislature, the commission may include any recommendation it considers appropriate.

[Sections 1603.003-1603.050 reserved for expansion]

SUBCHAPTER B. TEXAS BOARD OF BARBERING AND COSMETOLOGY

Sec. 1603.051. BOARD; MEMBERSHIP. (a) The Texas Board of Barbering and Cosmetology consists of nine members appointed by the governor as follows:

(1) three barber members, one of whom must be a Class A barber certificate holder, one of whom must be a barbershop permit holder, and one of whom must be a barber school permit holder;

(2) three cosmetologist members, one of whom must be an operator license holder, one of whom must be a beauty or specialty shop license holder, and one of whom must be a private beauty culture school license holder; and

(3) three public members.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 1603.052. MEMBER ELIGIBILITY. (a) To qualify as a board member, a person must:

(1) be a United States citizen;

(2) be at least 25 years of age; and

(3) unless the person is a public member, have been actively engaged in the field of barbering or cosmetology that is

the basis of the person's qualification for office under Section 1603.051 for not less than the five years preceding appointment.

(b) A person may not be a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of barbering or cosmetology;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(c) An operator license holder is not eligible for appointment as a board member if the license holder has a direct or indirect affiliation with or a financial or other interest in a private beauty culture school or beauty shop.

(d) A beauty shop license holder is not eligible for appointment as a board member if the license holder has a direct or indirect affiliation with or a financial or other interest in a private beauty culture school.

(e) A private beauty culture school license holder is not eligible for appointment as a board member if the license holder has a direct or indirect affiliation with or a financial or other

interest in a beauty shop.

Sec. 1603.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of barbering or cosmetology; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of barbering or cosmetology.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 1603.054. TERMS; VACANCY. (a) Board members serve staggered six-year terms, with three members' terms expiring on

February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Sec. 1603.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 1603.051;

(2) does not maintain during service on the board the qualifications required by Section 1603.051;

(3) is ineligible for membership under Section 1603.052 or 1603.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the

executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 1603.056. PER DIEM; REIMBURSEMENT. (a) A board member is entitled to the per diem set by the General Appropriations Act.

(b) A board member is entitled to reimbursement for travel expenses in accordance with the General Appropriations Act.

(c) A board member who seeks reimbursement for expenses shall present a sworn, complete itemized statement of the number of days engaged in the board's business and the amount of expenses incurred by the member.

Sec. 1603.057. PRESIDING OFFICER. The governor shall designate a public member of the board as the presiding officer of the board to serve in that capacity at the will of the governor.

Sec. 1603.058. MEETINGS. (a) The board shall meet at least once each year.

(b) The board may meet at other times at the call of the presiding officer or as provided by board rule.

Sec. 1603.059. BOARD MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter, Chapters 1601 and 1602, and the programs, functions, rules, and budget of the board;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

[Sections 1603.060-1603.100 reserved for expansion]

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 1603.101. EXECUTIVE DIRECTOR. (a) The board shall employ an executive director. The executive director is the executive head of the board and performs its administrative duties.

(b) The board shall set the compensation of the executive director.

Sec. 1603.102. PERSONNEL. The executive director may employ personnel as necessary to implement this chapter.

Sec. 1603.103. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

[Sections 1603.104-1603.150 reserved for expansion]

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 1603.151. RULES. The board shall adopt rules consistent with this chapter for:

(1) the administration of this chapter and the operation of the board; and

(2) the administration of Chapters 1601 and 1602.

Sec. 1603.152. FEES. The board shall adopt fees in amounts that are reasonable and necessary to provide sufficient revenue to administer the programs under the board's authority, including application, examination, inspection, certificate, license, permit, and renewal fees.

Sec. 1603.153. SANITATION RULES. The board shall establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.154. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the use of a trade name in advertising by the person.

Sec. 1603.155. INSPECTION OF SCHOOLS, SHOPS, AND FACILITIES BEFORE OPERATION. (a) Until the board determines, by inspection, that the person has established the school, shop, or facility in compliance with this chapter, Chapter 1601, or Chapter 1602, a person may not operate a school, shop, or other facility licensed or permitted under this chapter, Chapter 1601, or Chapter 1602.

(b) A school, shop, or other facility that is not approved by the board on initial inspection may be reinspected.

(c) The school, shop, or other facility shall pay for each inspection.

Sec. 1603.156. PERIODIC AND RISK-BASED INSPECTIONS. (a) The board may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(2) any place in which the board has probable cause to believe that a certificate, license, or permit holder is practicing illegally.

(b) At least once every two years, the board shall inspect:

(1) the place of business of each permit holder under Chapter 1601; and

(2) each facility licensed under Subchapter G, Chapter 1602.

(c) The board may inspect the premises of any person regulated under this chapter, Chapter 1601, or Chapter 1602 to investigate a complaint at any time during business hours on

receipt of a formal written complaint that the person has violated this chapter, Chapter 1601, or Chapter 1602.

(d) The board shall set priorities for inspections based on the risk of:

(1) a sanitation violation; and

(2) a new violation due to the person's inspection and complaint history.

(e) If an inspector discovers a violation of this chapter, Chapter 1601, Chapter 1602, or a board rule, the inspector shall:

(1) provide written notice of the violation to the violator on a form prescribed by the board; and

(2) file a complaint with the executive director.

Sec. 1603.157. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Sec. 1603.158. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute

resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Sec. 1603.159. RETENTION OF STUDENT RECORDS. The board may not retain student records, including student transcripts, beyond the time required by state law.

Sec. 1603.160. COMMITTEES. The board may appoint committees that it considers necessary to carry out its duties.

[Sections 1603.161-1603.200 reserved for expansion]

SUBCHAPTER E. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.201. PUBLIC INTEREST INFORMATION AND PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(b) The board shall prepare information of public interest describing the functions of the board. The board shall make the information available to the public and appropriate state agencies.

(c) The board by rule shall establish methods by which

consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter, Chapter 1601, or Chapter 1602;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(3) in a bill for service provided by a person regulated under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.202. COMPLAINT PROCEDURES. (a) The board shall adopt a comprehensive procedure for receiving and adjudicating complaints from consumers and service recipients. The procedures must address each phase of the complaint process, including complaint intake, preliminary evaluation, investigation, adjudication, penalties, and public disclosure.

(b) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

(2) a summary of the results of the review or investigation of the complaint; and

(3) information about the disposition of the complaint.

(c) The board shall make information available describing its procedures for complaint investigation and resolution.

(d) The board shall periodically notify the parties of the status of the complaint until final disposition of the complaint.

(e) If the board determines that it lacks jurisdiction to resolve the complaint, the board shall notify the complainant in writing that the board is closing the complaint because it lacks jurisdiction.

Sec. 1603.203. ANALYSIS OF COMPLAINTS AND VIOLATIONS. (a) The board shall develop and maintain a system to analyze the processing, sources, and types of complaints filed with the board and the types of violations that occur under this chapter, Chapter 1601, and Chapter 1602.

(b) Based on the information under Subsection (a), the board shall analyze trends in violations and complaints that may require further attention or technical assistance to help reduce the frequency of those complaints and violations.

(c) The board shall annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year, including:

(1) the number of complaints filed;

(2) a categorization of complaints filed according to the basis of the complaint and the number of complaints in each category;

(3) the number of complaints filed by board staff;

(4) the number of complaints filed by persons other than board staff;

(5) the number of complaints filed over which the board lacks jurisdiction;

(6) the average length of time required to close a complaint or violation from the time the board receives the complaint or otherwise initiates an investigation of a possible violation until the complaint or violation is resolved by a final order or penalty;

(7) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal; and

(B) the number of complaints resulting in disciplinary action and the type of disciplinary action taken; and

(8) the number of complaints filed that are unresolved, the number of those complaints filed by board staff, the number of those complaints filed by persons other than board staff, and the average length of time that the unresolved complaints have been on file.

Sec. 1603.204. INFORMAL SETTLEMENT CONFERENCE. The board shall establish guidelines for an informal settlement conference related to a complaint filed with the board.

[Sections 1603.205-1603.250 reserved for expansion]

SUBCHAPTER F. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.251. APPLICATION FORM; TIMING. (a) An application for a certificate, license, or permit must be made on a form prescribed and provided by the board.

(b) An application for an operator license, instructor

license, manicurist license, or facialist specialty license must be filed with the board not later than the 10th day before the date set for the applicable examination.

Sec. 1603.252. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. The board shall issue a duplicate certificate, license, or permit to an applicant who:

(1) submits an application for a duplicate certificate, license, or permit to the board; and

(2) pays the required fee.

Sec. 1603.253. PROVISIONAL CERTIFICATE OR LICENSE. (a) The board may issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who:

(1) has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in another jurisdiction, including a foreign country, that has requirements substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602, as appropriate; and

(2) has passed a national or other examination recognized by the board relating to the practice of that profession.

(b) A provisional certificate or license is valid until the date the board approves or denies the provisional certificate or license holder's application. The board shall issue a certificate or license to the provisional certificate or license holder if:

(1) the provisional certificate or license holder is

eligible to hold a certificate or license under Chapter 1601 or Chapter 1602; or

(2) the provisional certificate or license holder passes the part of the examination under Chapter 1601 or Chapter 1602 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of the profession in this state and:

(A) the board verifies that the provisional certificate or license holder meets the academic and experience requirements for the certificate or license; and

(B) the provisional certificate or license holder satisfies any other certificate or license requirements.

(c) The board must approve or deny a provisional certificate or license holder's application for a certificate or license not later than the 180th day after the date the provisional certificate or license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

Sec. 1603.254. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. (a) A person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602 may apply for a license, certificate, or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country.

(b) The person must:

(1) submit an application for the license, certificate, or permit to the board; and

(2) pay fees in an amount prescribed by the board, including any applicable license, certificate, or permit fee.

(c) A person issued a license, certificate, or permit under this section:

(1) may perform the acts of barbering or cosmetology stated on the license, certificate, or permit; and

(2) is subject to the renewal procedures and fees provided in this chapter, Chapter 1601, or Chapter 1602 for the performance of those acts of barbering or cosmetology.

[Sections 1603.255-1603.300 reserved for expansion]

SUBCHAPTER G. EXAMINATION REQUIREMENTS

Sec. 1603.301. WRITTEN EXAMINATION. The board shall select a written examination for each examination required under this chapter, Chapter 1601, or Chapter 1602. The written examination must be:

(1) validated by an independent testing professional; or

(2) purchased from a national testing service.

Sec. 1603.302. EXAMINATION APPLICATION FOR BARBERS. An applicant for an examination for a certificate or license issued under Chapter 1601 must submit to the board a sworn application on a form prescribed and provided by the board accompanied by:

(1) two photographs of the applicant, one of which accompanies the application and one of which is to be returned to the applicant to be presented at the examination; and

(2) the appropriate examination fee.

Sec. 1603.303. EXAMINATION FREQUENCY. (a) The board shall examine applicants for a Class A barber certificate and a teacher's certificate at least four times annually, at times and places designated by the board.

(b) The board shall administer examinations for certificates and licenses issued under Chapter 1602 beginning the first day of each month. If the first day of the month is a legal holiday, the examination shall begin on the following day.

Sec. 1603.304. LOCATION OF EXAMINATION. (a) The board shall announce the site of an examination for a certificate or license issued under Chapter 1602 not later than six months before the scheduled examination date.

(b) The board may not administer an examination in a board member's school.

(c) An examination may not be held at a barber school or barbershop owned, managed, or operated by a board member.

Sec. 1603.305. EARLY EXAMINATION. (a) The board, on written request by a student, may 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 board-approved training program.

(b) A board inspector may administer an examination under this section at barber schools or beauty culture schools throughout the state.

Sec. 1603.306. EXAMINATION RESULTS. (a) The board shall

notify each examinee of the results of the examination not later than the 30th day after the date an examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the board shall provide to the person an analysis of the person's performance on the examination.

[Sections 1603.307-1603.350 reserved for expansion]

SUBCHAPTER H. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1603.351. CERTIFICATE, LICENSE, AND PERMIT EXPIRATION AND RENEWAL. (a) A person who is otherwise eligible to renew a certificate, license, or permit may renew the unexpired certificate, license, or permit by paying the required renewal fee to the board before the expiration date of the certificate, license, or permit. A person whose certificate, license, or permit has expired may not engage in activities that require a certificate, license, or permit until the certificate, license, or permit has been renewed.

(b) A person whose certificate, license, or permit has been expired for 90 days or less may renew the certificate, license, or permit by paying to the board a renewal fee that is equal to 1-1/2

times the normally required renewal fee.

(c) A person whose certificate, license, or permit has been expired for more than 90 days but less than one year may renew the certificate, license, or permit by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certificate, license, or permit has been expired for one year or more may not renew the certificate, license, or permit. The person may obtain a new certificate, license, or permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate, license, or permit.

Sec. 1603.352. RENEWAL OF EXPIRED CERTIFICATE, LICENSE, OR PERMIT BY OUT-OF-STATE PRACTITIONER. A person who held a certificate, license, or permit in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate, license, or permit without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the certificate, license, or permit.

Sec. 1603.353. NOTICE OF CERTIFICATE, LICENSE, OR PERMIT EXPIRATION. Not later than the 30th day before the date a person's certificate, license, or permit is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board.

Sec. 1603.354. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE

PENALTY. The board may deny a person's request to renew a certificate, license, or permit issued under this chapter, Chapter 1601, or Chapter 1602 if the person has not paid an administrative penalty imposed under Subchapter K. This section does not apply if:

(1) the person's time to pay or request a hearing has not expired under Section 1603.504;

(2) the person has requested a hearing under Section 1603.504, but the person's time to pay has not expired under Section 1603.507; or

(3) the penalty is stayed.

[Sections 1603.355-1603.400 reserved for expansion]

SUBCHAPTER I. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.401. MINIMUM CURRICULUM FOR SCHOOLS. The board shall prescribe the minimum curriculum, including the subjects and the number of hours in each subject, taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602, including a private beauty culture school or a vocational cosmetology program in a public school.

[Sections 1603.402-1603.450 reserved for expansion]

SUBCHAPTER J. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.451. DENIAL, SUSPENSION, OR REVOCATION. The board shall deny an application for issuance or renewal of, or shall suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit:

(1) engages in gross malpractice;

(2) knowingly continues to practice while having an

infectious or contagious disease;

(3) knowingly makes a false or deceptive statement in advertising;

(4) advertises, practices, or attempts to practice under another person's name or trade name;

(5) engages in fraud or deceit in obtaining a certificate, license, or permit; or

(6) engages in an act that violates this chapter, Chapter 1601, or Chapter 1602 or a board rule or order.

Sec. 1603.452. PROBATION. (a) The board may place on probation a person whose certificate, license, or permit is suspended. If a suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(b) The board by rule shall adopt clear probation standards and procedures, including procedures for:

(1) imposing appropriate probation requirements;

(2) notifying persons on probation of probation requirements and the actions necessary to meet the requirements; and

(3) tracking the progress of persons on probation.

Sec. 1603.453. ADMINISTRATIVE PROCEDURE. A hearing or an appeal from a hearing under this subchapter is subject to Chapter 2001, Government Code.

[Sections 1603.454-1603.500 reserved for expansion]

SUBCHAPTER K. ADMINISTRATIVE PENALTIES

Sec. 1603.501. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person regulated under this chapter, Chapter 1601, or Chapter 1602 who violates one of those chapters or a board rule or order.

Sec. 1603.502. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed $1,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstance, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

Sec. 1603.503. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director determines that a violation has

occurred, the executive director may issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the executive director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 1603.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:

(1) accept the executive director's determination and recommended administrative penalty; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the executive director's determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

Sec. 1603.505. HEARING. (a) An administrative law judge of the State Office of Administrative Hearings shall hold a hearing

requested under Section 1603.504.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 1603.506. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Sec. 1603.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 1603.508. COLLECTION OF PENALTY. If the person on whom the administrative penalty is imposed does not pay the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for

collection of the penalty.

Sec. 1603.509. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Sec. 1603.510. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond if the penalty is not imposed or order the release of the bond after the person pays the penalty if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 1603.511. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter to impose an administrative penalty is a contested case under Chapter 2001, Government Code.

[Sections 1603.512-1603.550 reserved for expansion]

SUBCHAPTER L. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.551. INJUNCTIVE RELIEF. (a) The board may bring an action in a district court in Travis County to enjoin a person from violating this chapter, Chapter 1601, Chapter 1602, or a board rule.

(b) If a certificate, license, or permit holder commits a violation of one of those chapters or a board rule and the violation poses a serious threat to the public health, the board shall initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit.

(c) In seeking an injunction under this section, the board is not required to allege or prove:

(1) that an adequate remedy at law does not exist; or

(2) that substantial or irreparable damage would result from the continued violation.

Sec. 1603.552. CIVIL PENALTY. (a) A barber, barber school, or private beauty culture school that violates this chapter, Chapter 1601, Chapter 1602, or a board rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law.

(b) The amount of the civil penalty for a barber may not exceed $25 a day for each violation.

(c) The amount of the civil penalty for a barber school or private beauty culture school may not exceed $1,000 a day for each violation.

(d) The attorney general may sue to collect the civil penalty.

Sec. 1603.553. APPEAL BOND NOT REQUIRED. The board is not required to give an appeal bond in a cause arising under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.554. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general shall represent the board in an action to enforce this chapter, Chapter 1601, or Chapter 1602.

[Sections 1603.555-1603.600 reserved for expansion]

SUBCHAPTER M. BUSINESS IMPROVEMENT PLAN

Sec. 1603.601. BUSINESS IMPROVEMENT PLAN. (a) The board shall adopt and implement a business improvement plan.

(b) The plan must demonstrate a commitment to and result in significant improvement in:

(1) the elimination of any backlogs in inspection and enforcement, including resolution of complaints and pending enforcement cases; and

(2) the implementation of:

(A) legislation passed affecting the board;

(B) management recommendations by the Sunset Advisory Commission; and

(C) recommendations of the State Auditor's Office.

Sec. 1603.602. QUARTERLY REPORTS. (a) Not later than December 1, 2005, the board shall provide to the Sunset Advisory Commission and state auditor an initial assessment report regarding the implementation of the business improvement plan. Additional reports are due each quarter, beginning March 1, 2006.

(b) The board shall prepare the reports in a format

specified by the Sunset Advisory Commission and shall include in the reports specific information demonstrating the progress made by the board in implementing the goals and objectives of the business improvement plan.

Sec. 1603.603. MANAGEMENT AUDIT. Not later than September 1, 2006, the state auditor shall conduct a management audit of the board and deliver the audit report to the governor, the lieutenant governor, the speaker of the house of representatives, and the Sunset Advisory Commission. The audit report may include any matter related to the management audit, but must include an evaluation of:

(1) the board's business improvement plan, including implementation of the plan; and

(2) compliance with the recommendations of the state auditor and Sunset Advisory Commission.

Sec. 1603.604. EXPIRATION. This subchapter expires June 1, 2009.

ARTICLE 2. REGULATION OF BARBERING

SECTION 2.01. Section 1601.001(a)(3), Occupations Code, is amended to read as follows:

(3) "Board" means the Texas [~~State~~] Board of Barbering and Cosmetology [~~Barber Examiners~~].

SECTION 2.02. Section 1601.003, Occupations Code, is amended to read as follows:

Sec. 1601.003. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) does not represent or advertise to the public

directly or indirectly that the person is authorized by the board to practice barbering; and

(2) is:

(A) a physician or registered nurse licensed in this state and operating within the scope of the person's license;

(B) a commissioned or authorized medical or surgical officer of the United States armed forces;

(C) a person regulated under Chapter 1602, if the person practices within the scope of a permit, license, or certificate issued by the board under that chapter [~~Texas Cosmetology Commission~~]; or

(D) an inmate in the institutional division of the Texas Department of Criminal Justice who performs barbering during the person's incarceration.

SECTION 2.03. Section 1601.253(b), Occupations Code, is amended to read as follows:

(b) The board shall issue a Class A barber certificate to an applicant who:

(1) complies with the application requirements of this chapter;

(2) passes the examination with an average grade of at least 75 percent;

(3) pays the required [~~a~~] fee [~~not to exceed $100~~]; and

(4) possesses the other qualifications required by this chapter.

SECTION 2.04. Sections 1601.254(a) and (c), Occupations Code, are amended to read as follows:

(a) An applicant for a teacher's certificate must:

(1) be a Class A barber;

(2) have 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

(3) submit the required [~~an~~] examination fee [~~not to exceed $100~~] with the application.

(c) The board shall issue a teacher's certificate to an applicant who:

(1) passes the appropriate examination; and

(2) pays the required [~~a~~] certificate fee [~~not to exceed:~~

[~~(A) $100, if the applicant fulfills the certificate requirements during the period beginning November 1 of an odd-numbered year and extending through October 31 of the following year; or~~

[~~(B) $50, if the applicant fulfills the certificate requirements during the period beginning November 1 of an even-numbered year and extending through October 31 of the following year~~].

SECTION 2.05. Sections 1601.256(b) and (d), Occupations Code, are amended to read as follows:

(b) An applicant for a barber technician license must:

(1) be at least 16 years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a course of instruction in a

board-approved training program consisting of not less than 300 hours in a period of not less than eight weeks; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(d) The board shall issue a barber technician license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $100~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.06. Sections 1601.257(b) and (c), Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist license must:

(1) be at least 16 years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a board-approved training program consisting of 600 hours of instruction in manicuring; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(c) The board shall issue a manicurist license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $30~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.07. Section 1601.260(a), Occupations Code, is amended to read as follows:

(a) An applicant for a permit to be a student in a barber school must:

(1) submit an enrollment application to the board in the form prescribed by the board;

(2) have completed the seventh grade;

(3) satisfy other requirements specified by the board; and

(4) submit with the application the required [~~a~~] nonrefundable application fee [~~in an amount not to exceed $25~~].

SECTION 2.08. Section 1601.302(a), Occupations Code, is amended to read as follows:

(a) A person who opens a new barbershop shall submit, not later than the third day after the date the shop opens, an application to the board for a temporary barbershop permit accompanied by the required [~~an~~] inspection fee [~~not to exceed $70~~].

SECTION 2.09. Section 1601.304(b), Occupations Code, is amended to read as follows:

(b) An applicant for a manicurist specialty shop permit must submit:

(1) an application that includes:

(A) the shop's address;

(B) the legal description of the premises for which the permit is sought; and

(C) any other information required by the board; and

(2) the required [~~an~~] inspection fee [~~in an amount not to exceed $50~~].

SECTION 2.10. Section 1601.305, Occupations Code, is amended to read as follows:

Sec. 1601.305. ISSUANCE OF MANICURIST SPECIALTY SHOP PERMIT. The board shall issue a permanent manicurist specialty shop permit to an applicant if:

(1) the applicant holds a manicurist license; and

(2) the shop meets the minimum health standards for manicurist specialty shops set by the board, as determined by a board inspection under Section 1603.155, and any other requirements imposed by board rule.

SECTION 2.11. Section 1601.309, Occupations Code, is amended to read as follows:

Sec. 1601.309. PRACTICE BY COSMETOLOGIST AT SPECIALTY SHOP PROHIBITED. A person who holds a license, permit, or certificate issued by the board under Chapter 1602 [~~Texas Cosmetology Commission~~] may not practice under that authority at a specialty shop regulated under this chapter.

SECTION 2.12. Section 1601.353(b), Occupations Code, is amended to read as follows:

(b) An applicant for a barber school permit must submit to the board:

(1) a detailed drawing and chart of the proposed physical layout of the school, showing the departments, floor space, equipment, lights, and outlets;

(2) photographs of the proposed site for the school, including the interior and exterior of the building, rooms, and departments;

(3) a detailed copy of the training program;

(4) a copy of the catalogue and promotional literature of the school;

(5) a copy of the building lease or proposed building lease if the building is not owned by the school;

(6) a sworn statement showing the ownership of the school; and

(7) the required [~~a~~] permit fee [~~not to exceed $1,000~~].

SECTION 2.13. Section 1601.402(c), Occupations Code, is amended to read as follows:

(c) The board shall issue a renewal certificate or license on receipt of a renewal application in the form prescribed by the board, accompanied by a renewal fee in an amount equal to the original certificate or license fee [~~but not to exceed $100~~].

SECTION 2.14. The heading to Section 1601.404, Occupations Code, is amended to read as follows:

Sec. 1601.404. [~~RENEWAL OR~~] REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE.

SECTION 2.15. Section 1601.404(c), Occupations Code, is amended to read as follows:

(c) A Class A barber or license holder who retires from practice and whose certificate or license has been expired for more than five years may qualify for a new certificate or license by applying to the board and by:

(1) making a proper showing to the board, supported by a personal affidavit;

(2) paying the required [~~an~~] examination fee [~~not to exceed $100~~];

(3) passing a satisfactory examination conducted by the board; and

(4) paying the fee for an original certificate or license.

SECTION 2.16. Section 1601.405(b), Occupations Code, is amended to read as follows:

(b) The board shall issue a renewal certificate or license on application and payment of the required [~~a~~] renewal fee not later than the 90th day after the date the person is released or discharged from active duty in the armed forces. [~~The renewal fee is:~~

[~~(1) $10 if the application and payment are made during the period beginning November 1 of an odd-numbered year and ending October 31 of the following year; or~~

[~~(2) $5 if the application and payment are made during the period beginning November 1 of an even-numbered year and ending October 31 of the following year.~~]

SECTION 2.17. Section 1601.406, Occupations Code, is amended to read as follows:

Sec. 1601.406. RENEWAL OF BARBERSHOP OR SPECIALTY SHOP PERMIT. (a) A barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance [~~on July 1 of each odd-numbered year~~].

(b) A barbershop permit holder may renew the permit by paying the required [~~a~~] renewal fee [~~not to exceed $70~~].

(c) A specialty shop permit holder may renew the permit by submitting to the board a renewal application accompanied by the required [~~a~~] renewal fee [~~not to exceed $50~~].

SECTION 2.18. Section 1601.407, Occupations Code, is amended to read as follows:

Sec. 1601.407. RENEWAL OF BARBER SCHOOL PERMIT. (a) A barber school permit expires on the first anniversary [~~September 1~~] of the date of issuance [~~each year~~].

(b) A barber school may renew its permit by paying the required [~~a~~] renewal fee [~~not to exceed $300~~].

SECTION 2.19. Section 1601.454, Occupations Code, is amended to read as follows:

Sec. 1601.454. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY BOARD AND TEXAS COSMETOLOGY COMMISSION~~]. (a) The board may not adopt rules to restrict or prohibit practice by a Class A barber or manicurist in a facility solely because the facility is licensed or permitted by [~~both~~] the board under both this chapter and Chapter 1602 [~~and the Texas Cosmetology Commission~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1602 [~~the board and the Texas Cosmetology Commission license or permit the same facility~~], the board may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 2.20. Section 1601.502, Occupations Code, is amended to read as follows:

Sec. 1601.502. SUPERVISION OF BARBERSHOP. A person may not operate a barbershop unless:

(1) the shop is at all times under the exclusive supervision and management of a Class A barber; and

(2) no person is practicing on the premises by authority of a license, permit, or certificate issued by the board under Chapter 1602 [~~Texas Cosmetology Commission~~], except as allowed by other law.

SECTION 2.21. Sections 1601.561(a) and (b), Occupations Code, are amended to read as follows:

(a) A barber school shall maintain [~~submit~~] a monthly progress report [~~to the board~~] regarding each student attending the school. The report must certify the daily attendance record of each student and the number of credit hours earned by each student during

the previous month.

(b) On a student's completion of a prescribed course of instruction, the school shall notify [~~certify to~~] the board that the student has completed the required number of hours and is eligible to take the appropriate examination.

ARTICLE 3. REGULATION OF COSMETOLOGY

SECTION 3.01. Section 1602.001(1), Occupations Code, is amended to read as follows:

(1) "Board" [~~"Commission"~~] means the Texas Board of Barbering and Cosmetology [~~Commission~~].

SECTION 3.02. The heading to Subchapter D, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES RELATED TO COSMETOLOGY

SECTION 3.03. Sections 1602.153(a) and (b), Occupations Code, are amended to read as follows:

(a) The board [~~commission~~] may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of records and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the board [~~commission~~], acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board [~~commission~~] may be held.

SECTION 3.04. Section 1602.251(c), Occupations Code, is amended to read as follows:

(c) A person licensed by the board [~~commission~~] may practice cosmetology only at a facility operated by a person holding a beauty shop license, private beauty culture school license, or other license issued by the board [~~commission~~].

SECTION 3.05. Section 1602.254(b), Occupations Code, is amended to read as follows:

(b) To be eligible for an operator license, an applicant must:

(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:

(A) 1,500 hours of instruction in a licensed beauty culture school; or

(B) 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the board [~~commission~~] in a vocational cosmetology program in a public school.

SECTION 3.06. Sections 1602.255(b) and (c), Occupations Code, are amended to read as follows:

(b) To be eligible for an instructor license, an applicant must:

(1) be at least 18 years of age;

(2) have completed the 12th grade or its equivalent;

(3) hold an operator license; and

(4) have completed:

(A) a course consisting of 750 hours of instruction in cosmetology courses and methods of teaching in:

(i) a licensed private beauty culture school; or

(ii) a vocational training program of a publicly financed postsecondary institution; or

(B) at least:

(i) two years of verifiable experience as a licensed operator; and

(ii) 250 hours of instruction in cosmetology in a board-approved [~~commission-approved~~] training program.

(c) The board [~~commission~~] shall adopt rules for the licensing of specialty instructors to teach specialty courses in the practice of cosmetology defined in Sections 1602.002(7), (9), and (10).

SECTION 3.07. Section 1602.256(b), Occupations Code, is amended to read as follows:

(b) To be eligible for a manicurist license, an applicant must:

(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 600 hours of instruction in manicuring through a board-approved [~~commission-approved~~] training program.

SECTION 3.08. Section 1602.257(b), Occupations Code, is amended to read as follows:

(b) To be eligible for a facialist specialty license, an applicant must:

(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 facialist specialty through a board-approved [~~commission-approved~~] training program.

SECTION 3.09. Section 1602.258(b), Occupations Code, is amended to read as follows:

(b) To be eligible for a specialty certificate, an applicant must:

(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 the necessary requisites as determined by the board [~~commission~~] in the particular specialty for which

certification is sought, including training through a board-approved [~~commission-approved~~] training program.

SECTION 3.10. Section 1602.263(b), Occupations Code, is amended to read as follows:

(b) The person shall:

(1) submit an application for the license or certificate to the board [~~commission~~];

(2) pay a fee in an amount prescribed by the board [~~commission~~]; and

(3) pay the applicable license or certificate fee.

SECTION 3.11. Section 1602.264(a), Occupations Code, is amended to read as follows:

(a) The board [~~commission~~] shall issue a temporary license to a person who:

(1) holds a license in another state or country;

(2) submits an application for a temporary license to the board [~~commission~~]; and

(3) pays the required fee.

SECTION 3.12. Sections 1602.266(a) and (b), Occupations Code, are amended to read as follows:

(a) The board [~~commission~~] shall require a student enrolled in a school of cosmetology in this state to hold a permit stating the student's name and the name of the school. The permit shall be displayed in a reasonable manner at the school.

(b) The board [~~commission~~] shall issue a student permit to an applicant who submits an application to the board [~~commission~~] for a student permit accompanied by the required fee.

SECTION 3.13. Sections 1602.267(b) and (d), Occupations Code, are amended to read as follows:

(b) The board [~~commission~~] shall issue a shampoo apprentice permit to an applicant who[~~:~~

[~~(1)~~] is at least 16 years of age[~~; and~~

[~~(2) submits a certificate of health as required by Section 1602.253~~].

(d) The board [~~commission~~] shall adopt rules as necessary to administer this section. The board [~~commission~~] may not require an applicant to:

(1) complete any hours of instruction at a cosmetology training program as a prerequisite for the issuance of a shampoo apprentice permit; or

(2) pay a fee for a shampoo apprentice permit.

SECTION 3.14. Sections 1602.302(b) and (c), Occupations Code, are amended to read as follows:

(b) An application for a beauty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the board [~~commission~~];

(2) contain proof of the particular requisites for a beauty shop established by the board [~~commission~~]; and

(3) be verified by the applicant.

(c) The applicant is entitled to a beauty shop license if:

(1) the application complies with board [~~commission~~] rules;

(2) the applicant pays the required license fee; and

(3) the applicant has not committed an act that

constitutes a ground for denial of a license.

SECTION 3.15. Sections 1602.303(b) and (c), Occupations Code, are amended to read as follows:

(b) An application for a private beauty culture school license must be accompanied by the required license fee and inspection fee and:

(1) be on a form prescribed by the board [~~commission~~];

(2) be verified by the applicant;

(3) contain a detailed floor plan of the school building divided into two separate areas, one area for instruction in theory and one area for clinic work; and

(4) contain a statement that the building:

(A) is fireproof;

(B) is of permanent construction;

(C) contains a minimum of 3,500 square feet of floor space;

(D) has separate restrooms for male and female students; and

(E) contains, or will contain before classes begin, the equipment established by board [~~commission~~] rule as sufficient to properly instruct a minimum of 50 students.

(c) The applicant is entitled to a private beauty culture school license if:

(1) the board [~~commission~~] determines that the applicant is financially sound and capable of fulfilling the school's commitments for training;

(2) the applicant's facilities pass an inspection

conducted by the board under Section 1603.155 [~~commission~~]; and

(3) the applicant has not committed an act that constitutes a ground for denial of a license.

SECTION 3.16. Sections 1602.305(b) and (c), Occupations Code, are amended to read as follows:

(b) An application for a specialty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the board [~~commission~~];

(2) contain proof of the particular requisites for a specialty shop as established by the board [~~commission~~]; and

(3) be verified by the applicant.

(c) The applicant is entitled to a specialty shop license if:

(1) the application complies with board [~~commission~~] rules;

(2) the applicant pays the required license fee; and

(3) the applicant has not committed an act that constitutes a ground for denial of a license.

SECTION 3.17. Sections 1602.306(b), (c), and (d), Occupations Code, are amended to read as follows:

(b) An application for a booth rental license must:

(1) be on a form prescribed by the board [~~commission~~];

(2) contain information as required by board [~~commission~~] rule; and

(3) be verified by the applicant.

(c) The applicant is entitled to a booth rental license if the applicant:

(1) pays the application fee set by the board [~~commission~~] in an amount reasonable and necessary to cover the costs of administering the booth rental licensing program;

(2) complies with board [~~commission~~] rules; and

(3) has not committed an act that constitutes a ground for denial of a license or certificate.

(d) The board [~~commission~~] shall adopt rules relating to the information submitted for a booth rental license, including information regarding the applicant's compliance with state and federal tax laws.

SECTION 3.18. Section 1602.351(d), Occupations Code, is amended to read as follows:

(d) The board [~~commission~~] may prorate a license or certificate for the number of months the license or certificate is valid.

SECTION 3.19. The heading to Section 1602.352, Occupations Code, is amended to read as follows:

Sec. 1602.352. REQUIREMENT FOR FIRST [~~PROCEDURE FOR~~] RENEWAL OF LICENSE [~~OR REINSTATEMENT~~].

SECTION 3.20. Section 1602.354, Occupations Code, is amended to read as follows:

Sec. 1602.354. CONTINUING EDUCATION. The board [~~commission will~~] by rule shall recognize, prepare, or administer continuing education programs for the practice of cosmetology. Participation in the programs is mandatory for all license renewals.

SECTION 3.21. Section 1602.405, Occupations Code, is

amended to read as follows:

Sec. 1602.405. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY COMMISSION AND STATE BOARD OF BARBER EXAMINERS~~]. (a) The board [~~commission~~] may not adopt rules to restrict or prohibit practice by a cosmetologist in a facility solely because the facility is licensed or permitted by [~~both~~] the board under both this chapter and Chapter 1601 [~~commission and the State Board of Barber Examiners~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1601 [~~the commission and the State Board of Barber Examiners license the same facility~~], the board [~~commission~~] may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 3.22. Subchapter I, Chapter 1602, Occupations Code, is amended by adding Section 1602.408 to read as follows:

Sec. 1602.408. SANITIZATION OF INSTRUMENTS. (a) This section applies only to an establishment in which the practice of cosmetology as defined by Section 1602.002(10) is performed.

(b) Instruments used in an establishment to which this section applies must be sanitized by use of an autoclave.

SECTION 3.23. Section 1602.451(a), Occupations Code, is

amended to read as follows:

(a) The holder of a private beauty culture school license shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours one full-time licensed instructor for each 25 students in attendance;

(3) maintain a daily record of students' attendance;

(4) establish regular class and instruction hours and grades;

(5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than 600 hours instruction for a complete course in manicuring;

(7) hold examinations before issuing diplomas;

(8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed;

(9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and

(10) [~~submit to the executive director the name of each student within 10 days after the date the student enrolls in the school and notify the executive director of the withdrawal or graduation of a student not later than the 10th day after the date the student withdraws or graduates; and~~

[~~(11)~~] provide the board [~~commission~~] with

information on:

(A) the current course completion rates of students who attend a course of instruction offered by the school; and

(B) job placement rates and employment rates of students who complete the course of instruction.

SECTION 3.24. Section 1602.452, Occupations Code, is amended to read as follows:

Sec. 1602.452. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a private beauty culture school license shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the refund policy required under Section 1602.458;

(4) the school grading policy and rules relating to incomplete grades;

(5) the school rules of operation and conduct, including rules relating to absences;

(6) the name, mailing address, and telephone number of the board [~~commission~~] for the purpose of directing complaints to the board [~~commission~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 3.25. Sections 1602.453(b), (c), and (d), Occupations Code, are amended to read as follows:

(b) A school must submit to the board [~~commission~~] for approval the course length and curriculum content for each course

offered by the school. The school may implement a course length and curriculum content only after approval by the board [~~commission~~].

(c) Before issuing or renewing a license under this chapter, the board [~~commission~~] shall require a school to account for each course length and curriculum content.

(d) If a school manipulates a course length below or above industry standards, the board [~~commission~~] shall place the school on probation until:

(1) justification for the deviation is proven; or

(2) the course length is adjusted to meet industry standards.

SECTION 3.26. Section 1602.454, Occupations Code, is amended to read as follows:

Sec. 1602.454. STUDENT RECORD. A private beauty culture school shall notify [~~send to~~] the board [~~commission a certified copy of a student's record, indicating all course hours completed by the student and whether the agreed tuition has been paid,~~] when a [~~the~~] student[~~:~~

[~~(1)~~] graduates from a course of training offered by the school and is eligible to take the appropriate examination[~~; or~~

[~~(2) withdraws or transfers from a course of training without completion of the training~~].

SECTION 3.27. Section 1602.460(d), Occupations Code, is amended to read as follows:

(d) The board [~~commission~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school

shall provide to the board [~~commission~~] on request documentation of the effort to locate the student.

SECTION 3.28. Section 1602.463(a), Occupations Code, is amended to read as follows:

(a) If a private beauty culture school closes, the board [~~commission~~] shall attempt to arrange for students enrolled in the closed school to attend another private beauty culture school.

SECTION 3.29. Sections 1602.464(a) and (b), Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the private beauty culture school tuition protection account is less than $200,000, the board [~~commission~~] shall collect a fee from each private beauty culture school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $200,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the board [~~commission~~] for the purpose described by Section 1602.463. The board [~~commission~~] shall administer claims made against the account.

SECTION 3.30. Sections 1602.465(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) If the board [~~commission~~] has reasonable cause to believe that a private beauty culture school has violated this chapter or a rule adopted under this chapter, the board [~~commission~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the board [~~commission~~]. The board [~~commission~~] shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states.

(c) The team shall provide the board [~~commission~~] with an objective assessment of the content of the school's curriculum and its application.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Section 232.002, Family Code, is amended to read as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following are licensing authorities subject to this chapter:

(1) Department of Agriculture;

(2) [~~Texas Commission on Alcohol and Drug Abuse;~~

[~~(3)~~] Texas Alcoholic Beverage Commission;

(3) [~~(4)~~] Texas Appraiser Licensing and Certification Board;

(4) [~~(5)~~] Texas Board of Architectural Examiners;

(5) [~~(6)~~] Texas [~~State~~] Board of Barbering and Cosmetology [~~Barber Examiners~~];

(6) [~~(7)~~] Texas Board of Chiropractic Examiners;

(7) [~~(8)~~] Comptroller of Public Accounts;

(8) [~~(9) Texas Cosmetology Commission;~~

[~~(10)~~] Court Reporters Certification Board;

(9) [~~(11)~~] State Board of Dental Examiners;

(10) [~~(12)~~] Texas State Board of Examiners of Dietitians;

(11) [~~(13)~~] Texas Funeral Service Commission;

(12) [~~(14) Texas~~] Department of State Health Services [~~Health~~];

(13) [~~(15) Texas~~] Department of Aging and Disability [~~Human~~] Services;

(14) [~~(16)~~] Texas Board of Professional Land Surveying;

(15) [~~(17)~~] Texas Department of Licensing and Regulation;

(16) [~~(18)~~] Texas State Board of Examiners of Marriage and Family Therapists;

(17) [~~(19)~~] Texas State Board of Medical Examiners;

(18) [~~(20)~~] Midwifery Board;

(19) [~~(21)~~] Texas Commission on Environmental Quality;

(20) [~~(22)~~] Board of Nurse Examiners;

(21) [~~(23)~~] Texas Board of Occupational Therapy Examiners;

(22) [~~(24)~~] Texas Optometry Board;

(23) [~~(25)~~] Parks and Wildlife Department;

(24) [~~(26)~~] Texas State Board of Examiners of Perfusionists;

(25) [~~(27)~~] Texas State Board of Pharmacy;

(26) [~~(28)~~] Texas Board of Physical Therapy Examiners;

(27) [~~(29)~~] Texas State Board of Plumbing Examiners;

(28) [~~(30)~~] Texas State Board of Podiatric Medical Examiners;

(29) [~~(31)~~] Polygraph Examiners Board;

(30) [~~(32)~~] Texas [~~Commission on~~] Private Security Board;

(31) [~~(33)~~] Texas State Board of Examiners of Professional Counselors;

(32) [~~(34)~~] Texas Board of Professional Engineers;

(33) [~~(35)~~] Department of Family and Protective [~~and Regulatory~~] Services;

(34) [~~(36)~~] Texas State Board of Examiners of Psychologists;

(35) [~~(37)~~] Texas State Board of Public Accountancy;

(36) [~~(38)~~] Department of Public Safety of the State of Texas;

(37) [~~(39)~~] Public Utility Commission of Texas;

(38) [~~(40)~~] Railroad Commission of Texas;

(39) [~~(41)~~] Texas Real Estate Commission;

(40) [~~(42)~~] State Bar of Texas;

(41) [~~(43)~~] Texas State Board of Social Worker Examiners;

(42) [~~(44)~~] State Board of Examiners for Speech-Language Pathology and Audiology;

(43) [~~(45)~~] Texas Structural Pest Control Board;

(44) [~~(46)~~] Board of Tax Professional Examiners;

(45) [~~(47)~~] Secretary of State;

(46) [~~(48)~~] Supreme Court of Texas;

(47) [~~(49)~~] Texas Transportation Commission;

(48) [~~(50)~~] State Board of Veterinary Medical Examiners;

(49) [~~(51)~~] Texas Ethics Commission;

(50) [~~(52)~~] Advisory Board of Athletic Trainers;

(51) [~~(53)~~] State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(52) [~~(54)~~] Texas Board of Licensure for Professional Medical Physicists;

(53) [~~(55)~~] Texas Department of Insurance;

(54) [~~(56)~~] Texas Board of Orthotics and Prosthetics;

(55) [~~(57)~~] savings and loan commissioner;

(56) [~~(58)~~] Texas Juvenile Probation Commission; and

(57) [~~(59)~~] Texas Lottery Commission under Chapter 466, Government Code.

SECTION 4.02. Section 411.122(d), Government Code, is amended to read as follows:

(d) The following state agencies are subject to this section:

(1) Texas Appraiser Licensing and Certification Board;

(2) Texas Board of Architectural Examiners;

(3) Texas [~~State~~] Board of Barbering and Cosmetology [~~Barber Examiners~~];

(4) Texas Board of Chiropractic Examiners;

(5) [~~Texas Cosmetology Commission;~~

[~~(6)~~] State Board of Dental Examiners;

(6) [~~(7)~~] Texas Board of Professional Engineers;

(7) [~~(8)~~] Texas Funeral Service Commission;

(8) [~~(9)~~] Texas Board of Professional Geoscientists;

(9) [~~(10) Texas~~] Department of State Health Services, except as provided by Section 411.110, and agencies attached to the department, including:

(A) Texas State Board of Examiners of Dietitians;

(B) Texas State Board of Examiners of Marriage and Family Therapists;

(C) Midwifery Board;

(D) Texas State Board of Examiners of Perfusionists;

(E) Texas State Board of Examiners of Professional Counselors;

(F) Texas State Board of Social Worker Examiners;

(G) State Board of Examiners for Speech-Language Pathology and Audiology;

(H) Advisory Board of Athletic Trainers;

(I) State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(J) Texas Board of Licensure for Professional Medical Physicists; and

(K) Texas Board of Orthotics and Prosthetics;

(10) [~~(11)~~] Texas Board of Professional Land Surveying;

(11) [~~(12)~~] Texas Department of Licensing and

Regulation, except as provided by Section 411.093;

(12) [~~(13)~~] Texas Commission on Environmental Quality;

(13) [~~(14)~~] Texas Board of Occupational Therapy Examiners;

(14) [~~(15)~~] Texas Optometry Board;

(15) [~~(16)~~] Texas State Board of Pharmacy;

(16) [~~(17)~~] Texas Board of Physical Therapy Examiners;

(17) [~~(18)~~] Texas State Board of Plumbing Examiners;

(18) [~~(19)~~] Texas State Board of Podiatric Medical Examiners;

(19) [~~(20)~~] Polygraph Examiners Board;

(20) [~~(21)~~] Texas State Board of Examiners of Psychologists;

(21) [~~(22)~~] Texas Real Estate Commission;

(22) [~~(23)~~] Board of Tax Professional Examiners;

(23) [~~(24)~~] Texas Department of Transportation;

(24) [~~(25)~~] State Board of Veterinary Medical Examiners;

[~~(26) Board of Vocational Nurse Examiners;~~]

(25) [~~(27)~~] Texas Department of Housing and Community Affairs;

(26) [~~(28)~~] secretary of state;

(27) [~~(29)~~] state fire marshal;

(28) [~~(30)~~] Texas Education Agency; and

(29) [~~(31)~~] Department of Agriculture.

SECTION 4.03. Section 2054.352(a), Government Code, is amended to read as follows:

(a) The following licensing entities shall participate in the system established under Section 2054.353[~~, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001~~]:

(1) Texas [~~State~~] Board of Barbering and Cosmetology [~~Barber Examiners~~];

(2) Texas Board of Chiropractic Examiners;

(3) [~~Texas Cosmetology Commission;~~

[~~(4)~~] Court Reporters Certification Board;

(4) [~~(5)~~] State Board of Dental Examiners;

(5) [~~(6)~~] Texas Funeral Service Commission;

(6) [~~(7)~~] Texas Board of Professional Land Surveying;

(7) [~~(8)~~] Texas State Board of Medical Examiners;

(8) [~~(9)~~] Board of Nurse Examiners;

(9) [~~(10)~~] Texas Optometry Board;

(10) [~~(11)~~] Texas Structural Pest Control Board;

(11) [~~(12)~~] Texas State Board of Pharmacy;

(12) [~~(13)~~] Executive Council of Physical Therapy and Occupational Therapy Examiners;

(13) [~~(14)~~] Texas State Board of Plumbing Examiners;

(14) [~~(15)~~] Texas State Board of Podiatric Medical Examiners;

(15) [~~(16)~~] Board of Tax Professional Examiners;

(16) [~~(17)~~] Polygraph Examiners Board;

(17) [~~(18)~~] Texas State Board of Examiners of Psychologists;

(18) [~~(19)~~] State Board of Veterinary Medical Examiners;

(19) [~~(20)~~] Texas Real Estate Commission;

(20) [~~(21)~~] Texas Appraiser Licensing and Certification Board;

(21) [~~(22)~~] Texas Department of Licensing and Regulation;

(22) [~~(24)~~] Texas State Board of Public Accountancy;

(23) [~~(25)~~] State Board for Educator Certification;

(24) [~~(26)~~] Texas Board of Professional Engineers;

(25) [~~(27) Texas~~] Department of State Health Services;

(26) [~~(28)~~] Texas Board of Architectural Examiners;

(27) [~~(29)~~] Texas Racing Commission;

(28) [~~(30)~~] Commission on Law Enforcement Officer Standards and Education; and

(29) [~~(31)~~] Texas [~~Commission on~~] Private Security Board.

ARTICLE 5. REPEALER

SECTION 5.01. The following laws are repealed:

(1) Subchapters B, C, D, E, and O, Chapter 1601, Occupations Code;

(2) Subchapters B, C, E, and K, Chapter 1602, Occupations Code; and

(3) Sections 1601.004, 1601.252, 1601.261, 1601.262, 1601.263, 1601.264, 1601.266, 1601.356, 1601.402(d), 1601.403, 1601.404(a) and (b), 1601.408, 1601.601, 1601.651, 1601.654,

1602.004, 1602.151, 1602.152, 1602.154, 1602.155, 1602.252, 1602.253, as amended by Chapter 1282, Acts of the 78th Legislature, Regular Session, 2003, 1602.259, 1602.260, 1602.261, 1602.264, 1602.265, 1602.303(d), 1602.304(b), 1602.352(b)-(f), 1602.407, 1602.551, 1602.552, 1602.553, and 1602.555, Occupations Code.

ARTICLE 6. TRANSITION AND EFFECTIVE DATE

SECTION 6.01. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission are abolished but continue in existence until September 1, 2006, for the sole purpose of transferring obligations, property, employees, rights, powers, and duties to the Texas Board of Barbering and Cosmetology created under Chapter 1603, Occupations Code, as added by this Act. The Texas Board of Barbering and Cosmetology assumes all of the obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission, as they exist immediately before the effective date of this Act. All unexpended funds appropriated to the State Board of Barber Examiners and the Texas Cosmetology Commission are transferred to the Texas Board of Barbering and Cosmetology. The transfer of the obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the Texas Board of Barbering and Cosmetology must be completed not later than September 1, 2006.

(b) All rules of the State Board of Barber Examiners and the Texas Cosmetology Commission are continued in effect as rules of the Texas Board of Barbering and Cosmetology until superseded by a rule of the Texas Board of Barbering and Cosmetology. A

certificate, license, or permit issued by the State Board of Barber Examiners or the Texas Cosmetology Commission is continued in effect as provided by the law in effect immediately before the effective date of this Act. A complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act.

(c) A reference in another law or an administrative rule to the State Board of Barber Examiners or the Texas Cosmetology Commission means the Texas Board of Barbering and Cosmetology.

SECTION 6.02. (a) In making the initial appointments to the Texas Board of Barbering and Cosmetology, the governor shall appoint:

(1) one person described by Section 1603.051(a)(1), Occupations Code, as added by this Act, one person described by Section 1603.051(a)(2), Occupations Code, as added by this Act, and one public member to serve terms expiring February 1, 2007;

(2) one person described by Section 1603.051(a)(1), Occupations Code, as added by this Act, one person described by Section 1603.051(a)(2), Occupations Code, as added by this Act, and one public member to serve terms expiring February 1, 2009; and

(3) one person described by Section 1603.051(a)(1), Occupations Code, as added by this Act, one person described by Section 1603.051(a)(2), Occupations Code, as added by this Act, and one public member to serve terms expiring February 1, 2011.

(b) Not later than March 1, 2005, each initial board member appointed under this section must complete the training required by

Section 1603.059, Occupations Code, as added by this Act. Before March 1, 2005, Section 1603.059(a) does not apply to an initial board member.

SECTION 6.03. Not later than the 90th day after the date that a majority of the members of the Texas Board of Barbering and Cosmetology are appointed under Section 6.02 of this article and qualify for office, the board shall appoint an executive director under Section 1603.101, Occupations Code, as added by this Act. A person who is the executive director of the State Board of Barber Examiners or the Texas Cosmetology Commission on, or within one year preceding, the effective date of this Act, is not eligible to be employed as the initial executive director under this section.

SECTION 6.04. This Act takes effect September 1, 2005.

BILL ANALYSIS

Senate Research Center
79R698 MXM-D

S.B. 411
By: Whitmire
Government Organization
4/11/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas State Board of Barber Examiners (board) and the Texas Cosmetology Commission (commission) regulate barbers and cosmetologists to protect the health and safety of the public. The agencies perform two major functions: licensing barbers and cosmetologists, instructors, shops, salons, and schools; and enforcing the Barber and Cosmetology Acts and agency rules by investigating complaints and conducting inspections.

The board currently regulates about 13,150 individuals and 8,000 entities, with a staff of 13, on an annual budget of about $600,000.

The commission currently regulates about 151,500 individuals and 8,000 entities, with a staff of 42, on an annual budget of about $2.3 million.

The board and the commission are subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the legislature. The sunset review found that the agencies are not effective in carrying out their regulatory duties, and that some aspects of the regulation of barbering and cosmetology did not protect the public and wasted resources.

S.B. 411 abolishes the board and the commission and merges the agencies' functions into a newly created agency, the Texas Board of Barbering and Cosmetology, giving the new agency a sunset date of September 1, 2009.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Barbering and Cosmetology in SECTION 1.01 (Sections 1603.151, 1603.153, 1603.201, and 1603.452, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Cosmetology Commission is transferred to the Texas Board of Barbering and Cosmetology in SECTION 3.06 (Section 1602.255, Occupations Code), SECTION 3.13 (Section 1602.267, Occupations Code), SECTION 3.17 (Section 1602.306, Occupations Code) and SECTION 3.20 (Section 1602.354, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. TEXAS BOARD OF BARBERING AND COSMETOLOGY

SECTION 1.01. Amends Title 9, Occupations Code, by adding Chapter 1603, as follows:

CHAPTER 1603. TEXAS BOARD OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. (a) Defines "board" and "executive director."

(b) Provides that the definitions in Chapters 1601 (Barbers), Occupations Code and 1602 (Cosmetologists), Occupations Code, apply to this chapter, unless the context clearly indicates otherwise.

Sec. 1603.002. APPLICATION OF SUNSET ACT. Provides that the Texas Board of Barbering and Cosmetology (board) is subject to Chapter 325 (Texas Sunset Act), Government Code, and, unless continued in existence as provided by that chapter, the board is abolished and this chapter, Chapter 1601, and Chapter 1602, Occupations Code, expire September 1, 2009. Requires the Sunset Advisory Commission (commission), in its review of the board, as required by this section, to limit its review to the appropriateness of recommendations made by the commission to the 79th Legislature. Authorizes the commission, in its report to the 81st Legislature, to include any recommendations it considers appropriate.

[Reserves Sections 1603.003-1603.050 for expansion.]

SUBCHAPTER B. TEXAS BOARD OF BARBERING AND COSMETOLOGY

Sec. 1603.051. BOARD; MEMBERSHIP. Sets forth requirements for the composition of the board and appointment of members to the board.

Sec. 1603.052. MEMBER ELIGIBILITY. Sets forth eligibility requirements and prohibitions for members of the board.

Sec. 1603.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. Defines "Texas trade association" and sets forth restrictions for certain persons regarding membership on or employment with the board.

Sec. 1603.054. TERMS; VACANCY. Sets forth guidelines for the terms of members of the board and for appointment of a replacement in the event of a vacancy.

Sec. 1603.055. GROUNDS FOR REMOVAL. Sets forth specific grounds for removal of board members. Provides that the validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists. Sets forth specific notification requirements for the executive director if the executive director has knowledge that a potential ground for removal exists. Sets forth additional notification requirements if the potential ground for removal involves the presiding officer.

Sec. 1603.056. PER DIEM; REIMBURSEMENT. Provides that a board member is entitled to the per diem set by the General Appropriations Act and to reimbursement for travel expenses in accordance with the General Appropriations Act. Requires a board member seeking reimbursement for expenses to present a sworn, complete, itemized statement for the number of days engaged in the board's business and the amount of expenses incurred by the member.

Sec. 1603.057. PRESIDING OFFICER. Sets forth requirements for the governor in designating a board member as presiding officer of the board.

Sec. 1603.058. MEETINGS. Sets forth meeting requirements for the board.

Sec. 1603.059. BOARD MEMBER TRAINING. Sets forth specific training requirements and guidelines for members of the board.

[Reserves Sections 1603.060-1603.100 for expansion.]

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 1603.101. EXECUTIVE DIRECTOR. Sets forth requirements for the employment of an executive director and compensation of the executive director.

Sec. 1603.102. PERSONNEL. Authorizes the executive director to employ personnel as necessary to implement this chapter.

Sec. 1603.103. DIVISION OF RESPONSIBILITIES. Requires the board to develop and implement policies that clearly designate the responsibilities of the board, the executive director, and the staff of the board.

[Reserves Sections 1603.104-1603.150 for expansion.]

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 1603.151. RULES. Requires the board to adopt rules consistent with this chapter for the administration of this chapter, the operation of the board, and the administration of Chapters 1601 and 1602, Occupations Code.

Sec. 1603.152. FEES. Requires the board to adopt fees in amounts that are reasonable and necessary to provide sufficient revenue to administer the programs under the board's authority, including application, inspection, certificate, license, permit, and renewal fees.

Sec. 1603.153. SANITATION RULES. Requires the board to establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.154. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. Prohibits the board from adopting rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person. Sets forth restrictions for the board in adopting its rules to prohibit such practices.

Sec. 1603.155. INSPECTION OF SCHOOLS, SHOPS, AND FACILITIES BEFORE OPERATION. Prohibits a person from operating a school, shop, or other facility licensed or permitted under Chapters 1601 and 1602, Occupations Code, until the board determines, by inspection, that the person has established the school, shop, or facility in compliance with said chapters. Authorizes a school, shop, or other facility that is not approved by the board on initial inspection to be reinspected and requires said facility to pay for each inspection.

Sec. 1603.156. PERIODIC AND RISK-BASED INSPECTIONS. Requires the board to conduct specific, periodic inspections of certain facilities under this chapter, Chapter 1601, or Chapter 1602, Occupations Code, and authorizes the board to conduct specific risk-based inspections of certain facilities under said chapters. Requires the board to set priorities for inspections based on certain risk factors. Sets forth requirements for an inspector in finding a violation during inspection.

Sec. 1603.157. USE OF TECHNOLOGY. Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions and requires said policy to ensure that the public is able to interact with the board on the Internet.

Sec. 1603.158. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. Requires the board to develop and implement a policy to encourage the use of specific negotiated rulemaking and alternative dispute resolution procedures. Requires the board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. Requires the board to designate a trained person to coordinate the implementation of the policy adopted under this section, serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by the board.

Sec. 1603.159. RETENTION OF STUDENT RECORDS. Prohibits the board from retaining student records, including student transcripts, beyond the time required by state law.

Sec. 1603.160. COMMITTEES. Authorizes the board to appoint committees as necessary to carry out its duties.

[Reserves Sections 1603.161-1603.200 for expansion.]

SUBCHAPTER E. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.201. PUBLIC INTEREST INFORMATION AND PARTICIPATION. Requires the board to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board. Requires the board to prepare information of public interest describing its functions and to make the information available to the public and appropriate state agencies. Requires the board, by rule, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board and authorizes the board to provide for such notice on certain forms and in certain places.

Sec. 1603.202. COMPLAINT PROCEDURES. Requires the board to adopt a comprehensive procedure for receiving and adjudicating complaints for consumers and service recipients and sets forth specific requirements for said procedures. Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board and sets forth specific requirements for said system. Requires the board to make information available describing its procedures for complaint investigation and resolution, to periodically notify the parties of the status of the complaint until its final disposition, and, if the board determines that it lacks jurisdiction to resolve the complaint, to notify the complainant in writing of such.

Sec. 1603.203. ANALYSIS OF COMPLAINTS AND VIOLATIONS. Requires the board to develop and maintain a system to analyze the processing, sources, and types of complaints filed with the board and the types of violations that occur under this chapter, Chapter 1601, and Chapter 1602, Occupations Code, and, based on said information, to analyze trends in violations and complaints that may require further attention or technical assistance to help reduce their frequency. Requires the board to annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year which must include specific information.

Sec. 1603.204. INFORMAL SETTLEMENT CONFERENCE. Requires the board to establish guidelines for an informal settlement conference related to a complaint filed with the board.

[Reserves Sections 1603.205-1603.250 for expansion.]

SUBCHAPTER F. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.251. APPLICATION FORM; TIMING. Requires an application for a certificate, license, or permit to be made on a form prescribed and provided by the board. Requires an application for an operator license, instructor license, manicurist license, or facialist specialty license to be filed with the board no later than 10 days before the date set for the applicable examination.

Sec. 1603.252. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. Requires the board to issue a duplicate certificate, license, or permit to an applicant who meets certain requirements.

Sec. 1603.253. PROVISIONAL CERTIFICATE OR LICENSE. Authorizes the board to issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who meets certain requirements. Sets forth guidelines for granting a certificate or license to a provisional holder. Sets forth a timeline for the board to grant or deny a provisional certificate or license.

Sec. 1603.254. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. Authorizes a person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter or Chapters 1601 or 1602, Occupations Code, to apply for a license, certificate, or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country and sets forth certain requirements for doing such. Authorizes a person issued a license, certificate, or permit under this section to perform the acts of barbering or cosmetology stated on the license, certificate, or permit and provides that the person is subject to the renewal procedures and fees provided for the performance of those acts of barbering or cosmetology.

[Reserves Sections 1603.255-1603.300 for expansion.]

SUBCHAPTER G. EXAMINATION REQUIREMENTS

Sec. 1603.301. WRITTEN EXAMINATION. Requires the board to select a written examination for each examination required under this chapter, or Chapters 1601 or 1602, Occupations Code, and provides requirements for said examination.

Sec. 1603.302. EXAMINATION APPLICATION FOR BARBERS. Requires an applicant for an examination for a certificate or license issued under Chapter 1601 to submit to the board a sworn application on a form prescribed and provided by the board accompanied by certain materials and fees.

Sec. 1603.303. EXAMINATION FREQUENCY. Sets forth requirements for frequency of examinations for applicants for a Class A barber's certificate and a teacher's certificate. Sets forth requirements and guidelines for when the board should administer examinations for certificates and licenses under Chapter 1602, Occupations Code.

Sec. 1603.304. LOCATION OF EXAMINATION. Requires the board to announce the site of an examination for a certificate or license issued under Chapter 1602, Occupations Code, at least six months before the scheduled examination date. Prohibits the board from administering an examination in a board member's school or from holding an examination at a barber school or barber shop owned, managed, or operated by a board member.

Sec. 1603.305. EARLY EXAMINATION. Authorizes the board, 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 met certain requirements. Authorizes a board inspector to administer an examination under this section at barber school or beauty culture schools throughout the state.

Sec. 1603.306. EXAMINATION RESULTS. Sets forth requirements for the board in notifying each examinee of the results of the examination and, if the results will be delayed for longer than 90 days after the examination date, in notifying the examinee of the reason for the delay. Requires the board, if requested in writing by a person who fails the examination, to provide to the person an analysis of the person's performance on the examination.

[Reserves Sections 1603.307-1603.350 for expansion.]

SUBCHAPTER H. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1306.351. CERTIFICATE, LICENSE, AND PERMIT EXPIRATION AND RENEWAL. (a) Provides guidelines for certificate, license, and permit renewal for a person who meets all eligibility requirements and whose certificate, license, or permit is unexpired.

(b) Provides guidelines for certificate, license, and permit renewal for a person whose license has been expired for 90 days or less, including paying to the board a fee that is equal to one and a half times the normally required renewal fee.

(c) Provides guidelines for certificate, license, or permit renewal for a person whose license has been expired for more than 90 days but less than one year, including paying to the board a fee that is equal to two times the normally required renewal fee.

(d) Prohibits a person whose certificate, license, or permit has been expired for more than one year from renewal. Authorizes said person to obtain a new certificate, license, or permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate, license, or permit.

Sec. 1603.352. RENEWAL OF EXPIRED CERTIFICATE, LICENSE, OR PERMIT BY OUT-OF-STATE PRACTITIONER. Authorizes a person who held a certificate, license, or permit in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application to obtain a new certificate, license, or permit without reexamination by paying to the board a fee that is equal to two times the normally required renewal fee for the certificate, license, or permit.

Sec. 1603.353. NOTICE OF CERTIFICATE, LICENSE, OR PERMIT EXPIRATION. Sets forth notification requirements for the board regarding the impending expiration of a person's certificate, license, or permit.

Sec. 1603.354. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. Authorizes the board to deny a person's request to renew a certificate, license, or permit under this chapter, Chapter 1601, Occupations Code, or Chapter 1602, Occupations Code, if the person has not paid an administrative penalty imposed under Subchapter K. Provides specific exceptions.

[Reserves Sections 1603.355-1603.400 for expansion.]

SUBCHAPTER I. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.401. MINIMUM CURRICULUM FOR SCHOOLS. Requires the board to prescribe the minimum curriculum taught by all schools licensed under this chapter, Chapter 1601, or Chapter 1602, Occupations Code.

[Reserves Sections 1603.402-1603.450 for expansion.]

SUBCHAPTER J. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.451. DENIAL, SUSPENSION, OR REVOCATION. Requires the board to deny an application for issuance or renewal of, or to suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit engages in certain behaviors or acts.

Sec. 1603.452. PROBATION. Authorizes the board to place on probation a person whose certificate, license, or permit is suspended and, if a suspension is probated, to impose certain requirements on the person who is placed on probation. Requires the board, by rule, to adopt clear probation standards and procedures and provides specific areas for which procedures should be adopted.

Sec. 1603.453. ADMINISTRATIVE PROCEDURE. Provides that a hearing or an appeal from a hearing under this subchapter is subject to Chapter 2001 (Administrative Procedure), Government Code.

[Reserves Sections 1603.454-1603.500 for expansion.]

Sec. 1603.501. IMPOSITION OF PENALTY. Authorizes the board to impose an administrative penalty on a person regulated under this chapter, Chapter 1601, or Chapter 1602, Occupations Code, who violates one of those chapters or a board rule or order.

Sec. 1603.502. AMOUNT OF PENALTY. Provides limitations for the amount of the administrative penalty and sets forth guidelines for determining the amount of the penalty.

Sec. 1603.503. REPORT AND NOTICE OF VIOLATION AND PENALTY. Authorizes the executive director, upon determining that a violation has occurred, to issue to the board a report stating certain facts and recommendations regarding such. Requires the executive director, not later than 14 days after the report is issued, to give written notice of such to the person on whom the penalty may be imposed. Provides specific requirements for such notice.

Sec. 1603.504. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, not later than 20 days after receiving the notice, to accept the executive director's determination and recommended administrative penalty or make a request for a hearing on the occurrence of the violation, or both.

Sec. 1603.505. HEARING. Requires an administrative law judge of the State Office of Administrative Hearings to hold a hearing requested under Section 1603.504 and to make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 1603.506. DECISION BY BOARD. Authorizes the board to make certain determinations based on the findings of fact, conclusions of law, and proposal for a decision.

Sec. 1603.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person, not later than 30 days after the board's order becomes final, to perform certain actions in response to the board's order. Authorizes the executive director, if the executive director receives a copy of an affidavit under this section, to file with the court a contest to the affidavit not later than the fifth day after the date the copy is received. 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 penalty and to give a supersedeas bond.

Sec. 1603.508. COLLECTION OF PENALTY. Authorizes the executive director, if the person on whom the penalty is imposed does not pay the penalty and the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection of the penalty.

Sec. 1603.509. DECISION BY COURT. Authorizes the court, upon sustaining the finding that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount and requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 1603.510. REMITTANCE OF PENALTY AND INTEREST. Requires the court, if, after judicial review, the administrative penalty is reduced or not imposed by the court, to order certain actions after the judgment becomes final.

Sec. 1603.511. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter to impose an administrative penalty is a contested case under Chapter 2001, Government Code.

[Reserves Sections 1603.512-1603.550 for expansion.]

SUBCHAPTER L. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.551. INJUNCTIVE RELIEF. Authorizes the board to bring an action in a specified court to enjoin a person from violating this chapter, Chapter 1601, or Chapter 1602, Occupations Code, or a board rule. Requires the board, if a certificate, license, or permit holder commits a violation of said chapters or a board rule which poses a serious threat to public health, to initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit. Provides that, in seeking an injunction under this section, the board is not required to allege or prove certain facts.

Sec. 1603.552. CIVIL PENALTY. Provides that a barber, barber school, or private beauty culture school that violates this chapter, Chapter 1601, or Chapter 1602, Occupations Code, or a board rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law. Sets forth guidelines for imposition and collection of said civil penalty.

Sec. 1603.553. APPEAL BOND NOT REQUIRED. Provides that the board is not required to give an appeal bond in a cause arising under this chapter, or Chapters 1601 or 1602, Occupations Code.

Sec. 1603.554. ENFORCEMENT BY ATTORNEY GENERAL. Requires the attorney general to represent the board in an action to enforce this chapter or Chapters 1601 or 1602, Occupations Code.

[Reserves Sections 1603.555-1603.600 for expansion.]

SUBCHAPTER M. BUSINESS IMPROVEMENT PLAN

Sec. 1603.601. BUSINESS IMPROVEMENT PLAN. Requires the board to adopt and implement a business improvement plan which demonstrates a commitment to and result in significant improvement in specific areas.

Sec. 1603.602. QUARTERLY REPORTS. Requires the board, not later than December 1, 2005, to provide to the Sunset Advisory Commission and state auditor an initial assessment report regarding the implementation of the business improvement plan and provides that additional reports are due each quarter, beginning March 1, 2006. Provides specific guidelines for the format of and information included in the reports.

Sec. 1603.603. MANAGEMENT AUDIT. Requires the state auditor, not later than September 1, 2006, to conduct a management audit of the board and sets forth guidelines regarding certain persons that are required to receive the report and information that must be included.

Sec. 1603.604. EXPIRATION. Provides that this subchapter expires June 1, 2009.

ARTICLE 2. REGULATION OF BARBERING

SECTION 2.01. Amends Section 1601.001(a)(3), Occupations Code, to redefine "board."

SECTION 2.02. Amends Section 1601.003, Occupations Code, as follows:

Sec. 1601.003. APPLICATION OF CHAPTER. Sets forth specific persons to whom this chapter does not apply, including a person regulated under Chapter 1602, Occupations code, if the person practices within the scope of a permit, license, or certificate issued by the board under that chapter, rather than a person regulated under Chapter 1602, Occupations Code, if the person practices within the scope of a license or certificate issued by the Texas Cosmetology Commission.

SECTION 2.03. Amends Section 1601.253(b), Occupations Code, to require the board to issue a class A barber certificate to applicants who meet certain requirements, including paying the required fee, rather paying a fee not to exceed $100.

SECTION 2.04. Amends Sections 1601.254(a) and (c), Occupations Code, to delete existing text providing that the required fee under this section is not to exceed a specified amount, based on whether or not the applicant fulfills the certificate requirements and the year in which the requirements are fulfilled. Makes conforming changes.

SECTION 2.05. Amends Sections 1601.256(b) and (d), Occupations Code, to require that an applicant for a barber technician license submit the required fee, rather than a $10 administration fee, with the application and make conforming changes.

SECTION 2.06. Amends Sections 1601.257(b) and (c), Occupations Code, to require that an applicant for a manicurist license pay the required license fee, rather than a fee not to exceed $30, and make conforming changes.

SECTION 2.07. Amends Section 1601.260(a), Occupations Code, to require that an applicant for a permit to be a student in a barber school submit the required nonrefundable application fee, rather than a nonrefundable application fee not to exceed $25, with the application.

SECTION 2.08. Amends Section 1601.302(a), Occupations Code, to require a person who opens a new barbershop to submit the required inspection fee, rather than an inspection fee not to exceed $70, with the required application for a temporary barbershop permit.

SECTION 2.09. Amends Section 1601.304(b), Occupations Code, to require an applicant for a manicurist specialty shop permit to submit the required inspection fee, rather than a fee not to exceed $50.

SECTION 2.10. Amends Section 1601.305, Occupations Code, as follows:

> Sec. 1601.305. ISSUANCE OF MANICURIST SPECIALTY SHOP PERMIT. Requires the board to issue a manicurist specialty shop permit to an applicant who meets certain requirements, including that the shop meets the minimum health standards for manicurist specialty shops set by the board, as determined by a board inspection under Section 1603.155, rather than as determined by a board inspection, and any other requirements imposed by board rule.

SECTION 2.11. Amends Section 1601.309, Occupations Code, as follows:

> Sec. 1601.309. PRACTICE BY COSMETOLOGIST AT SPECIALTY SHOP PROHIBITED. Makes a conforming change.

SECTION 2.12. Amends Section 1601.353(b), Occupations Code, to require an applicant for a barber school permit to submit certain materials to the board, including the required permit fee, rather than a permit fee not to exceed $1,000.

SECTION 2.13. Amends Section 1601.402(c), Occupations Code, to require a renewal application under this section to be accompanied by a renewal fee in an amount equal to the original certificate or license fee, rather than an amount equal to the original certificate or license fee but not to exceed $100.

SECTION 2.14. Amends the heading to Section 1601.404, Occupations Code, to read as follows:

> Sec. 1601.404. REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE.

SECTION 2.15. Amends Section 1601.404(c), Occupations Code, to make conforming changes.

SECTION 2.16. Amends Section 1601.405(b), Occupations Code, to require the board to issue a renewal certificate or license on application and payment of the required renewal fee, rather than a renewal fee, within 90 days of the date the person is released or discharged from active duty in the armed forces. Deletes existing text providing for the amount of the renewal fee.

SECTION 2.17. Amends Section 1601.406, Occupations Code, as follows:

> Sec. 1601.406. RENEWAL OF BARBERSHOP OR SPECIALTY SHOP PERMIT. Provides that a barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance, rather than on July 1 of each odd-numbered year. Authorizes a barbershop permit holder to renew the permit by paying the required renewal fee, rather than a renewal fee not to exceed $70, and authorizes a specialty shop permit holder to renew the permit by including, with the renewal application, the required renewal fee, rather than a renewal fee not to exceed $50.

SECTION 2.18. Amends Section 1601.407, Occupations Code, as follows:

> Sec. 1601.407. RENEWAL OF BARBER SCHOOL PERMIT. Provides that a barber school permit expires on the first anniversary of the date of issuance, rather than September 1 of each year, and that a barber school may renew its permit by paying the required renewal fee, rather than a renewal fee not to exceed $300.

SECTION 2.19. Amends Sections 1601.454, Occupations Code, as follows:

> Sec. 1601.454. New heading: PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY. Prohibits the board from adopting certain rules solely because a facility is licensed or permitted by the board under both this chapter and Chapter 1602, Occupations Code, rather than by both the board and the Texas Cosmetology Commission. Makes conforming changes.

SECTION 2.20. Amends Section 1601.502, Occupations Code, as follows:

> Sec. 1601.502. SUPERVISION OF BARBERSHOP. Makes a conforming change.

SECTION 2.21. Amends Sections 1601.561(a) and (b), Occupations Code, to require a barber school to maintain a monthly progress report regarding each student attending the school, rather than to submit a monthly progress report to the board regarding each student attending the school. Requires the school, on a student's completion of a prescribed course of instruction, to notify, rather than certify to, the board that the student has completed the required number of hours and is eligible to take the appropriate examination.

ARTICLE 3. REGULATION OF COSMETOLOGY

SECTION 3.01. Amends Section 1602.001(1), Occupations Code, to define "board" and delete existing definition of "commission."

SECTION 3.02. Amends the heading to Subchapter D, Chapter 1602, Occupations Code, to read as follows:

SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES RELATED TO COSMETOLOGY

SECTION 3.03. Amends Sections 1602.153(a) and (b), Occupations Code, to authorize the board, rather than the Texas Cosmetology Commission (commission), to request and, if necessary, compel by subpoena, certain witnesses and information. Makes conforming changes.

SECTION 3.04. Amends Section 1602.251(c), Occupations Code, to make conforming changes.

SECTION 3.05. Amends Section 1602.254(b), Occupations Code, to make a conforming change.

SECTION 3.06. Amends Sections 1602.255(b) and (c), Occupations Code, to make conforming changes.

SECTION 3.07. Amends Section 1602.256(b), Occupations Code, to make a conforming change.

SECTION 3.08. Amends Section 1602.257(b), Occupations Code, to make a conforming change.

SECTION 3.09. Amends Section 1602.258(b), Occupations Code, to make conforming changes.

SECTION 3.10. Amends Section 1602.263(b), Occupations Code, to make conforming changes.

SECTION 3.11. Amends Sections 1602.264(a), Occupations Code, to make conforming changes.

SECTION 3.12. Amends Sections 1602.266(a) and (b), Occupations Code, to make conforming changes.

SECTION 3.13. Amends Sections 1602.267(b) and (d), Occupations Code, to delete existing text requiring an applicant to submit a certificate of health as required by Section 1602.253 and make conforming changes.

SECTION 3.14. Amends Sections 1602.302(b) and (c), Occupations Code, to make conforming changes.

SECTION 3.15. Amends Sections 1602.303(b) and (c), Occupations Code, to make conforming changes.

SECTION 3.16. Amends Sections 1602.305(b) and (c), Occupations Code, to make conforming changes.

SECTION 3.17. Amends Sections 1602.306(b), (c), and (d), Occupations Code, to make conforming changes.

SECTION 3.18. Amends Section 1602.351(d), Occupations Code, to make a conforming change.

SECTION 3.19. Amends the heading to Section 1602.352, Occupations Code, to read as follows:

> Sec. 1602.352. REQUIREMENT FOR FIRST RENEWAL OF LICENSE.

SECTION 3.20. Amends Section 1602.354, Occupations Code, to make a conforming and a nonsubtantive change.

SECTION 3.21. Amends Section 1602.405, Occupations Code, as follows:

> Sec. 1602.405. New heading: PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY. Makes conforming changes.

SECTION 3.22. Amends Subchapter I, Chapter 1602, Occupations Code, by adding Section 1602.408, as follows:

> Sec. 1602.408. SANITIZATION OF INSTRUMENTS. Provides that this section applies only to certain establishments and requires instruments used in an establishment to which this section applies to be sanitized by use of an autoclave.

SECTION 3.23. Amends Section 1602.451(a), Occupations Code, to delete existing text requiring the holder of a private beauty culture school license to submit certain information to the executive director and make a conforming change.

SECTION 3.24. Amends Section 1602.452, Occupations Code, to make conforming changes.

SECTION 3.25. Amends Sections 1602.453(b), (c), and (d), Occupations Code, to make conforming changes.

SECTION 3.26. Amends Section 1602.454, Occupations Code, as follows:

> Sec. 1602.454. STUDENT RECORD. Deletes existing text requiring a private beauty culture school to send to the commission a certified copy of a student's records, including specific information, when the student withdraws or transfers from a course of training without completion of the training and requires the school to notify the board when a student graduates from a course of training offered by the school and is eligible to take the appropriate examination.

SECTION 3.27. Amends Section 1602.460(d), Occupations Code, to make conforming changes.

SECTION 3.28. Amends Section 1602.463(a), Occupations Code, to make a conforming change.

SECTION 3.29. Amends Sections 1602.464(a) and (b), Occupations Code, to make conforming changes.

SECTION 3.30. Amends Sections 1602.465(a), (b), and (c), Occupations Code, to make conforming changes.

ARTICLE 4. CONFORMING AMENDMENTS.

SECTION 4.01. Amends Section 232.002, Family Code, as follows:

> Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. Deletes existing text providing that the Texas Commission on Alcohol and Drug Abuse and the Texas Cosmetology Commission are licensing authorities subject to this chapter. Amends existing text to include that the Texas Board of Barbering and Cosmetology, rather than the State Board of Barber Examiners, the Department of State Health Services, rather than the Texas Department of Health, the Department of Aging and Disability Services, rather than the Texas Department of Human Services, the Texas Private Security Board, rather than the Texas Commission on Private Security, and the Department of Family and Protective Services, rather than the Department of Protective and Regulatory Services, are licensing authorities subject to this chapter.

SECTION 4.02. Amends Section 411.122(d), Government Code, to delete existing text providing that the Board of Vocational Nurse Examiners is subject to this section and make conforming changes.

SECTION 4.03. Amends Section 2054.352(a), Government Code, to require certain licensing entities to participate in the system established under Section 2054.353, rather than Section 2054.353, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, and make conforming changes.

ARTICLE 5. REPEALER

SECTION 5.01. Repealers: Subchapter B, Chapter 1601 (State Board of Barber Examiners), Subchapter C, Chapter 1601 (Executive Director and Personnel), Subchapter D, Chapter 1601 (Powers and Duties), Subchapter E, Chapter 1601 (Public Interest Information and Complaint Procedures), Subchapter O, Chapter 1601 (Administrative Penalties), Subchapter B, Chapter 1602 (Texas Cosmetology Commission), Subchapter C, Chapter 1602 (Executive Director and Personnel), Subchapter E, Chapter 1602 (Public Interest Information and Complaint Procedures),

Subchapter K, Chapter 1602 (Administrative Penalty), Section 1601.004 (Application of Sunset Act), Section 1601.252 (Application Process), Section 1601.261 (Examination Application), Section 1601.262 (Examination for Class A Barber and Teachers Certificates), Section 1601.263 (Examination Results), Section 1601.264 (Health Certificate Requirement), Section 1601.266 (Duplicate Certificate), Section 1601.356 (Inspection Before Operation), Section 1601.402(d) (Renewal of Certificate or License), Section 1601.403 (Renewal of Teachers Certificate), Section 1601.404(a) and (b) (Renewal or Reinstatement of Expired Certificate or License), Section 1601.408 (Renewal of Expired Permit), Section 1601.601 (Denial, Suspension, or Revocation), Section 1601.651 (Injunction; Civil Penalty), Section 1601.654 (Enforcement by Attorney General), Section 1602.004 (Application of Sunset Act), Section 1602.151 (General Powers and Duties of Commission), Section 1602.152 (Rules Restricting Advertising or Competitive Bidding), Section 1602.154 (Fees), Section 1602.155 (Annual Report), Section 1602.252 (License or Certificate Application), Section 1602.253, as amended by Chapter 1282, Acts of the 78th Legislature, Regular Session, 2003 (Certificate of Health Required for Certain Applicants), Section 1602.259 (License Examination), Section 1602.260 (Examination Procedures), Section 1602.261 (Examination Results), Section 1602.264 (Temporary License), Section 1602.265 (Duplicate License or Certificate; Transcript), Section 1602.303(d) (Private Beauty Culture School License), Section 1602.304(b) (Public Secondary or Postsecondary Beauty Culture School Certificate), Section 1602.352(b)-(f) (Procedure for Renewal or Reinstatement), Section 1602.407 (Grounds for Refusing, Revoking, or Suspending License), Section 1602.551 (Right of Access; Discovery of Violation), Section 1602.552 (Injunctive Relief), Section 1602.553 (Civil Penalty), and Section 1602.555 (Issuance of Certificate Without Examination; Offense), Occupations Code.

ARTICLE 6. TRANSITION AND EFFECTIVE DATE

SECTION 6.01. (a) Makes application of the abolishment of the State Board of Barber Examiners and the Texas Cosmetology Commission, of this Act, prospective to September 1, 2006. Provides that the board created under Chapter 1603, Occupations Code, as added by this Act, assumes all of the obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission, as they exist immediately before the effective date of this Act and that all unexpended funds appropriated to the abolished entities are transferred to the board. Requires that said transfer be completed no later than September 1, 2006.

(b) Provides that all rules of the State Board of Barber Examiners and the Texas Cosmetology Commission are continued in effect as rules of the board until superseded by a rule of the board and that a certificate, license, or permit issued by the State Board of Barber Examiners or the Texas Cosmetology Commission is continued in effect as provided by the law in effect immediately before the effective date of this Act. A complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act.

(c) Provides that a reference in another law or administrative rule to the State Board of Barber Examiners or the Texas Cosmetology Commission means the Texas Board of Barbering and Cosmetology.

SECTION 6.02. Sets forth requirements and provides a timeline for the governor in making the initial appointments to the board, as added by this Act. Requires each initial board member appointed under this section, not later than March 1, 2005, to complete the training required by Section 1603.059, Occupations Code, as added by this Act and provides that, before March 1, 2005, Section 1603.059(a) does not apply to an initial board member.

SECTION 6.03. Requires the board, not later than the 90th day after the date that a majority of the members of the board are appointed under Section 6.02 of this article and qualify for office, to appoint an executive director under Section 1603.101, Occupations Code, as added by this Act and provides that a person who is the executive director of the State Board of Barber Examiners or the Texas Cosmetology Commission on, or within one year preceding, the effective date of this Act, is not eligible to be employed as the initial executive director under this section.

SECTION 6.04. Effective date: September 1, 2005.

By: Whitmire S.B. No. 411

(In the Senate - Filed February 14, 2005; February 15, 2005, read first time and referred to Committee on Government Organization; April 18, 2005, reported adversely, with favorable Committee Substitute by the following vote: Yeas 4, Nays 0; April 18, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 411 By: Whitmire

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.01. Title 9, Occupations Code, is amended by adding Chapter 1603 to read as follows:

CHAPTER 1603. REGULATION OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(b) Unless the context clearly indicates otherwise, the definitions in Chapters 1601 and 1602 apply to this chapter.

Sec. 1603.002. REGULATION OF BARBERING AND COSMETOLOGY BY DEPARTMENT OF LICENSING AND REGULATION. The department shall administer this chapter and Chapters 1601 and 1602. A reference in this chapter to the commission's or department's powers or duties applies only in relation to those chapters, except that this section does not limit the department's or commission's general powers under Chapter 51.

[Sections 1603.003-1603.050 reserved for expansion]

SUBCHAPTER B. ADVISORY BOARDS FOR BARBERING AND COSMETOLOGY

Sec. 1603.051. DUTIES. The advisory boards established under Chapters 1601 and 1602 shall advise the commission on administering this chapter and Chapters 1601 and 1602 regarding barbering or cosmetology, as applicable.

[Sections 1603.052-1603.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1603.101. RULES. The commission shall adopt rules consistent with this chapter for:

(1) the administration of this chapter and the operations of the department in regulating barbering and cosmetology; and

(2) the administration of Chapters 1601 and 1602.

Sec. 1603.102. SANITATION RULES. The commission shall establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.103. INSPECTION OF SCHOOLS, SHOPS, AND FACILITIES BEFORE OPERATION. (a) Until the department determines, by inspection, that the person has established the school, shop, or facility in compliance with this chapter, Chapter 1601, or Chapter 1602, a person may not operate a school, shop, or other facility licensed or permitted under this chapter, Chapter 1601, or Chapter 1602.

(b) A school, shop, or other facility that is not approved by the department on initial inspection may be reinspected.

(c) The school, shop, or other facility shall pay a fee for each inspection. The commission shall by rule set the amount of the

fee.

Sec. 1603.104. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(2) any place in which the department has probable cause to believe that a certificate, license, or permit holder is practicing in violation of this chapter, Chapter 1601, or Chapter 1602 or in violation of a rule or order of the commission or executive director.

(b) At least once every two years, the department shall inspect each school, shop, or other facility that holds a license, certificate, or permit under this chapter, Chapter 1601, or Chapter 1602.

(c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the school, shop, or other facility;

(2) whether there has been a prior sanitation violation at the school, shop, or facility;

(3) the inspection history of the school, shop, or other facility;

(4) any history of complaints involving the school, shop, or other facility; and

(5) any other factor determined by the commission by rule.

(d) An inspector who discovers a violation of this chapter, Chapter 1601, or Chapter 1602 or of a rule or order of the commission or executive director shall:

(1) provide written notice of the violation to the license, certificate, or permit holder on a form prescribed by the department; and

(2) file a complaint with the executive director.

(e) The school, shop, or other facility shall pay a fee for each inspection performed under Subsection (c). The commission shall by rule set the amount of the fee.

Sec. 1603.105. RETENTION OF STUDENT RECORDS. The department may not retain student records, including student transcripts, beyond the time required by state law.

Sec. 1603.106. COMMITTEES. The commission may appoint committees that it considers necessary to carry out its duties.

[Sections 1603.107-1603.150 reserved for expansion]

SUBCHAPTER D. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.151. NOTIFICATION OF PUBLIC INTEREST INFORMATION AND PARTICIPATION. The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding barbering and cosmetology. The department may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter, Chapter 1601, or Chapter 1602;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(3) in a bill for service provided by a person regulated under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.152. COMPLAINT JURISDICTION; NOTIFICATION. If the department determines that it lacks jurisdiction to resolve the complaint, the department shall notify the complainant in writing that the department is closing the complaint because it lacks jurisdiction.

Sec. 1603.153. ANALYSIS OF COMPLAINTS AND VIOLATIONS. (a) The department shall develop and maintain a system to analyze the processing, sources, and types of complaints filed with the department and the types of violations that occur under this

chapter, Chapter 1601, and Chapter 1602.

(b) Based on the information under Subsection (a), the department shall analyze trends in violations and complaints that may require further attention or technical assistance to help reduce the frequency of those complaints and violations.

(c) The department shall annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year, including:

(1) the number of complaints filed;

(2) a categorization of complaints filed according to the basis of the complaint and the number of complaints in each category;

(3) the number of complaints filed by department staff;

(4) the number of complaints filed by persons other than department staff;

(5) the number of complaints filed over which the department lacks jurisdiction;

(6) the average length of time required to close a complaint or violation from the time the department receives the complaint or otherwise initiates an investigation of a possible violation until the complaint or violation is resolved by a final order or penalty;

(7) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal; and

(B) the number of complaints resulting in disciplinary action and the type of disciplinary action taken; and

(8) the number of complaints filed that are unresolved, the number of those complaints filed by department staff, the number of those complaints filed by persons other than department staff, and the average length of time that the unresolved complaints have been on file.

Sec. 1603.154. INFORMAL SETTLEMENT CONFERENCE. The department shall establish guidelines for an informal settlement conference related to a complaint filed with the department.

[Sections 1603.155-1603.200 reserved for expansion]

SUBCHAPTER E. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.201. APPLICATION FORM; TIMING. (a) An application for a certificate, license, or permit must be made on a form prescribed and provided by the department.

(b) An application for an operator license, instructor license, manicurist license, or facialist specialty license must be filed with the department not later than the 10th day before the date set for the applicable examination.

Sec. 1603.202. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. The department shall issue a duplicate certificate, license, or permit to an applicant who:

(1) submits an application for a duplicate certificate, license, or permit to the department; and

(2) pays the required fee.

Sec. 1603.203. PROVISIONAL CERTIFICATE OR LICENSE. (a) The department may issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who:

(1) has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in another jurisdiction, including a foreign country, that has requirements substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602, as appropriate; and

(2) has passed a national or other examination recognized by the commission relating to the practice of that profession.

(b) A provisional certificate or license is valid until the date the department approves or denies the provisional certificate or license holder's application. The department shall issue a certificate or license to the provisional certificate or license

holder if:

(1) the provisional certificate or license holder is eligible to hold a certificate or license under Chapter 1601 or Chapter 1602; or

(2) the provisional certificate or license holder passes the part of the examination under Chapter 1601 or Chapter 1602 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of the profession in this state and:

(A) the department verifies that the provisional certificate or license holder meets the academic and experience requirements for the certificate or license; and

(B) the provisional certificate or license holder satisfies any other certificate or license requirements.

(c) The department must approve or deny a provisional certificate or license holder's application for a certificate or license not later than the 180th day after the date the provisional certificate or license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

Sec. 1603.204. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. (a) A person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602 may apply for a license, certificate, or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country.

(b) The person must:

(1) submit an application for the license, certificate, or permit to the department; and

(2) pay fees in an amount prescribed by the commission, including any applicable license, certificate, or permit fee.

(c) A person issued a license, certificate, or permit under this section:

(1) may perform the acts of barbering or cosmetology stated on the license, certificate, or permit; and

(2) is subject to the renewal procedures and fees provided in this chapter, Chapter 1601, or Chapter 1602 for the performance of those acts of barbering or cosmetology.

[Sections 1603.205-1603.250 reserved for expansion]

SUBCHAPTER F. EXAMINATION REQUIREMENTS

Sec. 1603.251. DEFINITION. In this subchapter, "examination proctor" means an individual registered under this subchapter to administer a practical examination for the department.

Sec. 1603.252. GENERAL EXAMINATION REQUIREMENTS. (a) The department may accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations.

(b) The executive director shall determine uniform standards for acceptable performance on an examination for a license or certificate under Chapter 1601 and for a license or certificate under Chapter 1602.

(c) The examination must include a written examination and may include a practical examination as provided by Section 1603.256.

Sec. 1603.253. EXAMINATION FOR BARBERS. (a) An applicant for an examination for a certificate or license issued under Chapter 1601 must submit to the department a sworn application on a form prescribed and provided by the department accompanied by:

(1) two photographs of the applicant, one of which accompanies the application and one of which is to be returned to the applicant to be presented at the examination; and

(2) the appropriate examination fee.

(b) The department shall examine applicants for a Class A barber certificate and a teacher's certificate.

Sec. 1603.254. EXAMINATION FOR COSMETOLOGISTS. (a) The

department shall administer examinations for certificates and licenses issued under Chapter 1602 beginning the first day of each month. If the first day of the month is a legal holiday, the examination shall begin on the following day.

(b) The department shall announce the site of an examination for a certificate or license issued under Chapter 1602 not later than six months before the scheduled examination date.

Sec. 1603.255. EARLY EXAMINATION. The department, on written request by a student, may 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 department-approved training program.

Sec. 1603.256. PRACTICAL EXAMINATION. (a) The commission may require a practical examination as it considers necessary for a license or certificate issued under Chapter 1601 or 1602.

(b) The department shall prescribe the method and content of any practical examination.

(c) The following persons may administer a practical examination required under this subchapter:

(1) the department;

(2) a person with whom the department contracts under Section 1603.252; or

(3) an examination proctor.

Sec. 1603.257. EXAMINATION PROCTOR; REGISTRATION. (a) A person may not act as an examination proctor under this subchapter unless the person is registered with the department under this section.

(b) To be eligible for registration as an examination proctor, a person must:

(1) meet eligibility requirements determined by commission rule;

(2) file with the department an application on a form prescribed by the department; and

(3) pay the required fees as determined by the commission by rule.

(c) If the department requires an examination proctor to administer a practical examination under this subchapter, the examination proctor shall perform the examination administration function of the department in a competent and professional manner and in compliance with:

(1) standards and specifications adopted by the commission under this chapter; and

(2) rules adopted by the commission under this chapter.

[Sections 1603.258-1603.300 reserved for expansion]

SUBCHAPTER G. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1603.301. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. The department may deny a person's request to renew a certificate, license, or permit issued under this chapter, Chapter 1601, or Chapter 1602 if the person has not paid an administrative penalty imposed under Subchapter F, Chapter 51. This section does not apply if:

(1) the person's time to pay or request a hearing has not expired under Section 51.304;

(2) the person has requested a hearing under Section 51.304, but the person's time to pay has not expired under Section 51.307; or

(3) the penalty is stayed.

[Sections 1603.302-1603.350 reserved for expansion]

SUBCHAPTER H. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.351. MINIMUM CURRICULUM FOR SCHOOLS. The commission shall prescribe the minimum curriculum, including the subjects and the number of hours in each subject, taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602, including a private beauty culture school or a vocational cosmetology program in a public school.

Sec. 1603.352. SANITATION REQUIREMENTS FOR CERTAIN

SERVICES. (a) 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(10) or (11):

(1) shall, before performing the service, disinfect and sterilize with an autoclave each nondisposable instrument used to perform the service; and

(2) may use a disposable supply or instrument only if that supply or instrument is purchased at the location where the service is performed or provided by the person on whom the service is performed.

(b) The owner or manager of a barbershop, barber school, beauty shop, specialty shop, or beauty culture school is responsible for providing an autoclave for use in the shop or school as required by Subsection (a). An autoclave used as required by Subsection (a) must be:

(1) registered and listed with the federal Food and Drug Administration; and

(2) used in accordance with the manufacturer's instructions.

[Sections 1603.353-1603.400 reserved for expansion]

SUBCHAPTER I. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.401. DENIAL, SUSPENSION, OR REVOCATION. The department shall deny an application for issuance or renewal of, or shall suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit:

(1) engages in gross malpractice;

(2) knowingly continues to practice while having an infectious or contagious disease;

(3) knowingly makes a false or deceptive statement in advertising;

(4) advertises, practices, or attempts to practice under another person's name or trade name;

(5) engages in fraud or deceit in obtaining a certificate, license, or permit; or

(6) engages in an act that violates this chapter, Chapter 51, Chapter 1601, or Chapter 1602 or a rule or order adopted or issued under those chapters.

[Sections 1603.402-1603.450 reserved for expansion]

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.451. INJUNCTIVE RELIEF. (a) If a certificate, license, or permit holder commits a violation of this chapter, Chapter 1601, Chapter 1602, or a commission rule and the violation poses a serious threat to the public health, the attorney general shall initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit.

(b) In seeking an injunction under this section, the attorney general is not required to allege or prove:

(1) that an adequate remedy at law does not exist; or

(2) that substantial or irreparable damage would result from the continued violation.

Sec. 1603.452. CIVIL PENALTY. (a) A barber, barber school, or private beauty culture school that violates this chapter, Chapter 1601, Chapter 1602, or a commission rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law.

(b) The amount of the civil penalty for a barber may not exceed $25 a day for each violation.

(c) The amount of the civil penalty for a barber school or private beauty culture school may not exceed $1,000 a day for each violation.

(d) The attorney general may sue to collect the civil penalty.

Sec. 1603.453. APPEAL BOND NOT REQUIRED. The department is not required to give an appeal bond in a cause arising under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.454. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general shall represent the department in an action to

enforce this chapter, Chapter 1601, or Chapter 1602.

ARTICLE 2. REGULATION OF BARBERING

SECTION 2.01. Subsection (a), Section 1601.001, Occupations Code, is amended by amending Subdivisions (3), (4), (5), and (8) and adding Subdivisions (4-a) and (4-b) to read as follows:

(3) "Board" means the Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~].

(4) "Certificate" means a certificate of registration issued by the department [~~board~~].

(4-a) "Commission" means the Texas Commission of Licensing and Regulation.

(4-b) "Department" means the Texas Department of Licensing and Regulation.

(5) "License" means a license issued by the department [~~board~~].

(8) "Permit" means a permit issued by the department [~~board~~].

SECTION 2.02. Section 1601.003, Occupations Code, is amended to read as follows:

Sec. 1601.003. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) does not represent or advertise to the public directly or indirectly that the person is authorized by the department [~~board~~] to practice barbering; and

(2) is:

(A) a physician or registered nurse licensed in this state and operating within the scope of the person's license;

(B) a commissioned or authorized medical or surgical officer of the United States armed forces;

(C) a person regulated under Chapter 1602, if the person practices within the scope of a permit, license, or certificate issued by the department under that chapter [~~Texas Cosmetology Commission~~]; or

(D) an inmate in the institutional division of the Texas Department of Criminal Justice who performs barbering during the person's incarceration.

SECTION 2.03. The heading to Subchapter B, Chapter 1601, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY [~~STATE~~] BOARD ON BARBERING [~~OF BARBER EXAMINERS~~]

SECTION 2.04. Subsection (a), Section 1601.051, Occupations Code, is amended to read as follows:

[~~(a)~~] The Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~] consists of five [~~seven~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) two members, each of whom:

(A) is engaged in the practice of barbering as a Class A barber [~~and has been for at least five years before being appointed~~]; and

(B) does not hold a barbershop permit;

(2) two members, each of whom [~~one member who:~~

[~~(A)~~] is a barbershop owner who holds a barbershop permit; and

[~~(B) is engaged in the practice of barbering and has been for at least five years before being appointed;~~]

(3) one member who holds a permit to conduct or operate a barber school[~~; and~~

[~~(4) three members who represent the public~~].

SECTION 2.05. Section 1601.055, Occupations Code, is amended to read as follows:

Sec. 1601.055. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of one or two [~~or three~~] members expiring on the same date each odd-numbered year [~~every two years~~].

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's

approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 2.06. Section 1601.058, Occupations Code, is amended to read as follows:

Sec. 1601.058. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate a board member as presiding officer to serve in that capacity for a two-year term [~~at the will of the governor~~].

SECTION 2.07. Subchapter B, Chapter 1601, is amended by adding Section 1601.059 to read as follows:

Sec. 1601.059. BOARD DUTIES. The board shall:

(1) advise the commission on rules, enforcement, and licensing requirements;

(2) recommend to the commission standards of practice, conduct, and ethics for persons regulated under this chapter and Chapter 1603;

(3) advise the commission in establishing education requirements for initial applicants; and

(4) advise the commission regarding examinations and, at the request of the commission, assist in administering an examination.

SECTION 2.08. Section 1601.253, Occupations Code, is amended to read as follows:

Sec. 1601.253. ELIGIBILITY FOR CLASS A BARBER CERTIFICATE. (a) An applicant for a Class A barber certificate must:

(1) be at least 16 years of age; and

(2) pass a written and practical examination demonstrating to the department's [~~board's~~] satisfaction the applicant's fitness and competence to practice barbering.

(b) The department [~~board~~] shall issue a Class A barber certificate to an applicant who:

(1) complies with the application requirements of this chapter;

(2) passes the examination with an average grade of at least 75 percent;

(3) pays the required [~~a~~] fee [~~not to exceed $100~~]; and

(4) possesses the other qualifications required by this chapter.

SECTION 2.09. Subsections (a) and (c), Section 1601.254, Occupations Code, are amended to read as follows:

(a) An applicant for a teacher's certificate must:

(1) be a Class A barber;

(2) have 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

(3) submit the required [~~an~~] examination fee [~~not to exceed $100~~] with the application.

(c) The department [~~board~~] shall issue a teacher's certificate to an applicant who:

(1) passes the appropriate examination; and

(2) pays the required [~~a~~] certificate fee [~~not to exceed:~~

[~~(A) $100, if the applicant fulfills the certificate requirements during the period beginning November 1 of an odd-numbered year and extending through October 31 of the following year; or~~

[~~(B) $50, if the applicant fulfills the certificate requirements during the period beginning November 1 of an even-numbered year and extending through October 31 of the following year~~].

SECTION 2.10. Subsections (b) and (d), Section 1601.256, Occupations Code, are amended to read as follows:

(b) An applicant for a barber technician license must:

(1) be at least 16 years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a course of instruction in a commission-approved [~~board-approved~~] training program consisting of not less than 300 hours in a period of not less than eight weeks;

and

(4) submit the required [~~a $10 administration~~] fee with the application.

(d) The department [~~board~~] shall issue a barber technician license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $100~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.11. Subsections (b) and (c), Section 1601.257, Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist license must:

(1) be at least 16 years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a commission-approved [~~board-approved~~] training program consisting of 600 hours of instruction in manicuring; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(c) The department [~~board~~] shall issue a manicurist license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $30~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.12. Section 1601.260, Occupations Code, is amended to read as follows:

Sec. 1601.260. ELIGIBILITY FOR STUDENT PERMIT. (a) An applicant for a permit to be a student in a barber school must:

(1) submit an enrollment application to the department [~~board~~] in the form prescribed by the department [~~board~~];

(2) have completed the seventh grade;

(3) satisfy other requirements specified by the department [~~board~~]; and

(4) submit with the application the required [~~a~~] nonrefundable application fee [~~in an amount not to exceed $25~~].

(b) A separate application is required for each enrollment, reenrollment, or transfer enrollment. The application fee applies only to the first enrollment. The department [~~board~~] may not charge the application fee for any later enrollment, reenrollment, or transfer enrollment.

SECTION 2.13. Section 1601.265, Occupations Code, is amended to read as follows:

Sec. 1601.265. WAIVER OF LICENSE REQUIREMENTS; PERSONAL INTERVIEW. (a) The department [~~board~~] may waive any license requirement for an applicant holding a license from another state or country that has license requirements substantially equivalent to those of this state.

(b) The department [~~board~~] may not require a personal interview as part of the application process.

SECTION 2.14. Subsection (b), Section 1601.301, Occupations Code, is amended to read as follows:

(b) A person who owns, operates, or manages a barbershop or specialty shop must:

(1) submit an application to the department [~~board~~] for an appropriate permit for each shop; and

(2) register with the department [~~board~~] the person's full name and the location of each shop.

SECTION 2.15. Section 1601.302, Occupations Code, is amended to read as follows:

Sec. 1601.302. TEMPORARY BARBERSHOP PERMIT. (a) A person who opens a new barbershop shall submit, not later than the third

day after the date the shop opens, an application to the department [~~board~~] for a temporary barbershop permit accompanied by the required [~~an~~] inspection fee [~~not to exceed $70~~].

(b) The application must provide:

(1) the permanent address of the barbershop;

(2) the legal description of the premises to be licensed; and

(3) other information required by the department [~~board~~].

SECTION 2.16. Section 1601.303, Occupations Code, is amended to read as follows:

Sec. 1601.303. ISSUANCE OF BARBERSHOP PERMIT. The department [~~board~~] shall issue a barbershop permit to an applicant if:

(1) the applicant holds a Class A barber certificate;

(2) the applicant has practiced barbering for at least 12 months; and

(3) the shop meets the minimum health standards for barbershops set by the commission [~~board~~] and all other rules of the commission [~~board~~].

SECTION 2.17. Subsections (b) and (c), Section 1601.304, Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist specialty shop permit must submit:

(1) an application that includes:

(A) the shop's address;

(B) the legal description of the premises for which the permit is sought; and

(C) any other information required by the department [~~board~~]; and

(2) the required [~~an~~] inspection fee [~~in an amount not to exceed $50~~].

(c) As soon as practicable after receipt of the application and fee, the department [~~board~~] shall issue a temporary manicurist specialty shop permit to the applicant. The applicant may operate the applicant's shop under the temporary permit until a permanent permit is issued.

SECTION 2.18. Section 1601.305, Occupations Code, is amended to read as follows:

Sec. 1601.305. ISSUANCE OF MANICURIST SPECIALTY SHOP PERMIT. The department [~~board~~] shall issue a permanent manicurist specialty shop permit to an applicant if:

(1) the applicant holds a manicurist license; and

(2) the shop meets the minimum health standards for manicurist specialty shops set by the commission [~~board~~], as determined by a department [~~board~~] inspection under Section 1603.103, and any other requirements imposed by commission [~~board~~] rule.

SECTION 2.19. Section 1601.309, Occupations Code, is amended to read as follows:

Sec. 1601.309. PRACTICE BY COSMETOLOGIST AT SPECIALTY SHOP PROHIBITED. A person who holds a license, permit, or certificate issued by the department under Chapter 1602 [~~Texas Cosmetology Commission~~] may not practice under that authority at a specialty shop regulated under this chapter.

SECTION 2.20. Section 1601.310, Occupations Code, is amended to read as follows:

Sec. 1601.310. RELOCATION OF SPECIALTY SHOP. (a) The holder of a specialty shop permit may move the person's specialty shop to a different location if the person receives department [~~board~~] approval for the new location.

(b) The permit holder must notify the department [~~board~~] of the move not later than the 10th day before the date the move is scheduled to occur.

SECTION 2.21. Section 1601.352, Occupations Code, is amended to read as follows:

Sec. 1601.352. APPLICATION FOR BARBER SCHOOL PERMIT. (a) An applicant for a barber school permit must demonstrate to the department [~~board~~] that the school meets the requirements of

this subchapter for issuance of a permit.

(b) Before issuing a barber school permit, the department [~~board~~] must determine that the applicant is financially sound and capable of fulfilling the applicant's commitments for training.

SECTION 2.22. Section 1601.353, Occupations Code, is amended to read as follows:

Sec. 1601.353. REQUIRED FACILITIES AND EQUIPMENT. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school has:

(1) an adequate school site housed in a substantial building of permanent construction containing at least 2,800 square feet of floor space, divided into:

(A) a senior department;

(B) a junior department;

(C) a class theory room;

(D) a supply room;

(E) an office space;

(F) a dressing and cloak room; and

(G) two sanitary, modern, separate restrooms, each equipped with one commode and one of which is also equipped with a urinal;

(2) a hard-surface floor-covering of tile or other suitable material;

(3) at least 20 modern barber chairs, including a cabinet and mirror for each chair;

(4) a lavatory behind every two barber chairs;

(5) a liquid sterilizer for each barber chair;

(6) an adequate number of latherers, vibrators, and hair dryers for student use;

(7) adequate lighting for each room;

(8) at least 20 classroom chairs, a blackboard, anatomical charts of the head, neck, and face, and one barber chair in the class theory room;

(9) a library with library facilities available to students containing at least one medical dictionary and a standard work on human anatomy;

(10) adequate drinking fountain facilities, with at least one for each floor;

(11) adequate toilet facilities for the students; and

(12) adequate fire-fighting equipment.

(b) An applicant for a barber school permit must submit to the department [~~board~~]:

(1) a detailed drawing and chart of the proposed physical layout of the school, showing the departments, floor space, equipment, lights, and outlets;

(2) photographs of the proposed site for the school, including the interior and exterior of the building, rooms, and departments;

(3) a detailed copy of the training program;

(4) a copy of the catalogue and promotional literature of the school;

(5) a copy of the building lease or proposed building lease if the building is not owned by the school;

(6) a sworn statement showing the ownership of the school; and

(7) the required [~~a~~] permit fee [~~not to exceed $1,000~~].

SECTION 2.23. Section 1601.354, Occupations Code, is amended to read as follows:

Sec. 1601.354. PREREQUISITES FOR GRADUATION. (a) The department [~~board~~] may not approve an application for a barber school permit unless the school requires as a prerequisite for graduation the following hours of instruction:

(1) for a barber technician, 300 hours of instruction completed in a course of not less than eight weeks;

(2) for a Class A barber, 1,500 hours of instruction completed in a course of not less than nine months, at least 800 hours of which is in the actual practice of cutting hair as a

primary service;

(3) for a manicurist, 600 hours of instruction completed in a course of not less than 16 weeks; and

(4) for a teacher, 1,000 hours of instruction completed in a course of not less than six months.

(b) If a barber school offers a refresher course, the course must require at least 300 hours of instruction. The commission [~~board~~] by rule shall set the curriculum for a refresher course.

SECTION 2.24. Section 1601.355, Occupations Code, is amended to read as follows:

Sec. 1601.355. SUPERVISION AND TEACHING REQUIREMENTS. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school is under the direct supervision and control of a Class A barber certificate holder who presents evidence of at least five years' experience as a practicing barber.

(b) Each barber school for which a permit is sought must 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. In addition to satisfying other department [~~board~~] requirements, the teacher must demonstrate to the department [~~board~~]:

(1) through a written and practical examination an ability to teach the curriculum; and

(2) that the teacher is qualified to teach and:

(A) has had at least six months' experience as a teacher in an approved school in this state or in another state approved by the department [~~board~~]; or

(B) has completed 1,000 hours of instruction in a postgraduate course as a student teacher in a department-approved [~~board-approved~~] barber school in this state.

SECTION 2.25. Subsections (a) and (b), Section 1601.3571, Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the barber school tuition protection account is less than $25,000, the department [~~board~~] shall collect a fee from each barber school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $25,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~board~~] for the purpose of refunding unused tuition if a barber school ceases operation before its course of instruction is complete. The department [~~board~~] shall administer claims made against the account.

SECTION 2.26. Subsection (c), Section 1601.402, Occupations Code, is amended to read as follows:

(c) The department [~~board~~] shall issue a renewal certificate or license on receipt of a renewal application in the form prescribed by the department [~~board~~], accompanied by a renewal fee in an amount equal to the original certificate or license fee [~~but not to exceed $100~~].

SECTION 2.27. The heading to Section 1601.404, Occupations Code, is amended to read as follows:

Sec. 1601.404. [~~RENEWAL OR~~] REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE.

SECTION 2.28. Section 1601.404(c), Occupations Code, is amended to read as follows:

(c) A Class A barber or license holder who retires from practice and whose certificate or license has been expired for more than five years may qualify for a new certificate or license by applying to the department [~~board~~] and by:

(1) making a proper showing to the department [~~board~~], supported by a personal affidavit;

(2) paying the required [~~an~~] examination fee [~~not to exceed $100~~];

(3) passing a satisfactory examination conducted by the department [~~board~~]; and

(4) paying the fee for an original certificate or

license.

SECTION 2.29. Section 1601.405, Occupations Code, is amended to read as follows:

Sec. 1601.405. RENEWAL WHILE IN ARMED FORCES. (a) The department [~~board~~] may not require a Class A barber, barber technician, teacher, or manicurist who is serving on active duty in the United States armed forces to renew the person's certificate or license.

(b) The department [~~board~~] shall issue a renewal certificate or license on application and payment of the required [~~a~~] renewal fee not later than the 90th day after the date the person is released or discharged from active duty in the armed forces. [~~The renewal fee is:~~

[~~(1) $10 if the application and payment are made during the period beginning November 1 of an odd-numbered year and ending October 31 of the following year; or~~

[~~(2) $5 if the application and payment are made during the period beginning November 1 of an even-numbered year and ending October 31 of the following year.~~]

SECTION 2.30. Section 1601.406, Occupations Code, is amended to read as follows:

Sec. 1601.406. RENEWAL OF BARBERSHOP OR SPECIALTY SHOP PERMIT. (a) A barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance [~~on July 1 of each odd-numbered year~~].

(b) A barbershop permit holder may renew the permit by paying the required [~~a~~] renewal fee [~~not to exceed $70~~].

(c) A specialty shop permit holder may renew the permit by submitting to the department [~~board~~] a renewal application accompanied by the required [~~a~~] renewal fee [~~not to exceed $50~~].

SECTION 2.31. Section 1601.407, Occupations Code, is amended to read as follows:

Sec. 1601.407. RENEWAL OF BARBER SCHOOL PERMIT. (a) A barber school permit expires on the first anniversary [~~September 1~~] of the date of issuance [~~each year~~].

(b) A barber school may renew its permit by paying the required [~~a~~] renewal fee [~~not to exceed $300~~].

SECTION 2.32. Section 1601.452, Occupations Code, is amended to read as follows:

Sec. 1601.452. DISPLAY OF SANITATION RULES. Each barbershop or specialty shop shall post in the shop a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.33. Section 1601.453, Occupations Code, is amended to read as follows:

Sec. 1601.453. LOCATION OF PRACTICE. A person licensed by the department [~~board~~] may practice barbering only at a location for which the department [~~board~~] has issued a barbershop permit, specialty shop permit, or barber school permit.

SECTION 2.34. Section 1601.454, Occupations Code, is amended to read as follows:

Sec. 1601.454. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY BOARD AND TEXAS COSMETOLOGY COMMISSION~~]. (a) The commission [~~board~~] may not adopt rules to restrict or prohibit practice by a Class A barber or manicurist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1602 [~~board and the Texas Cosmetology Commission~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1602 [~~the board and the Texas Cosmetology Commission license or permit the same facility~~], the commission [~~board~~] may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 2.35. Section 1601.502, Occupations Code, is amended to read as follows:

Sec. 1601.502. SUPERVISION OF BARBERSHOP. A person may not operate a barbershop unless:

(1) the shop is at all times under the exclusive supervision and management of a Class A barber; and

(2) no person is practicing on the premises by authority of a license, permit, or certificate issued by the department under Chapter 1602 [~~Texas Cosmetology Commission~~], except as allowed by other law.

SECTION 2.36. Section 1601.503, Occupations Code, is amended to read as follows:

Sec. 1601.503. NOTIFICATION OF CHANGE OF LOCATION. A person operating under a barbershop permit may move the operation to another location approved by the department [~~board~~] if the person notifies the department [~~board~~] not later than the 10th day before the date of the move.

SECTION 2.37. Section 1601.552, Occupations Code, is amended to read as follows:

Sec. 1601.552. DISPLAY OF SANITATION RULES. Each barber school shall post in the school a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.38. Section 1601.554, Occupations Code, is amended to read as follows:

Sec. 1601.554. CHANGE OF BARBER SCHOOL OWNERSHIP OR LOCATION. (a) If a barber school changes ownership, the department [~~board~~] must be notified of the change not later than the 10th day before the date the change takes effect.

(b) A barber school may not change the location of the school unless the school obtains approval from the department [~~board~~] before the change by showing that the proposed location meets the requirements of Subchapter H for issuance of a permit to the school.

SECTION 2.39. Section 1601.556, Occupations Code, is amended to read as follows:

Sec. 1601.556. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a barber school permit shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the school's refund policy required under Section 1601.563;

(4) the school's grading policy and rules relating to incomplete grades;

(5) the school's rules of operation and conduct, including rules relating to absences;

(6) the department's [~~board's~~] name, mailing address, and telephone number for the purpose of directing complaints to the department [~~board~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 2.40. Section 1601.557, Occupations Code, is amended to read as follows:

Sec. 1601.557. COURSE LENGTH AND CURRICULUM CONTENT. (a) A barber school shall submit to the department [~~board~~] for approval the course length and curriculum content for a course offered by the school. The course length and curriculum content shall be designed to reasonably ensure that a student develops the job skills and knowledge necessary for employment. The school may not implement a course length or curriculum content unless it is approved by the department [~~board~~].

(b) Before issuing or renewing a permit under this chapter, the department [~~board~~] shall require a school to account for all course lengths and curriculum contents.

SECTION 2.41. Subsection (b), Section 1601.559, Occupations Code, is amended to read as follows:

(b) The department [~~board~~] may inspect a school's attendance record book at any time.

SECTION 2.42. Section 1601.561, Occupations Code, is

amended to read as follows:

Sec. 1601.561. REPORTS TO DEPARTMENT [~~BOARD~~]. (a) A barber school shall maintain [~~submit~~] a monthly progress report [~~to the board~~] regarding each student attending the school. The report must certify the daily attendance record of each student and the number of credit hours earned by each student during the previous month.

(b) On a student's completion of a prescribed course of instruction, the school shall notify [~~certify to~~] the department [~~board~~] that the student has completed the required number of hours and is eligible to take the appropriate examination.

(c) A barber school permit holder shall furnish to the department [~~board~~]:

(1) the current course completion rates of students who attend a course of instruction offered by the school; and

(2) job placement rates and employment rates of students who complete a course of instruction.

SECTION 2.43. Subsection (d), Section 1601.566, Occupations Code, is amended to read as follows:

(d) The department [~~board~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department [~~board~~] on request documentation of the school's effort to locate the student.

SECTION 2.44. Section 1601.603, Occupations Code, is amended to read as follows:

Sec. 1601.603. DENIAL OF PERMIT; SUIT. (a) If the department [~~board~~] denies an application for a barber school permit, the school may request in writing the reasons for the refusal.

(b) If the barber school meets the requirements for issuance of the permit and shows that the requirements of this chapter have been met, and the department [~~board~~] refuses to issue the permit, the school may file suit in a district court in Travis County to require the department [~~board~~] to issue the permit.

(c) A suit under Subsection (b) must be filed not later than the 20th day after the date of the department's [~~board's~~] final order denying issuance of the permit, if registered notice of the order is mailed or it is otherwise shown that the school had notice of the order not later than the 10th day after the date the department [~~board~~] entered the order.

SECTION 2.45. Subsection (a), Section 1601.604, Occupations Code, is amended to read as follows:

(a) The commission [~~board~~] shall suspend or revoke the permit of a barber school that directly or indirectly violates this chapter.

SECTION 2.46. Section 1601.605, Occupations Code, is amended to read as follows:

Sec. 1601.605. PROBATION FOR ALTERING COURSE LENGTH. The commission [~~board~~] shall place on probation a barber school that alters a course length below or above industry standards until the school:

(1) provides justification for the alteration; or

(2) adjusts the course length to meet industry standards.

SECTION 2.47. Subsections (a), (b), and (c), Section 1601.606, Occupations Code, are amended to read as follows:

(a) If the department [~~board~~] has reasonable cause to believe that a barber school has violated this chapter or a rule adopted under this chapter, the department [~~board~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~board~~]. The department [~~board~~] shall attempt to provide a balance on a peer review team between members assigned to the team who are from this state and members who are from other states.

(c) The peer review team shall provide the department [~~board~~] with an objective assessment of the school's curriculum

content and its application.

SECTION 2.48. Subsection (a), Section 1601.653, Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person is a barber inspector or other department [~~board~~] employee and the person sells barber supplies or engages in a business, other than barbering, that deals directly with a barber, barbershop, specialty shop, or barber school.

ARTICLE 3. REGULATION OF COSMETOLOGY

SECTION 3.01. Section 1602.001, Occupations Code, is amended to read as follows:

Sec. 1602.001. GENERAL DEFINITIONS. In this chapter:

(1) "Board" means the Advisory Board on Cosmetology.

(2) "Commission" means the Texas [~~Cosmetology~~] Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) [~~(2)~~] "Public school" includes a public high school, a public junior college, or any other nonprofit tax-exempt institution that conducts a cosmetology program.

SECTION 3.02. The heading to Subchapter B, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY BOARD ON [~~TEXAS~~] COSMETOLOGY [~~COMMISSION~~]

SECTION 3.03. The heading to Section 1602.051, Occupations Code, is amended to read as follows:

Sec. 1602.051. BOARD [~~COMMISSION~~]; MEMBERSHIP.

SECTION 3.04. Subsection (a), Section 1602.051, Occupations Code, is amended to read as follows:

[~~(a)~~] The Advisory Board on [~~Texas~~] Cosmetology [~~Commission~~] consists of five [~~six~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) one member who holds a license for a beauty shop that is part of a chain of beauty shops [~~license~~];

(2) one member who holds a license for a beauty shop that is not part of a chain of beauty shops;

(3) one member who holds a private beauty culture school license; and

(4) [~~(3)~~] two members who each hold an operator license[~~, and~~

[~~(4) two members who represent the public~~].

SECTION 3.05. Subsections (a) and (c), Section 1602.055, Occupations Code, are amended to read as follows:

(a) Members of the board [~~commission~~] serve staggered six-year terms, with the terms of one or two members expiring on the same date [~~December 31 of~~] each odd-numbered year.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 3.06. The heading to Section 1602.058, Occupations Code, is amended to read as follows:

Sec. 1602.058. PRESIDING OFFICER[~~, COMMITTEES~~].

SECTION 3.07. Subsection (a), Section 1602.058, Occupations Code, is amended to read as follows:

[~~(a)~~] The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate one member of the commission as presiding officer to serve in that capacity for a two-year term [~~at the pleasure of the governor~~].

SECTION 3.08. Subchapter B, Chapter 1602, is amended by adding Section 1602.060 to read as follows:

Sec. 1602.060. BOARD DUTIES. The board shall:

(1) advise the commission on rules, enforcement, licensing requirements, and continuing education;

(2) recommend to the commission standards of practice, conduct, and ethics for persons regulated under this chapter and

Chapter 1603; and

(3) advise the commission in establishing education requirements for initial applicants.

SECTION 3.09. The heading to Subchapter D, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES RELATED TO COSMETOLOGY

SECTION 3.10. Subsections (a) and (b), Section 1602.153, Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of records and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the department [~~commission~~], acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the department [~~commission~~] may be held.

SECTION 3.11. Subsection (c), Section 1602.251, Occupations Code, is amended to read as follows:

(c) A person licensed by the department [~~commission~~] may practice cosmetology only at a facility operated by a person holding a beauty shop license, private beauty culture school license, or other license issued by the department [~~commission~~].

SECTION 3.12. Subsection (b), Section 1602.258, Occupations Code, is amended to read as follows:

(b) To be eligible for a specialty certificate, an applicant must:

(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 the necessary requisites as determined by the department [~~commission~~] in the particular specialty for which certification is sought, including training through a commission-approved training program.

SECTION 3.13. Subsections (a) and (b), Section 1602.266, Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] shall require a student enrolled in a school of cosmetology in this state to hold a permit stating the student's name and the name of the school. The permit shall be displayed in a reasonable manner at the school.

(b) The department [~~commission~~] shall issue a student permit to an applicant who submits an application to the department [~~commission~~] for a student permit accompanied by the required fee.

SECTION 3.14. Subsection (b), Section 1602.267, Occupations Code, is amended to read as follows:

(b) The department [~~commission~~] shall issue a shampoo apprentice permit to an applicant who[~~:~~

[~~(1)~~] is at least 16 years of age[~~; and~~

[~~(2) submits a certificate of health as required by Section 1602.253~~].

SECTION 3.15. Subsection (b), Section 1602.302, Occupations Code, is amended to read as follows:

(b) An application for a beauty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a beauty shop established by the commission; and

(3) be verified by the applicant.

SECTION 3.16. Subsections (b) and (c), Section 1602.303, Occupations Code, are amended to read as follows:

(b) An application for a private beauty culture school license must be accompanied by the required license fee and inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) be verified by the applicant;

(3) contain a detailed floor plan of the school building divided into two separate areas, one area for instruction in theory and one area for clinic work; and

(4) contain a statement that the building:

(A) is fireproof;

(B) is of permanent construction;

(C) contains a minimum of 3,500 square feet of floor space;

(D) has separate restrooms for male and female students; and

(E) contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 50 students.

(c) The applicant is entitled to a private beauty culture school license if:

(1) the department [~~commission~~] determines that the applicant is financially sound and capable of fulfilling the school's commitments for training;

(2) the applicant's facilities pass an inspection conducted by the department under Section 1603.103 [~~commission~~]; and

(3) the applicant has not committed an act that constitutes a ground for denial of a license.

SECTION 3.17. Subsection (b), Section 1602.305, Occupations Code, is amended to read as follows:

(b) An application for a specialty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a specialty shop as established by the commission; and

(3) be verified by the applicant.

SECTION 3.18. Subsection (b), Section 1602.306, Occupations Code, is amended to read as follows:

(b) An application for a booth rental license must:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain information as required by commission rule; and

(3) be verified by the applicant.

SECTION 3.19. The heading to Section 1602.352, Occupations Code, is amended to read as follows:

Sec. 1602.352. REQUIREMENT FOR FIRST [~~PROCEDURE FOR~~] RENEWAL OF LICENSE [~~OR REINSTATEMENT~~].

SECTION 3.20. Subchapter H, Chapter 1602, Occupations Code, is amended by adding Section 1602.353 to read as follows:

Sec. 1602.353. INACTIVE STATUS. (a) Not later than the 10th day before the expiration date of a certificate or license issued under this chapter, the certificate or license holder may place the certificate or license on inactive status by:

(1) submitting an application for inactive status to the department on a form prescribed by the department; and

(2) paying the required fee.

(b) Except as provided by Subsection (e), a person whose certificate or license is on inactive status is not required to complete continuing education required under this chapter.

(c) A person whose certificate or license is on inactive status may reapply for inactive status before the expiration date of the certificate or license. The person must pay the required fee.

(d) A license holder may not employ a person on inactive status.

(e) A person on inactive status may return the certificate or license to active status by:

(1) applying to the department for active status on a form prescribed by the department;

(2) paying the required fee; and

(3) providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding two-year license period.

(f) The commission may set fees and adopt rules to implement this section.

SECTION 3.21. Section 1602.405, Occupations Code, is amended to read as follows:

Sec. 1602.405. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY COMMISSION AND STATE BOARD OF BARBER EXAMINERS~~]. (a) The commission may not adopt rules to restrict or prohibit practice by a cosmetologist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1601 [~~commission and the State Board of Barber Examiners~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1601 [~~the commission and the State Board of Barber Examiners license the same facility~~], the commission may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 3.22. Subsection (a), Section 1602.451, Occupations Code, is amended to read as follows:

(a) The holder of a private beauty culture school license shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours one full-time licensed instructor for each 25 students in attendance;

(3) maintain a daily record of students' attendance;

(4) establish regular class and instruction hours and grades;

(5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than 600 hours instruction for a complete course in manicuring;

(7) hold examinations before issuing diplomas;

(8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed;

(9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and

(10) [~~submit to the executive director the name of each student within 10 days after the date the student enrolls in the school and notify the executive director of the withdrawal or graduation of a student not later than the 10th day after the date the student withdraws or graduates; and~~

[~~(11)~~] provide the department [~~commission~~] with information on:

(A) the current course completion rates of students who attend a course of instruction offered by the school; and

(B) job placement rates and employment rates of students who complete the course of instruction.

SECTION 3.23. Section 1602.452, Occupations Code, is amended to read as follows:

Sec. 1602.452. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a private beauty culture school license shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the refund policy required under Section 1602.458;

(4) the school grading policy and rules relating to incomplete grades;

(5) the school rules of operation and conduct, including rules relating to absences;

(6) the name, mailing address, and telephone number of the department [~~commission~~] for the purpose of directing complaints to the department [~~commission~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 3.24. Subsection (c), Section 1602.453, Occupations Code, is amended to read as follows:

(c) Before issuing or renewing a license under this chapter, the department [~~commission~~] shall require a school to account for each course length and curriculum content.

SECTION 3.25. Section 1602.454, Occupations Code, is amended to read as follows:

Sec. 1602.454. STUDENT RECORD. A private beauty culture school shall notify [~~send to~~] the department [~~commission a certified copy of a student's record, indicating all course hours completed by the student and whether the agreed tuition has been paid,~~] when a [~~the~~] student[~~:~~

[~~(1)~~] graduates from a course of training offered by the school and is eligible to take the appropriate examination[~~; or~~

[~~(2) withdraws or transfers from a course of training without completion of the training~~].

SECTION 3.26. Subsection (d), Section 1602.460, Occupations Code, is amended to read as follows:

(d) The department [~~commission~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department [~~commission~~] on request documentation of the effort to locate the student.

SECTION 3.27. Subsection (a), Section 1602.463, Occupations Code, is amended to read as follows:

(a) If a private beauty culture school closes, the department [~~commission~~] shall attempt to arrange for students enrolled in the closed school to attend another private beauty culture school.

SECTION 3.28. Subsections (a) and (b), Section 1602.464, Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the private beauty culture school tuition protection account is less than $200,000, the department [~~commission~~] shall collect a fee from each private beauty culture school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $200,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~commission~~] for the purpose described by Section 1602.463. The department [~~commission~~] shall administer claims made against the account.

SECTION 3.29. Subsections (a), (b), and (c), Section 1602.465, Occupations Code, are amended to read as follows:

(a) If the department [~~commission~~] has reasonable cause to believe that a private beauty culture school has violated this chapter or a rule adopted under this chapter, the department [~~commission~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~commission~~]. The department [~~commission~~] shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states.

(c) The team shall provide the department [~~commission~~] with an objective assessment of the content of the school's curriculum and its application.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Section 232.002, Family Code, is amended to

read as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following are licensing authorities subject to this chapter:

(1) Department of Agriculture;

(2) [~~Texas Commission on Alcohol and Drug Abuse;~~

[~~(3)~~] Texas Alcoholic Beverage Commission;

(3) [~~(4)~~] Texas Appraiser Licensing and Certification Board;

(4) [~~(5)~~] Texas Board of Architectural Examiners;

(5) [~~(6) State Board of Barber Examiners;~~

[~~(7)~~] Texas Board of Chiropractic Examiners;

(6) [~~(8)~~] Comptroller of Public Accounts;

(7) [~~(9) Texas Cosmetology Commission;~~

[~~(10)~~] Court Reporters Certification Board;

(8) [~~(11)~~] State Board of Dental Examiners;

(9) [~~(12)~~] Texas State Board of Examiners of Dietitians;

(10) [~~(13)~~] Texas Funeral Service Commission;

(11) [~~(14) Texas~~] Department of State Health Services [~~Health~~];

(12) [~~(15) Texas~~] Department of Aging and Disability [~~Human~~] Services;

(13) [~~(16)~~] Texas Board of Professional Land Surveying;

(14) [~~(17)~~] Texas Department of Licensing and Regulation;

(15) [~~(18)~~] Texas State Board of Examiners of Marriage and Family Therapists;

(16) [~~(19)~~] Texas State Board of Medical Examiners;

(17) [~~(20)~~] Midwifery Board;

(18) [~~(21)~~] Texas Commission on Environmental Quality;

(19) [~~(22)~~] Board of Nurse Examiners;

(20) [~~(23)~~] Texas Board of Occupational Therapy Examiners;

(21) [~~(24)~~] Texas Optometry Board;

(22) [~~(25)~~] Parks and Wildlife Department;

(23) [~~(26)~~] Texas State Board of Examiners of Perfusionists;

(24) [~~(27)~~] Texas State Board of Pharmacy;

(25) [~~(28)~~] Texas Board of Physical Therapy Examiners;

(26) [~~(29)~~] Texas State Board of Plumbing Examiners;

(27) [~~(30)~~] Texas State Board of Podiatric Medical Examiners;

(28) [~~(31)~~] Polygraph Examiners Board;

(29) [~~(32)~~] Texas [~~Commission on~~] Private Security Board;

(30) [~~(33)~~] Texas State Board of Examiners of Professional Counselors;

(31) [~~(34)~~] Texas Board of Professional Engineers;

(32) [~~(35)~~] Department of Family and Protective [~~and Regulatory~~] Services;

(33) [~~(36)~~] Texas State Board of Examiners of Psychologists;

(34) [~~(37)~~] Texas State Board of Public Accountancy;

(35) [~~(38)~~] Department of Public Safety of the State of Texas;

(36) [~~(39)~~] Public Utility Commission of Texas;

(37) [~~(40)~~] Railroad Commission of Texas;

(38) [~~(41)~~] Texas Real Estate Commission;

(39) [~~(42)~~] State Bar of Texas;

(40) [~~(43)~~] Texas State Board of Social Worker Examiners;

(41) [~~(44)~~] State Board of Examiners for Speech-Language Pathology and Audiology;

(42) [~~(45)~~] Texas Structural Pest Control Board;

(43) [~~(46)~~] Board of Tax Professional Examiners;

(44) [~~(47)~~] Secretary of State;

(45) [~~(48)~~] Supreme Court of Texas;
(46) [~~(49)~~] Texas Transportation Commission;
(47) [~~(50)~~] State Board of Veterinary Medical Examiners;
(48) [~~(51)~~] Texas Ethics Commission;
(49) [~~(52)~~] Advisory Board of Athletic Trainers;
(50) [~~(53)~~] State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;
(51) [~~(54)~~] Texas Board of Licensure for Professional Medical Physicists;
(52) [~~(55)~~] Texas Department of Insurance;
(53) [~~(56)~~] Texas Board of Orthotics and Prosthetics;
(54) [~~(57)~~] savings and loan commissioner;
(55) [~~(58)~~] Texas Juvenile Probation Commission; and
(56) [~~(59)~~] Texas Lottery Commission under Chapter 466, Government Code.

SECTION 4.02. Subsection (d), Section 411.122, Government Code, is amended to read as follows:

(d) The following state agencies are subject to this section:

(1) Texas Appraiser Licensing and Certification Board;
(2) Texas Board of Architectural Examiners;
(3) [~~State Board of Barber Examiners;~~
[~~(4)~~] Texas Board of Chiropractic Examiners;
(4) [~~(5) Texas Cosmetology Commission;~~
[~~(6)~~] State Board of Dental Examiners;
(5) [~~(7)~~] Texas Board of Professional Engineers;
(6) [~~(8)~~] Texas Funeral Service Commission;
(7) [~~(9)~~] Texas Board of Professional Geoscientists;
(8) [~~(10) Texas~~] Department of State Health Services, except as provided by Section 411.110, and agencies attached to the department, including:
(A) Texas State Board of Examiners of Dietitians;
(B) Texas State Board of Examiners of Marriage and Family Therapists;
(C) Midwifery Board;
(D) Texas State Board of Examiners of Perfusionists;
(E) Texas State Board of Examiners of Professional Counselors;
(F) Texas State Board of Social Worker Examiners;
(G) State Board of Examiners for Speech-Language Pathology and Audiology;
(H) Advisory Board of Athletic Trainers;
(I) State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;
(J) Texas Board of Licensure for Professional Medical Physicists; and
(K) Texas Board of Orthotics and Prosthetics;
(9) [~~(11)~~] Texas Board of Professional Land Surveying;
(10) [~~(12)~~] Texas Department of Licensing and Regulation, except as provided by Section 411.093;
(11) [~~(13)~~] Texas Commission on Environmental Quality;
(12) [~~(14)~~] Texas Board of Occupational Therapy Examiners;
(13) [~~(15)~~] Texas Optometry Board;
(14) [~~(16)~~] Texas State Board of Pharmacy;
(15) [~~(17)~~] Texas Board of Physical Therapy Examiners;
(16) [~~(18)~~] Texas State Board of Plumbing Examiners;
(17) [~~(19)~~] Texas State Board of Podiatric Medical Examiners;
(18) [~~(20)~~] Polygraph Examiners Board;
(19) [~~(21)~~] Texas State Board of Examiners of Psychologists;
(20) [~~(22)~~] Texas Real Estate Commission;

(21) [~~(23)~~] Board of Tax Professional Examiners;
(22) [~~(24)~~] Texas Department of Transportation;
(23) [~~(25)~~] State Board of Veterinary Medical Examiners;
(24) [~~(26) Board of Vocational Nurse Examiners;~~
[~~(27)~~] Texas Department of Housing and Community Affairs;
(25) [~~(28)~~] secretary of state;
(26) [~~(29)~~] state fire marshal;
(27) [~~(30)~~] Texas Education Agency; and
(28) [~~(31)~~] Department of Agriculture.

SECTION 4.03. Subsection (a), Section 2054.352, Government Code, is amended to read as follows:

(a) The following licensing entities shall participate in the system established under Section 2054.353[~~, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001~~]:

(1) [~~State Board of Barber Examiners;~~
[~~(2)~~] Texas Board of Chiropractic Examiners;
(2) [~~(3) Texas Cosmetology Commission;~~
[~~(4)~~] Court Reporters Certification Board;
(3) [~~(5)~~] State Board of Dental Examiners;
(4) [~~(6)~~] Texas Funeral Service Commission;
(5) [~~(7)~~] Texas Board of Professional Land Surveying;
(6) [~~(8)~~] Texas State Board of Medical Examiners;
(7) [~~(9)~~] Board of Nurse Examiners;
(8) [~~(10)~~] Texas Optometry Board;
(9) [~~(11)~~] Texas Structural Pest Control Board;
(10) [~~(12)~~] Texas State Board of Pharmacy;
(11) [~~(13)~~] Executive Council of Physical Therapy and Occupational Therapy Examiners;
(12) [~~(14)~~] Texas State Board of Plumbing Examiners;
(13) [~~(15)~~] Texas State Board of Podiatric Medical Examiners;
(14) [~~(16)~~] Board of Tax Professional Examiners;
(15) [~~(17)~~] Polygraph Examiners Board;
(16) [~~(18)~~] Texas State Board of Examiners of Psychologists;
(17) [~~(19)~~] State Board of Veterinary Medical Examiners;
(18) [~~(20)~~] Texas Real Estate Commission;
(19) [~~(21)~~] Texas Appraiser Licensing and Certification Board;
(20) [~~(22)~~] Texas Department of Licensing and Regulation;
(21) [~~(24)~~] Texas State Board of Public Accountancy;
(22) [~~(25)~~] State Board for Educator Certification;
(23) [~~(26)~~] Texas Board of Professional Engineers;
(24) [~~(27) Texas~~] Department of State Health Services;
(25) [~~(28)~~] Texas Board of Architectural Examiners;
(26) [~~(29)~~] Texas Racing Commission;
(27) [~~(30)~~] Commission on Law Enforcement Officer Standards and Education; and
(28) [~~(31)~~] Texas [~~Commission on~~] Private Security Board.

ARTICLE 5. REPEALER

SECTION 5.01. The following laws are repealed:

(1) Subchapters C, D, E, and O, Chapter 1601, Occupations Code;

(2) Subchapters C, E, and K, Chapter 1602, Occupations Code; and

(3) Sections 1601.004, 1601.051(b) and (c), 1601.052, 1601.053, 1601.054, 1601.056, 1601.057, 1601.252, 1601.261, 1601.262, 1601.263, 1601.264, 1601.266, 1601.267, 1601.356, 1601.401, 1601.402(d), 1601.403, 1601.404(a) and (b), 1601.408, 1601.601, 1601.651, 1601.654, 1602.004, 1602.051(b) and (c), 1602.052, 1602.053, 1602.054, 1602.055(b), 1602.056, 1602.057, 1602.058(b), 1602.059, 1602.151, 1602.152, 1602.154, 1602.155, 1602.252, 1602.253, as amended by Chapter 1282, Acts of the 78th

Legislature, Regular Session, 2003, 1602.259, 1602.260, 1602.261, 1602.263, 1602.264, 1602.265, 1602.303(d), 1602.304(b), 1602.351(d), 1602.352(b) through (f), 1602.407, 1602.551, 1602.552, 1602.553, and 1602.555, Occupations Code.

ARTICLE 6. TRANSITION AND EFFECTIVE DATE

SECTION 6.01. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission are abolished but continue in existence until September 1, 2006, for the sole purpose of transferring obligations, property, employees, rights, powers, and duties to the Texas Department of Licensing and Regulation. The Texas Department of Licensing and Regulation assumes all of the obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission, as they exist immediately before the effective date of this Act. All unexpended funds appropriated to the State Board of Barber Examiners and the Texas Cosmetology Commission are transferred to the Texas Department of Licensing and Regulation. The transfer of the obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation must be completed not later than September 1, 2006.

(b) All rules of the State Board of Barber Examiners and the Texas Cosmetology Commission are continued in effect as rules of the Texas Commission of Licensing and Regulation until superseded by a rule of the Texas Commission of Licensing and Regulation. A certificate, license, or permit issued by the State Board of Barber Examiners or the Texas Cosmetology Commission is continued in effect as provided by the law in effect immediately before the effective date of this Act. A complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. An inspection or other activity conducted by the State Board of Barber Examiners or the Texas Cosmetology Commission is considered to be an inspection or activity conducted by the Texas Department of Licensing and Regulation, including an inspection or other activity conducted for purposes of allowing a school, shop, or facility to continue to operate under Section 1603.103, Occupations Code, as added by this Act.

(c) A reference in another law or an administrative rule to the State Board of Barber Examiners or the Texas Cosmetology Commission means the Texas Department of Licensing and Regulation.

SECTION 6.02. Sections 1602.353 and 1603.352, Occupations Code, as added by this Act, take effect January 1, 2006.

SECTION 6.03. This Act takes effect September 1, 2005.

* * * * *

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

(SB) SCR SJR SR HB HCR HJR 411

By Whitmire
(Author/Senate Sponsor)

4-18-05
(date)

We, your Committee on GOVERNMENT ORGANIZATION, to which was referred the attached measure, have on 4/12/05 (date of hearing), had the same under consideration and I am instructed to report it back with the recommendation (s) that it:

(✓) do pass as substituted, and be printed
(✓) the caption remained the same as original measure
( ) the caption changed with adoption of the substitute

( ) do pass as substituted, and be ordered not printed

(✓) and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. (✓) yes ( ) no

A revised fiscal note was requested. (✓) yes ( ) no

An actuarial analysis was requested. ( ) yes (✓) no

Considered by subcommittee. ( ) yes (✓) no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Ellis, Chair	✓			
Senator Eltife, Vice-Chair			✓	
Senator Gallegos	✓			
Senator Harris			✓	
Senator Jackson			✓	
Senator Nelson	✓			
Senator Whitmire	✓			
TOTAL VOTES	4	0	3	0

COMMITTEE ACTION

(S260) Considered in public hearing
(S270) Testimony taken

Vanessa McMahan
COMMITTEE CLERK

CHAIR

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

WITNESS LIST

SB 411

SENATE COMMITTEE REPORT

Government Organization

April 12, 2005 - 8:30AM

FOR: Colwell, Erin Executive Director (Lonestar Cosmetology Association), Austin, TX
Colwell, Linda (United Career Training), Austin, TX
Davis, Jennifer Cosmetologist (Self), Austin, TX
Holcombe, Linda Executive Director (Texas Industrial Vocational Association (TIVA)), Austin, TX
Schnabel, Charlie Consultant (Lone Star Cosmetology Association), Austin, TX

ON: Humphrey, Antoinette Executive Director (Texas Cosmetology Commission), Austin, TX
Parker, Glenn Executive Director (Board of Barber Examiners), Austin, TX

Registering, but not testifying:

On: Brown, Ronald Barber School Owner (TSBBE), Austin, TX
Kuntz, Jr., William Executive Director (Texas Department of Licensing and Regulation), Austin, TX
Lieberknecht, Chloe Policy Analyst (Sunset Advisory Commission), Austin, TX

BILL ANALYSIS

Senate Research Center
79R 10401 MXM-D

C.S.S.B. 411
By: Whitmire
Government Organization
4/15/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas State Board of Barber Examiners (board) and the Texas Cosmetology Commission (commission) regulate barbers and cosmetologists to protect the health and safety of the public. The agencies perform two major functions: licensing barbers and cosmetologists, instructors, shops, salons, and schools; and enforcing the Barber and Cosmetology Acts and agency rules by investigating complaints and conducting inspections.

The board currently regulates about 13,150 individuals and 8,000 entities, with a staff of 13, on an annual budget of about $600,000.

The commission currently regulates about 151,500 individuals and 8,000 entities, with a staff of 42, on an annual budget of about $2.3 million.

The board and the commission are subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the legislature. The sunset review found that the agencies are not effective in carrying out their regulatory duties, and that some aspects of the regulation of barbering and cosmetology did not protect the public and wasted resources.

C.S.S.B. 411 abolishes the board and the commission and transfers the agencies' functions to the Texas Department of Licensing and Regulation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1.01 (Section 1603.101, 1603.102, 1603.103, 1603.104, and 1603.151, Occupations Code) and SECTION 3.20 (Section 1602.353, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.01. Amends Title 9, Occupations Code, by adding Chapter 1603, as follows:

CHAPTER 1603. REGULATION OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. (a) Defines "commission," "department," and "executive director."

(b) Provides that the definitions in Chapters 1601 (Barbers), Occupations Code and 1602 (Cosmetologists), Occupations Code, apply to this chapter, unless the context clearly indicates otherwise.

Sec. 1603.002. REGULATION OF BARBERING AND COSMETOLOGY BY DEPARTMENT OF LICENSING AND REGULATION. Requires the Texas Department of Licensing and Regulation (department) to administer this chapter and Chapters 1601 and 1602. Provides that a reference in this chapter to the Texas Commission of Licensing and Regulation's (commission) or department's powers or duties applies only in relation to those chapters, except that this section does not limit the

department's or commission's general powers under Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code.

[Reserves Sections 1603.003-1603.050 for expansion.]

SUBCHAPTER B. ADVISORY BOARDS FOR BARBERING AND COSMETOLOGY

Sec. 1603.051. DUTIES. Requires the barber and cosmetology advisory boards established under Chapters 1601 and 1602 to advise the commission on administering this chapter and Chapters 1601 and 1602 regarding barbering or cosmetology, as applicable.

[Reserves Sections 1603.052-1603.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1603.101. RULES. Requires the commission to adopt rules consistent with this chapter for the administration of this chapter, the operation of the department in regulating barbering and cosmetology, and the administration of Chapters 1601 and 1602, Occupations Code.

Sec. 1603.102. SANITATION RULES. Requires the commission to establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.103. INSPECTION OF SCHOOLS, SHOPS, AND FACILITIES BEFORE OPERATION. Prohibits a person from operating a school, shop, or other facility licensed or permitted under Chapters 1601 and 1602, Occupations Code, until the department determines, by inspection, that the person has established the school, shop, or facility in compliance with said chapters. Authorizes a school, shop, or other facility that is not approved by the department on initial inspection to be reinspected and requires said facility to pay a fee for each inspection. Requires the commission, by rule, to set the amount of the fee.

Sec. 1603.104. PERIODIC AND RISK-BASED INSPECTIONS. (a) Authorizes the department to enter and inspect at any time during business hours certain facilities regulated under this chapter, Chapter 1601, or Chapter 1602, or any place in which the department has probable cause to believe that a certificate, license, or permit holder is participating in violation of this chapter, Chapter 1601, or Chapter 1602, or in violation of a rule or order of the commission or the executive director of the department (executive director).

(b) Requires the department to conduct specific, periodic inspections of certain facilities under this chapter, Chapter 1601, or Chapter 1602, Occupations Code.

(c) Requires the department to conduct specific risk-based inspections of certain facilities under said chapters. Requires the board to set priorities for inspections based on certain risk factors.

(d) Sets forth actions required of an inspector who finds a violation during an inspection.

(e) Requires the school, shop, or other facility to pay a fee for each inspection performed under Subsection (c). Requires the commission, by rule, to set the amount of the fee.

Sec. 1603.105. RETENTION OF STUDENT RECORDS. Prohibits the department from retaining student records, including student transcripts, beyond the time required by state law.

Sec. 1603.106. COMMITTEES. Authorizes the commission to appoint committees as necessary to carry out its duties.

[Reserves Sections 1603.107-1603.150 for expansion.]

SUBCHAPTER D. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.151. NOTIFICATION OF PUBLIC INTEREST INFORMATION AND PARTICIPATION. Requires the commission, by rule, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding barbering and cosmetology. Authorizes the department to provide for that notice through specific means.

Sec. 1603.152. COMPLAINT JURISDICTION; NOTIFICATION. Requires the department, if the department determines that it lacks jurisdiction to resolve the complaint, to notify the complainant in writing that the department is closing the complaint because it lacks jurisdiction.

Sec. 1603.153. ANALYSIS OF COMPLAINTS AND VIOLATIONS. Requires the department to develop and maintain a system to analyze the processing, sources, and types of complaints filed with the department and the types of violations that occur under this chapter, Chapter 1601, and Chapter 1602, Occupations Code, and, based on said information, to analyze trends in violations and complaints that may require further attention or technical assistance to help reduce their frequency. Requires the department to annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year which must include specific information.

Sec. 1603.154. INFORMAL SETTLEMENT CONFERENCE. Requires the department to establish guidelines for an informal settlement conference related to a complaint filed with the department.

[Reserves Sections 1603.155-1603.200 for expansion.]

SUBCHAPTER E. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.201. APPLICATION FORM; TIMING. Requires an application for a certificate, license, or permit to be made on a form prescribed and provided by the department. Requires an application for an operator license, instructor license, manicurist license, or facialist specialty license to be filed with the department no later than 10 days before the date set for the applicable examination.

Sec. 1603.202. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. Requires the department to issue a duplicate certificate, license, or permit to an applicant who meets certain requirements.

Sec. 1603.203. PROVISIONAL CERTIFICATE OR LICENSE. Authorizes the department to issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who meets certain requirements. Sets forth guidelines for granting a certificate or license to a provisional holder. Sets forth a timeline for the department to grant or deny a provisional certificate or license.

Sec. 1603.204. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. Authorizes a person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter or Chapters 1601 or 1602, Occupations Code, to apply for a license, certificate, or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country and sets forth certain requirements for doing such. Authorizes a person issued a license, certificate, or permit under this section to perform the acts of barbering or

cosmetology stated on the license, certificate, or permit and provides that the person is subject to the renewal procedures and fees provided for the performance of those acts of barbering or cosmetology.

[Reserves Sections 1603.205-1603.250 for expansion.]

SUBCHAPTER F. EXAMINATION REQUIREMENTS

Sec. 1603.251. DEFINITION. Defines "examination proctor."

Sec. 1603.252. GENERAL EXAMINATION REQUIREMENTS. Authorizes the department to accept, develop, or contract for the examinations required by this chapter, including the administration of examinations. Requires the executive director to determine uniform standards for acceptable performance on an examination for a license or certificate under Chapter 1601 and for a license or certificate under Chapter 1602. Requires said examination to include a written examination and authorizes said examination to include a practical examination as provided by Section 1603.256.

Sec. 1603.253. EXAMINATION FOR BARBERS. Requires an applicant for an examination for a certificate or license issued under Chapter 1601 to submit to the department a sworn application on a form prescribed and provided by the department accompanied by certain materials and fees. Requires the department to examine applicants for a Class A barber certificate and a teacher's certificate.

Sec. 1603.254. EXAMINATION FOR COSMETOLOGISTS. Requires the department to administer examinations for certificates and licenses issued under Chapter 1602 beginning the first day of each month. Requires the examination to begin on the following day, if the first day of the month is a legal holiday.

Sec. 1603.255. EARLY EXAMINATION. Authorizes the department, 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 met certain requirements.

Sec. 1603.256. PRACTICAL EXAMINATION. Authorizes the commission to require a practical examination as it considers necessary for a license or certificate issued under Chapter 1601 or 1602. Requires the department to prescribe the method and content of any practical examination. Authorizes certain persons to administer a practical examination under this subchapter.

Sec. 1603.257. EXAMINATION PROCTOR; REGISTRATION. Prohibits a person from acting as an examination proctor under this subchapter unless the person is registered with the department under this section. Sets forth eligibility requirements for registration as an examination proctor under this subchapter. Requires the examination proctor, if the department requires an examination proctor to administer a practical examination under this subchapter, to perform the examination administration function of the department in a competent and professional manner and in compliance with standards and specifications adopted by the commission under this chapter and rules adopted by the commission under this chapter.

[Reserves Sections 1603.258-1603.300 for expansion.]

SUBCHAPTER G. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1603.301. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. Authorizes the department to deny a person's request to renew a certificate, license, or permit under this chapter, Chapter 1601, Occupations Code, or Chapter 1602, Occupations Code, if the person has not paid an administrative penalty imposed under Subchapter F, Chapter 51. Provides specific exceptions.

[Reserves Sections 1603.302-1603.350 for expansion.]

SUBCHAPTER H. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.351. MINIMUM CURRICULUM FOR SCHOOLS. Requires the commission to prescribe the minimum curriculum taught by all schools licensed under this chapter, Chapter 1601, or Chapter 1602, Occupations Code.

Sec. 1603.352. SANITATION REQUIREMENTS FOR CERTAIN SERVICES. Sets forth specific sanitation requirements, including requiring the use of an autoclave for sterilizing nondisposable instruments used to perform services and authorizing the use of disposable supplies or instruments under certain conditions, for 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(10) or (11). Provides that the owner or manager of a barber shop, barber school, beauty shop, specialty shop, or beauty culture school is responsible for providing said autoclave for use in the shop or school as required by Subsection (a). Sets forth specific requirements for said autoclave.

[Reserves Sections 1603.353-1603.400 for expansion.]

SUBCHAPTER I. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.401. DENIAL, SUSPENSION, OR REVOCATION. Requires the department to deny an application for issuance or renewal of, or to suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit engages in certain behaviors or acts.

[Reserves Sections 1603.402-1603.450 for expansion.]

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.451. INJUNCTIVE RELIEF. Requires the attorney general, if a certificate, license, or permit holder commits a violation of Chapters 1601 or 1602, Occupations Code, or a commission rule which poses a serious threat to public health, to initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit. Provides that, in seeking an injunction under this section, the attorney general is not required to allege or prove certain facts.

Sec. 1603.452. CIVIL PENALTY. Provides that a barber, barber school, or private beauty culture school that violates this chapter, Chapters 1601 or 1602, Occupations Code, or a commission rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law. Sets forth guidelines for imposition and collection of said civil penalty.

Sec. 1603.453. APPEAL BOND NOT REQUIRED. Provides that the department is not required to give an appeal bond in a cause arising under this chapter, or Chapters 1601 or 1602, Occupations Code.

Sec. 1603.454. ENFORCEMENT BY ATTORNEY GENERAL. Requires the attorney general to represent the department in an action to enforce this chapter or Chapters 1601 or 1602, Occupations Code.

ARTICLE 2. REGULATION OF BARBERING

SECTION 2.01. Amends Section 1601.001(a), Occupations Code, to redefine "board," "certificate," "license," and "permit" and to define "commission" and "department."

SECTION 2.02. Amends Section 1601.003, Occupations Code, as follows:

Sec. 1601.003. APPLICATION OF CHAPTER. Sets forth specific persons to whom this chapter does not apply, including a person who does not represent or advertise to the public directly or indirectly that the person is authorized by the department, rather than The State Board of Barber Examiners (board), to practice barbering or a person who is regulated under Chapter 1602, Occupations code, if the person practices within the scope of a permit, license, or certificate issued by the department under that chapter, rather than a person regulated under Chapter 1602, Occupations Code, if the person practices within the scope of a license or certificate issued by the Texas Cosmetology Commission.

SECTION 2.03. Amends the heading to Subchapter B, Chapter 1601, Occupations Code, to read as follows:

SUBCHAPTER B. ADVISORY BOARD ON BARBERING

SECTION 2.04. Amends Section 1601.051(a), Occupations Code, to provide that the Advisory Board on Barbering, rather than the State Board of Barber Examiners, consists of five members appointed by the presiding officer of the commission, with the commission's approval, rather than seven members appointed by the governor with the advice and consent of the senate. Amends specific membership guidelines.

SECTION 2.05. Amends Section 1601.055, Occupations Code, to amend the specific guidelines for terms of members of the Advisory Board on Barbering and to make conforming changes.

SECTION 2.06. Amends Section 1601.058, Occupations Code, to amend the specific guidelines for the presiding officer of the Advisory Board on Barbering and to make conforming changes.

SECTION 2.07. Amends Subchapter B, Chapter 1601, Occupations Code, by adding Section 1601.059, as follows:

Sec. 1601.059. BOARD DUTIES. Sets forth the specific duties of the Advisory Board on Barbering.

SECTION 2.08. Amends Section 1601.253, Occupations Code, to require the department to issue a Class A barber certificate to applicants who meet certain requirements, including paying the required fee, rather paying a fee not to exceed $100. Makes conforming changes.

SECTION 2.09. Amends Sections 1601.254(a) and (c), Occupations Code, to delete existing text providing that the required fee under this section is not to exceed a specified amount, based on whether or not the applicant fulfills the certificate requirements and the year in which the requirements are fulfilled. Makes conforming changes.

SECTION 2.10. Amends Sections 1601.256(b) and (d), Occupations Code, to require that an applicant for a barber technician license submit the required fee, rather than a $10 administration fee, with the application and make conforming changes.

SECTION 2.11. Amends Sections 1601.257(b) and (c), Occupations Code, to require that an applicant for a manicurist license pay the required license fee, rather than a fee not to exceed $30, and make conforming changes.

SECTION 2.12. Amends Section 1601.260, Occupations Code, to require that an applicant for a permit to be a student in a barber school submit the required nonrefundable application fee, rather than a nonrefundable application fee not to exceed $25, with the application. Makes conforming changes.

SECTION 2.13. Amends Section 1601.265, Occupations Code, to make conforming changes.

SECTION 2.14. Amends Section 1601.301(b), Occupations Code, to make conforming changes.

SECTION 2.15. Amends Section 1601.302, Occupations Code, to require a person who opens a new barbershop to submit the required inspection fee, rather than an inspection fee not to exceed

$70, with the required application for a temporary barbershop permit. Makes conforming changes.

SECTION 2.16. Amends Section 1601.303, Occupations Code, to require a barbershop permit to be issued to an applicant if the shop meets certain requirements, including the minimum health standards for barbershops set by the commission, rather than the board. Makes conforming changes.

SECTION 2.17. Amends Sections 1601.304(b) and (c), Occupations Code, to require an applicant for a manicurist specialty shop permit to submit the required inspection fee, rather than a fee not to exceed $50, and to make conforming changes.

SECTION 2.18. Amends Section 1601.305, Occupations Code, to require the department to issue a manicurist specialty shop permit to an applicant who meets certain requirements, including that the shop meets the minimum health standards for manicurist specialty shops set by the commission, as determined by a department inspection under Section 1603.103, rather than as determined by a board inspection, and any other requirements imposed by commission rule. Makes conforming changes.

SECTION 2.19. Amends Section 1601.309, Occupations Code, to make a conforming change.

SECTION 2.20. Amends Section 1601.310, Occupations Code, to make conforming changes.

SECTION 2.21. Amends Section 1601.352, Occupations Code, to make conforming changes.

SECTION 2.22. Amends Section 1601.353, Occupations Code, to require an applicant for a barber school permit to submit certain materials to the department, including the required permit fee, rather than a permit fee not to exceed $1,000, and to make conforming changes.

SECTION 2.23. Amends Section 1601.354, Occupations Code, to make conforming changes.

SECTION 2.24. Amends Section 1601.355, Occupations Code, to make conforming changes.

SECTION 2.25. Amends Section 1601.3571(a) and (b), Occupations Code, to make conforming changes.

SECTION 2.26. Amends Section 1601.402(c), Occupations Code, to require a renewal application under this section to be accompanied by a renewal fee in an amount equal to the original certificate or license fee, rather than an amount equal to the original certificate or license fee but not to exceed $100. Makes conforming changes.

SECTION 2.27. Amends the heading to Section 1601.404, Occupations Code, to read as follows:

> Sec. 1601.404. REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE.

SECTION 2.28. Amends Section 1601.404(c), Occupations Code, to make conforming changes.

SECTION 2.29. Amends Section 1601.405, Occupations Code, to require the department to issue a renewal certificate or license on application and payment of the required renewal fee, rather than a renewal fee, within 90 days of the date the person is released or discharged from active duty in the armed forces. Deletes existing text providing for the amount of the renewal fee. Makes conforming changes.

SECTION 2.30. Amends Section 1601.406, Occupations Code, to provide that a barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance, rather than on July 1 of each odd-numbered year. Authorizes a barbershop permit holder to renew the permit by paying the required renewal fee, rather than a renewal fee not to exceed $70, and authorizes a specialty shop permit holder to renew the permit by including, with the renewal

application, the required renewal fee, rather than a renewal fee not to exceed $50. Makes conforming changes.

SECTION 2.31. Amends Section 1601.407, Occupations Code, to provide that a barber school permit expires on the first anniversary of the date of issuance, rather than September 1 of each year, and that a barber school may renew its permit by paying the required renewal fee, rather than a renewal fee not to exceed $300. Makes conforming changes.

SECTION 2.32. Amends Section 1601.452, Occupations Code, to require each barbershop or specialty shop to post in the shop a copy of the commission's sanitation rules, rather than the board's rules adopted under Section 1601.152.

SECTION 2.33. Amends Section 1601.453, Occupations Code, to make conforming changes.

SECTION 2.34. Amends Sections 1601.454, Occupations Code, as follows:

> Sec. 1601.454. New heading: PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY. Prohibits the department from adopting certain rules solely because a facility is licensed or permitted by the department under both this chapter and Chapter 1602, Occupations Code, rather than by both the board and the Texas Cosmetology Commission. Makes conforming changes.

SECTION 2.35. Amends Section 1601.502, Occupations Code, to make a conforming change.

SECTION 2.36. Amends Section 1601.503, Occupations Code, to make conforming changes.

SECTION 2.37. Amends Section 1601.552, Occupations Code, to make conforming changes.

SECTION 2.38. Amends Section 1601.554, Occupations Code, to make conforming changes.

SECTION 2.39. Amends Section 1601.556, Occupations Code, to make conforming changes.

SECTION 2.40. Amends Section 1601.557, Occupations Code, to make conforming changes.

SECTION 2.41. Amends Section 1601.559(b), Occupations Code, to make a conforming change.

SECTION 2.42. Amends Sections 1601.561, Occupations Code, as follows:

> Sec. 1601.561. New heading: REPORTS TO DEPARTMENT. Requires a barber school to maintain a monthly progress report regarding each student attending the school, rather than to submit a monthly progress report to the board regarding each student attending the school. Requires the school, on a student's completion of a prescribed course of instruction, to notify, rather than certify to, the department that the student has completed the required number of hours and is eligible to take the appropriate examination. Makes conforming changes.

SECTION 2.43. Amends Section 1601.566(d), Occupations Code, to make conforming changes.

SECTION 2.44. Amends Section 1601.603, Occupations Code, to make conforming changes.

SECTION 2.45. Amends Section 1601.604(a), Occupations Code, to make a conforming change.

SECTION 2.46. Amends Section 1601.605, Occupations Code, to make a conforming change.

SECTION 2.47. Amends Sections 1601.606(a), (b), and (c), Occupations Code, to make conforming changes.

SECTION 2.48. Amends Section 1601.653(a), Occupations Code, to make a conforming change.

ARTICLE 3. REGULATION OF COSMETOLOGY

SECTION 3.01. Amends Section 1602.001, Occupations Code, to define "board," "department," and "executive director" and to redefine "commission."

SECTION 3.02. Amends the heading to Subchapter B, Chapter 1602, Occupations Code, to read as follows:

SUBCHAPTER B. ADVISORY BOARD ON COSMETOLOGY

SECTION 3.03. Amends the heading to Section 1602.051, Occupations Code, as follows:

Sec. 1602.051. BOARD; MEMBERSHIP.

SECTION 3.04. Amends Section 1602.051(a), Occupations Code, to provide that the Advisory Board on Cosmetology, rather than the Texas Cosmetology Commission, consists of five members appointed by the presiding officer of the commission, with the commission's approval, rather than six members appointed by the governor with the advice and consent of the senate. Amends specific membership guidelines.

SECTION 3.05. Amends Sections 1602.055(a) and (c), Occupations Code, to amend the guidelines for terms of members of the Advisory Board on Cosmetology and to make conforming changes.

SECTION 3.06. Amends the heading to Section 1602.058, Occupations Code, to read as follows:

Sec. 1602.058. PRESIDING OFFICER.

SECTION 3.07. Amends Section 1602.058(a), Occupations Code, to amend the existing guidelines for appointment of the presiding officer of the Advisory Board on Cosmetology and to make conforming changes.

SECTION 3.08. Amends Subchapter B, Chapter 1602, Occupations Code, by adding Section 1602.060, as follows:

Sec. 1602.060. BOARD DUTIES. Sets forth specific duties of the Advisory Board on Cosmetology.

SECTION 3.09. Amends the heading to Subchapter D, Chapter 1602, Occupations Code, to read as follows:

SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES RELATED TO COSMETOLOGY

SECTION 3.10. Amends Sections 1602.153(a) and (b), Occupations Code, to authorize the department, rather than the Texas Cosmetology Commission (commission), to request and, if necessary, compel by subpoena, certain witnesses and information. Makes conforming changes.

SECTION 3.11. Amends Section 1602.251(c), Occupations Code, to make conforming changes.

SECTION 3.12. Amends Section 1602.258(b), Occupations Code, to make a conforming change.

SECTION 3.13. Amends Sections 1602.266(a) and (b), Occupations Code, to make conforming changes.

SECTION 3.14. Amends Sections 1602.267(b), Occupations Code, to delete existing text requiring an applicant to submit a certificate of health as required by Section 1602.253 and make conforming changes.

SECTION 3.15. Amends Sections 1602.302(b), Occupations Code, to make a conforming change.

SECTION 3.16. Amends Sections 1602.303(b) and (c), Occupations Code, to make conforming changes.

SECTION 3.17. Amends Sections 1602.305(b), Occupations Code, to make a conforming change.

SECTION 3.18. Amends Sections 1602.306(b), Occupations Code, to make a conforming change.

SECTION 3.19. Amends the heading to Section 1602.352, Occupations Code, to read as follows:

Sec. 1602.352. REQUIREMENT FOR FIRST RENEWAL OF LICENSE.

SECTION 3.20. Amends Subchapter H, Chapter 1602, Occupations Code, by adding Section 1602.353, as follows:

Sec. 1602.353. INACTIVE STATUS. (a) Authorizes a certificate or license holder, not later than the 10th day before the expiration date of a certificate or license issued under this chapter, to place the certificate or license on inactive status by submitting a specific application and paying the required fee.

(b) Provides that, except as provided by Subsection (e), a person whose certificate or license is on inactive status is not required to complete continuing education required under this chapter.

(c) Authorizes a person whose certificate or license is on inactive status to reapply for inactive status before the expiration date of the certificate or license. Requires the person to pay the required fee.

(d) Prohibits a license holder from employing a person on inactive status.

(e) Authorizes a person on inactive status to return the certificate or license to active status by submitting a specific application, paying the required fee, and providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding two-year license period.

(f) Authorizes the commission to set fees and adopt rules to implement this section.

SECTION 3.21. Amends Section 1602.405, Occupations Code, as follows:

Sec. 1602.405. New heading: PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY. Makes conforming changes.

SECTION 3.22. Amends Section 1602.451(a), Occupations Code, to delete existing text requiring the holder of a private beauty culture school license to submit certain information to the executive director and make a conforming change.

SECTION 3.23. Amends Section 1602.452, Occupations Code, to make conforming changes.

SECTION 3.24. Amends Sections 1602.453(c), Occupations Code, to make a conforming change.

SECTION 3.25. Amends Section 1602.454, Occupations Code, to delete existing text requiring a private beauty culture school to send to the commission a certified copy of a student's records, including specific information, when the student withdraws or transfers from a course of training without completion of the training. Requires the school to notify the department when a student graduates from a course of training offered by the school and is eligible to take the appropriate examination.

SECTION 3.26. Amends Section 1602.460(d), Occupations Code, to make conforming changes.

SECTION 3.27. Amends Section 1602.463(a), Occupations Code, to make a conforming change.

SECTION 3.28. Amends Sections 1602.464(a) and (b), Occupations Code, to make conforming changes.

SECTION 3.29. Amends Sections 1602.465(a), (b), and (c), Occupations Code, to make conforming changes.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Amends Section 232.002, Family Code, as follows:

> Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. Deletes existing text providing that the Texas Commission on Alcohol and Drug Abuse, the State Board of Barber Examiners, and the Texas Cosmetology Commission are licensing authorities subject to this chapter. Amends existing text to include that the Department of State Health Services, rather than the Texas Department of Health, the Department of Aging and Disability Services, rather than the Texas Department of Human Services, the Texas Private Security Board, rather than the Texas Commission on Private Security, and the Department of Family and Protective Services, rather than the Department of Protective and Regulatory Services, are licensing authorities subject to this chapter.

SECTION 4.02. Amends Section 411.122(d), Government Code, to delete existing text providing that the Board of Vocational Nurse Examiners is subject to this section and make conforming changes.

SECTION 4.03. Amends Section 2054.352(a), Government Code, to require certain licensing entities to participate in the system established under Section 2054.353, rather than Section 2054.353, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, and make conforming changes.

ARTICLE 5. REPEALER

SECTION 5.01. Repealers: Subchapter C, Chapter 1601 (Executive Director and Personnel), Subchapter D, Chapter 1601 (Powers and Duties), Subchapter E, Chapter 1601 (Public Interest Information and Complaint Procedures), Subchapter O, Chapter 1601 (Administrative Penalties), Subchapter C, Chapter 1602 (Executive Director and Personnel), Subchapter E, Chapter 1602 (Public Interest Information and Complaint Procedures), Subchapter K, Chapter 1602 (Administrative Penalty), Section 1601.004 (Application of Sunset Act), Section 1601.051(b) and (c) (Board; Membership), Section 1601.052 (Public Member Eligibility), Section 1601.053 (Membership and Employee Restrictions), Section 1601.054 (Official Oath), Section 1601.056 (Grounds for Removal), Section 1601.057 (Per Diem; Reimbursement), Section 1601.252 (Application Process), Section 1601.261 (Examination Application), Section 1601.262 (Examination for Class A Barber and Teachers Certificates), Section 1601.263 (Examination Results), Section 1601.264 (Health Certificate Requirement), Section 1601.266 (Duplicate Certificate), Section 1601.267 (Reciprocal License or Certificate), Section 1601.356 (Inspection Before Operation), Section 1601.401 (Expiration of Certificate or License), Section 1601.402(d) (Renewal of Certificate or License), Section 1601.403 (Renewal of Teachers Certificate), Section

1601.404(a) and (b) (Renewal or Reinstatement of Expired Certificate or License), Section 1601.408 (Renewal of Expired Permit), Section 1601.601 (Denial, Suspension, or Revocation), Section 1601.651 (Injunction; Civil Penalty), Section 1601.654 (Enforcement by Attorney General), Section 1602.004 (Application of Sunset Act), Section 1602.051(b) and (c) (Commission; Membership), Section 1602.052 (Member Eligibility), Section 1602.053 (Membership and Employee Restrictions), Section 1602.054 (Official Oath), Section 1602.055(b) (Terms; Vacancy), Section 1602.056 (Grounds for Removal), Section 1602.057 (Per Diem; Reimbursement), Section 1602.058 (Presiding Officer; Committees), Section 1602.059 (Meetings), Section 1602.151 (General Powers and Duties of Commission), Section 1602.152 (Rules Restricting Advertising or Competitive Bidding), Section 1602.154 (Fees), Section 1602.155 (Annual Report), Section 1602.252 (License or Certificate Application), Section 1602.253, as amended by Chapter 1282, Acts of the 78th Legislature, Regular Session, 2003 (Certificate of Health Required for Certain Applicants), Section 1602.259 (License Examination), Section 1602.260 (Examination Procedures), Section 1602.261 (Examination Results), Section 1602.263 (Examination Results), Section 1602.264 (Temporary License), Section 1602.265 (Duplicate License or Certificate; Transcript), Section 1602.303(d) (Private Beauty Culture School License), Section 1602.304(b) (Public Secondary or Postsecondary Beauty Culture School Certificate), Section 1602.351(d) (Permit Required), Section 1602.352(b)-(f) (Procedure for Renewal or Reinstatement), Section 1602.407 (Grounds for Refusing, Revoking, or Suspending License), Section 1602.551 (Right of Access; Discovery of Violation), Section 1602.552 (Injunctive Relief), Section 1602.553 (Civil Penalty), and Section 1602.555 (Issuance of Certificate Without Examination; Offense), Occupations Code.

ARTICLE 6. TRANSITION AND EFFECTIVE DATE

SECTION 6.01. (a) Makes application of the abolishment of the State Board of Barber Examiners and the Texas Cosmetology Commission, of this Act, prospective to September 1, 2006 for certain purposes. Provides that the department assumes all of the obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission, as they exist immediately before the effective date of this Act and that all unexpended funds appropriated to the abolished entities are transferred to the department. Requires that said transfer be completed no later than September 1, 2006.

(b) Provides that all rules of the State Board of Barber Examiners and the Texas Cosmetology Commission are continued in effect as rules of the commission until superseded by a rule of the commission and that a certificate, license, or permit issued by the State Board of Barber Examiners or the Texas Cosmetology Commission is continued in effect as provided by the law in effect immediately before the effective date of this Act. Provides that a complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. Provides that an inspection or other activity conducted by the State Board of Barber Examiners or the Texas Cosmetology Commission is considered to be an inspection or activity conducted by the Texas Department of Licensing and Regulation, including an inspection or other activity conducted for purposes of allowing a school, shop, or facility to continue to operate under Section 1603.103, Occupations Code, as added by this Act.

(c) Provides that a reference in another law or administrative rule to the State Board of Barber Examiners or the Texas Cosmetology Commission means the Texas Department of Licensing and Regulation.

SECTION 6.02. Provides that Sections 1602.353 and 1603.352, Occupations Code, as added by this Act, take effect January 1, 2006.

SECTION 6.03. Effective date: September 1, 2005.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 15, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB411** by Whitmire (Relating tot he regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB411, Committee Report 1st House, Substituted: a positive impact of $2,336,806 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$1,005,903
2007	$1,330,903
2008	$1,330,903
2009	$1,330,903
2010	$1,330,903

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	$1,005,903	(19.5)
2007	$1,330,903	(19.5)
2008	$1,330,903	(19.5)
2009	$1,330,903	(19.5)
2010	$1,330,903	(19.5)

Fiscal Analysis

The provisions of the bill abolish the State Board of Barber Examiners (Board) and the Texas Cosmetology Commission (Commission), which then transfers their function to the Texas Department of Licensing and Regulation (TDLR).

The provisions of the bill create two new advisory committees to advise TDLR on barbering and cosmetology and provides for composition requirements and duties of the advisory boards. The provisions require barber and cosmetology inspection efforts to be risk-based that focus on sanitation violations and establish the criteria for a risk-based inspection procedure. The provisions allow TDLR to inspect barber and cosmetology facilities before the facility begins operations and to charge fees for

the inspections and authorize the registration of examination proctors at TDLR who would hold a certificate enabling them to administer cosmetology and barber exams around the state. The provisions eliminate the barber health certificate requirement and create an inactive license status for cosmetology licensees.

TDLR would adopt fees in amounts considered reasonable and necessary to provide sufficient revenue to administer the programs under its authority. The provisions would remove the fee caps established for various fees established by the two current regulatory agencies and would establish standard time frames and late fees for license renewals.

The bill would take effect September 1, 2005.

Methodology

It is assumed that TDLR would not adjust the current fees set by the Board of Barber Examiners and Cosmetology Commission that would lower overall revenue estimated in the 2006-07 Comptrollers' Biennial Revenue Estimate.

Based on information provided by the Sunset Advisory Commission (SAC), abolishing independent agencies and transferring their function to TDLR would result in a total savings or $1,005,903 and a reduction of 19.5 Full-time Equivalents (FTEs) each fiscal year.

Abolishing the independent agencies and merging their functions would result in a reduction of 11.5 redundant and unneeded FTE positions. Eliminating these positions saves approximately $666,207 annually, based on the current salary and benefit levels of the positions at the Board and Commission.

The savings are based on a reduction of 3.5 FTEs at the Board resulting in an annual savings of $179,234 based on current salary and benefit levels associated with the Executive Director position, the CFO position, one administrative position, and one-half of the support services position, which can be absorbed by TDLR.

The reductions would also include an 8 FTE reduction from the Commission resulting in a cost savings of $478,207 per year based on current salary and benefit levels associated with the Executive Director position, one information specialist position, one director of enforcement position, one CFO position, three accounting positions, and one IT position.

Additionally, abolishing both the policymaking bodies consisting of seven members each for each agency would result in a reduction of travel costs for Board and Commission members. Based on an average travel reimbursement of $250 per member per meeting, and assuming that the current Board and Commission met four times a year, the reduction of 14 board members would save $14,000 per year.

Requiring inspections to be risk-based, at least every two years would reduce the number of inspections that the agencies currently administer per year by an estimated one-quarter reduction on average. Assuming that one inspector can, on average, perform 1,500 inspections per year, reducing the number of inspection would result in a reduction of three inspector positions at the Board and five inspector positions at the Commission. Based on average salary classifications for these inspectors (Inspector III, salary group B5) plus benefits at the 29.74 percent rate, the reduction would result in a cost savings of $40,712 per position, or $325,696 annually.

SAC estimates that authorizing the registration of examination proctors at TDLR would not result in a fiscal impact. Any cost associated with registering proctors would be minimal.

In addition, the Board and the Commission currently contract for its licensing system from Northrup Grumman at estimated annual costs of $50,000 and $275,000, respectively. It is estimated that TDLR would transfer these licensing system to its own system in fiscal year 2006 and realize a savings of $325,000 beginning in fiscal year 2007.

Technology

Savings of $325,000 from the transfer of the Board's and Commission's licensing system to TDLR's in fiscal year 2007.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 308 State Auditor's Office, 452 Department of Licensing and Regulation, 502 Board of Barber Examiners, 505 Cosmetology Commission

LBB Staff: JOB, LB, MW, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 11, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB411** by Whitmire (Relating to the regulation of barbers and cosmetologists by the Texas Board of Barbering and Cosmetology and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB411, As Introduced: a positive impact of $976,494 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$389,247
2007	$587,247
2008	$587,247
2009	$587,247
2010	$587,247

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	$587,247	($198,000)	(11.1)
2007	$587,247	$0	(13.0)
2008	$587,247	$0	(13.0)
2009	$587,247	$0	(13.0)
2010	$587,247	$0	(13.0)

Fiscal Analysis

The provisions of the bill abolish the State Board of Barber Examiners and the Texas Cosmetology Commission, which would be replaced by the newly created Texas Board of Barbering and Cosmetology (Board). The provisions would continue the new Board for four years and would require the Sunset Advisory Commission to review the Board and report to the 81st Legislature in 2009.

The new Board would consist of nine members serving staggered six-year terms. Board members would be entitled to receive the per diem set by, and reimbursement for travel expenses in accordance with, the General Appropriations Act.

The Board would adopt fees in amounts considered reasonable and necessary to provide sufficient revenue to administer the programs under its authority. The provisions would remove the fee caps established for various fees established by the two current regulatory agencies and would establish standard time frames and late fees for license renewals.

The provisions remove the requirement that applicants take barber or cosmetology practical examinations before their written examinations.

The transfer of all obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the newly created Board would have to be completed no later than September 1, 2006, at which time both existing agencies would be abolished. All existing rules would remain in effect until superseded by a rule of the newly created board.

The bill would require that no later than September 1, 2006, the State Auditor shall conduct a management audit of the Board and deliver the audit report to the Governor, Lieutenant Governor, Speaker of the House of Representatives and the Sunset Advisory Commission.

The bill would take effect September 1, 2005.

Methodology

It is assumed that the Board would not lower the current fees set by the Board of Barber Examiners and the Cosmetology Commission.

Based on information provided by the Sunset Advisory Commission (SAC), abolishing the independent agencies and merging their functions would result in a total savings of $587,247 and a reduction of 13 Full-time Equivalents (FTEs) each fiscal year.

The reductions would include two redundant FTE positions, including one Executive Director ($60,119) position and one Chief Financial Officer ($69,016) position. It is estimated that eliminating these positions would save $129,135 annually, based on the current salary and benefit levels of the current executive director and finance director positions at the Cosmetology Commission.

Additionally, abolishing the independent policymaking bodies consisting of seven members each for each agency and creating one Board consisting of nine members would result in a reduction of travel costs for Board members. Based on an average travel reimbursement of $250 per member per meeting, and assuming that the new Board will meet four times per year, the reduction of five board members would save $5,000 per year.

According to SAC, requiring inspections to be risk-based, at least every two years would reduce the number of inspections that the agencies currently administer per year by an estimated one-quarter reduction on average. It is assumed that one inspector can perform 1,500 inspections per year. This would result in a reduction of three inspector positions at the Board of Barber Examiners and five inspector positions at the Cosmetology Commission. Based on average salary classifications for these inspectors (Inspector III) plus benefits, the reduction would result in a cost savings of $40,712 per position, or $325,696 annually.

Because the Board of Barber Examiners members give the practical exam and travel to Austin six times a year, eliminating the practical exam would reduce the amount of travel reimbursements by $220 per member, for four members who are barbers, resulting in an annual savings of $5,280.

The Cosmetology Commission has four FTEs that give the written and practical exam. It is estimated that eliminating the practical exam portion would eliminate three of the four FTE positions at the Cosmetology Commission. Based on average salary classifications for these employees (Inspector III) plus benefits, the reduction would result in a cost savings of $40,712 per position, or $122,136 annually.

According to the State Auditor's Office, it is estimated that the required management audit would cost $198,000 and require an additional 1.9 FTEs in fiscal year 2006.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 360 State Office of Administrative Hearings, 502 Board of Barber Examiners, 505 Cosmetology Commission

LBB Staff: JOB, LB, MW, DE

REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that SB 411 (Bill No.), by Whitmire (Author/Sponsor),

was heard by the Committee on Gov. Org. on 4/12, 2005,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Vanessa McMahan
(Clerk of the reporting committee)

IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A **COMMITTEE PRINTED VERSION** OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.

Paper clip the original to the bill; retain pink copy for committee files; deliver yellow copy to bill author/sponsor.

ADOPTED
31-0
APR 26 2005
Secretary of the Senate

By: _____ S.B. No. 411

Substitute the following for S.B. No. 411:

By: _____ C.S.S.B. No. 411

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.01. Title 9, Occupations Code, is amended by adding Chapter 1603 to read as follows:

CHAPTER 1603. REGULATION OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(b) Unless the context clearly indicates otherwise, the definitions in Chapters 1601 and 1602 apply to this chapter.

Sec. 1603.002. REGULATION OF BARBERING AND COSMETOLOGY BY DEPARTMENT OF LICENSING AND REGULATION. The department shall administer this chapter and Chapters 1601 and 1602. A reference in this chapter to the commission's or department's powers or duties

4-18-05 EH
4-25-05 EH

applies only in relation to those chapters, except that this section does not limit the department's or commission's general powers under Chapter 51.

[Sections 1603.003-1603.050 reserved for expansion]

SUBCHAPTER B. ADVISORY BOARDS FOR BARBERING AND COSMETOLOGY

Sec. 1603.051. DUTIES. The advisory boards established under Chapters 1601 and 1602 shall advise the commission on administering this chapter and Chapters 1601 and 1602 regarding barbering or cosmetology, as applicable.

[Sections 1603.052-1603.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1603.101. RULES. The commission shall adopt rules consistent with this chapter for:

(1) the administration of this chapter and the operations of the department in regulating barbering and cosmetology; and

(2) the administration of Chapters 1601 and 1602.

Sec. 1603.102. SANITATION RULES. The commission shall establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.103. INSPECTION OF SCHOOLS, SHOPS, AND FACILITIES BEFORE OPERATION. (a) Until the department determines, by inspection, that the person has established the school, shop, or facility in compliance with this chapter, Chapter 1601, or Chapter 1602, a person may not operate a school, shop, or other facility licensed or permitted under this chapter, Chapter 1601, or Chapter 1602.

(b) A school, shop, or other facility that is not approved by the department on initial inspection may be reinspected.

(c) The school, shop, or other facility shall pay a fee for each inspection. The commission shall by rule set the amount of the fee.

Sec. 1603.104. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(2) any place in which the department has probable cause to believe that a certificate, license, or permit holder is practicing in violation of this chapter, Chapter 1601, or Chapter 1602 or in violation of a rule or order of the commission or executive director.

(b) At least once every two years, the department shall inspect each school, shop, or other facility that holds a license, certificate, or permit under this chapter, Chapter 1601, or Chapter 1602.

(c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the school, shop, or other facility;

(2) whether there has been a prior sanitation violation at the school, shop, or facility;

(3) the inspection history of the school, shop, or

other facility;

(4) any history of complaints involving the school, shop, or other facility; and

(5) any other factor determined by the commission by rule.

(d) An inspector who discovers a violation of this chapter, Chapter 1601, or Chapter 1602 or of a rule or order of the commission or executive director shall:

(1) provide written notice of the violation to the license, certificate, or permit holder on a form prescribed by the department; and

(2) file a complaint with the executive director.

(e) The school, shop, or other facility shall pay a fee for each inspection performed under Subsection (c). The commission shall by rule set the amount of the fee.

Sec. 1603.105. RETENTION OF STUDENT RECORDS. The department may not retain student records, including student transcripts, beyond the time required by state law.

Sec. 1603.106. COMMITTEES. The commission may appoint committees that it considers necessary to carry out its duties.

[Sections 1603.107-1603.150 reserved for expansion]

SUBCHAPTER D. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.151. NOTIFICATION OF PUBLIC INTEREST INFORMATION AND PARTICIPATION. The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding

barbering and cosmetology. The department may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter, Chapter 1601, or Chapter 1602;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(3) in a bill for service provided by a person regulated under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.152. COMPLAINT JURISDICTION; NOTIFICATION. If the department determines that it lacks jurisdiction to resolve the complaint, the department shall notify the complainant in writing that the department is closing the complaint because it lacks jurisdiction.

Sec. 1603.153. ANALYSIS OF COMPLAINTS AND VIOLATIONS. (a) The department shall develop and maintain a system to analyze the processing, sources, and types of complaints filed with the department and the types of violations that occur under this chapter, Chapter 1601, and Chapter 1602.

(b) Based on the information under Subsection (a), the department shall analyze trends in violations and complaints that may require further attention or technical assistance to help reduce the frequency of those complaints and violations.

(c) The department shall annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year, including:

(1) the number of complaints filed;

(2) a categorization of complaints filed according to the basis of the complaint and the number of complaints in each category;

(3) the number of complaints filed by department staff;

(4) the number of complaints filed by persons other than department staff;

(5) the number of complaints filed over which the department lacks jurisdiction;

(6) the average length of time required to close a complaint or violation from the time the department receives the complaint or otherwise initiates an investigation of a possible violation until the complaint or violation is resolved by a final order or penalty;

(7) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal; and

(B) the number of complaints resulting in disciplinary action and the type of disciplinary action taken; and

(8) the number of complaints filed that are unresolved, the number of those complaints filed by department staff, the number of those complaints filed by persons other than department staff, and the average length of time that the unresolved complaints have been on file.

Sec. 1603.154. INFORMAL SETTLEMENT CONFERENCE. The

department shall establish guidelines for an informal settlement conference related to a complaint filed with the department.

[Sections 1603.155-1603.200 reserved for expansion]

SUBCHAPTER E. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.201. APPLICATION FORM; TIMING. (a) An application for a certificate, license, or permit must be made on a form prescribed and provided by the department.

(b) An application for an operator license, instructor license, manicurist license, or facialist specialty license must be filed with the department not later than the 10th day before the date set for the applicable examination.

Sec. 1603.202. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. The department shall issue a duplicate certificate, license, or permit to an applicant who:

(1) submits an application for a duplicate certificate, license, or permit to the department; and

(2) pays the required fee.

Sec. 1603.203. PROVISIONAL CERTIFICATE OR LICENSE. (a) The department may issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who:

(1) has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in another jurisdiction, including a foreign country, that has requirements substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602, as appropriate; and

(2) has passed a national or other examination recognized by the commission relating to the practice of that profession.

(b) A provisional certificate or license is valid until the date the department approves or denies the provisional certificate or license holder's application. The department shall issue a certificate or license to the provisional certificate or license holder if:

(1) the provisional certificate or license holder is eligible to hold a certificate or license under Chapter 1601 or Chapter 1602; or

(2) the provisional certificate or license holder passes the part of the examination under Chapter 1601 or Chapter 1602 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of the profession in this state and:

(A) the department verifies that the provisional certificate or license holder meets the academic and experience requirements for the certificate or license; and

(B) the provisional certificate or license holder satisfies any other certificate or license requirements.

(c) The department must approve or deny a provisional certificate or license holder's application for a certificate or license not later than the 180th day after the date the provisional certificate or license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period. 8/a

Sec. 1603.204. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. (a) A person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602 may apply for a license, certificate, or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country.

(b) The person must:

(1) submit an application for the license, certificate, or permit to the department; and

(2) pay fees in an amount prescribed by the commission, including any applicable license, certificate, or permit fee.

(c) A person issued a license, certificate, or permit under this section:

(1) may perform the acts of barbering or cosmetology stated on the license, certificate, or permit; and

(2) is subject to the renewal procedures and fees provided in this chapter, Chapter 1601, or Chapter 1602 for the performance of those acts of barbering or cosmetology.

[Sections 1603.205-1603.250 reserved for expansion]

SUBCHAPTER F. EXAMINATION REQUIREMENTS

Sec. 1603.251. DEFINITION. In this subchapter, "examination proctor" means an individual registered under this subchapter to administer a practical examination for the department.

Sec. 1603.252. GENERAL EXAMINATION REQUIREMENTS. (a) The department may accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations.

(b) The executive director shall determine uniform standards for acceptable performance on an examination for a license or certificate under Chapter 1601 and for a license or certificate under Chapter 1602.

(c) The examination must include a written examination and may include a practical examination as provided by Section 1603.256.

Sec. 1603.253. EXAMINATION FOR BARBERS. (a) An applicant for an examination for a certificate or license issued under Chapter 1601 must submit to the department a sworn application on a form prescribed and provided by the department accompanied by:

(1) two photographs of the applicant, one of which accompanies the application and one of which is to be returned to the applicant to be presented at the examination; and

(2) the appropriate examination fee.

(b) The department shall examine applicants for a Class A barber certificate and a teacher's certificate.

Sec. 1603.254. EXAMINATION FOR COSMETOLOGISTS. (a) The department shall administer examinations for certificates and licenses issued under Chapter 1602 beginning the first day of each month. If the first day of the month is a legal holiday, the examination shall begin on the following day.

(b) The department shall announce the site of an examination

for a certificate or license issued under Chapter 1602 not later than six months before the scheduled examination date.

Sec. 1603.255. EARLY EXAMINATION. The department, on written request by a student, may 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 department-approved training program.

Sec. 1603.256. PRACTICAL EXAMINATION. (a) The commission may require a practical examination as it considers necessary for a license or certificate issued under Chapter 1601 or 1602.

(b) The department shall prescribe the method and content of any practical examination.

(c) The following persons may administer a practical examination required under this subchapter:

(1) the department;

(2) a person with whom the department contracts under Section 1603.252; or

(3) an examination proctor.

Sec. 1603.257. EXAMINATION PROCTOR; REGISTRATION. (a) A person may not act as an examination proctor under this subchapter unless the person is registered with the department under this section.

(b) To be eligible for registration as an examination proctor, a person must:

(1) meet eligibility requirements determined by commission rule;

11/12

(2) file with the department an application on a form prescribed by the department; and

(3) pay the required fees as determined by the commission by rule.

(c) If the department requires an examination proctor to administer a practical examination under this subchapter, the examination proctor shall perform the examination administration function of the department in a competent and professional manner and in compliance with:

(1) standards and specifications adopted by the commission under this chapter; and

(2) rules adopted by the commission under this chapter.

[Sections 1603.258-1603.300 reserved for expansion]

SUBCHAPTER G. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1603.301. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. The department may deny a person's request to renew a certificate, license, or permit issued under this chapter, Chapter 1601, or Chapter 1602 if the person has not paid an administrative penalty imposed under Subchapter F, Chapter 51. This section does not apply if:

(1) the person's time to pay or request a hearing has not expired under Section 51.304;

(2) the person has requested a hearing under Section 51.304, but the person's time to pay has not expired under Section 51.307; or

(3) the penalty is stayed.

12/13

[Sections 1603.302-1603.350 reserved for expansion]

SUBCHAPTER H. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.351. MINIMUM CURRICULUM FOR SCHOOLS. The commission shall prescribe the minimum curriculum, including the subjects and the number of hours in each subject, taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602, including a private beauty culture school or a vocational cosmetology program in a public school.

Sec. 1603.352. SANITATION REQUIREMENTS FOR CERTAIN SERVICES. (a) 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(10) or (11):

(1) shall, before performing the service, disinfect and sterilize with an autoclave each nondisposable instrument used to perform the service; and

(2) may use a disposable supply or instrument only if that supply or instrument is purchased at the location where the service is performed or provided by the person on whom the service is performed.

(b) The owner or manager of a barber shop, barber school, beauty shop, specialty shop, or beauty culture school is responsible for providing an autoclave for use in the shop or school as required by Subsection (a). An autoclave used as required by Subsection (a) must be:

13/14

(1) registered and listed with the federal Food and Drug Administration; and

(2) used in accordance with the manufacturer's instructions.

[Sections 1603.353-1603.400 reserved for expansion]

SUBCHAPTER I. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.401. DENIAL, SUSPENSION, OR REVOCATION. The department shall deny an application for issuance or renewal of, or shall suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit:

(1) engages in gross malpractice;

(2) knowingly continues to practice while having an infectious or contagious disease;

(3) knowingly makes a false or deceptive statement in advertising;

(4) advertises, practices, or attempts to practice under another person's name or trade name;

(5) engages in fraud or deceit in obtaining a certificate, license, or permit; or

(6) engages in an act that violates this chapter, Chapter 51, Chapter 1601, or Chapter 1602 or a rule or order adopted or issued under those chapters.

[Sections 1603.402-1603.450 reserved for expansion]

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.451. INJUNCTIVE RELIEF. (a) If a certificate, license, or permit holder commits a violation of this chapter, Chapter 1601, Chapter 1602, or a commission rule and the violation

poses a serious threat to the public health, the attorney general shall initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit.

(b) In seeking an injunction under this section, the attorney general is not required to allege or prove:

(1) that an adequate remedy at law does not exist; or

(2) that substantial or irreparable damage would result from the continued violation.

Sec. 1603.452. CIVIL PENALTY. (a) A barber, barber school, or private beauty culture school that violates this chapter, Chapter 1601, Chapter 1602, or a commission rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law.

(b) The amount of the civil penalty for a barber may not exceed $25 a day for each violation.

(c) The amount of the civil penalty for a barber school or private beauty culture school may not exceed $1,000 a day for each violation.

(d) The attorney general may sue to collect the civil penalty.

Sec. 1603.453. APPEAL BOND NOT REQUIRED. The department is not required to give an appeal bond in a cause arising under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.454. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general shall represent the department in an action to enforce this chapter, Chapter 1601, or Chapter 1602.

15/16

ARTICLE 2. REGULATION OF BARBERING

SECTION 2.01. Subsection (a), Section 1601.001~~(a)~~, Occupations Code, is amended by amending Subdivisions (3), (4), (5), and (8) and adding Subdivisions (4-a) and (4-b) to read as follows:

(3) "Board" means the Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~].

(4) "Certificate" means a certificate of registration issued by the department [~~board~~].

(4-a) "Commission" means the Texas Commission of Licensing and Regulation.

(4-b) "Department" means the Texas Department of Licensing and Regulation.

(5) "License" means a license issued by the department [~~board~~].

(8) "Permit" means a permit issued by the department [~~board~~].

SECTION 2.02. Section 1601.003, Occupations Code, is amended to read as follows:

Sec. 1601.003. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) does not represent or advertise to the public directly or indirectly that the person is authorized by the department [~~board~~] to practice barbering; and

(2) is:

(A) a physician or registered nurse licensed in this state and operating within the scope of the person's license; / 16/17

(B) a commissioned or authorized medical or

surgical officer of the United States armed forces;

(C) a person regulated under Chapter 1602, if the person practices within the scope of a permit, license, or certificate issued by the department under that chapter [~~Texas Cosmetology Commission~~]; or

(D) an inmate in the institutional division of the Texas Department of Criminal Justice who performs barbering during the person's incarceration.

SECTION 2.03. The heading to Subchapter B, Chapter 1601, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY [~~STATE~~] BOARD ON BARBERING [~~OF BARBER EXAMINERS~~]

SECTION 2.04. Subsection (a), Section 1601.051~~(a)~~, Occupations Code, is amended to read as follows:

[~~(a)~~] The Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~] consists of five [~~seven~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) two members, each of whom:

(A) is engaged in the practice of barbering as a Class A barber [~~and has been for at least five years before being appointed~~]; and

(B) does not hold a barbershop permit;

(2) two members, each of whom [~~one member who:~~

[~~(A)~~] is a barbershop owner who holds a barbershop permit; and

17/18

[~~(B) is engaged in the practice of barbering and has been for at least five years before being appointed;~~]

(3) one member who holds a permit to conduct or operate a barber school[~~; and~~

[~~(4) three members who represent the public~~].

SECTION 2.05. Section 1601.055, Occupations Code, is amended to read as follows:

Sec. 1601.055. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of one or two [~~or three~~] members expiring on the same date each odd-numbered year [~~every two years~~].

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 2.06. Section 1601.058, Occupations Code, is amended to read as follows:

Sec. 1601.058. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate a board member as presiding officer to serve in that capacity for a two-year term [~~at the will of the governor~~].

SECTION 2.07. Subchapter B, Chapter 1601, is amended by adding Section 1601.059 to read as follows:

Sec. 1601.059. BOARD DUTIES. The board shall:

(1) advise the commission on rules, enforcement, and licensing requirements;

(2) recommend to the commission standards of practice,

conduct, and ethics for persons regulated under this chapter and Chapter 1603;

(3) advise the commission in establishing education requirements for initial applicants; and

(4) advise the commission regarding examinations and, at the request of the commission, assist in administering an examination.

SECTION 2.08. Section 1601.253, Occupations Code, is amended to read as follows:

Sec. 1601.253. ELIGIBILITY FOR CLASS A BARBER CERTIFICATE. (a) An applicant for a Class A barber certificate must:

(1) be at least 16 years of age; and

(2) pass a written and practical examination demonstrating to the department's [~~board's~~] satisfaction the applicant's fitness and competence to practice barbering.

(b) The department [~~board~~] shall issue a Class A barber certificate to an applicant who:

(1) complies with the application requirements of this chapter;

(2) passes the examination with an average grade of at least 75 percent;

(3) pays the required [~~a~~] fee [~~not to exceed $100~~]; and

(4) possesses the other qualifications required by this chapter.

SECTION 2.09. Subsections (a) and (c), Section 1601.254 ~~(a) and (c)~~, Occupations Code, are amended to read as follows:

19/20

(a) An applicant for a teacher's certificate must:

(1) be a Class A barber;

(2) have 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

(3) submit the required [~~an~~] examination fee [~~not to exceed $100~~] with the application.

(c) The department [~~board~~] shall issue a teacher's certificate to an applicant who:

(1) passes the appropriate examination; and

(2) pays the required [~~a~~] certificate fee [~~not to exceed:~~

[~~(A) $100, if the applicant fulfills the certificate requirements during the period beginning November 1 of an odd-numbered year and extending through October 31 of the following year; or~~

[~~(B) $50, if the applicant fulfills the certificate requirements during the period beginning November 1 of an even-numbered year and extending through October 31 of the following year~~].

SECTION 2.10. Subsections (b) and (d), Section~~s~~ 1601.256~~(b) and (d)~~, Occupations Code, are amended to read as follows:

(b) An applicant for a barber technician license must:

(1) be at least 16 years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a course of instruction in a

commission-approved [~~board-approved~~] training program consisting of not less than 300 hours in a period of not less than eight weeks; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(d) The department [~~board~~] shall issue a barber technician license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $100~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.11. Subsections (b) and (c), ~~Section~~ 1601.257 ~~(b) and (c)~~, Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist license must:

(1) be at least 16 years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a commission-approved [~~board-approved~~] training program consisting of 600 hours of instruction in manicuring; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(c) The department [~~board~~] shall issue a manicurist license to an applicant who:

21/22

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $30~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.12. Section 1601.260, Occupations Code, is amended to read as follows:

Sec. 1601.260. ELIGIBILITY FOR STUDENT PERMIT. (a) An applicant for a permit to be a student in a barber school must:

(1) submit an enrollment application to the department [~~board~~] in the form prescribed by the department [~~board~~];

(2) have completed the seventh grade;

(3) satisfy other requirements specified by the department [~~board~~]; and

(4) submit with the application the required [~~a~~] nonrefundable application fee [~~in an amount not to exceed $25~~].

(b) A separate application is required for each enrollment, reenrollment, or transfer enrollment. The application fee applies only to the first enrollment. The department [~~board~~] may not charge the application fee for any later enrollment, reenrollment, or transfer enrollment.

SECTION 2.13. Section 1601.265, Occupations Code, is amended to read as follows:

Sec. 1601.265. WAIVER OF LICENSE REQUIREMENTS; PERSONAL INTERVIEW. (a) The department [~~board~~] may waive any license

requirement for an applicant holding a license from another state or country that has license requirements substantially equivalent to those of this state.

(b) The department [~~board~~] may not require a personal interview as part of the application process.

SECTION 2.14. Subsection (b), Section 1601.301~~(b)~~, Occupations Code, is amended to read as follows:

(b) A person who owns, operates, or manages a barbershop or specialty shop must:

(1) submit an application to the department [~~board~~] for an appropriate permit for each shop; and

(2) register with the department [~~board~~] the person's full name and the location of each shop.

SECTION 2.15. Section 1601.302, Occupations Code, is amended to read as follows:

Sec. 1601.302. TEMPORARY BARBERSHOP PERMIT. (a) A person who opens a new barbershop shall submit, not later than the third day after the date the shop opens, an application to the department [~~board~~] for a temporary barbershop permit accompanied by the required [~~an~~] inspection fee [~~not to exceed $70~~].

(b) The application must provide:

(1) the permanent address of the barbershop;

(2) the legal description of the premises to be licensed; and

(3) other information required by the department [~~board~~].

SECTION 2.16. Section 1601.303, Occupations Code, is 23/24

amended to read as follows:

Sec. 1601.303. ISSUANCE OF BARBERSHOP PERMIT. The department [~~board~~] shall issue a barbershop permit to an applicant if:

(1) the applicant holds a Class A barber certificate;

(2) the applicant has practiced barbering for at least 12 months; and

(3) the shop meets the minimum health standards for barbershops set by the commission [~~board~~] and all other rules of the commission [~~board~~].

SECTION 2.17. Subsections (b) and (c), Section~~s~~ 1601.304~~(b) and (c)~~, Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist specialty shop permit must submit:

(1) an application that includes:

(A) the shop's address;

(B) the legal description of the premises for which the permit is sought; and

(C) any other information required by the department [~~board~~]; and

(2) the required [~~an~~] inspection fee [~~in an amount not to exceed $50~~].

(c) As soon as practicable after receipt of the application and fee, the department [~~board~~] shall issue a temporary manicurist specialty shop permit to the applicant. The applicant may operate the applicant's shop under the temporary permit until a permanent permit is issued.

24/25

SECTION 2.18. Section 1601.305, Occupations Code, is amended to read as follows:

Sec. 1601.305. ISSUANCE OF MANICURIST SPECIALTY SHOP PERMIT. The department [~~board~~] shall issue a permanent manicurist specialty shop permit to an applicant if:

(1) the applicant holds a manicurist license; and

(2) the shop meets the minimum health standards for manicurist specialty shops set by the commission [~~board~~], as determined by a department [~~board~~] inspection under Section 1603.103, and any other requirements imposed by commission [~~board~~] rule.

SECTION 2.19. Section 1601.309, Occupations Code, is amended to read as follows:

Sec. 1601.309. PRACTICE BY COSMETOLOGIST AT SPECIALTY SHOP PROHIBITED. A person who holds a license, permit, or certificate issued by the department under Chapter 1602 [~~Texas Cosmetology Commission~~] may not practice under that authority at a specialty shop regulated under this chapter.

SECTION 2.20. Section 1601.310, Occupations Code, is amended to read as follows:

Sec. 1601.310. RELOCATION OF SPECIALTY SHOP. (a) The holder of a specialty shop permit may move the person's specialty shop to a different location if the person receives department [~~board~~] approval for the new location.

(b) The permit holder must notify the department [~~board~~] of the move not later than the 10th day before the date the move is scheduled to occur.

25/26

SECTION 2.21. Section 1601.352, Occupations Code, is amended to read as follows:

Sec. 1601.352. APPLICATION FOR BARBER SCHOOL PERMIT. (a) An applicant for a barber school permit must demonstrate to the department [~~board~~] that the school meets the requirements of this subchapter for issuance of a permit.

(b) Before issuing a barber school permit, the department [~~board~~] must determine that the applicant is financially sound and capable of fulfilling the applicant's commitments for training.

SECTION 2.22. Section 1601.353, Occupations Code, is amended to read as follows:

Sec. 1601.353. REQUIRED FACILITIES AND EQUIPMENT. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school has:

(1) an adequate school site housed in a substantial building of permanent construction containing at least 2,800 square feet of floor space, divided into:

(A) a senior department;

(B) a junior department;

(C) a class theory room;

(D) a supply room;

(E) an office space;

(F) a dressing and cloak room; and

(G) two sanitary, modern, separate restrooms, each equipped with one commode and one of which is also equipped with a urinal;

24/24

(2) a hard-surface floor-covering of tile or other suitable material;

(3) at least 20 modern barber chairs, including a cabinet and mirror for each chair;

(4) a lavatory behind every two barber chairs;

(5) a liquid sterilizer for each barber chair;

(6) an adequate number of latherers, vibrators, and hair dryers for student use;

(7) adequate lighting for each room;

(8) at least 20 classroom chairs, a blackboard, anatomical charts of the head, neck, and face, and one barber chair in the class theory room;

(9) a library with library facilities available to students containing at least one medical dictionary and a standard work on human anatomy;

(10) adequate drinking fountain facilities, with at least one for each floor;

(11) adequate toilet facilities for the students; and

(12) adequate fire-fighting equipment.

(b) An applicant for a barber school permit must submit to the department [~~board~~]:

(1) a detailed drawing and chart of the proposed physical layout of the school, showing the departments, floor space, equipment, lights, and outlets;

(2) photographs of the proposed site for the school, including the interior and exterior of the building, rooms, and departments;

27/28

(3) a detailed copy of the training program;

(4) a copy of the catalogue and promotional literature of the school;

(5) a copy of the building lease or proposed building lease if the building is not owned by the school;

(6) a sworn statement showing the ownership of the school; and

(7) the required [~~a~~] permit fee [~~not to exceed $1,000~~].

SECTION 2.23. Section 1601.354, Occupations Code, is amended to read as follows:

Sec. 1601.354. PREREQUISITES FOR GRADUATION. (a) The department [~~board~~] may not approve an application for a barber school permit unless the school requires as a prerequisite for graduation the following hours of instruction:

(1) for a barber technician, 300 hours of instruction completed in a course of not less than eight weeks;

(2) for a Class A barber, 1,500 hours of instruction completed in a course of not less than nine months, at least 800 hours of which is in the actual practice of cutting hair as a primary service;

(3) for a manicurist, 600 hours of instruction completed in a course of not less than 16 weeks; and

(4) for a teacher, 1,000 hours of instruction completed in a course of not less than six months.

(b) If a barber school offers a refresher course, the course must require at least 300 hours of instruction. The commission

[~~board~~] by rule shall set the curriculum for a refresher course.

SECTION 2.24. Section 1601.355, Occupations Code, is amended to read as follows:

Sec. 1601.355. SUPERVISION AND TEACHING REQUIREMENTS. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school is under the direct supervision and control of a Class A barber certificate holder who presents evidence of at least five years' experience as a practicing barber.

(b) Each barber school for which a permit is sought must 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. In addition to satisfying other department [~~board~~] requirements, the teacher must demonstrate to the department [~~board~~]:

(1) through a written and practical examination an ability to teach the curriculum; and

(2) that the teacher is qualified to teach and:

(A) has had at least six months' experience as a teacher in an approved school in this state or in another state approved by the department [~~board~~]; or

(B) has completed 1,000 hours of instruction in a postgraduate course as a student teacher in a department-approved [~~board-approved~~] barber school in this state.

SECTION 2.25. Subsections (a) and (b), Section~~s~~ 1601.357~~1(a) and (b)~~, Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the barber school tuition protection account is less than $25,000, the department [~~board~~] shall collect a fee from each barber school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $25,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~board~~] for the purpose of refunding unused tuition if a barber school ceases operation before its course of instruction is complete. The department [~~board~~] shall administer claims made against the account.

SECTION 2.26. Subsection (c), Section 1601.402~~(c)~~, Occupations Code, is amended to read as follows:

(c) The department [~~board~~] shall issue a renewal certificate or license on receipt of a renewal application in the form prescribed by the department [~~board~~], accompanied by a renewal fee in an amount equal to the original certificate or license fee [~~but not to exceed $100~~].

SECTION 2.27. The heading to Section 1601.404, Occupations Code, is amended to read as follows:

Sec. 1601.404. [~~RENEWAL OR~~] REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE.

SECTION 2.28. Subsection (c), Section 1601.404~~(c)~~, Occupations Code, is amended to read as follows:

(c) A Class A barber or license holder who retires from practice and whose certificate or license has been expired for more than five years may qualify for a new certificate or license by

applying to the department [~~board~~] and by:

(1) making a proper showing to the department [~~board~~], supported by a personal affidavit;

(2) paying the required [~~an~~] examination fee [~~not to exceed $100~~];

(3) passing a satisfactory examination conducted by the department [~~board~~]; and

(4) paying the fee for an original certificate or license.

SECTION 2.29. Section 1601.405, Occupations Code, is amended to read as follows:

Sec. 1601.405. RENEWAL WHILE IN ARMED FORCES. (a) The department [~~board~~] may not require a Class A barber, barber technician, teacher, or manicurist who is serving on active duty in the United States armed forces to renew the person's certificate or license.

(b) The department [~~board~~] shall issue a renewal certificate or license on application and payment of the required [~~a~~] renewal fee not later than the 90th day after the date the person is released or discharged from active duty in the armed forces. [~~The renewal fee is:~~

[~~(1) $10 if the application and payment are made during the period beginning November 1 of an odd-numbered year and ending October 31 of the following year; or~~

[~~(2) $5 if the application and payment are made during the period beginning November 1 of an even-numbered year and ending October 31 of the following year.~~]

SECTION 2.30. Section 1601.406, Occupations Code, is amended to read as follows:

Sec. 1601.406. RENEWAL OF BARBERSHOP OR SPECIALTY SHOP PERMIT. (a) A barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance [~~on July 1 of each odd-numbered year~~].

(b) A barbershop permit holder may renew the permit by paying the required [~~a~~] renewal fee [~~not to exceed $70~~].

(c) A specialty shop permit holder may renew the permit by submitting to the department [~~board~~] a renewal application accompanied by the required [~~a~~] renewal fee [~~not to exceed $50~~].

SECTION 2.31. Section 1601.407, Occupations Code, is amended to read as follows:

Sec. 1601.407. RENEWAL OF BARBER SCHOOL PERMIT. (a) A barber school permit expires on the first anniversary [~~September 1~~] of the date of issuance [~~each year~~].

(b) A barber school may renew its permit by paying the required [~~a~~] renewal fee [~~not to exceed $300~~].

SECTION 2.32. Section 1601.452, Occupations Code, is amended to read as follows:

Sec. 1601.452. DISPLAY OF SANITATION RULES. Each barbershop or specialty shop shall post in the shop a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.33. Section 1601.453, Occupations Code, is amended to read as follows:

Sec. 1601.453. LOCATION OF PRACTICE. A person licensed by

32/33

the department [~~board~~] may practice barbering only at a location for which the department [~~board~~] has issued a barbershop permit, specialty shop permit, or barber school permit.

SECTION 2.34. Section 1601.454, Occupations Code, is amended to read as follows:

Sec. 1601.454. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY BOARD AND TEXAS COSMETOLOGY COMMISSION~~]. (a) The commission [~~board~~] may not adopt rules to restrict or prohibit practice by a Class A barber or manicurist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1602 [~~board and the Texas Cosmetology Commission~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1602 [~~the board and the Texas Cosmetology Commission license or permit the same facility~~], the commission [~~board~~] may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 2.35. Section 1601.502, Occupations Code, is amended to read as follows:

Sec. 1601.502. SUPERVISION OF BARBERSHOP. A person may not operate a barbershop unless:

33/34

(1) the shop is at all times under the exclusive supervision and management of a Class A barber; and

(2) no person is practicing on the premises by authority of a license, permit, or certificate issued by the department under Chapter 1602 [~~Texas Cosmetology Commission~~], except as allowed by other law.

SECTION 2.36. Section 1601.503, Occupations Code, is amended to read as follows:

Sec. 1601.503. NOTIFICATION OF CHANGE OF LOCATION. A person operating under a barbershop permit may move the operation to another location approved by the department [~~board~~] if the person notifies the department [~~board~~] not later than the 10th day before the date of the move.

SECTION 2.37. Section 1601.552, Occupations Code, is amended to read as follows:

Sec. 1601.552. DISPLAY OF SANITATION RULES. Each barber school shall post in the school a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.38. Section 1601.554, Occupations Code, is amended to read as follows:

Sec. 1601.554. CHANGE OF BARBER SCHOOL OWNERSHIP OR LOCATION. (a) If a barber school changes ownership, the department [~~board~~] must be notified of the change not later than the 10th day before the date the change takes effect.

(b) A barber school may not change the location of the school unless the school obtains approval from the department [~~board~~] before the change by showing that the proposed location

meets the requirements of Subchapter H for issuance of a permit to the school.

SECTION 2.39. Section 1601.556, Occupations Code, is amended to read as follows:

Sec. 1601.556. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a barber school permit shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the school's refund policy required under Section 1601.563;

(4) the school's grading policy and rules relating to incomplete grades;

(5) the school's rules of operation and conduct, including rules relating to absences;

(6) the department's [~~board's~~] name, mailing address, and telephone number for the purpose of directing complaints to the department [~~board~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 2.40. Section 1601.557, Occupations Code, is amended to read as follows:

Sec. 1601.557. COURSE LENGTH AND CURRICULUM CONTENT. (a) A barber school shall submit to the department [~~board~~] for approval the course length and curriculum content for a course offered by the school. The course length and curriculum content shall be designed to reasonably ensure that a student develops the job skills and

knowledge necessary for employment. The school may not implement a course length or curriculum content unless it is approved by the department [~~board~~].

(b) Before issuing or renewing a permit under this chapter, the department [~~board~~] shall require a school to account for all course lengths and curriculum contents.

SECTION 2.41. Subsection (b), Section 1601.559~~(b)~~, Occupations Code, is amended to read as follows:

(b) The department [~~board~~] may inspect a school's attendance record book at any time.

SECTION 2.42. Section 1601.561, Occupations Code, is amended to read as follows:

Sec. 1601.561. REPORTS TO DEPARTMENT [~~BOARD~~]. (a) A barber school shall maintain [~~submit~~] a monthly progress report [~~to the board~~] regarding each student attending the school. The report must certify the daily attendance record of each student and the number of credit hours earned by each student during the previous month.

(b) On a student's completion of a prescribed course of instruction, the school shall notify [~~certify to~~] the department [~~board~~] that the student has completed the required number of hours and is eligible to take the appropriate examination.

(c) A barber school permit holder shall furnish to the department [~~board~~]:

(1) the current course completion rates of students who attend a course of instruction offered by the school; and

(2) job placement rates and employment rates of

students who complete a course of instruction.

SECTION 2.43. Subsection (d), Section 1601.566~~(d)~~, Occupations Code, is amended to read as follows:

(d) The department [~~board~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department [~~board~~] on request documentation of the school's effort to locate the student.

SECTION 2.44. Section 1601.603, Occupations Code, is amended to read as follows:

Sec. 1601.603. DENIAL OF PERMIT; SUIT. (a) If the department [~~board~~] denies an application for a barber school permit, the school may request in writing the reasons for the refusal.

(b) If the barber school meets the requirements for issuance of the permit and shows that the requirements of this chapter have been met, and the department [~~board~~] refuses to issue the permit, the school may file suit in a district court in Travis County to require the department [~~board~~] to issue the permit.

(c) A suit under Subsection (b) must be filed not later than the 20th day after the date of the department's [~~board's~~] final order denying issuance of the permit, if registered notice of the order is mailed or it is otherwise shown that the school had notice of the order not later than the 10th day after the date the department [~~board~~] entered the order.

SECTION 2.45. Subsection (a), Section 1601.604~~(a)~~, Occupations Code, is amended to read as follows: 37/38

(a) The commission [~~board~~] shall suspend or revoke the permit of a barber school that directly or indirectly violates this chapter.

SECTION 2.46. Section 1601.605, Occupations Code, is amended to read as follows:

Sec. 1601.605. PROBATION FOR ALTERING COURSE LENGTH. The commission [~~board~~] shall place on probation a barber school that alters a course length below or above industry standards until the school:

(1) provides justification for the alteration; or

(2) adjusts the course length to meet industry standards.

SECTION 2.47. Subsections (a), (b), and (c), Section~~s~~ 1601.606~~(a), (b), and (c)~~, Occupations Code, are amended to read as follows:

(a) If the department [~~board~~] has reasonable cause to believe that a barber school has violated this chapter or a rule adopted under this chapter, the department [~~board~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~board~~]. The department [~~board~~] shall attempt to provide a balance on a peer review team between members assigned to the team who are from this state and members who are from other states.

(c) The peer review team shall provide the department [~~board~~] with an objective assessment of the school's curriculum content and its application.

SECTION 2.48. Subsection (a), Section 1601.653~~(a)~~, Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person is a barber inspector or other department [~~board~~] employee and the person sells barber supplies or engages in a business, other than barbering, that deals directly with a barber, barbershop, specialty shop, or barber school.

ARTICLE 3. REGULATION OF COSMETOLOGY

SECTION 3.01. Section 1602.001, Occupations Code, is amended to read as follows:

Sec. 1602.001. GENERAL DEFINITIONS. In this chapter:

(1) "Board" means the Advisory Board on Cosmetology.

(2) "Commission" means the Texas [~~Cosmetology~~] Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) [~~(2)~~] "Public school" includes a public high school, a public junior college, or any other nonprofit tax-exempt institution that conducts a cosmetology program.

SECTION 3.02. The heading to Subchapter B, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY BOARD ON [~~TEXAS~~] COSMETOLOGY [~~COMMISSION~~]

SECTION 3.03. The heading to Section 1602.051, Occupations Code, is amended to read as follows:

Sec. 1602.051. BOARD [~~COMMISSION~~]; MEMBERSHIP. 39/40

SECTION 3.04. Subsection (a), Section 1602.051~~(a)~~, Occupations Code, is amended to read as follows:

[~~(a)~~] The Advisory Board on [~~Texas~~] Cosmetology [~~Commission~~] consists of five [~~six~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) one member who holds a license for a beauty shop that is part of a chain of beauty shops [~~license~~];

(2) one member who holds a license for a beauty shop that is not part of a chain of beauty shops;

(3) one member who holds a private beauty culture school license; and

(4) [~~(3)~~] two members who each hold an operator license[~~; and~~

[~~(4) two members who represent the public~~].

SECTION 3.05. Subsections (a) and (c), Section~~s~~ 1602.055~~(a) and (c)~~, Occupations Code, are amended to read as follows:

(a) Members of the board [~~commission~~] serve staggered six-year terms, with the terms of one or two members expiring on the same date [~~December 31 of~~] each odd-numbered year.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 3.06. The heading to Section 1602.058, Occupations Code, is amended to read as follows: 40/41

Sec. 1602.058. PRESIDING OFFICER[~~, COMMITTEES~~].

SECTION 3.07. Subsection (a), Section 1602.058~~(a)~~, Occupations Code, is amended to read as follows:

[~~(a)~~] The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate one member of the commission as presiding officer to serve in that capacity for a two-year term [~~at the pleasure of the governor~~].

SECTION 3.08. Subchapter B, Chapter 1602, is amended by adding Section 1602.060 to read as follows:

Sec. 1602.060. BOARD DUTIES. The board shall:

(1) advise the commission on rules, enforcement, licensing requirements, and continuing education;

(2) recommend to the commission standards of practice, conduct, and ethics for persons regulated under this chapter and Chapter 1603; and

(3) advise the commission in establishing education requirements for initial applicants.

SECTION 3.09. The heading to Subchapter D, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES RELATED TO COSMETOLOGY

SECTION 3.10. Subsections (a) and (b), Section~~s~~ 1602.153~~(a) and (b)~~, Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of / 41/42

records and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the department [~~commission~~], acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the department [~~commission~~] may be held.

SECTION 3.11. Subsection (c), Section 1602.251~~(c)~~, Occupations Code, is amended to read as follows:

(c) A person licensed by the department [~~commission~~] may practice cosmetology only at a facility operated by a person holding a beauty shop license, private beauty culture school license, or other license issued by the department [~~commission~~].

SECTION 3.12. Subsection (b), Section 1602.258~~(b)~~, Occupations Code, is amended to read as follows:

(b) To be eligible for a specialty certificate, an applicant must:

(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 the necessary requisites as determined by the department [~~commission~~] in the particular specialty for which certification is sought, including training through a commission-approved training program.

SECTION 3.13. Subsections (a) and (b), Sections 1602.266~~(a) and (b)~~, Occupations

42/43

Code, are amended to read as follows:

(a) The department [~~commission~~] shall require a student enrolled in a school of cosmetology in this state to hold a permit stating the student's name and the name of the school. The permit shall be displayed in a reasonable manner at the school.

(b) The department [~~commission~~] shall issue a student permit to an applicant who submits an application to the department [~~commission~~] for a student permit accompanied by the required fee.

SECTION 3.14. Subsection (b), Section 1602.267~~(b)~~, Occupations Code, is amended to read as follows:

(b) The department [~~commission~~] shall issue a shampoo apprentice permit to an applicant who[~~:~~

[~~(1)~~] is at least 16 years of age[~~; and~~

[~~(2) submits a certificate of health as required by Section 1602.253~~].

SECTION 3.15. Subsection (b), Section 1602.302~~(b)~~, Occupations Code, is amended to read as follows:

(b) An application for a beauty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a beauty shop established by the commission; and

(3) be verified by the applicant.

SECTION 3.16. Subsections (b) and (c), Section 1602.303~~(b) and (c)~~, Occupations Code, are amended to read as follows:

(b) An application for a private beauty culture school 43/44

license must be accompanied by the required license fee and inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) be verified by the applicant;

(3) contain a detailed floor plan of the school building divided into two separate areas, one area for instruction in theory and one area for clinic work; and

(4) contain a statement that the building:

(A) is fireproof;

(B) is of permanent construction;

(C) contains a minimum of 3,500 square feet of floor space;

(D) has separate restrooms for male and female students; and

(E) contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 50 students.

(c) The applicant is entitled to a private beauty culture school license if:

(1) the department [~~commission~~] determines that the applicant is financially sound and capable of fulfilling the school's commitments for training;

(2) the applicant's facilities pass an inspection conducted by the department under Section 1603.103 [~~commission~~]; and

(3) the applicant has not committed an act that

constitutes a ground for denial of a license.

SECTION 3.17. Subsection (b), Section 1602.305~~(b)~~, Occupations Code, is amended to read as follows:

(b) An application for a specialty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a specialty shop as established by the commission; and

(3) be verified by the applicant.

SECTION 3.18. Subsection (b), Section 1602.306~~(b)~~, Occupations Code, is amended to read as follows:

(b) An application for a booth rental license must:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain information as required by commission rule; and

(3) be verified by the applicant.

SECTION 3.19. The heading to Section 1602.352, Occupations Code, is amended to read as follows:

Sec. 1602.352. REQUIREMENT FOR FIRST [~~PROCEDURE FOR~~] RENEWAL OF LICENSE [~~OR REINSTATEMENT~~].

SECTION 3.20. Subchapter H, Chapter 1602, Occupations Code, is amended by adding Section 1602.353 to read as follows:

Sec. 1602.353. INACTIVE STATUS. (a) Not later than the 10th day before the expiration date of a certificate or license issued under this chapter, the certificate or license holder may 45/46

place the certificate or license on inactive status by:

(1) submitting an application for inactive status to the department on a form prescribed by the department; and

(2) paying the required fee.

(b) Except as provided by Subsection (e), a person whose certificate or license is on inactive status is not required to complete continuing education required under this chapter.

(c) A person whose certificate or license is on inactive status may reapply for inactive status before the expiration date of the certificate or license. The person must pay the required fee.

(d) A license holder may not employ a person on inactive status.

(e) A person on inactive status may return the certificate or license to active status by:

(1) applying to the department for active status on a form prescribed by the department;

(2) paying the required fee; and

(3) providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding two-year license period.

(f) The commission may set fees and adopt rules to implement this section.

SECTION 3.21. Section 1602.405, Occupations Code, is amended to read as follows:

Sec. 1602.405. PRACTICE AT FACILITY LICENSED OR PERMITTED

AS BARBER AND COSMETOLOGIST FACILITY [~~BY COMMISSION AND STATE BOARD OF BARBER EXAMINERS~~]. (a) The commission may not adopt rules to restrict or prohibit practice by a cosmetologist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1601 [~~commission and the State Board of Barber Examiners~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1601 [~~the commission and the State Board of Barber Examiners license the same facility~~], the commission may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 3.22. Subsection (a), Section 1602.451~~(a)~~, Occupations Code, is amended to read as follows:

(a) The holder of a private beauty culture school license shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours one full-time licensed instructor for each 25 students in attendance;

(3) maintain a daily record of students' attendance;

(4) establish regular class and instruction hours and /47/48

grades;

(5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than 600 hours instruction for a complete course in manicuring;

(7) hold examinations before issuing diplomas;

(8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed;

(9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and

(10) [~~submit to the executive director the name of each student within 10 days after the date the student enrolls in the school and notify the executive director of the withdrawal or graduation of a student not later than the 10th day after the date the student withdraws or graduates; and~~

[~~(11)~~] provide the department [~~commission~~] with information on:

(A) the current course completion rates of students who attend a course of instruction offered by the school; and

(B) job placement rates and employment rates of students who complete the course of instruction.

SECTION 3.23. Section 1602.452, Occupations Code, is amended to read as follows:

Sec. 1602.452. INFORMATION PROVIDED TO PROSPECTIVE

STUDENT. The holder of a private beauty culture school license shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the refund policy required under Section 1602.458;

(4) the school grading policy and rules relating to incomplete grades;

(5) the school rules of operation and conduct, including rules relating to absences;

(6) the name, mailing address, and telephone number of the department [~~commission~~] for the purpose of directing complaints to the department [~~commission~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 3.24. Subsection (c), Section 1602.453~~(c)~~, Occupations Code, is amended to read as follows:

(c) Before issuing or renewing a license under this chapter, the department [~~commission~~] shall require a school to account for each course length and curriculum content.

SECTION 3.25. Section 1602.454, Occupations Code, is amended to read as follows:

Sec. 1602.454. STUDENT RECORD. A private beauty culture school shall notify [~~send to~~] the department [~~commission a certified copy of a student's record, indicating all course hours completed by the student and whether the agreed tuition has been paid,~~] when a [~~the~~] student[~~:~~

[~~(1)~~] graduates from a course of training offered by

the school and is eligible to take the appropriate examination[~~; or~~

[~~(2) withdraws or transfers from a course of training without completion of the training~~].

SECTION 3.26. Subsection (d), Section 1602.460~~(d)~~, Occupations Code, is amended to read as follows:

(d) The department [~~commission~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department [~~commission~~] on request documentation of the effort to locate the student.

SECTION 3.27. Subsection (a), Section 1602.463~~(a)~~, Occupations Code, is amended to read as follows:

(a) If a private beauty culture school closes, the department [~~commission~~] shall attempt to arrange for students enrolled in the closed school to attend another private beauty culture school.

SECTION 3.28. Subsections (a) and (b), Section~~s~~ 1602.464~~(a) and (b)~~, Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the private beauty culture school tuition protection account is less than $200,000, the department [~~commission~~] shall collect a fee from each private beauty culture school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $200,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~commission~~] for the 50/51

purpose described by Section 1602.463. The department [~~commission~~] shall administer claims made against the account.

SECTION 3.29. Subsections (a), (b), and (c), Section~~s~~ 1602.465~~(a), (b), and (c)~~, Occupations Code, are amended to read as follows:

(a) If the department [~~commission~~] has reasonable cause to believe that a private beauty culture school has violated this chapter or a rule adopted under this chapter, the department [~~commission~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~commission~~]. The department [~~commission~~] shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states.

(c) The team shall provide the department [~~commission~~] with an objective assessment of the content of the school's curriculum and its application.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Section 232.002, Family Code, is amended to read as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following are licensing authorities subject to this chapter:

(1) Department of Agriculture;

(2) [~~Texas Commission on Alcohol and Drug Abuse;~~

[~~(3)~~] Texas Alcoholic Beverage Commission;

(3) [~~(4)~~] Texas Appraiser Licensing and Certification

Board;

(4) [~~(5)~~] Texas Board of Architectural Examiners;

(5) [~~(6) State Board of Barber Examiners;~~

[~~(7)~~] Texas Board of Chiropractic Examiners;

(6) [~~(8)~~] Comptroller of Public Accounts;

(7) [~~(9) Texas Cosmetology Commission;~~

[~~(10)~~] Court Reporters Certification Board;

(8) [~~(11)~~] State Board of Dental Examiners;

(9) [~~(12)~~] Texas State Board of Examiners of Dietitians;

(10) [~~(13)~~] Texas Funeral Service Commission;

(11) [~~(14) Texas~~] Department of State Health Services [~~Health~~];

(12) [~~(15) Texas~~] Department of Aging and Disability [~~Human~~] Services;

(13) [~~(16)~~] Texas Board of Professional Land Surveying;

(14) [~~(17)~~] Texas Department of Licensing and Regulation;

(15) [~~(18)~~] Texas State Board of Examiners of Marriage and Family Therapists;

(16) [~~(19)~~] Texas State Board of Medical Examiners;

(17) [~~(20)~~] Midwifery Board;

(18) [~~(21)~~] Texas Commission on Environmental Quality;

(19) [~~(22)~~] Board of Nurse Examiners;

(20) [~~(23)~~] Texas Board of Occupational Therapy 52/53

Examiners;

(21) [~~(24)~~] Texas Optometry Board;

(22) [~~(25)~~] Parks and Wildlife Department;

(23) [~~(26)~~] Texas State Board of Examiners of Perfusionists;

(24) [~~(27)~~] Texas State Board of Pharmacy;

(25) [~~(28)~~] Texas Board of Physical Therapy Examiners;

(26) [~~(29)~~] Texas State Board of Plumbing Examiners;

(27) [~~(30)~~] Texas State Board of Podiatric Medical Examiners;

(28) [~~(31)~~] Polygraph Examiners Board;

(29) [~~(32)~~] Texas [~~Commission on~~] Private Security Board;

(30) [~~(33)~~] Texas State Board of Examiners of Professional Counselors;

(31) [~~(34)~~] Texas Board of Professional Engineers;

(32) [~~(35)~~] Department of Family and Protective [~~and Regulatory~~] Services;

(33) [~~(36)~~] Texas State Board of Examiners of Psychologists;

(34) [~~(37)~~] Texas State Board of Public Accountancy;

(35) [~~(38)~~] Department of Public Safety of the State of Texas;

(36) [~~(39)~~] Public Utility Commission of Texas;

(37) [~~(40)~~] Railroad Commission of Texas;

(38) [~~(41)~~] Texas Real Estate Commission; 83/84

(39) [~~(42)~~] State Bar of Texas;

(40) [~~(43)~~] Texas State Board of Social Worker Examiners;

(41) [~~(44)~~] State Board of Examiners for Speech-Language Pathology and Audiology;

(42) [~~(45)~~] Texas Structural Pest Control Board;

(43) [~~(46)~~] Board of Tax Professional Examiners;

(44) [~~(47)~~] Secretary of State;

(45) [~~(48)~~] Supreme Court of Texas;

(46) [~~(49)~~] Texas Transportation Commission;

(47) [~~(50)~~] State Board of Veterinary Medical Examiners;

(48) [~~(51)~~] Texas Ethics Commission;

(49) [~~(52)~~] Advisory Board of Athletic Trainers;

(50) [~~(53)~~] State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(51) [~~(54)~~] Texas Board of Licensure for Professional Medical Physicists;

(52) [~~(55)~~] Texas Department of Insurance;

(53) [~~(56)~~] Texas Board of Orthotics and Prosthetics;

(54) [~~(57)~~] savings and loan commissioner;

(55) [~~(58)~~] Texas Juvenile Probation Commission; and

(56) [~~(59)~~] Texas Lottery Commission under Chapter 466, Government Code.

SECTION 4.02. subsection (d), Section 411.122~~(d)~~, Government Code, is amended to read as follows:

(d) The following state agencies are subject to this 154/55

section:

(1) Texas Appraiser Licensing and Certification Board;

(2) Texas Board of Architectural Examiners;

(3) [~~State Board of Barber Examiners;~~

[~~(4)~~] Texas Board of Chiropractic Examiners;

(4) [~~(5) Texas Cosmetology Commission;~~

[~~(6)~~] State Board of Dental Examiners;

(5) [~~(7)~~] Texas Board of Professional Engineers;

(6) [~~(8)~~] Texas Funeral Service Commission;

(7) [~~(9)~~] Texas Board of Professional Geoscientists;

(8) [~~(10) Texas~~] Department of State Health Services, except as provided by Section 411.110, and agencies attached to the department, including:

(A) Texas State Board of Examiners of Dietitians;

(B) Texas State Board of Examiners of Marriage and Family Therapists;

(C) Midwifery Board;

(D) Texas State Board of Examiners of Perfusionists;

(E) Texas State Board of Examiners of Professional Counselors;

(F) Texas State Board of Social Worker Examiners;

(G) State Board of Examiners for Speech-Language Pathology and Audiology;

(H) Advisory Board of Athletic Trainers;

(I) State Committee of Examiners in the Fitting 55/56

and Dispensing of Hearing Instruments;

(J) Texas Board of Licensure for Professional Medical Physicists; and

(K) Texas Board of Orthotics and Prosthetics;

(9) [~~(11)~~] Texas Board of Professional Land Surveying;

(10) [~~(12)~~] Texas Department of Licensing and Regulation, except as provided by Section 411.093;

(11) [~~(13)~~] Texas Commission on Environmental Quality;

(12) [~~(14)~~] Texas Board of Occupational Therapy Examiners;

(13) [~~(15)~~] Texas Optometry Board;

(14) [~~(16)~~] Texas State Board of Pharmacy;

(15) [~~(17)~~] Texas Board of Physical Therapy Examiners;

(16) [~~(18)~~] Texas State Board of Plumbing Examiners;

(17) [~~(19)~~] Texas State Board of Podiatric Medical Examiners;

(18) [~~(20)~~] Polygraph Examiners Board;

(19) [~~(21)~~] Texas State Board of Examiners of Psychologists;

(20) [~~(22)~~] Texas Real Estate Commission;

(21) [~~(23)~~] Board of Tax Professional Examiners;

(22) [~~(24)~~] Texas Department of Transportation;

(23) [~~(25)~~] State Board of Veterinary Medical Examiners;

(24) [~~(26) Board of Vocational Nurse Examiners;~~

[~~(27)~~] Texas Department of Housing and Community Affairs;

(25) [~~(28)~~] secretary of state;

(26) [~~(29)~~] state fire marshal;

(27) [~~(30)~~] Texas Education Agency; and

(28) [~~(31)~~] Department of Agriculture.

SECTION 4.03. Subsection (a), Section 2054.352~~(a)~~, Government Code, is amended to read as follows:

(a) The following licensing entities shall participate in the system established under Section 2054.353[~~, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001~~]:

(1) [~~State Board of Barber Examiners;~~

[~~(2)~~] Texas Board of Chiropractic Examiners;

(2) [~~(3) Texas Cosmetology Commission;~~

[~~(4)~~] Court Reporters Certification Board;

(3) [~~(5)~~] State Board of Dental Examiners;

(4) [~~(6)~~] Texas Funeral Service Commission;

(5) [~~(7)~~] Texas Board of Professional Land Surveying;

(6) [~~(8)~~] Texas State Board of Medical Examiners;

(7) [~~(9)~~] Board of Nurse Examiners;

(8) [~~(10)~~] Texas Optometry Board;

(9) [~~(11)~~] Texas Structural Pest Control Board;

(10) [~~(12)~~] Texas State Board of Pharmacy;

(11) [~~(13)~~] Executive Council of Physical Therapy and Occupational Therapy Examiners;

(12) [~~(14)~~] Texas State Board of Plumbing Examiners; [57/58

(13) [~~(15)~~] Texas State Board of Podiatric Medical Examiners;

(14) [~~(16)~~] Board of Tax Professional Examiners;

(15) [~~(17)~~] Polygraph Examiners Board;

(16) [~~(18)~~] Texas State Board of Examiners of Psychologists;

(17) [~~(19)~~] State Board of Veterinary Medical Examiners;

(18) [~~(20)~~] Texas Real Estate Commission;

(19) [~~(21)~~] Texas Appraiser Licensing and Certification Board;

(20) [~~(22)~~] Texas Department of Licensing and Regulation;

(21) [~~(24)~~] Texas State Board of Public Accountancy;

(22) [~~(25)~~] State Board for Educator Certification;

(23) [~~(26)~~] Texas Board of Professional Engineers;

(24) [~~(27) Texas~~] Department of State Health Services;

(25) [~~(28)~~] Texas Board of Architectural Examiners;

(26) [~~(29)~~] Texas Racing Commission;

(27) [~~(30)~~] Commission on Law Enforcement Officer Standards and Education; and

(28) [~~(31)~~] Texas [~~Commission on~~] Private Security Board.

ARTICLE 5. REPEALER

SECTION 5.01. The following laws are repealed:

(1) Subchapters C, D, E, and O, Chapter 1601,

Occupations Code;

(2) Subchapters C, E, and K, Chapter 1602, Occupations Code; and

(3) Sections 1601.004, 1601.051~~(b) and (c)~~, 1601.052, 1601.053, 1601.054, 1601.056, 1601.057, 1601.252, 1601.261, 1601.262, 1601.263, 1601.264, 1601.266, 1601.267, 1601.356, 1601.401, 1601.402~~(d)~~, 1601.403, 1601.404~~(a) and (b)~~, 1601.408, 1601.601, 1601.651, 1601.654, 1602.004, 1602.051~~(b) and (c)~~, 1602.052, 1602.053, 1602.054, 1602.055(b), 1602.056, 1602.057, 1602.058(b), 1602.059, 1602.151, 1602.152, 1602.154, 1602.155, 1602.252, 1602.253, as amended by Chapter 1282, Acts of the 78th Legislature, Regular Session, 2003, 1602.259, 1602.260, 1602.261, 1602.263, 1602.264, 1602.265, 1602.303(d), 1602.304(b), 1602.351(d), 1602.352(b) through (f), 1602.407, 1602.551, 1602.552, 1602.553, and 1602.555, Occupations Code.

ARTICLE 6. TRANSITION AND EFFECTIVE DATE

SECTION 6.01. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission are abolished but continue in existence until September 1, 2006, for the sole purpose of transferring obligations, property, employees, rights, powers, and duties to the Texas Department of Licensing and Regulation. The Texas Department of Licensing and Regulation assumes all of the obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission, as they exist immediately before the effective date of this Act. All unexpended funds appropriated to the State Board of Barber Examiners and the Texas Cosmetology Commission are

transferred to the Texas Department of Licensing and Regulation. The transfer of the obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation must be completed not later than September 1, 2006.

(b) All rules of the State Board of Barber Examiners and the Texas Cosmetology Commission are continued in effect as rules of the Texas Commission of Licensing and Regulation until superseded by a rule of the Texas Commission of Licensing and Regulation. A certificate, license, or permit issued by the State Board of Barber Examiners or the Texas Cosmetology Commission is continued in effect as provided by the law in effect immediately before the effective date of this Act. A complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. An inspection or other activity conducted by the State Board of Barber Examiners or the Texas Cosmetology Commission is considered to be an inspection or activity conducted by the Texas Department of Licensing and Regulation, including an inspection or other activity conducted for purposes of allowing a school, shop, or facility to continue to operate under Section 1603.103, Occupations Code, as added by this Act.

(c) A reference in another law or an administrative rule to the State Board of Barber Examiners or the Texas Cosmetology Commission means the Texas Department of Licensing and Regulation.

SECTION 6.02. Sections 1602.353 and 1603.352, Occupations Code, as added by this Act, take effect January 1, 2006. 60/61

SECTION 6.03. This Act takes effect September 1, 2005.

Engrossed April 26, 2005
Mardi Alexander
Engrossing Clerk

I certify this to be a true and correct copy of the indicated document as referred or transmitted to committee.

Chief Clerk of the House

By: Whitmire S.B. No. 411

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.01. Title 9, Occupations Code, is amended by adding Chapter 1603 to read as follows:

CHAPTER 1603. REGULATION OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(b) Unless the context clearly indicates otherwise, the definitions in Chapters 1601 and 1602 apply to this chapter.

Sec. 1603.002. REGULATION OF BARBERING AND COSMETOLOGY BY DEPARTMENT OF LICENSING AND REGULATION. The department shall administer this chapter and Chapters 1601 and 1602. A reference in this chapter to the commission's or department's powers or duties

applies only in relation to those chapters, except that this section does not limit the department's or commission's general powers under Chapter 51.

[Sections 1603.003-1603.050 reserved for expansion]

SUBCHAPTER B. ADVISORY BOARDS FOR BARBERING AND COSMETOLOGY

Sec. 1603.051. DUTIES. The advisory boards established under Chapters 1601 and 1602 shall advise the commission on administering this chapter and Chapters 1601 and 1602 regarding barbering or cosmetology, as applicable.

[Sections 1603.052-1603.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1603.101. RULES. The commission shall adopt rules consistent with this chapter for:

(1) the administration of this chapter and the operations of the department in regulating barbering and cosmetology; and

(2) the administration of Chapters 1601 and 1602.

Sec. 1603.102. SANITATION RULES. The commission shall establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.103. INSPECTION OF SCHOOLS, SHOPS, AND FACILITIES BEFORE OPERATION. (a) Until the department determines, by inspection, that the person has established the school, shop, or facility in compliance with this chapter, Chapter 1601, or Chapter 1602, a person may not operate a school, shop, or other facility licensed or permitted under this chapter, Chapter 1601, or Chapter 1602.

(b) A school, shop, or other facility that is not approved by the department on initial inspection may be reinspected.

(c) The school, shop, or other facility shall pay a fee for each inspection. The commission shall by rule set the amount of the fee.

Sec. 1603.104. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(2) any place in which the department has probable cause to believe that a certificate, license, or permit holder is practicing in violation of this chapter, Chapter 1601, or Chapter 1602 or in violation of a rule or order of the commission or executive director.

(b) At least once every two years, the department shall inspect each school, shop, or other facility that holds a license, certificate, or permit under this chapter, Chapter 1601, or Chapter 1602.

(c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the school, shop, or other facility;

(2) whether there has been a prior sanitation violation at the school, shop, or facility;

(3) the inspection history of the school, shop, or

other facility;

(4) any history of complaints involving the school, shop, or other facility; and

(5) any other factor determined by the commission by rule.

(d) An inspector who discovers a violation of this chapter, Chapter 1601, or Chapter 1602 or of a rule or order of the commission or executive director shall:

(1) provide written notice of the violation to the license, certificate, or permit holder on a form prescribed by the department; and

(2) file a complaint with the executive director.

(e) The school, shop, or other facility shall pay a fee for each inspection performed under Subsection (c). The commission shall by rule set the amount of the fee.

Sec. 1603.105. RETENTION OF STUDENT RECORDS. The department may not retain student records, including student transcripts, beyond the time required by state law.

Sec. 1603.106. COMMITTEES. The commission may appoint committees that it considers necessary to carry out its duties.

[Sections 1603.107-1603.150 reserved for expansion]

SUBCHAPTER D. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.151. NOTIFICATION OF PUBLIC INTEREST INFORMATION AND PARTICIPATION. The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding

barbering and cosmetology. The department may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter, Chapter 1601, or Chapter 1602;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(3) in a bill for service provided by a person regulated under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.152. COMPLAINT JURISDICTION; NOTIFICATION. If the department determines that it lacks jurisdiction to resolve the complaint, the department shall notify the complainant in writing that the department is closing the complaint because it lacks jurisdiction.

Sec. 1603.153. ANALYSIS OF COMPLAINTS AND VIOLATIONS. (a) The department shall develop and maintain a system to analyze the processing, sources, and types of complaints filed with the department and the types of violations that occur under this chapter, Chapter 1601, and Chapter 1602.

(b) Based on the information under Subsection (a), the department shall analyze trends in violations and complaints that may require further attention or technical assistance to help reduce the frequency of those complaints and violations.

(c) The department shall annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year, including:

(1) the number of complaints filed;

(2) a categorization of complaints filed according to the basis of the complaint and the number of complaints in each category;

(3) the number of complaints filed by department staff;

(4) the number of complaints filed by persons other than department staff;

(5) the number of complaints filed over which the department lacks jurisdiction;

(6) the average length of time required to close a complaint or violation from the time the department receives the complaint or otherwise initiates an investigation of a possible violation until the complaint or violation is resolved by a final order or penalty;

(7) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal; and

(B) the number of complaints resulting in disciplinary action and the type of disciplinary action taken; and

(8) the number of complaints filed that are unresolved, the number of those complaints filed by department staff, the number of those complaints filed by persons other than department staff, and the average length of time that the unresolved complaints have been on file.

Sec. 1603.154. INFORMAL SETTLEMENT CONFERENCE. The

department shall establish guidelines for an informal settlement conference related to a complaint filed with the department.

[Sections 1603.155-1603.200 reserved for expansion]

SUBCHAPTER E. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.201. APPLICATION FORM; TIMING. (a) An application for a certificate, license, or permit must be made on a form prescribed and provided by the department.

(b) An application for an operator license, instructor license, manicurist license, or facialist specialty license must be filed with the department not later than the 10th day before the date set for the applicable examination.

Sec. 1603.202. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. The department shall issue a duplicate certificate, license, or permit to an applicant who:

(1) submits an application for a duplicate certificate, license, or permit to the department; and

(2) pays the required fee.

Sec. 1603.203. PROVISIONAL CERTIFICATE OR LICENSE. (a) The department may issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who:

(1) has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in another jurisdiction, including a foreign country, that has requirements substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602, as appropriate; and

(2) has passed a national or other examination recognized by the commission relating to the practice of that profession.

(b) A provisional certificate or license is valid until the date the department approves or denies the provisional certificate or license holder's application. The department shall issue a certificate or license to the provisional certificate or license holder if:

(1) the provisional certificate or license holder is eligible to hold a certificate or license under Chapter 1601 or Chapter 1602; or

(2) the provisional certificate or license holder passes the part of the examination under Chapter 1601 or Chapter 1602 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of the profession in this state and:

(A) the department verifies that the provisional certificate or license holder meets the academic and experience requirements for the certificate or license; and

(B) the provisional certificate or license holder satisfies any other certificate or license requirements.

(c) The department must approve or deny a provisional certificate or license holder's application for a certificate or license not later than the 180th day after the date the provisional certificate or license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

Sec. 1603.204. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. (a) A person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602 may apply for a license, certificate, or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country.

(b) The person must:

(1) submit an application for the license, certificate, or permit to the department; and

(2) pay fees in an amount prescribed by the commission, including any applicable license, certificate, or permit fee.

(c) A person issued a license, certificate, or permit under this section:

(1) may perform the acts of barbering or cosmetology stated on the license, certificate, or permit; and

(2) is subject to the renewal procedures and fees provided in this chapter, Chapter 1601, or Chapter 1602 for the performance of those acts of barbering or cosmetology.

[Sections 1603.205-1603.250 reserved for expansion]

SUBCHAPTER F. EXAMINATION REQUIREMENTS

Sec. 1603.251. DEFINITION. In this subchapter, "examination proctor" means an individual registered under this subchapter to administer a practical examination for the department.

Sec. 1603.252. GENERAL EXAMINATION REQUIREMENTS. (a) The department may accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations.

(b) The executive director shall determine uniform standards for acceptable performance on an examination for a license or certificate under Chapter 1601 and for a license or certificate under Chapter 1602.

(c) The examination must include a written examination and may include a practical examination as provided by Section 1603.256.

Sec. 1603.253. EXAMINATION FOR BARBERS. (a) An applicant for an examination for a certificate or license issued under Chapter 1601 must submit to the department a sworn application on a form prescribed and provided by the department accompanied by:

(1) two photographs of the applicant, one of which accompanies the application and one of which is to be returned to the applicant to be presented at the examination; and

(2) the appropriate examination fee.

(b) The department shall examine applicants for a Class A barber certificate and a teacher's certificate.

Sec. 1603.254. EXAMINATION FOR COSMETOLOGISTS. (a) The department shall administer examinations for certificates and licenses issued under Chapter 1602 beginning the first day of each month. If the first day of the month is a legal holiday, the examination shall begin on the following day.

(b) The department shall announce the site of an examination

for a certificate or license issued under Chapter 1602 not later than six months before the scheduled examination date.

Sec. 1603.255. EARLY EXAMINATION. The department, on written request by a student, may 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 department-approved training program.

Sec. 1603.256. PRACTICAL EXAMINATION. (a) The commission may require a practical examination as it considers necessary for a license or certificate issued under Chapter 1601 or 1602.

(b) The department shall prescribe the method and content of any practical examination.

(c) The following persons may administer a practical examination required under this subchapter:

(1) the department;

(2) a person with whom the department contracts under Section 1603.252; or

(3) an examination proctor.

Sec. 1603.257. EXAMINATION PROCTOR; REGISTRATION. (a) A person may not act as an examination proctor under this subchapter unless the person is registered with the department under this section.

(b) To be eligible for registration as an examination proctor, a person must:

(1) meet eligibility requirements determined by commission rule;

(2) file with the department an application on a form prescribed by the department; and

(3) pay the required fees as determined by the commission by rule.

(c) If the department requires an examination proctor to administer a practical examination under this subchapter, the examination proctor shall perform the examination administration function of the department in a competent and professional manner and in compliance with:

(1) standards and specifications adopted by the commission under this chapter; and

(2) rules adopted by the commission under this chapter.

[Sections 1603.258-1603.300 reserved for expansion]

SUBCHAPTER G. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1603.301. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. The department may deny a person's request to renew a certificate, license, or permit issued under this chapter, Chapter 1601, or Chapter 1602 if the person has not paid an administrative penalty imposed under Subchapter F, Chapter 51. This section does not apply if:

(1) the person's time to pay or request a hearing has not expired under Section 51.304;

(2) the person has requested a hearing under Section 51.304, but the person's time to pay has not expired under Section 51.307; or

(3) the penalty is stayed.

[Sections 1603.302-1603.350 reserved for expansion]

SUBCHAPTER H. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.351. MINIMUM CURRICULUM FOR SCHOOLS. The commission shall prescribe the minimum curriculum, including the subjects and the number of hours in each subject, taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602, including a private beauty culture school or a vocational cosmetology program in a public school.

Sec. 1603.352. SANITATION REQUIREMENTS FOR CERTAIN SERVICES. (a) 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(10) or (11):

(1) shall, before performing the service, disinfect and sterilize with an autoclave each nondisposable instrument used to perform the service; and

(2) may use a disposable supply or instrument only if that supply or instrument is purchased at the location where the service is performed or provided by the person on whom the service is performed.

(b) The owner or manager of a barbershop, barber school, beauty shop, specialty shop, or beauty culture school is responsible for providing an autoclave for use in the shop or school as required by Subsection (a). An autoclave used as required by Subsection (a) must be:

(1) registered and listed with the federal Food and Drug Administration; and

(2) used in accordance with the manufacturer's instructions.

[Sections 1603.353-1603.400 reserved for expansion]

SUBCHAPTER I. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.401. DENIAL, SUSPENSION, OR REVOCATION. The department shall deny an application for issuance or renewal of, or shall suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit:

(1) engages in gross malpractice;

(2) knowingly continues to practice while having an infectious or contagious disease;

(3) knowingly makes a false or deceptive statement in advertising;

(4) advertises, practices, or attempts to practice under another person's name or trade name;

(5) engages in fraud or deceit in obtaining a certificate, license, or permit; or

(6) engages in an act that violates this chapter, Chapter 51, Chapter 1601, or Chapter 1602 or a rule or order adopted or issued under those chapters.

[Sections 1603.402-1603.450 reserved for expansion]

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.451. INJUNCTIVE RELIEF. (a) If a certificate, license, or permit holder commits a violation of this chapter, Chapter 1601, Chapter 1602, or a commission rule and the violation

poses a serious threat to the public health, the attorney general shall initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit.

(b) In seeking an injunction under this section, the attorney general is not required to allege or prove:

(1) that an adequate remedy at law does not exist; or

(2) that substantial or irreparable damage would result from the continued violation.

Sec. 1603.452. CIVIL PENALTY. (a) A barber, barber school, or private beauty culture school that violates this chapter, Chapter 1601, Chapter 1602, or a commission rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law.

(b) The amount of the civil penalty for a barber may not exceed $25 a day for each violation.

(c) The amount of the civil penalty for a barber school or private beauty culture school may not exceed $1,000 a day for each violation.

(d) The attorney general may sue to collect the civil penalty.

Sec. 1603.453. APPEAL BOND NOT REQUIRED. The department is not required to give an appeal bond in a cause arising under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.454. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general shall represent the department in an action to enforce this chapter, Chapter 1601, or Chapter 1602.

ARTICLE 2. REGULATION OF BARBERING

SECTION 2.01. Subsection (a), Section 1601.001, Occupations Code, is amended by amending Subdivisions (3), (4), (5), and (8) and adding Subdivisions (4-a) and (4-b) to read as follows:

(3) "Board" means the Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~].

(4) "Certificate" means a certificate of registration issued by the department [~~board~~].

(4-a) "Commission" means the Texas Commission of Licensing and Regulation.

(4-b) "Department" means the Texas Department of Licensing and Regulation.

(5) "License" means a license issued by the department [~~board~~].

(8) "Permit" means a permit issued by the department [~~board~~].

SECTION 2.02. Section 1601.003, Occupations Code, is amended to read as follows:

Sec. 1601.003. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) does not represent or advertise to the public directly or indirectly that the person is authorized by the department [~~board~~] to practice barbering; and

(2) is:

(A) a physician or registered nurse licensed in this state and operating within the scope of the person's license;

(B) a commissioned or authorized medical or surgical officer of the United States armed forces;

(C) a person regulated under Chapter 1602, if the person practices within the scope of a permit, license, or certificate issued by the department under that chapter [~~Texas Cosmetology Commission~~]; or

(D) an inmate in the institutional division of the Texas Department of Criminal Justice who performs barbering during the person's incarceration.

SECTION 2.03. The heading to Subchapter B, Chapter 1601, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY [~~STATE~~] BOARD ON BARBERING [~~OF BARBER EXAMINERS~~]

SECTION 2.04. Subsection (a), Section 1601.051, Occupations Code, is amended to read as follows:

[~~(a)~~] The Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~] consists of five [~~seven~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) two members, each of whom:

(A) is engaged in the practice of barbering as a Class A barber [~~and has been for at least five years before being appointed~~]; and

(B) does not hold a barbershop permit;

(2) two members, each of whom [~~one member who:~~

[~~(A)~~] is a barbershop owner who holds a

barbershop permit; and

[~~(B) is engaged in the practice of barbering and has been for at least five years before being appointed;~~]

(3) one member who holds a permit to conduct or operate a barber school[~~; and~~

[~~(4) three members who represent the public~~].

SECTION 2.05. Section 1601.055, Occupations Code, is amended to read as follows:

Sec. 1601.055. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of one or two [~~or three~~] members expiring on the same date each odd-numbered year [~~every two years~~].

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 2.06. Section 1601.058, Occupations Code, is amended to read as follows:

Sec. 1601.058. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate a board member as presiding officer to serve in that capacity for a two-year term [~~at the will of the governor~~].

SECTION 2.07. Subchapter B, Chapter 1601, is amended by adding Section 1601.059 to read as follows:

Sec. 1601.059. BOARD DUTIES. The board shall:

(1) advise the commission on rules, enforcement, and licensing requirements;

(2) recommend to the commission standards of practice, conduct, and ethics for persons regulated under this chapter and Chapter 1603;

(3) advise the commission in establishing education requirements for initial applicants; and

(4) advise the commission regarding examinations and, at the request of the commission, assist in administering an examination.

SECTION 2.08. Section 1601.253, Occupations Code, is amended to read as follows:

Sec. 1601.253. ELIGIBILITY FOR CLASS A BARBER CERTIFICATE. (a) An applicant for a Class A barber certificate must:

(1) be at least 16 years of age; and

(2) pass a written and practical examination demonstrating to the department's [~~board's~~] satisfaction the applicant's fitness and competence to practice barbering.

(b) The department [~~board~~] shall issue a Class A barber certificate to an applicant who:

(1) complies with the application requirements of this chapter;

(2) passes the examination with an average grade of at least 75 percent;

(3) pays the required [~~a~~] fee [~~not to exceed $100~~]; and

(4) possesses the other qualifications required by this chapter.

SECTION 2.09. Subsections (a) and (c), Section 1601.254, Occupations Code, are amended to read as follows:

(a) An applicant for a teacher's certificate must:

(1) be a Class A barber;

(2) have 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

(3) submit the required [~~an~~] examination fee [~~not to exceed $100~~] with the application.

(c) The department [~~board~~] shall issue a teacher's certificate to an applicant who:

(1) passes the appropriate examination; and

(2) pays the required [~~a~~] certificate fee [~~not to exceed:~~

[~~(A) $100, if the applicant fulfills the certificate requirements during the period beginning November 1 of an odd-numbered year and extending through October 31 of the following year; or~~

[~~(B) $50, if the applicant fulfills the certificate requirements during the period beginning November 1 of an even-numbered year and extending through October 31 of the following year~~].

SECTION 2.10. Subsections (b) and (d), Section 1601.256, Occupations Code, are amended to read as follows:

(b) An applicant for a barber technician license must:

(1) be at least 16 years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a course of instruction in a

commission-approved [~~board-approved~~] training program consisting of not less than 300 hours in a period of not less than eight weeks; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(d) The department [~~board~~] shall issue a barber technician license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $100~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.11. Subsections (b) and (c), Section 1601.257, Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist license must:

(1) be at least 16 years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a commission-approved [~~board-approved~~] training program consisting of 600 hours of instruction in manicuring; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(c) The department [~~board~~] shall issue a manicurist license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $30~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.12. Section 1601.260, Occupations Code, is amended to read as follows:

Sec. 1601.260. ELIGIBILITY FOR STUDENT PERMIT. (a) An applicant for a permit to be a student in a barber school must:

(1) submit an enrollment application to the department [~~board~~] in the form prescribed by the department [~~board~~];

(2) have completed the seventh grade;

(3) satisfy other requirements specified by the department [~~board~~]; and

(4) submit with the application the required [~~a~~] nonrefundable application fee [~~in an amount not to exceed $25~~].

(b) A separate application is required for each enrollment, reenrollment, or transfer enrollment. The application fee applies only to the first enrollment. The department [~~board~~] may not charge the application fee for any later enrollment, reenrollment, or transfer enrollment.

SECTION 2.13. Section 1601.265, Occupations Code, is amended to read as follows:

Sec. 1601.265. WAIVER OF LICENSE REQUIREMENTS; PERSONAL INTERVIEW. (a) The department [~~board~~] may waive any license

requirement for an applicant holding a license from another state or country that has license requirements substantially equivalent to those of this state.

(b) The department [~~board~~] may not require a personal interview as part of the application process.

SECTION 2.14. Subsection (b), Section 1601.301, Occupations Code, is amended to read as follows:

(b) A person who owns, operates, or manages a barbershop or specialty shop must:

(1) submit an application to the department [~~board~~] for an appropriate permit for each shop; and

(2) register with the department [~~board~~] the person's full name and the location of each shop.

SECTION 2.15. Section 1601.302, Occupations Code, is amended to read as follows:

Sec. 1601.302. TEMPORARY BARBERSHOP PERMIT. (a) A person who opens a new barbershop shall submit, not later than the third day after the date the shop opens, an application to the department [~~board~~] for a temporary barbershop permit accompanied by the required [~~an~~] inspection fee [~~not to exceed $70~~].

(b) The application must provide:

(1) the permanent address of the barbershop;

(2) the legal description of the premises to be licensed; and

(3) other information required by the department [~~board~~].

SECTION 2.16. Section 1601.303, Occupations Code, is

amended to read as follows:

Sec. 1601.303. ISSUANCE OF BARBERSHOP PERMIT. The department [~~board~~] shall issue a barbershop permit to an applicant if:

(1) the applicant holds a Class A barber certificate;

(2) the applicant has practiced barbering for at least 12 months; and

(3) the shop meets the minimum health standards for barbershops set by the commission [~~board~~] and all other rules of the commission [~~board~~].

SECTION 2.17. Subsections (b) and (c), Section 1601.304, Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist specialty shop permit must submit:

(1) an application that includes:

(A) the shop's address;

(B) the legal description of the premises for which the permit is sought; and

(C) any other information required by the department [~~board~~]; and

(2) the required [~~an~~] inspection fee [~~in an amount not to exceed $50~~].

(c) As soon as practicable after receipt of the application and fee, the department [~~board~~] shall issue a temporary manicurist specialty shop permit to the applicant. The applicant may operate the applicant's shop under the temporary permit until a permanent permit is issued.

SECTION 2.18. Section 1601.305, Occupations Code, is amended to read as follows:

Sec. 1601.305. ISSUANCE OF MANICURIST SPECIALTY SHOP PERMIT. The department [~~board~~] shall issue a permanent manicurist specialty shop permit to an applicant if:

(1) the applicant holds a manicurist license; and

(2) the shop meets the minimum health standards for manicurist specialty shops set by the commission [~~board~~], as determined by a department [~~board~~] inspection under Section 1603.103, and any other requirements imposed by commission [~~board~~] rule.

SECTION 2.19. Section 1601.309, Occupations Code, is amended to read as follows:

Sec. 1601.309. PRACTICE BY COSMETOLOGIST AT SPECIALTY SHOP PROHIBITED. A person who holds a license, permit, or certificate issued by the department under Chapter 1602 [~~Texas Cosmetology Commission~~] may not practice under that authority at a specialty shop regulated under this chapter.

SECTION 2.20. Section 1601.310, Occupations Code, is amended to read as follows:

Sec. 1601.310. RELOCATION OF SPECIALTY SHOP. (a) The holder of a specialty shop permit may move the person's specialty shop to a different location if the person receives department [~~board~~] approval for the new location.

(b) The permit holder must notify the department [~~board~~] of the move not later than the 10th day before the date the move is scheduled to occur.

SECTION 2.21. Section 1601.352, Occupations Code, is amended to read as follows:

Sec. 1601.352. APPLICATION FOR BARBER SCHOOL PERMIT. (a) An applicant for a barber school permit must demonstrate to the department [~~board~~] that the school meets the requirements of this subchapter for issuance of a permit.

(b) Before issuing a barber school permit, the department [~~board~~] must determine that the applicant is financially sound and capable of fulfilling the applicant's commitments for training.

SECTION 2.22. Section 1601.353, Occupations Code, is amended to read as follows:

Sec. 1601.353. REQUIRED FACILITIES AND EQUIPMENT. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school has:

(1) an adequate school site housed in a substantial building of permanent construction containing at least 2,800 square feet of floor space, divided into:

(A) a senior department;

(B) a junior department;

(C) a class theory room;

(D) a supply room;

(E) an office space;

(F) a dressing and cloak room; and

(G) two sanitary, modern, separate restrooms, each equipped with one commode and one of which is also equipped with a urinal;

(2) a hard-surface floor-covering of tile or other suitable material;

(3) at least 20 modern barber chairs, including a cabinet and mirror for each chair;

(4) a lavatory behind every two barber chairs;

(5) a liquid sterilizer for each barber chair;

(6) an adequate number of latherers, vibrators, and hair dryers for student use;

(7) adequate lighting for each room;

(8) at least 20 classroom chairs, a blackboard, anatomical charts of the head, neck, and face, and one barber chair in the class theory room;

(9) a library with library facilities available to students containing at least one medical dictionary and a standard work on human anatomy;

(10) adequate drinking fountain facilities, with at least one for each floor;

(11) adequate toilet facilities for the students; and

(12) adequate fire-fighting equipment.

(b) An applicant for a barber school permit must submit to the department [~~board~~]:

(1) a detailed drawing and chart of the proposed physical layout of the school, showing the departments, floor space, equipment, lights, and outlets;

(2) photographs of the proposed site for the school, including the interior and exterior of the building, rooms, and departments;

(3) a detailed copy of the training program;

(4) a copy of the catalogue and promotional literature of the school;

(5) a copy of the building lease or proposed building lease if the building is not owned by the school;

(6) a sworn statement showing the ownership of the school; and

(7) the required [~~a~~] permit fee [~~not to exceed $1,000~~].

SECTION 2.23. Section 1601.354, Occupations Code, is amended to read as follows:

Sec. 1601.354. PREREQUISITES FOR GRADUATION. (a) The department [~~board~~] may not approve an application for a barber school permit unless the school requires as a prerequisite for graduation the following hours of instruction:

(1) for a barber technician, 300 hours of instruction completed in a course of not less than eight weeks;

(2) for a Class A barber, 1,500 hours of instruction completed in a course of not less than nine months, at least 800 hours of which is in the actual practice of cutting hair as a primary service;

(3) for a manicurist, 600 hours of instruction completed in a course of not less than 16 weeks; and

(4) for a teacher, 1,000 hours of instruction completed in a course of not less than six months.

(b) If a barber school offers a refresher course, the course must require at least 300 hours of instruction. The commission

[~~board~~] by rule shall set the curriculum for a refresher course.

SECTION 2.24. Section 1601.355, Occupations Code, is amended to read as follows:

Sec. 1601.355. SUPERVISION AND TEACHING REQUIREMENTS. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school is under the direct supervision and control of a Class A barber certificate holder who presents evidence of at least five years' experience as a practicing barber.

(b) Each barber school for which a permit is sought must 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. In addition to satisfying other department [~~board~~] requirements, the teacher must demonstrate to the department [~~board~~]:

(1) through a written and practical examination an ability to teach the curriculum; and

(2) that the teacher is qualified to teach and:

(A) has had at least six months' experience as a teacher in an approved school in this state or in another state approved by the department [~~board~~]; or

(B) has completed 1,000 hours of instruction in a postgraduate course as a student teacher in a department-approved [~~board-approved~~] barber school in this state.

SECTION 2.25. Subsections (a) and (b), Section 1601.3571, Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the barber school tuition protection account is less than $25,000, the department [~~board~~] shall collect a fee from each barber school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $25,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~board~~] for the purpose of refunding unused tuition if a barber school ceases operation before its course of instruction is complete. The department [~~board~~] shall administer claims made against the account.

SECTION 2.26. Subsection (c), Section 1601.402, Occupations Code, is amended to read as follows:

(c) The department [~~board~~] shall issue a renewal certificate or license on receipt of a renewal application in the form prescribed by the department [~~board~~], accompanied by a renewal fee in an amount equal to the original certificate or license fee [~~but not to exceed $100~~].

SECTION 2.27. The heading to Section 1601.404, Occupations Code, is amended to read as follows:

Sec. 1601.404. [~~RENEWAL OR~~] REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE.

SECTION 2.28. Section 1601.404(c), Occupations Code, is amended to read as follows:

(c) A Class A barber or license holder who retires from practice and whose certificate or license has been expired for more than five years may qualify for a new certificate or license by

applying to the department [~~board~~] and by:

(1) making a proper showing to the department [~~board~~], supported by a personal affidavit;

(2) paying the required [~~an~~] examination fee [~~not to exceed $100~~];

(3) passing a satisfactory examination conducted by the department [~~board~~]; and

(4) paying the fee for an original certificate or license.

SECTION 2.29. Section 1601.405, Occupations Code, is amended to read as follows:

Sec. 1601.405. RENEWAL WHILE IN ARMED FORCES. (a) The department [~~board~~] may not require a Class A barber, barber technician, teacher, or manicurist who is serving on active duty in the United States armed forces to renew the person's certificate or license.

(b) The department [~~board~~] shall issue a renewal certificate or license on application and payment of the required [~~a~~] renewal fee not later than the 90th day after the date the person is released or discharged from active duty in the armed forces. [~~The renewal fee is:~~

[~~(1) $10 if the application and payment are made during the period beginning November 1 of an odd-numbered year and ending October 31 of the following year; or~~

[~~(2) $5 if the application and payment are made during the period beginning November 1 of an even-numbered year and ending October 31 of the following year.~~]

SECTION 2.30. Section 1601.406, Occupations Code, is amended to read as follows:

Sec. 1601.406. RENEWAL OF BARBERSHOP OR SPECIALTY SHOP PERMIT. (a) A barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance [~~on July 1 of each odd-numbered year~~].

(b) A barbershop permit holder may renew the permit by paying the required [~~a~~] renewal fee [~~not to exceed $70~~].

(c) A specialty shop permit holder may renew the permit by submitting to the department [~~board~~] a renewal application accompanied by the required [~~a~~] renewal fee [~~not to exceed $50~~].

SECTION 2.31. Section 1601.407, Occupations Code, is amended to read as follows:

Sec. 1601.407. RENEWAL OF BARBER SCHOOL PERMIT. (a) A barber school permit expires on the first anniversary [~~September 1~~] of the date of issuance [~~each year~~].

(b) A barber school may renew its permit by paying the required [~~a~~] renewal fee [~~not to exceed $300~~].

SECTION 2.32. Section 1601.452, Occupations Code, is amended to read as follows:

Sec. 1601.452. DISPLAY OF SANITATION RULES. Each barbershop or specialty shop shall post in the shop a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.33. Section 1601.453, Occupations Code, is amended to read as follows:

Sec. 1601.453. LOCATION OF PRACTICE. A person licensed by

the department [~~board~~] may practice barbering only at a location for which the department [~~board~~] has issued a barbershop permit, specialty shop permit, or barber school permit.

SECTION 2.34. Section 1601.454, Occupations Code, is amended to read as follows:

Sec. 1601.454. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY BOARD AND TEXAS COSMETOLOGY COMMISSION~~]. (a) The commission [~~board~~] may not adopt rules to restrict or prohibit practice by a Class A barber or manicurist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1602 [~~board and the Texas Cosmetology Commission~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1602 [~~the board and the Texas Cosmetology Commission license or permit the same facility~~], the commission [~~board~~] may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 2.35. Section 1601.502, Occupations Code, is amended to read as follows:

Sec. 1601.502. SUPERVISION OF BARBERSHOP. A person may not operate a barbershop unless:

(1) the shop is at all times under the exclusive supervision and management of a Class A barber; and

(2) no person is practicing on the premises by authority of a license, permit, or certificate issued by the department under Chapter 1602 [~~Texas Cosmetology Commission~~], except as allowed by other law.

SECTION 2.36. Section 1601.503, Occupations Code, is amended to read as follows:

Sec. 1601.503. NOTIFICATION OF CHANGE OF LOCATION. A person operating under a barbershop permit may move the operation to another location approved by the department [~~board~~] if the person notifies the department [~~board~~] not later than the 10th day before the date of the move.

SECTION 2.37. Section 1601.552, Occupations Code, is amended to read as follows:

Sec. 1601.552. DISPLAY OF SANITATION RULES. Each barber school shall post in the school a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.38. Section 1601.554, Occupations Code, is amended to read as follows:

Sec. 1601.554. CHANGE OF BARBER SCHOOL OWNERSHIP OR LOCATION. (a) If a barber school changes ownership, the department [~~board~~] must be notified of the change not later than the 10th day before the date the change takes effect.

(b) A barber school may not change the location of the school unless the school obtains approval from the department [~~board~~] before the change by showing that the proposed location

meets the requirements of Subchapter H for issuance of a permit to the school.

SECTION 2.39. Section 1601.556, Occupations Code, is amended to read as follows:

Sec. 1601.556. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a barber school permit shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the school's refund policy required under Section 1601.563;

(4) the school's grading policy and rules relating to incomplete grades;

(5) the school's rules of operation and conduct, including rules relating to absences;

(6) the department's [~~board's~~] name, mailing address, and telephone number for the purpose of directing complaints to the department [~~board~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 2.40. Section 1601.557, Occupations Code, is amended to read as follows:

Sec. 1601.557. COURSE LENGTH AND CURRICULUM CONTENT. (a) A barber school shall submit to the department [~~board~~] for approval the course length and curriculum content for a course offered by the school. The course length and curriculum content shall be designed to reasonably ensure that a student develops the

job skills and knowledge necessary for employment. The school may not implement a course length or curriculum content unless it is approved by the department [~~board~~].

(b) Before issuing or renewing a permit under this chapter, the department [~~board~~] shall require a school to account for all course lengths and curriculum contents.

SECTION 2.41. Subsection (b), Section 1601.559, Occupations Code, is amended to read as follows:

(b) The department [~~board~~] may inspect a school's attendance record book at any time.

SECTION 2.42. Section 1601.561, Occupations Code, is amended to read as follows:

Sec. 1601.561. REPORTS TO DEPARTMENT [~~BOARD~~]. (a) A barber school shall maintain [~~submit~~] a monthly progress report [~~to the board~~] regarding each student attending the school. The report must certify the daily attendance record of each student and the number of credit hours earned by each student during the previous month.

(b) On a student's completion of a prescribed course of instruction, the school shall notify [~~certify to~~] the department [~~board~~] that the student has completed the required number of hours and is eligible to take the appropriate examination.

(c) A barber school permit holder shall furnish to the department [~~board~~]:

(1) the current course completion rates of students who attend a course of instruction offered by the school; and

(2) job placement rates and employment rates of

students who complete a course of instruction.

SECTION 2.43. Subsection (d), Section 1601.566, Occupations Code, is amended to read as follows:

(d) The department [~~board~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department [~~board~~] on request documentation of the school's effort to locate the student.

SECTION 2.44. Section 1601.603, Occupations Code, is amended to read as follows:

Sec. 1601.603. DENIAL OF PERMIT; SUIT. (a) If the department [~~board~~] denies an application for a barber school permit, the school may request in writing the reasons for the refusal.

(b) If the barber school meets the requirements for issuance of the permit and shows that the requirements of this chapter have been met, and the department [~~board~~] refuses to issue the permit, the school may file suit in a district court in Travis County to require the department [~~board~~] to issue the permit.

(c) A suit under Subsection (b) must be filed not later than the 20th day after the date of the department's [~~board's~~] final order denying issuance of the permit, if registered notice of the order is mailed or it is otherwise shown that the school had notice of the order not later than the 10th day after the date the department [~~board~~] entered the order.

SECTION 2.45. Subsection (a), Section 1601.604, Occupations Code, is amended to read as follows:

(a) The commission [~~board~~] shall suspend or revoke the permit of a barber school that directly or indirectly violates this chapter.

SECTION 2.46. Section 1601.605, Occupations Code, is amended to read as follows:

Sec. 1601.605. PROBATION FOR ALTERING COURSE LENGTH. The commission [~~board~~] shall place on probation a barber school that alters a course length below or above industry standards until the school:

(1) provides justification for the alteration; or

(2) adjusts the course length to meet industry standards.

SECTION 2.47. Subsections (a), (b), and (c), Section 1601.606, Occupations Code, are amended to read as follows:

(a) If the department [~~board~~] has reasonable cause to believe that a barber school has violated this chapter or a rule adopted under this chapter, the department [~~board~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~board~~]. The department [~~board~~] shall attempt to provide a balance on a peer review team between members assigned to the team who are from this state and members who are from other states.

(c) The peer review team shall provide the department [~~board~~] with an objective assessment of the school's curriculum content and its application.

SECTION 2.48. Subsection (a), Section 1601.653, Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person is a barber inspector or other department [~~board~~] employee and the person sells barber supplies or engages in a business, other than barbering, that deals directly with a barber, barbershop, specialty shop, or barber school.

ARTICLE 3. REGULATION OF COSMETOLOGY

SECTION 3.01. Section 1602.001, Occupations Code, is amended to read as follows:

Sec. 1602.001. GENERAL DEFINITIONS. In this chapter:

(1) "Board" means the Advisory Board on Cosmetology.

(2) "Commission" means the Texas [~~Cosmetology~~] Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) [~~(2)~~] "Public school" includes a public high school, a public junior college, or any other nonprofit tax-exempt institution that conducts a cosmetology program.

SECTION 3.02. The heading to Subchapter B, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY BOARD ON [~~TEXAS~~] COSMETOLOGY [~~COMMISSION~~]

SECTION 3.03. The heading to Section 1602.051, Occupations Code, is amended to read as follows:

Sec. 1602.051. BOARD [~~COMMISSION~~]; MEMBERSHIP.

SECTION 3.04. Subsection (a), Section 1602.051, Occupations Code, is amended to read as follows:

[~~(a)~~] The Advisory Board on [~~Texas~~] Cosmetology [~~Commission~~] consists of five [~~six~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) one member who holds a license for a beauty shop that is part of a chain of beauty shops [~~license~~];

(2) one member who holds a license for a beauty shop that is not part of a chain of beauty shops;

(3) one member who holds a private beauty culture school license; and

(4) [~~(3)~~] two members who each hold an operator license[~~; and~~

[~~(4) two members who represent the public~~].

SECTION 3.05. Subsections (a) and (c), Section 1602.055, Occupations Code, are amended to read as follows:

(a) Members of the board [~~commission~~] serve staggered six-year terms, with the terms of one or two members expiring on the same date [~~December 31 of~~] each odd-numbered year.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 3.06. The heading to Section 1602.058, Occupations Code, is amended to read as follows:

Sec. 1602.058. PRESIDING OFFICER[~~; COMMITTEES~~].

SECTION 3.07. Subsection (a), Section 1602.058, Occupations Code, is amended to read as follows:

[~~(a)~~] The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate one member of the commission as presiding officer to serve in that capacity for a two-year term [~~at the pleasure of the governor~~].

SECTION 3.08. Subchapter B, Chapter 1602, is amended by adding Section 1602.060 to read as follows:

Sec. 1602.060. BOARD DUTIES. The board shall:

(1) advise the commission on rules, enforcement, licensing requirements, and continuing education;

(2) recommend to the commission standards of practice, conduct, and ethics for persons regulated under this chapter and Chapter 1603; and

(3) advise the commission in establishing education requirements for initial applicants.

SECTION 3.09. The heading to Subchapter D, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES RELATED TO COSMETOLOGY

SECTION 3.10. Subsections (a) and (b), Section 1602.153, Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of

records and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the department [~~commission~~], acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the department [~~commission~~] may be held.

SECTION 3.11. Subsection (c), Section 1602.251, Occupations Code, is amended to read as follows:

(c) A person licensed by the department [~~commission~~] may practice cosmetology only at a facility operated by a person holding a beauty shop license, private beauty culture school license, or other license issued by the department [~~commission~~].

SECTION 3.12. Subsection (b), Section 1602.258, Occupations Code, is amended to read as follows:

(b) To be eligible for a specialty certificate, an applicant must:

(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 the necessary requisites as determined by the department [~~commission~~] in the particular specialty for which certification is sought, including training through a commission-approved training program.

SECTION 3.13. Subsections (a) and (b), Section 1602.266,

Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] shall require a student enrolled in a school of cosmetology in this state to hold a permit stating the student's name and the name of the school. The permit shall be displayed in a reasonable manner at the school.

(b) The department [~~commission~~] shall issue a student permit to an applicant who submits an application to the department [~~commission~~] for a student permit accompanied by the required fee.

SECTION 3.14. Subsection (b), Section 1602.267, Occupations Code, is amended to read as follows:

(b) The department [~~commission~~] shall issue a shampoo apprentice permit to an applicant who[~~:~~

[~~(1)~~] is at least 16 years of age[~~; and~~

[~~(2) submits a certificate of health as required by Section 1602.253~~].

SECTION 3.15. Subsection (b), Section 1602.302, Occupations Code, is amended to read as follows:

(b) An application for a beauty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a beauty shop established by the commission; and

(3) be verified by the applicant.

SECTION 3.16. Subsections (b) and (c), Section 1602.303, Occupations Code, are amended to read as follows:

(b) An application for a private beauty culture school

license must be accompanied by the required license fee and inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) be verified by the applicant;

(3) contain a detailed floor plan of the school building divided into two separate areas, one area for instruction in theory and one area for clinic work; and

(4) contain a statement that the building:

(A) is fireproof;

(B) is of permanent construction;

(C) contains a minimum of 3,500 square feet of floor space;

(D) has separate restrooms for male and female students; and

(E) contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 50 students.

(c) The applicant is entitled to a private beauty culture school license if:

(1) the department [~~commission~~] determines that the applicant is financially sound and capable of fulfilling the school's commitments for training;

(2) the applicant's facilities pass an inspection conducted by the department under Section 1603.103 [~~commission~~]; and

(3) the applicant has not committed an act that

constitutes a ground for denial of a license.

SECTION 3.17. Subsection (b), Section 1602.305, Occupations Code, is amended to read as follows:

(b) An application for a specialty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a specialty shop as established by the commission; and

(3) be verified by the applicant.

SECTION 3.18. Subsection (b), Section 1602.306, Occupations Code, is amended to read as follows:

(b) An application for a booth rental license must:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain information as required by commission rule; and

(3) be verified by the applicant.

SECTION 3.19. The heading to Section 1602.352, Occupations Code, is amended to read as follows:

Sec. 1602.352. REQUIREMENT FOR FIRST [~~PROCEDURE FOR~~] RENEWAL OF LICENSE [~~OR REINSTATEMENT~~].

SECTION 3.20. Subchapter H, Chapter 1602, Occupations Code, is amended by adding Section 1602.353 to read as follows:

Sec. 1602.353. INACTIVE STATUS. (a) Not later than the 10th day before the expiration date of a certificate or license issued under this chapter, the certificate or license holder may

place the certificate or license on inactive status by:

(1) submitting an application for inactive status to the department on a form prescribed by the department; and

(2) paying the required fee.

(b) Except as provided by Subsection (e), a person whose certificate or license is on inactive status is not required to complete continuing education required under this chapter.

(c) A person whose certificate or license is on inactive status may reapply for inactive status before the expiration date of the certificate or license. The person must pay the required fee.

(d) A license holder may not employ a person on inactive status.

(e) A person on inactive status may return the certificate or license to active status by:

(1) applying to the department for active status on a form prescribed by the department;

(2) paying the required fee; and

(3) providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding two-year license period.

(f) The commission may set fees and adopt rules to implement this section.

SECTION 3.21. Section 1602.405, Occupations Code, is amended to read as follows:

Sec. 1602.405. PRACTICE AT FACILITY LICENSED OR PERMITTED

AS BARBER AND COSMETOLOGIST FACILITY [~~BY COMMISSION AND STATE BOARD OF BARBER EXAMINERS~~]. (a) The commission may not adopt rules to restrict or prohibit practice by a cosmetologist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1601 [~~commission and the State Board of Barber Examiners~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1601 [~~the commission and the State Board of Barber Examiners license the same facility~~], the commission may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 3.22. Subsection (a), Section 1602.451, Occupations Code, is amended to read as follows:

(a) The holder of a private beauty culture school license shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours one full-time licensed instructor for each 25 students in attendance;

(3) maintain a daily record of students' attendance;

(4) establish regular class and instruction hours and

grades;

(5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than 600 hours instruction for a complete course in manicuring;

(7) hold examinations before issuing diplomas;

(8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed;

(9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and

(10) [~~submit to the executive director the name of each student within 10 days after the date the student enrolls in the school and notify the executive director of the withdrawal or graduation of a student not later than the 10th day after the date the student withdraws or graduates; and~~

[~~(11)~~] provide the department [~~commission~~] with information on:

(A) the current course completion rates of students who attend a course of instruction offered by the school; and

(B) job placement rates and employment rates of students who complete the course of instruction.

SECTION 3.23. Section 1602.452, Occupations Code, is amended to read as follows:

Sec. 1602.452. INFORMATION PROVIDED TO PROSPECTIVE

STUDENT. The holder of a private beauty culture school license shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the refund policy required under Section 1602.458;

(4) the school grading policy and rules relating to incomplete grades;

(5) the school rules of operation and conduct, including rules relating to absences;

(6) the name, mailing address, and telephone number of the department [~~commission~~] for the purpose of directing complaints to the department [~~commission~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 3.24. Subsection (c), Section 1602.453, Occupations Code, is amended to read as follows:

(c) Before issuing or renewing a license under this chapter, the department [~~commission~~] shall require a school to account for each course length and curriculum content.

SECTION 3.25. Section 1602.454, Occupations Code, is amended to read as follows:

Sec. 1602.454. STUDENT RECORD. A private beauty culture school shall notify [~~send to~~] the department [~~commission a certified copy of a student's record, indicating all course hours completed by the student and whether the agreed tuition has been paid,~~] when a [~~the~~] student[~~:~~

[~~(1)~~] graduates from a course of training offered by

the school and is eligible to take the appropriate examination[~~, or~~

[~~(2) withdraws or transfers from a course of training without completion of the training~~].

SECTION 3.26. Subsection (d), Section 1602.460, Occupations Code, is amended to read as follows:

(d) The department [~~commission~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department [~~commission~~] on request documentation of the effort to locate the student.

SECTION 3.27. Subsection (a), Section 1602.463, Occupations Code, is amended to read as follows:

(a) If a private beauty culture school closes, the department [~~commission~~] shall attempt to arrange for students enrolled in the closed school to attend another private beauty culture school.

SECTION 3.28. Subsections (a) and (b), Section 1602.464, Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the private beauty culture school tuition protection account is less than $200,000, the department [~~commission~~] shall collect a fee from each private beauty culture school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $200,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~commission~~] for the

purpose described by Section 1602.463. The department [~~commission~~] shall administer claims made against the account.

SECTION 3.29. Subsections (a), (b), and (c), Section 1602.465, Occupations Code, are amended to read as follows:

(a) If the department [~~commission~~] has reasonable cause to believe that a private beauty culture school has violated this chapter or a rule adopted under this chapter, the department [~~commission~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~commission~~]. The department [~~commission~~] shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states.

(c) The team shall provide the department [~~commission~~] with an objective assessment of the content of the school's curriculum and its application.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Section 232.002, Family Code, is amended to read as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following are licensing authorities subject to this chapter:

(1) Department of Agriculture;

(2) [~~Texas Commission on Alcohol and Drug Abuse;~~

[~~(3)~~] Texas Alcoholic Beverage Commission;

(3) [~~(4)~~] Texas Appraiser Licensing and Certification

Board;

(4) [~~(5)~~] Texas Board of Architectural Examiners;

(5) [~~(6) State Board of Barber Examiners;~~

[~~(7)~~] Texas Board of Chiropractic Examiners;

(6) [~~(8)~~] Comptroller of Public Accounts;

(7) [~~(9) Texas Cosmetology Commission;~~

[~~(10)~~] Court Reporters Certification Board;

(8) [~~(11)~~] State Board of Dental Examiners;

(9) [~~(12)~~] Texas State Board of Examiners of Dietitians;

(10) [~~(13)~~] Texas Funeral Service Commission;

(11) [~~(14) Texas~~] Department of State Health Services [~~Health~~];

(12) [~~(15) Texas~~] Department of Aging and Disability [~~Human~~] Services;

(13) [~~(16)~~] Texas Board of Professional Land Surveying;

(14) [~~(17)~~] Texas Department of Licensing and Regulation;

(15) [~~(18)~~] Texas State Board of Examiners of Marriage and Family Therapists;

(16) [~~(19)~~] Texas State Board of Medical Examiners;

(17) [~~(20)~~] Midwifery Board;

(18) [~~(21)~~] Texas Commission on Environmental Quality;

(19) [~~(22)~~] Board of Nurse Examiners;

(20) [~~(23)~~] Texas Board of Occupational Therapy

Examiners;

(21) [~~(24)~~] Texas Optometry Board;

(22) [~~(25)~~] Parks and Wildlife Department;

(23) [~~(26)~~] Texas State Board of Examiners of Perfusionists;

(24) [~~(27)~~] Texas State Board of Pharmacy;

(25) [~~(28)~~] Texas Board of Physical Therapy Examiners;

(26) [~~(29)~~] Texas State Board of Plumbing Examiners;

(27) [~~(30)~~] Texas State Board of Podiatric Medical Examiners;

(28) [~~(31)~~] Polygraph Examiners Board;

(29) [~~(32)~~] Texas [~~Commission on~~] Private Security Board;

(30) [~~(33)~~] Texas State Board of Examiners of Professional Counselors;

(31) [~~(34)~~] Texas Board of Professional Engineers;

(32) [~~(35)~~] Department of Family and Protective [~~and Regulatory~~] Services;

(33) [~~(36)~~] Texas State Board of Examiners of Psychologists;

(34) [~~(37)~~] Texas State Board of Public Accountancy;

(35) [~~(38)~~] Department of Public Safety of the State of Texas;

(36) [~~(39)~~] Public Utility Commission of Texas;

(37) [~~(40)~~] Railroad Commission of Texas;

(38) [~~(41)~~] Texas Real Estate Commission;

(39) [~~(42)~~] State Bar of Texas;

(40) [~~(43)~~] Texas State Board of Social Worker Examiners;

(41) [~~(44)~~] State Board of Examiners for Speech-Language Pathology and Audiology;

(42) [~~(45)~~] Texas Structural Pest Control Board;

(43) [~~(46)~~] Board of Tax Professional Examiners;

(44) [~~(47)~~] Secretary of State;

(45) [~~(48)~~] Supreme Court of Texas;

(46) [~~(49)~~] Texas Transportation Commission;

(47) [~~(50)~~] State Board of Veterinary Medical Examiners;

(48) [~~(51)~~] Texas Ethics Commission;

(49) [~~(52)~~] Advisory Board of Athletic Trainers;

(50) [~~(53)~~] State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(51) [~~(54)~~] Texas Board of Licensure for Professional Medical Physicists;

(52) [~~(55)~~] Texas Department of Insurance;

(53) [~~(56)~~] Texas Board of Orthotics and Prosthetics;

(54) [~~(57)~~] savings and loan commissioner;

(55) [~~(58)~~] Texas Juvenile Probation Commission; and

(56) [~~(59)~~] Texas Lottery Commission under Chapter 466, Government Code.

SECTION 4.02. Subsection (d), Section 411.122, Government Code, is amended to read as follows:

(d) The following state agencies are subject to this

section:

(1) Texas Appraiser Licensing and Certification Board;

(2) Texas Board of Architectural Examiners;

(3) [~~State Board of Barber Examiners;~~

[~~(4)~~] Texas Board of Chiropractic Examiners;

(4) [~~(5) Texas Cosmetology Commission;~~

[~~(6)~~] State Board of Dental Examiners;

(5) [~~(7)~~] Texas Board of Professional Engineers;

(6) [~~(8)~~] Texas Funeral Service Commission;

(7) [~~(9)~~] Texas Board of Professional Geoscientists;

(8) [~~(10) Texas~~] Department of State Health Services, except as provided by Section 411.110, and agencies attached to the department, including:

(A) Texas State Board of Examiners of Dietitians;

(B) Texas State Board of Examiners of Marriage and Family Therapists;

(C) Midwifery Board;

(D) Texas State Board of Examiners of Perfusionists;

(E) Texas State Board of Examiners of Professional Counselors;

(F) Texas State Board of Social Worker Examiners;

(G) State Board of Examiners for Speech-Language Pathology and Audiology;

(H) Advisory Board of Athletic Trainers;

(I) State Committee of Examiners in the Fitting

and Dispensing of Hearing Instruments;

(J) Texas Board of Licensure for Professional Medical Physicists; and

(K) Texas Board of Orthotics and Prosthetics;

(9) [~~(11)~~] Texas Board of Professional Land Surveying;

(10) [~~(12)~~] Texas Department of Licensing and Regulation, except as provided by Section 411.093;

(11) [~~(13)~~] Texas Commission on Environmental Quality;

(12) [~~(14)~~] Texas Board of Occupational Therapy Examiners;

(13) [~~(15)~~] Texas Optometry Board;

(14) [~~(16)~~] Texas State Board of Pharmacy;

(15) [~~(17)~~] Texas Board of Physical Therapy Examiners;

(16) [~~(18)~~] Texas State Board of Plumbing Examiners;

(17) [~~(19)~~] Texas State Board of Podiatric Medical Examiners;

(18) [~~(20)~~] Polygraph Examiners Board;

(19) [~~(21)~~] Texas State Board of Examiners of Psychologists;

(20) [~~(22)~~] Texas Real Estate Commission;

(21) [~~(23)~~] Board of Tax Professional Examiners;

(22) [~~(24)~~] Texas Department of Transportation;

(23) [~~(25)~~] State Board of Veterinary Medical Examiners;

(24) [~~(26) Board of Vocational Nurse Examiners;~~

[~~(27)~~] Texas Department of Housing and Community Affairs;

(25) [~~(28)~~] secretary of state;

(26) [~~(29)~~] state fire marshal;

(27) [~~(30)~~] Texas Education Agency; and

(28) [~~(31)~~] Department of Agriculture.

SECTION 4.03. Subsection (a), Section 2054.352, Government Code, is amended to read as follows:

(a) The following licensing entities shall participate in the system established under Section 2054.353[~~, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001~~]:

(1) [~~State Board of Barber Examiners;~~

[~~(2)~~] Texas Board of Chiropractic Examiners;

(2) [~~(3) Texas Cosmetology Commission;~~

[~~(4)~~] Court Reporters Certification Board;

(3) [~~(5)~~] State Board of Dental Examiners;

(4) [~~(6)~~] Texas Funeral Service Commission;

(5) [~~(7)~~] Texas Board of Professional Land Surveying;

(6) [~~(8)~~] Texas State Board of Medical Examiners;

(7) [~~(9)~~] Board of Nurse Examiners;

(8) [~~(10)~~] Texas Optometry Board;

(9) [~~(11)~~] Texas Structural Pest Control Board;

(10) [~~(12)~~] Texas State Board of Pharmacy;

(11) [~~(13)~~] Executive Council of Physical Therapy and Occupational Therapy Examiners;

(12) [~~(14)~~] Texas State Board of Plumbing Examiners;

(13) [~~(15)~~] Texas State Board of Podiatric Medical Examiners;

(14) [~~(16)~~] Board of Tax Professional Examiners;

(15) [~~(17)~~] Polygraph Examiners Board;

(16) [~~(18)~~] Texas State Board of Examiners of Psychologists;

(17) [~~(19)~~] State Board of Veterinary Medical Examiners;

(18) [~~(20)~~] Texas Real Estate Commission;

(19) [~~(21)~~] Texas Appraiser Licensing and Certification Board;

(20) [~~(22)~~] Texas Department of Licensing and Regulation;

(21) [~~(24)~~] Texas State Board of Public Accountancy;

(22) [~~(25)~~] State Board for Educator Certification;

(23) [~~(26)~~] Texas Board of Professional Engineers;

(24) [~~(27) Texas~~] Department of State Health Services;

(25) [~~(28)~~] Texas Board of Architectural Examiners;

(26) [~~(29)~~] Texas Racing Commission;

(27) [~~(30)~~] Commission on Law Enforcement Officer Standards and Education; and

(28) [~~(31)~~] Texas [~~Commission on~~] Private Security Board.

ARTICLE 5. REPEALER

SECTION 5.01. The following laws are repealed:

(1) Subchapters C, D, E, and O, Chapter 1601,

Occupations Code;

(2) Subchapters C, E, and K, Chapter 1602, Occupations Code; and

(3) Sections 1601.004, 1601.051(b) and (c), 1601.052, 1601.053, 1601.054, 1601.056, 1601.057, 1601.252, 1601.261, 1601.262, 1601.263, 1601.264, 1601.266, 1601.267, 1601.356, 1601.401, 1601.402(d), 1601.403, 1601.404(a) and (b), 1601.408, 1601.601, 1601.651, 1601.654, 1602.004, 1602.051(b) and (c), 1602.052, 1602.053, 1602.054, 1602.055(b), 1602.056, 1602.057, 1602.058(b), 1602.059, 1602.151, 1602.152, 1602.154, 1602.155, 1602.252, 1602.253, as amended by Chapter 1282, Acts of the 78th Legislature, Regular Session, 2003, 1602.259, 1602.260, 1602.261, 1602.263, 1602.264, 1602.265, 1602.303(d), 1602.304(b), 1602.351(d), 1602.352(b) through (f), 1602.407, 1602.551, 1602.552, 1602.553, and 1602.555, Occupations Code.

ARTICLE 6. TRANSITION AND EFFECTIVE DATE

SECTION 6.01. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission are abolished but continue in existence until September 1, 2006, for the sole purpose of transferring obligations, property, employees, rights, powers, and duties to the Texas Department of Licensing and Regulation. The Texas Department of Licensing and Regulation assumes all of the obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission, as they exist immediately before the effective date of this Act. All unexpended funds appropriated to the State Board of Barber Examiners and the Texas Cosmetology Commission are

transferred to the Texas Department of Licensing and Regulation. The transfer of the obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation must be completed not later than September 1, 2006.

(b) All rules of the State Board of Barber Examiners and the Texas Cosmetology Commission are continued in effect as rules of the Texas Commission of Licensing and Regulation until superseded by a rule of the Texas Commission of Licensing and Regulation. A certificate, license, or permit issued by the State Board of Barber Examiners or the Texas Cosmetology Commission is continued in effect as provided by the law in effect immediately before the effective date of this Act. A complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. An inspection or other activity conducted by the State Board of Barber Examiners or the Texas Cosmetology Commission is considered to be an inspection or activity conducted by the Texas Department of Licensing and Regulation, including an inspection or other activity conducted for purposes of allowing a school, shop, or facility to continue to operate under Section 1603.103, Occupations Code, as added by this Act.

(c) A reference in another law or an administrative rule to the State Board of Barber Examiners or the Texas Cosmetology Commission means the Texas Department of Licensing and Regulation.

SECTION 6.02. Sections 1602.353 and 1603.352, Occupations Code, as added by this Act, take effect January 1, 2006.

SECTION 6.03. This Act takes effect September 1, 2005.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 15, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB411** by Whitmire (Relating tot he regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB411, Committee Report 1st House. Substituted: a positive impact of $2,336,806 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$1,005,903
2007	$1,330,903
2008	$1,330,903
2009	$1,330,903
2010	$1,330,903

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	$1,005,903	(19.5)
2007	$1,330,903	(19.5)
2008	$1,330,903	(19.5)
2009	$1,330,903	(19.5)
2010	$1,330,903	(19.5)

Fiscal Analysis

The provisions of the bill abolish the State Board of Barber Examiners (Board) and the Texas Cosmetology Commission (Commission), which then transfers their function to the Texas Department of Licensing and Regulation (TDLR).

The provisions of the bill create two new advisory committees to advise TDLR on barbering and cosmetology and provides for composition requirements and duties of the advisory boards. The provisions require barber and cosmetology inspection efforts to be risk-based that focus on sanitation violations and establish the criteria for a risk-based inspection procedure. The provisions allow TDLR to inspect barber and cosmetology facilities before the facility begins operations and to charge fees for

the inspections and authorize the registration of examination proctors at TDLR who would hold a certificate enabling them to administer cosmetology and barber exams around the state. The provisions eliminate the barber health certificate requirement and create an inactive license status for cosmetology licensees.

TDLR would adopt fees in amounts considered reasonable and necessary to provide sufficient revenue to administer the programs under its authority. The provisions would remove the fee caps established for various fees established by the two current regulatory agencies and would establish standard time frames and late fees for license renewals.

The bill would take effect September 1, 2005.

Methodology

It is assumed that TDLR would not adjust the current fees set by the Board of Barber Examiners and Cosmetology Commission that would lower overall revenue estimated in the 2006-07 Comptrollers' Biennial Revenue Estimate.

Based on information provided by the Sunset Advisory Commission (SAC), abolishing independent agencies and transferring their function to TDLR would result in a total savings or $1,005,903 and a reduction of 19.5 Full-time Equivalents (FTEs) each fiscal year.

Abolishing the independent agencies and merging their functions would result in a reduction of 11.5 redundant and unneeded FTE positions. Eliminating these positions saves approximately $666,207 annually, based on the current salary and benefit levels of the positions at the Board and Commission.

The savings are based on a reduction of 3.5 FTEs at the Board resulting in an annual savings of $179,234 based on current salary and benefit levels associated with the Executive Director position, the CFO position, one administrative position, and one-half of the support services position, which can be absorbed by TDLR.

The reductions would also include an 8 FTE reduction from the Commission resulting in a cost savings of $478,207 per year based on current salary and benefit levels associated with the Executive Director position, one information specialist position, one director of enforcement position, one CFO position, three accounting positions, and one IT position.

Additionally, abolishing both the policymaking bodies consisting of seven members each for each agency would result in a reduction of travel costs for Board and Commission members. Based on an average travel reimbursement of $250 per member per meeting, and assuming that the current Board and Commission met four times a year, the reduction of 14 board members would save $14,000 per year.

Requiring inspections to be risk-based, at least every two years would reduce the number of inspections that the agencies currently administer per year by an estimated one-quarter reduction on average. Assuming that one inspector can, on average, perform 1,500 inspections per year, reducing the number of inspection would result in a reduction of three inspector positions at the Board and five inspector positions at the Commission. Based on average salary classifications for these inspectors (Inspector III, salary group B5) plus benefits at the 29.74 percent rate, the reduction would result in a cost savings of $40,712 per position, or $325,696 annually.

SAC estimates that authorizing the registration of examination proctors at TDLR would not result in a fiscal impact. Any cost associated with registering proctors would be minimal.

In addition, the Board and the Commission currently contract for its licensing system from Northrup Grumman at estimated annual costs of $50,000 and $275,000, respectively. It is estimated that TDLR would transfer these licensing system to its own system in fiscal year 2006 and realize a savings of $325,000 beginning in fiscal year 2007.

Technology

Savings of $325,000 from the transfer of the Board's and Commission's licensing system to TDLR's in fiscal year 2007.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 308 State Auditor's Office, 452 Department of Licensing and Regulation, 502 Board of Barber Examiners, 505 Cosmetology Commission

LBB Staff: JOB, LB, MW, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 11, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB411** by Whitmire (Relating to the regulation of barbers and cosmetologists by the Texas Board of Barbering and Cosmetology and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB411, As Introduced: a positive impact of $976,494 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$389,247
2007	$587,247
2008	$587,247
2009	$587,247
2010	$587,247

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	$587,247	($198,000)	(11.1)
2007	$587,247	$0	(13.0)
2008	$587,247	$0	(13.0)
2009	$587,247	$0	(13.0)
2010	$587,247	$0	(13.0)

Fiscal Analysis

The provisions of the bill abolish the State Board of Barber Examiners and the Texas Cosmetology Commission, which would be replaced by the newly created Texas Board of Barbering and Cosmetology (Board). The provisions would continue the new Board for four years and would require the Sunset Advisory Commission to review the Board and report to the 81st Legislature in 2009.

The new Board would consist of nine members serving staggered six-year terms. Board members would be entitled to receive the per diem set by, and reimbursement for travel expenses in accordance with, the General Appropriations Act.

The Board would adopt fees in amounts considered reasonable and necessary to provide sufficient revenue to administer the programs under its authority. The provisions would remove the fee caps established for various fees established by the two current regulatory agencies and would establish standard time frames and late fees for license renewals.

The provisions remove the requirement that applicants take barber or cosmetology practical examinations before their written examinations.

The transfer of all obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the newly created Board would have to be completed no later than September 1, 2006, at which time both existing agencies would be abolished. All existing rules would remain in effect until superseded by a rule of the newly created board.

The bill would require that no later than September 1, 2006, the State Auditor shall conduct a management audit of the Board and deliver the audit report to the Governor, Lieutenant Governor, Speaker of the House of Representatives and the Sunset Advisory Commission.

The bill would take effect September 1, 2005.

Methodology

It is assumed that the Board would not lower the current fees set by the Board of Barber Examiners and the Cosmetology Commission.

Based on information provided by the Sunset Advisory Commission (SAC), abolishing the independent agencies and merging their functions would result in a total savings of $587,247 and a reduction of 13 Full-time Equivalents (FTEs) each fiscal year.

The reductions would include two redundant FTE positions, including one Executive Director ($60,119) position and one Chief Financial Officer ($69,016) position. It is estimated that eliminating these positions would save $129,135 annually, based on the current salary and benefit levels of the current executive director and finance director positions at the Cosmetology Commission.

Additionally, abolishing the independent policymaking bodies consisting of seven members each for each agency and creating one Board consisting of nine members would result in a reduction of travel costs for Board members. Based on an average travel reimbursement of $250 per member per meeting, and assuming that the new Board will meet four times per year, the reduction of five board members would save $5,000 per year.

According to SAC, requiring inspections to be risk-based, at least every two years would reduce the number of inspections that the agencies currently administer per year by an estimated one-quarter reduction on average. It is assumed that one inspector can perform 1,500 inspections per year. This would result in a reduction of three inspector positions at the Board of Barber Examiners and five inspector positions at the Cosmetology Commission. Based on average salary classifications for these inspectors (Inspector III) plus benefits, the reduction would result in a cost savings of $40,712 per position, or $325,696 annually.

Because the Board of Barber Examiners members give the practical exam and travel to Austin six times a year, eliminating the practical exam would reduce the amount of travel reimbursements by $220 per member, for four members who are barbers, resulting in an annual savings of $5,280.

The Cosmetology Commission has four FTEs that give the written and practical exam. It is estimated that eliminating the practical exam portion would eliminate three of the four FTE positions at the Cosmetology Commission. Based on average salary classifications for these employees (Inspector III) plus benefits, the reduction would result in a cost savings of $40,712 per position, or $122,136 annually.

According to the State Auditor's Office, it is estimated that the required management audit would cost $198,000 and require an additional 1.9 FTEs in fiscal year 2006.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 360 State Office of Administrative Hearings, 502 Board of Barber Examiners, 505 Cosmetology Commission

LBB Staff: JOB, LB, MW, DE

HOUSE COMMITTEE REPORT

05 MAY 20 AM 2:17
HOUSE OF REPRESENTATIVES

1st Printing

By: Whitmire (Hamric) S.B. No. 411

Substitute the following for S.B. No. 411:

By: Otto C.S.S.B. No. 411

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.01. Title 9, Occupations Code, is amended by adding Chapter 1603 to read as follows:

CHAPTER 1603. REGULATION OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(b) Unless the context clearly indicates otherwise, the definitions in Chapters 1601 and 1602 apply to this chapter.

Sec. 1603.002. REGULATION OF BARBERING AND COSMETOLOGY BY DEPARTMENT OF LICENSING AND REGULATION. The department shall administer this chapter and Chapters 1601 and 1602. A reference in this chapter to the commission's or department's powers or duties

applies only in relation to those chapters, except that this section does not limit the department's or commission's general powers under Chapter 51.

[Sections 1603.003-1603.050 reserved for expansion]

SUBCHAPTER B. ADVISORY BOARDS FOR BARBERING AND COSMETOLOGY

Sec. 1603.051. DUTIES. The advisory boards established under Chapters 1601 and 1602 shall advise the commission on administering this chapter and Chapters 1601 and 1602 regarding barbering or cosmetology, as applicable.

[Sections 1603.052-1603.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1603.101. RULES. The commission shall adopt rules consistent with this chapter for:

(1) the administration of this chapter and the operations of the department in regulating barbering and cosmetology; and

(2) the administration of Chapters 1601 and 1602.

Sec. 1603.102. SANITATION RULES. The commission shall establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.103. INSPECTION OF SCHOOLS, SHOPS, AND FACILITIES BEFORE OPERATION. (a) Until the department determines, by inspection, that the person has established the school, shop, or facility in compliance with this chapter, Chapter 1601, or Chapter 1602, a person may not operate a school, shop, or other facility licensed or permitted under this chapter, Chapter 1601, or Chapter 1602.

(b) A school, shop, or other facility that is not approved by the department on initial inspection may be reinspected.

(c) The school, shop, or other facility shall pay a fee for each inspection. The commission shall by rule set the amount of the fee.

Sec. 1603.104. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(2) any place in which the department has reasonable cause to believe that a certificate, license, or permit holder is practicing in violation of this chapter, Chapter 1601, or Chapter 1602 or in violation of a rule or order of the commission or executive director.

(b) At least once every two years, the department shall inspect each school, shop, or other facility that holds a license, certificate, or permit under this chapter, Chapter 1601, or Chapter 1602.

(c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the school, shop, or other facility;

(2) whether there has been a prior sanitation violation at the school, shop, or facility;

(3) the inspection history of the school, shop, or

other facility;

(4) any history of complaints involving the school, shop, or other facility; and

(5) any other factor determined by the commission by rule.

(d) An inspector who discovers a violation of this chapter, Chapter 1601, or Chapter 1602 or of a rule or order of the commission or executive director shall:

(1) provide written notice of the violation to the license, certificate, or permit holder on a form prescribed by the department; and

(2) file a complaint with the executive director.

(e) The school, shop, or other facility shall pay a fee for each inspection performed under Subsection (c). The commission shall by rule set the amount of the fee.

Sec. 1603.105. RETENTION OF STUDENT RECORDS. The department may not retain student records, including student transcripts, beyond the time required by state law.

[Sections 1603.106-1603.150 reserved for expansion]

SUBCHAPTER D. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.151. NOTIFICATION OF PUBLIC INTEREST INFORMATION AND PARTICIPATION. The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding barbering and cosmetology. The department may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter, Chapter 1601, or Chapter 1602;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(3) in a bill for service provided by a person regulated under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.152. COMPLAINT JURISDICTION; NOTIFICATION. If the department determines that it lacks jurisdiction to resolve the complaint, the department shall notify the complainant in writing that the department is closing the complaint because it lacks jurisdiction.

Sec. 1603.153. ANALYSIS OF COMPLAINTS AND VIOLATIONS. (a) The department shall develop and maintain a system to analyze the processing, sources, and types of complaints filed with the department and the types of violations that occur under this chapter, Chapter 1601, and Chapter 1602.

(b) Based on the information under Subsection (a), the department shall analyze trends in violations and complaints that may require further attention or technical assistance to help reduce the frequency of those complaints and violations.

(c) The department shall annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year, including:

(1) the number of complaints filed;

(2) a categorization of complaints filed according to

the basis of the complaint and the number of complaints in each category;

(3) the number of complaints filed by department staff;

(4) the number of complaints filed by persons other than department staff;

(5) the number of complaints filed over which the department lacks jurisdiction;

(6) the average length of time required to close a complaint or violation from the time the department receives the complaint or otherwise initiates an investigation of a possible violation until the complaint or violation is resolved by a final order or penalty;

(7) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal; and

(B) the number of complaints resulting in disciplinary action and the type of disciplinary action taken; and

(8) the number of complaints filed that are unresolved, the number of those complaints filed by department staff, the number of those complaints filed by persons other than department staff, and the average length of time that the unresolved complaints have been on file.

Sec. 1603.154. INFORMAL SETTLEMENT CONFERENCE. The department shall establish guidelines for an informal settlement conference related to a complaint filed with the department.

[Sections 1603.155-1603.200 reserved for expansion]

SUBCHAPTER E. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.201. APPLICATION FORM. An application for a certificate, license, or permit must be made on a form prescribed and provided by the department.

Sec. 1603.202. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. The department shall issue a duplicate certificate, license, or permit to an applicant who:

(1) submits an application for a duplicate certificate, license, or permit to the department; and

(2) pays the required fee.

Sec. 1603.203. PROVISIONAL CERTIFICATE OR LICENSE. (a) The department may issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who:

(1) has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in another jurisdiction, including a foreign country, that has requirements substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602, as appropriate; and

(2) has passed a national or other examination recognized by the commission relating to the practice of that profession.

(b) A provisional certificate or license is valid until the date the department approves or denies the provisional certificate or license holder's application. The department shall issue a

certificate or license to the provisional certificate or license holder if:

(1) the provisional certificate or license holder is eligible to hold a certificate or license under Chapter 1601 or Chapter 1602; or

(2) the provisional certificate or license holder passes the part of the examination under Chapter 1601 or Chapter 1602 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of the profession in this state and:

(A) the department verifies that the provisional certificate or license holder meets the academic and experience requirements for the certificate or license; and

(B) the provisional certificate or license holder satisfies any other certificate or license requirements.

(c) The department must approve or deny a provisional certificate or license holder's application for a certificate or license not later than the 180th day after the date the provisional certificate or license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

Sec. 1603.204. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. (a) A person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602 may apply for a license, certificate,

or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country.

(b) The person must:

(1) submit an application for the license, certificate, or permit to the department; and

(2) pay fees in an amount prescribed by the commission, including any applicable license, certificate, or permit fee.

(c) A person issued a license, certificate, or permit under this section:

(1) may perform the acts of barbering or cosmetology stated on the license, certificate, or permit; and

(2) is subject to the renewal procedures and fees provided in this chapter, Chapter 1601, or Chapter 1602 for the performance of those acts of barbering or cosmetology.

[Sections 1603.205-1603.250 reserved for expansion]

SUBCHAPTER F. EXAMINATION REQUIREMENTS

Sec. 1603.251. DEFINITION. In this subchapter, "examination proctor" means an individual registered under this subchapter to administer a practical examination for the department.

Sec. 1603.252. GENERAL EXAMINATION REQUIREMENTS. (a) The department may accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations.

(b) The executive director shall determine uniform standards for acceptable performance on an examination for a

license or certificate under Chapter 1601 and for a license or certificate under Chapter 1602.

(c) The examination must include a written examination as provided by Section 1603.253 and may include a practical examination as provided by Section 1603.256.

Sec. 1603.253. WRITTEN EXAMINATION. The commission shall select an examination for each written examination required under this chapter, Chapter 1601, or Chapter 1602. The written examination must be:

(1) validated by an independent testing professional; or

(2) purchased from a national testing service.

Sec. 1603.254. EXAMINATION FOR BARBERS. (a) An applicant for an examination for a certificate or license issued under Chapter 1601 must submit to the department an application on a form prescribed and provided by the department accompanied by:

(1) two photographs of the applicant, one of which accompanies the application and one of which is to be returned to the applicant to be presented at the examination; and

(2) the appropriate examination fee.

(b) The department shall examine applicants for a Class A barber certificate and a teacher's certificate.

Sec. 1603.255. EARLY EXAMINATION. The department, on written request by a student, may 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 department-approved training

program.

Sec. 1603.256. PRACTICAL EXAMINATION. (a) The commission may require a practical examination as it considers necessary for a license or certificate issued under Chapter 1601 or 1602.

(b) The department shall prescribe the method and content of any practical examination.

(c) The following persons may administer a practical examination required under this subchapter:

(1) the department;

(2) a person with whom the department contracts under Section 1603.252; or

(3) an examination proctor.

Sec. 1603.257. EXAMINATION PROCTOR; REGISTRATION. (a) A person may not act as an examination proctor under this subchapter unless the person is registered with the department under this section.

(b) To be eligible for registration as an examination proctor, a person must:

(1) meet eligibility requirements determined by commission rule;

(2) file with the department an application on a form prescribed by the department; and

(3) pay the required fees as determined by the commission by rule.

(c) If the department requires an examination proctor to administer a practical examination under this subchapter, the examination proctor shall perform the examination administration

function of the department in a competent and professional manner and in compliance with:

(1) standards and specifications adopted by the commission under this chapter; and

(2) rules adopted by the commission under this chapter.

[Sections 1603.258-1603.300 reserved for expansion]

SUBCHAPTER G. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1603.301. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. The department may deny a person's request to renew a certificate, license, or permit issued under this chapter, Chapter 1601, or Chapter 1602 if the person has not paid an administrative penalty imposed under Subchapter F, Chapter 51. This section does not apply if:

(1) the person's time to pay or request a hearing has not expired under Section 51.304;

(2) the person has requested a hearing under Section 51.304, but the person's time to pay has not expired under Section 51.307; or

(3) the penalty is stayed.

[Sections 1603.302-1603.350 reserved for expansion]

SUBCHAPTER H. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.351. MINIMUM CURRICULUM FOR SCHOOLS. The commission shall prescribe the minimum curriculum, including the subjects and the number of hours in each subject, taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602,

including a private beauty culture school or a vocational cosmetology program in a public school.

Sec. 1603.352. SANITATION REQUIREMENTS FOR CERTAIN SERVICES. (a) 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(10) or (11):

(1) shall, before performing the service, disinfect and sterilize with an autoclave each nondisposable instrument used to perform the service; and

(2) may use a disposable supply or instrument only if that supply or instrument is purchased at the location where the service is performed or provided by the person on whom the service is performed.

(b) The owner or manager of a barber shop, barber school, beauty shop, specialty shop, or beauty culture school is responsible for providing an autoclave for use in the shop or school as required by Subsection (a). An autoclave used as required by Subsection (a) must be:

(1) registered and listed with the federal Food and Drug Administration; and

(2) used in accordance with the manufacturer's instructions.

[Sections 1603.353-1603.400 reserved for expansion]

SUBCHAPTER I. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.401. DENIAL, SUSPENSION, OR REVOCATION. The

department shall deny an application for issuance or renewal of, or shall suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit:

(1) engages in gross malpractice;

(2) knowingly continues to practice while having an infectious or contagious disease;

(3) knowingly makes a false or deceptive statement in advertising;

(4) advertises, practices, or attempts to practice under another person's name or trade name;

(5) engages in fraud or deceit in obtaining a certificate, license, or permit; or

(6) engages in an act that violates this chapter, Chapter 51, Chapter 1601, or Chapter 1602 or a rule or order adopted or issued under those chapters.

[Sections 1603.402-1603.450 reserved for expansion]

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.451. INJUNCTIVE RELIEF. (a) If a certificate, license, or permit holder commits a violation of this chapter, Chapter 1601, Chapter 1602, or a commission rule and the violation poses a serious threat to the public health, the attorney general shall initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit.

(b) In seeking an injunction under this section, the attorney general is not required to allege or prove:

(1) that an adequate remedy at law does not exist; or

(2) that substantial or irreparable damage would

result from the continued violation.

Sec. 1603.452. CIVIL PENALTY. (a) A barber, barbershop owner, barber school, or private beauty culture school that violates this chapter, Chapter 1601, Chapter 1602, or a commission rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law.

(b) The amount of the civil penalty for a barber or barbershop owner may not exceed $25 a day for each violation.

(c) The amount of the civil penalty for a barber school or private beauty culture school may not exceed $1,000 a day for each violation.

(d) The attorney general may sue to collect the civil penalty.

Sec. 1603.453. APPEAL BOND NOT REQUIRED. The department is not required to give an appeal bond in a cause arising under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.454. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general shall represent the department in an action to enforce this chapter, Chapter 1601, or Chapter 1602.

ARTICLE 2. REGULATION OF BARBERING

SECTION 2.01. Section 1601.001(a), Occupations Code, is amended by amending Subdivisions (3), (4), (5), and (8) and adding Subdivisions (4-a) and (4-b) to read as follows:

(3) "Board" means the Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~].

(4) "Certificate" means a certificate of registration issued by the department [~~board~~].

(4-a) "Commission" means the Texas Commission of Licensing and Regulation.

(4-b) "Department" means the Texas Department of Licensing and Regulation.

(5) "License" means a license issued by the department [~~board~~].

(8) "Permit" means a permit issued by the department [~~board~~].

SECTION 2.02. Section 1601.003, Occupations Code, is amended to read as follows:

Sec. 1601.003. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) does not represent or advertise to the public directly or indirectly that the person is authorized by the department [~~board~~] to practice barbering; and

(2) is:

(A) a physician or registered nurse licensed in this state and operating within the scope of the person's license;

(B) a commissioned or authorized medical or surgical officer of the United States armed forces;

(C) a person regulated under Chapter 1602, if the person practices within the scope of a permit, license, or certificate issued by the department under that chapter [~~Texas Cosmetology Commission~~]; or

(D) an inmate in the institutional division of the Texas Department of Criminal Justice who performs barbering during the person's incarceration.

SECTION 2.03. The heading to Subchapter B, Chapter 1601, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY [~~STATE~~] BOARD ON BARBERING [~~OF BARBER EXAMINERS~~]

SECTION 2.04. Section 1601.051(a), Occupations Code, is amended to read as follows:

[~~(a)~~] The Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~] consists of five [~~seven~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) two members, each of whom:

(A) is engaged in the practice of barbering as a Class A barber [~~and has been for at least five years before being appointed~~]; and

(B) does not hold a barbershop permit;

(2) two members, each of whom [~~one member who:~~

[~~(A)~~] is a barbershop owner who holds a barbershop permit; and

[~~(B) is engaged in the practice of barbering and has been for at least five years before being appointed;~~]

(3) one member who holds a permit to conduct or operate a barber school[~~; and~~

[~~(4) three members who represent the public~~].

SECTION 2.05. Section 1601.055, Occupations Code, is amended to read as follows:

Sec. 1601.055. TERMS; VACANCY. (a) Members of the board

serve staggered six-year terms, with the terms of one or two [~~or three~~] members expiring on the same date each odd-numbered year [~~every two years~~].

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 2.06. Section 1601.058, Occupations Code, is amended to read as follows:

Sec. 1601.058. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate a board member as presiding officer to serve in that capacity for a two-year term [~~at the will of the governor~~].

SECTION 2.07. Subchapter B, Chapter 1601, Occupations Code, is amended by adding Section 1601.059 to read as follows:

Sec. 1601.059. BOARD DUTIES. (a) The board shall advise the commission and the department on:

(1) education and curricula for applicants;

(2) the content of examinations;

(3) proposed rules and standards on technical issues related to barbering; and

(4) other issues affecting barbering.

(b) The board shall respond to questions from the department and the commission regarding barbering.

SECTION 2.08. Section 1601.253, Occupations Code, is amended to read as follows:

Sec. 1601.253. ELIGIBILITY FOR CLASS A BARBER CERTIFICATE.

(a) An applicant for a Class A barber certificate must:

(1) be at least 16 years of age; and

(2) pass a written and practical examination demonstrating to the department's [~~board's~~] satisfaction the applicant's fitness and competence to practice barbering.

(b) The department [~~board~~] shall issue a Class A barber certificate to an applicant who:

(1) complies with the application requirements of this chapter;

(2) passes the examination with an average grade of at least 75 percent;

(3) pays the required [~~a~~] fee [~~not to exceed $100~~]; and

(4) possesses the other qualifications required by this chapter.

SECTION 2.09. Sections 1601.254(a) and (c), Occupations Code, are amended to read as follows:

(a) An applicant for a teacher's certificate must:

(1) be a Class A barber;

(2) have 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

(3) submit the required [~~an~~] examination fee [~~not to exceed $100~~] with the application.

(c) The department [~~board~~] shall issue a teacher's certificate to an applicant who:

(1) passes the appropriate examination; and

(2) pays the required [~~a~~] certificate fee [~~not to~~

~~exceed:~~

[~~(A) $100, if the applicant fulfills the certificate requirements during the period beginning November 1 of an odd-numbered year and extending through October 31 of the following year; or~~

[~~(B) $50, if the applicant fulfills the certificate requirements during the period beginning November 1 of an even-numbered year and extending through October 31 of the following year~~].

SECTION 2.10. Sections 1601.256(b) and (d), Occupations Code, are amended to read as follows:

(b) An applicant for a barber technician license must:

(1) be at least 16 years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a course of instruction in a commission-approved [~~board-approved~~] training program consisting of not less than 300 hours in a period of not less than eight weeks; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(d) The department [~~board~~] shall issue a barber technician license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed~~

~~$100~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.11. Sections 1601.257(b) and (c), Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist license must:

(1) be at least 17 [~~16~~] years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a commission-approved [~~board-approved~~] training program consisting of 600 hours of instruction in manicuring; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(c) The department [~~board~~] shall issue a manicurist license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $30~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.12. Section 1601.260, Occupations Code, is amended to read as follows:

Sec. 1601.260. ELIGIBILITY FOR STUDENT PERMIT. (a) An applicant for a permit to be a student in a barber school must:

(1) submit an enrollment application to the department [board] in the form prescribed by the department [board];

(2) have completed the seventh grade;

(3) satisfy other requirements specified by the department [board]; and

(4) submit with the application the required [a] nonrefundable application fee [in an amount not to exceed $25].

(b) A separate application is required for each enrollment, reenrollment, or transfer enrollment. The application fee applies only to the first enrollment. The department [board] may not charge the application fee for any later enrollment, reenrollment, or transfer enrollment.

SECTION 2.13. Section 1601.265, Occupations Code, is amended to read as follows:

Sec. 1601.265. WAIVER OF LICENSE REQUIREMENTS; PERSONAL INTERVIEW. (a) The department [board] may waive any license requirement for an applicant holding a license from another state or country that has license requirements substantially equivalent to those of this state.

(b) The department [board] may not require a personal interview as part of the application process.

SECTION 2.14. Section 1601.301(b), Occupations Code, is amended to read as follows:

(b) Not later than the third day after the date the shop opens, a [A] person who owns, operates, or manages a barbershop or specialty shop must[:

[(1)] submit an application to the department [board]

for an appropriate permit for each shop, accompanied by a fee set by commission rule[~~; and~~

[~~(2) register with the board the person's full name and the location of each shop~~].

SECTION 2.15. Section 1601.303, Occupations Code, is amended to read as follows:

Sec. 1601.303. ISSUANCE OF BARBERSHOP PERMIT. The department [~~board~~] shall issue a barbershop permit to an applicant if:

(1) the applicant owns the barbershop [~~holds a Class A barber certificate;~~

[~~(2) the applicant has practiced barbering for at least 12 months~~]; and

(2) [~~(3)~~] the shop meets the minimum health standards for barbershops set by the commission [~~board~~] and all other commission rules [~~of the board~~].

SECTION 2.16. Sections 1601.304(b) and (c), Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist specialty shop permit must submit:

(1) an application that includes:

(A) the shop's address;

(B) the legal description of the premises for which the permit is sought; and

(C) any other information required by the department [~~board~~]; and

(2) the required [~~an~~] inspection fee [~~in an amount not~~

~~to exceed $50~~].

(c) As soon as practicable after receipt of the application and fee, the department [~~board~~] shall issue a temporary manicurist specialty shop permit to the applicant. The applicant may operate the applicant's shop under the temporary permit until a permanent permit is issued.

SECTION 2.17. Section 1601.305, Occupations Code, is amended to read as follows:

Sec. 1601.305. ISSUANCE OF MANICURIST SPECIALTY SHOP PERMIT. The department [~~board~~] shall issue a permanent manicurist specialty shop permit to an applicant if:

(1) the applicant holds a manicurist license; and

(2) the shop meets the minimum health standards for manicurist specialty shops set by the commission [~~board~~], as determined by a department [~~board~~] inspection under Section 1603.103, and any other requirements imposed by commission [~~board~~] rule.

SECTION 2.18. Section 1601.309, Occupations Code, is amended to read as follows:

Sec. 1601.309. PRACTICE BY COSMETOLOGIST AT SPECIALTY SHOP PROHIBITED. A person who holds a license, permit, or certificate issued by the department under Chapter 1602 [~~Texas Cosmetology Commission~~] may not practice under that authority at a specialty shop regulated under this chapter.

SECTION 2.19. Section 1601.352, Occupations Code, is amended to read as follows:

Sec. 1601.352. APPLICATION FOR BARBER SCHOOL PERMIT. (a)

An applicant for a barber school permit must demonstrate to the department [~~board~~] that the school meets the requirements of this subchapter for issuance of a permit.

(b) Before issuing a barber school permit, the department [~~board~~] must determine that the applicant is financially sound and capable of fulfilling the applicant's commitments for training.

SECTION 2.20. Section 1601.353, Occupations Code, is amended to read as follows:

Sec. 1601.353. REQUIRED FACILITIES AND EQUIPMENT. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school has:

(1) an adequate school site housed in a substantial building of permanent construction containing at least 2,800 square feet of floor space, divided into:

(A) a senior department;

(B) a junior department;

(C) a class theory room;

(D) a supply room;

(E) an office space;

(F) a dressing and cloak room; and

(G) two sanitary, modern, separate restrooms, each equipped with one commode and one of which is also equipped with a urinal;

(2) a hard-surface floor-covering of tile or other suitable material;

(3) at least 20 modern barber chairs, including a

cabinet and mirror for each chair;

(4) a lavatory behind every two barber chairs;

(5) a liquid sterilizer for each barber chair;

(6) an adequate number of latherers, vibrators, and hair dryers for student use;

(7) adequate lighting for each room;

(8) at least 20 classroom chairs, a blackboard, anatomical charts of the head, neck, and face, and one barber chair in the class theory room;

(9) a library with library facilities available to students containing at least one medical dictionary and a standard work on human anatomy;

(10) adequate drinking fountain facilities, with at least one for each floor;

(11) adequate toilet facilities for the students; and

(12) adequate fire-fighting equipment.

(b) An applicant for a barber school permit must submit to the department [~~board~~]:

(1) a detailed drawing and chart of the proposed physical layout of the school, showing the departments, floor space, equipment, lights, and outlets;

(2) photographs of the proposed site for the school, including the interior and exterior of the building, rooms, and departments;

(3) a detailed copy of the training program;

(4) a copy of the catalogue and promotional literature of the school;

(5) a copy of the building lease or proposed building lease if the building is not owned by the school;

(6) a sworn statement showing the ownership of the school; and

(7) the required [~~a~~] permit fee [~~not to exceed $1,000~~].

SECTION 2.21. Section 1601.354, Occupations Code, is amended to read as follows:

Sec. 1601.354. PREREQUISITES FOR GRADUATION. (a) The department [~~board~~] may not approve an application for a barber school permit unless the school requires as a prerequisite for graduation the following hours of instruction:

(1) for a barber technician, 300 hours of instruction completed in a course of not less than eight weeks;

(2) for a Class A barber, 1,500 hours of instruction completed in a course of not less than nine months, at least 800 hours of which is in the actual practice of cutting hair as a primary service;

(3) for a manicurist, 600 hours of instruction completed in a course of not less than 16 weeks; and

(4) for a teacher, 1,000 hours of instruction completed in a course of not less than six months.

(b) If a barber school offers a refresher course, the course must require at least 300 hours of instruction. The commission [~~board~~] by rule shall set the curriculum for a refresher course.

SECTION 2.22. Section 1601.355, Occupations Code, is amended to read as follows:

Sec. 1601.355. SUPERVISION AND TEACHING REQUIREMENTS. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school is under the direct supervision and control of a Class A barber certificate holder who presents evidence of at least five years' experience as a practicing barber.

(b) Each barber school for which a permit is sought must 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. In addition to satisfying other department [~~board~~] requirements, the teacher must demonstrate to the department [~~board~~]:

(1) through a written and practical examination an ability to teach the curriculum; and

(2) that the teacher is qualified to teach and:

(A) has had at least six months' experience as a teacher in an approved school in this state or in another state approved by the department [~~board~~]; or

(B) has completed 1,000 hours of instruction in a postgraduate course as a student teacher in a department-approved [~~board-approved~~] barber school in this state.

SECTION 2.23. Sections 1601.3571(a) and (b), Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the barber school tuition protection account is less than $25,000, the department [~~board~~] shall collect a fee from each barber school

during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $25,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~board~~] for the purpose of refunding unused tuition if a barber school ceases operation before its course of instruction is complete. The department [~~board~~] shall administer claims made against the account.

SECTION 2.24. Section 1601.402(c), Occupations Code, is amended to read as follows:

(c) The department [~~board~~] shall issue a renewal certificate or license on receipt of a renewal application in the form prescribed by the department [~~board~~], accompanied by a renewal fee in an amount equal to the original certificate or license fee [~~but not to exceed $100~~].

SECTION 2.25. The heading to Section 1601.404, Occupations Code, is amended to read as follows:

Sec. 1601.404. [~~RENEWAL OR~~] REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE.

SECTION 2.26. Section 1601.404(c), Occupations Code, is amended to read as follows:

(c) A Class A barber or license holder who retires from practice and whose certificate or license has been expired for more than five years may qualify for a new certificate or license by applying to the department [~~board~~] and by:

(1) making a proper showing to the department [~~board~~], supported by a personal affidavit;

(2) paying the required [~~an~~] examination fee [~~not to exceed $100~~];

(3) passing a satisfactory examination conducted by the department [~~board~~]; and

(4) paying the fee for an original certificate or license.

SECTION 2.27. Section 1601.405, Occupations Code, is amended to read as follows:

Sec. 1601.405. RENEWAL WHILE IN ARMED FORCES. (a) The department [~~board~~] may not require a Class A barber, barber technician, teacher, or manicurist who is serving on active duty in the United States armed forces to renew the person's certificate or license.

(b) The department [~~board~~] shall issue a renewal certificate or license on application and payment of the required [~~a~~] renewal fee not later than the 90th day after the date the person is released or discharged from active duty in the armed forces. [~~The renewal fee is:~~

[~~(1) $10 if the application and payment are made during the period beginning November 1 of an odd-numbered year and ending October 31 of the following year; or~~

[~~(2) $5 if the application and payment are made during the period beginning November 1 of an even-numbered year and ending October 31 of the following year.~~]

SECTION 2.28. Section 1601.406, Occupations Code, is amended to read as follows:

Sec. 1601.406. RENEWAL OF BARBERSHOP OR SPECIALTY SHOP

PERMIT. (a) A barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance [~~on July 1 of each odd-numbered year~~].

(b) A barbershop permit holder may renew the permit by paying the required [~~a~~] renewal fee [~~not to exceed $70~~].

(c) A specialty shop permit holder may renew the permit by submitting to the department [~~board~~] a renewal application accompanied by the required [~~a~~] renewal fee [~~not to exceed $50~~].

SECTION 2.29. Section 1601.407, Occupations Code, is amended to read as follows:

Sec. 1601.407. RENEWAL OF BARBER SCHOOL PERMIT. (a) A barber school permit expires on the first anniversary [~~September 1~~] of the date of issuance [~~each year~~].

(b) A barber school may renew its permit by paying the required [~~a~~] renewal fee [~~not to exceed $300~~].

SECTION 2.30. Section 1601.452, Occupations Code, is amended to read as follows:

Sec. 1601.452. DISPLAY OF SANITATION RULES. Each barbershop or specialty shop shall post in the shop a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.31. Section 1601.453, Occupations Code, is amended to read as follows:

Sec. 1601.453. LOCATION OF PRACTICE. A person licensed by the department [~~board~~] may practice barbering only at a location for which the department [~~board~~] has issued a barbershop permit, specialty shop permit, or barber school permit.

SECTION 2.32. Section 1601.454, Occupations Code, is amended to read as follows:

Sec. 1601.454. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY BOARD AND TEXAS COSMETOLOGY COMMISSION~~]. (a) The commission [~~board~~] may not adopt rules to restrict or prohibit practice by a Class A barber or manicurist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1602 [~~board and the Texas Cosmetology Commission~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1602 [~~the board and the Texas Cosmetology Commission license or permit the same facility~~], the commission [~~board~~] may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 2.33. Section 1601.501, Occupations Code, is amended to read as follows:

Sec. 1601.501. DISPLAY OF SHOP [~~BARBERSHOP~~] PERMIT. A barbershop or specialty shop permit holder must display the permit in a conspicuous place in the shop for which the permit is issued.

SECTION 2.34. Section 1601.552, Occupations Code, is amended to read as follows:

Sec. 1601.552. DISPLAY OF SANITATION RULES. Each barber school shall post in the school a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.35. Section 1601.554, Occupations Code, is amended to read as follows:

Sec. 1601.554. CHANGE OF BARBER SCHOOL OWNERSHIP OR LOCATION. (a) If a barber school changes ownership, the department [~~board~~] must be notified of the change not later than the 10th day before the date the change takes effect.

(b) A barber school may not change the location of the school unless the school obtains approval from the department [~~board~~] before the change by showing that the proposed location meets the requirements of Subchapter H for issuance of a permit to the school.

SECTION 2.36. Section 1601.556, Occupations Code, is amended to read as follows:

Sec. 1601.556. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a barber school permit shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the school's refund policy required under Section 1601.563;

(4) the school's grading policy and rules relating to incomplete grades;

(5) the school's rules of operation and conduct, including rules relating to absences;

(6) the department's [~~board's~~] name, mailing address, and telephone number for the purpose of directing complaints to the department [~~board~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 2.37. Section 1601.557, Occupations Code, is amended to read as follows:

Sec. 1601.557. COURSE LENGTH AND CURRICULUM CONTENT. (a) A barber school shall submit to the department [~~board~~] for approval the course length and curriculum content for a course offered by the school. The course length and curriculum content shall be designed to reasonably ensure that a student develops the job skills and knowledge necessary for employment. The school may not implement a course length or curriculum content unless it is approved by the department [~~board~~].

(b) Before issuing or renewing a permit under this chapter, the department [~~board~~] shall require a school to account for all course lengths and curriculum contents.

SECTION 2.38. Section 1601.559(b), Occupations Code, is amended to read as follows:

(b) The department [~~board~~] may inspect a school's attendance record book at any time.

SECTION 2.39. Section 1601.560(a), Occupations Code, is amended to read as follows:

(a) In addition to the teacher required by Section 1601.355(b), a barber school that provides training leading to issuance of a Class A barber certificate shall have at least one

qualified instructor, holding a Class A certificate, for every 25 [~~20~~] students on the school's premises [~~for instruction in practical work~~]. A teacher may serve as an instructor in practical work in addition to holding a position as a theory teacher.

SECTION 2.40. Section 1601.561, Occupations Code, is amended to read as follows:

Sec. 1601.561. REPORTS TO DEPARTMENT [~~BOARD~~]. (a) A barber school shall maintain [~~submit~~] a monthly progress report [~~to the board~~] regarding each student attending the school. The report must certify the daily attendance record of each student and the number of credit hours earned by each student during the previous month.

(b) On a student's completion of a prescribed course of instruction, the school shall notify [~~certify to~~] the department [~~board~~] that the student has completed the required number of hours and is eligible to take the appropriate examination.

(c) A barber school permit holder shall furnish to the department [~~board~~]:

(1) the current course completion rates of students who attend a course of instruction offered by the school; and

(2) job placement rates and employment rates of students who complete a course of instruction.

SECTION 2.41. Section 1601.566(d), Occupations Code, is amended to read as follows:

(d) The department [~~board~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school

shall provide to the department [~~board~~] on request documentation of the school's effort to locate the student.

SECTION 2.42. Section 1601.603, Occupations Code, is amended to read as follows:

Sec. 1601.603. DENIAL OF PERMIT; SUIT. (a) If the department [~~board~~] denies an application for a barber school permit, the school may request in writing the reasons for the refusal.

(b) If the barber school meets the requirements for issuance of the permit and shows that the requirements of this chapter have been met, and the department [~~board~~] refuses to issue the permit, the school may file suit in a district court in Travis County to require the department [~~board~~] to issue the permit.

(c) A suit under Subsection (b) must be filed not later than the 20th day after the date of the department's [~~board's~~] final order denying issuance of the permit, if registered notice of the order is mailed or it is otherwise shown that the school had notice of the order not later than the 10th day after the date the department [~~board~~] entered the order.

SECTION 2.43. Section 1601.604(a), Occupations Code, is amended to read as follows:

(a) The commission [~~board~~] shall suspend or revoke the permit of a barber school that directly or indirectly violates this chapter.

SECTION 2.44. Section 1601.605, Occupations Code, is amended to read as follows:

Sec. 1601.605. PROBATION FOR ALTERING COURSE LENGTH. The

commission [~~board~~] shall place on probation a barber school that alters a course length below or above industry standards until the school:

(1) provides justification for the alteration; or

(2) adjusts the course length to meet industry standards.

SECTION 2.45. Sections 1601.606(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) If the department [~~board~~] has reasonable cause to believe that a barber school has violated this chapter or a rule adopted under this chapter, the department [~~board~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~board~~]. The department [~~board~~] shall attempt to provide a balance on a peer review team between members assigned to the team who are from this state and members who are from other states.

(c) The peer review team shall provide the department [~~board~~] with an objective assessment of the school's curriculum content and its application.

SECTION 2.46. Section 1601.653(a), Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person is a barber inspector or other department [~~board~~] employee and the person sells barber supplies or engages in a business, other than barbering, that deals directly with a barber, barbershop, specialty shop, or

barber school.

ARTICLE 3. REGULATION OF COSMETOLOGY

SECTION 3.01. Section 1602.001, Occupations Code, is amended to read as follows:

Sec. 1602.001. GENERAL DEFINITIONS. In this chapter:

(1) "Board" means the Advisory Board on Cosmetology.

(2) "Commission" means the Texas [~~Cosmetology~~] Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) [~~(2)~~] "Public school" includes a public high school, a public junior college, or any other nonprofit tax-exempt institution that conducts a cosmetology program.

SECTION 3.02. The heading to Subchapter B, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY BOARD ON [~~TEXAS~~] COSMETOLOGY [~~COMMISSION~~]

SECTION 3.03. The heading to Section 1602.051, Occupations Code, is amended to read as follows:

Sec. 1602.051. BOARD [~~COMMISSION~~]; MEMBERSHIP.

SECTION 3.04. Sections 1602.051(a) and (b), Occupations Code, are amended to read as follows:

(a) The Advisory Board on [~~Texas~~] Cosmetology [~~Commission~~] consists of five [~~six~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) one member who holds a license for a beauty shop that is part of a chain of beauty shops [~~license~~];

(2) one member who holds a license for a beauty shop that is not part of a chain of beauty shops;

(3) one member who holds a private beauty culture school license; and

(4) [~~(3)~~] two members who each hold an operator license[~~; and~~

[~~(4) two members who represent the public~~].

(b) The associate commissioner for occupational education and technology of the Texas Education Agency or the associate commissioner's authorized representative shall serve as an ex officio member of the commission without [~~with~~] voting privileges.

SECTION 3.05. Sections 1602.055(a) and (c), Occupations Code, are amended to read as follows:

(a) Members of the board [~~commission~~] serve staggered six-year terms, with the terms of one or two members expiring on the same date [~~December 31 of~~] each odd-numbered year.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 3.06. The heading to Section 1602.058, Occupations Code, is amended to read as follows:

Sec. 1602.058. PRESIDING OFFICER[~~; COMMITTEES~~].

SECTION 3.07. Section 1602.058(a), Occupations Code, is amended to read as follows:

[~~(a)~~] The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate one member of the commission as presiding officer to serve in that capacity for a two-year term [~~at the pleasure of the governor~~].

SECTION 3.08. Subchapter B, Chapter 1602, Occupations Code, is amended by adding Section 1602.060 to read as follows:

Sec. 1602.060. BOARD DUTIES. (a) The board shall advise the commission and the department on:

(1) education and curricula for applicants;

(2) the content of examinations;

(3) proposed rules and standards on technical issues related to cosmetology; and

(4) other issues affecting cosmetology.

(b) The board shall respond to questions from the department and the commission regarding cosmetology.

SECTION 3.09. The heading to Subchapter D, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES RELATED TO COSMETOLOGY

SECTION 3.10. Sections 1602.153(a) and (b), Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of records and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the department [~~commission~~], acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the department [~~commission~~] may be held.

SECTION 3.11. Section 1602.251(c), Occupations Code, is amended to read as follows:

(c) A person licensed by the department [~~commission~~] may practice cosmetology only at a facility operated by a person holding a beauty shop license, private beauty culture school license, or other license issued by the department [~~commission~~].

SECTION 3.12. Section 1602.258(b), Occupations Code, is amended to read as follows:

(b) To be eligible for a specialty certificate, an applicant must:

(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 the necessary requisites as determined by the department [~~commission~~] in the particular specialty for which certification is sought, including training through a commission-approved training program.

SECTION 3.13. Sections 1602.266(a) and (b), Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] shall require a student

enrolled in a school of cosmetology in this state to hold a permit stating the student's name and the name of the school. The permit shall be displayed in a reasonable manner at the school.

(b) The department [~~commission~~] shall issue a student permit to an applicant who submits an application to the department [~~commission~~] for a student permit accompanied by the required fee.

SECTION 3.14. Section 1602.267(b), Occupations Code, is amended to read as follows:

(b) The department [~~commission~~] shall issue a shampoo apprentice permit to an applicant who[~~:~~

[~~(1)~~] is at least 16 years of age[~~; and~~

[~~(2) submits a certificate of health as required by Section 1602.253~~].

SECTION 3.15. Section 1602.302(b), Occupations Code, is amended to read as follows:

(b) An application for a beauty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a beauty shop established by the commission; and

(3) be verified by the applicant.

SECTION 3.16. Sections 1602.303(b) and (c), Occupations Code, are amended to read as follows:

(b) An application for a private beauty culture school license must be accompanied by the required license fee and inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) be verified by the applicant;

(3) contain a detailed floor plan of the school building divided into two separate areas, one area for instruction in theory and one area for clinic work; and

(4) contain a statement that the building:

(A) is fireproof;

(B) is of permanent construction;

(C) contains a minimum of 3,500 square feet of floor space;

(D) has separate restrooms for male and female students; and

(E) contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 50 students.

(c) The applicant is entitled to a private beauty culture school license if:

(1) the department [~~commission~~] determines that the applicant is financially sound and capable of fulfilling the school's commitments for training;

(2) the applicant's facilities pass an inspection conducted by the department under Section 1603.103 [~~commission~~]; and

(3) the applicant has not committed an act that constitutes a ground for denial of a license.

SECTION 3.17. Section 1602.305(b), Occupations Code, is

amended to read as follows:

(b) An application for a specialty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a specialty shop as established by the commission; and

(3) be verified by the applicant.

SECTION 3.18. Section 1602.306(b), Occupations Code, is amended to read as follows:

(b) An application for a booth rental license must:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain information as required by commission rule; and

(3) be verified by the applicant.

SECTION 3.19. The heading to Section 1602.352, Occupations Code, is amended to read as follows:

Sec. 1602.352. REQUIREMENT FOR FIRST [~~PROCEDURE FOR~~] RENEWAL OF LICENSE [~~OR REINSTATEMENT~~].

SECTION 3.20. Subchapter H, Chapter 1602, Occupations Code, is amended by adding Section 1602.353 to read as follows:

Sec. 1602.353. INACTIVE STATUS. (a) Not later than the 10th day before the expiration date of a certificate or license issued under this chapter, the certificate or license holder may place the certificate or license on inactive status by:

(1) submitting an application for inactive status to

the department on a form prescribed by the department; and

(2) paying the required fee.

(b) Except as provided by Subsection (e), a person whose certificate or license is on inactive status is not required to complete continuing education required under this chapter.

(c) A person whose certificate or license is on inactive status may reapply for inactive status before the expiration date of the certificate or license. The person must pay the required fee.

(d) A license holder may not employ a person on inactive status.

(e) A person on inactive status may return the certificate or license to active status by:

(1) applying to the department for active status on a form prescribed by the department;

(2) paying the required fee; and

(3) providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding two-year license period.

(f) The commission may set fees and adopt rules to implement this section.

SECTION 3.21. Section 1602.405, Occupations Code, is amended to read as follows:

Sec. 1602.405. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY COMMISSION AND STATE BOARD OF BARBER EXAMINERS~~]. (a) The commission may not adopt rules to

restrict or prohibit practice by a cosmetologist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1601 [~~commission and the State Board of Barber Examiners~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1601 [~~the commission and the State Board of Barber Examiners license the same facility~~], the commission may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 3.22. Section 1602.451(a), Occupations Code, is amended to read as follows:

(a) The holder of a private beauty culture school license shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours one full-time licensed instructor for each 25 students in attendance;

(3) maintain a daily record of students' attendance;

(4) establish regular class and instruction hours and grades;

(5) require a school term of not less than nine months

and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than 600 hours instruction for a complete course in manicuring;

(7) hold examinations before issuing diplomas;

(8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed;

(9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and

(10) [~~submit to the executive director the name of each student within 10 days after the date the student enrolls in the school and notify the executive director of the withdrawal or graduation of a student not later than the 10th day after the date the student withdraws or graduates; and~~

[~~(11)~~] provide the department [~~commission~~] with information on:

(A) the current course completion rates of students who attend a course of instruction offered by the school; and

(B) job placement rates and employment rates of students who complete the course of instruction.

SECTION 3.23. Section 1602.452, Occupations Code, is amended to read as follows:

Sec. 1602.452. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a private beauty culture school license shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the refund policy required under Section 1602.458;

(4) the school grading policy and rules relating to incomplete grades;

(5) the school rules of operation and conduct, including rules relating to absences;

(6) the name, mailing address, and telephone number of the department [~~commission~~] for the purpose of directing complaints to the department [~~commission~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 3.24. Section 1602.453(c), Occupations Code, is amended to read as follows:

(c) Before issuing or renewing a license under this chapter, the department [~~commission~~] shall require a school to account for each course length and curriculum content.

SECTION 3.25. Section 1602.454, Occupations Code, is amended to read as follows:

Sec. 1602.454. STUDENT RECORD. A private beauty culture school shall notify [~~send to~~] the department [~~commission a certified copy of a student's record, indicating all course hours completed by the student and whether the agreed tuition has been paid,~~] when a [~~the~~] student[~~:~~

[~~(1)~~] graduates from a course of training offered by the school and is eligible to take the appropriate examination[~~; or~~

[~~(2) withdraws or transfers from a course of training~~

~~without completion of the training~~].

SECTION 3.26. Section 1602.460(d), Occupations Code, is amended to read as follows:

(d) The department [~~commission~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department [~~commission~~] on request documentation of the effort to locate the student.

SECTION 3.27. Section 1602.463(a), Occupations Code, is amended to read as follows:

(a) If a private beauty culture school closes, the department [~~commission~~] shall attempt to arrange for students enrolled in the closed school to attend another private beauty culture school.

SECTION 3.28. Sections 1602.464(a) and (b), Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the private beauty culture school tuition protection account is less than $200,000, the department [~~commission~~] shall collect a fee from each private beauty culture school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $200,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~commission~~] for the purpose described by Section 1602.463. The department [~~commission~~] shall administer claims made against the account.

SECTION 3.29. Sections 1602.465(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) If the department [~~commission~~] has reasonable cause to believe that a private beauty culture school has violated this chapter or a rule adopted under this chapter, the department [~~commission~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~commission~~]. The department [~~commission~~] shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states.

(c) The team shall provide the department [~~commission~~] with an objective assessment of the content of the school's curriculum and its application.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Section 232.002, Family Code, is amended to read as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following are licensing authorities subject to this chapter:

(1) Department of Agriculture;

(2) [~~Texas Commission on Alcohol and Drug Abuse;~~

[~~(3)~~] Texas Alcoholic Beverage Commission;

(3) [~~(4)~~] Texas Appraiser Licensing and Certification Board;

(4) [~~(5)~~] Texas Board of Architectural Examiners;

(5) [~~(6) State Board of Barber Examiners;~~

[~~(7)~~] Texas Board of Chiropractic Examiners;

(6) [~~(8)~~] Comptroller of Public Accounts;

(7) [~~(9) Texas Cosmetology Commission;~~

[~~(10)~~] Court Reporters Certification Board;

(8) [~~(11)~~] State Board of Dental Examiners;

(9) [~~(12)~~] Texas State Board of Examiners of Dietitians;

(10) [~~(13)~~] Texas Funeral Service Commission;

(11) [~~(14) Texas~~] Department of State Health Services [~~Health~~];

(12) [~~(15) Texas~~] Department of Aging and Disability [~~Human~~] Services;

(13) [~~(16)~~] Texas Board of Professional Land Surveying;

(14) [~~(17)~~] Texas Department of Licensing and Regulation;

(15) [~~(18)~~] Texas State Board of Examiners of Marriage and Family Therapists;

(16) [~~(19)~~] Texas State Board of Medical Examiners;

(17) [~~(20)~~] Midwifery Board;

(18) [~~(21)~~] Texas Commission on Environmental Quality;

(19) [~~(22)~~] Board of Nurse Examiners;

(20) [~~(23)~~] Texas Board of Occupational Therapy Examiners;

(21) [~~(24)~~] Texas Optometry Board;

(22) [~~(25)~~] Parks and Wildlife Department;

(23) [~~(26)~~] Texas State Board of Examiners of Perfusionists;

(24) [~~(27)~~] Texas State Board of Pharmacy;

(25) [~~(28)~~] Texas Board of Physical Therapy Examiners;

(26) [~~(29)~~] Texas State Board of Plumbing Examiners;

(27) [~~(30)~~] Texas State Board of Podiatric Medical Examiners;

(28) [~~(31)~~] Polygraph Examiners Board;

(29) [~~(32)~~] Texas [~~Commission on~~] Private Security Board;

(30) [~~(33)~~] Texas State Board of Examiners of Professional Counselors;

(31) [~~(34)~~] Texas Board of Professional Engineers;

(32) [~~(35)~~] Department of Family and Protective [~~and Regulatory~~] Services;

(33) [~~(36)~~] Texas State Board of Examiners of Psychologists;

(34) [~~(37)~~] Texas State Board of Public Accountancy;

(35) [~~(38)~~] Department of Public Safety of the State of Texas;

(36) [~~(39)~~] Public Utility Commission of Texas;

(37) [~~(40)~~] Railroad Commission of Texas;

(38) [~~(41)~~] Texas Real Estate Commission;

(39) [~~(42)~~] State Bar of Texas;

(40) [~~(43)~~] Texas State Board of Social Worker

Examiners;

(41) [~~(44)~~] State Board of Examiners for Speech-Language Pathology and Audiology;

(42) [~~(45)~~] Texas Structural Pest Control Board;

(43) [~~(46)~~] Board of Tax Professional Examiners;

(44) [~~(47)~~] Secretary of State;

(45) [~~(48)~~] Supreme Court of Texas;

(46) [~~(49)~~] Texas Transportation Commission;

(47) [~~(50)~~] State Board of Veterinary Medical Examiners;

(48) [~~(51)~~] Texas Ethics Commission;

(49) [~~(52)~~] Advisory Board of Athletic Trainers;

(50) [~~(53)~~] State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(51) [~~(54)~~] Texas Board of Licensure for Professional Medical Physicists;

(52) [~~(55)~~] Texas Department of Insurance;

(53) [~~(56)~~] Texas Board of Orthotics and Prosthetics;

(54) [~~(57)~~] savings and loan commissioner;

(55) [~~(58)~~] Texas Juvenile Probation Commission; and

(56) [~~(59)~~] Texas Lottery Commission under Chapter 466, Government Code.

SECTION 4.02. Section 411.122(d), Government Code, is amended to read as follows:

(d) The following state agencies are subject to this section:

(1) Texas Appraiser Licensing and Certification

Board;

(2) Texas Board of Architectural Examiners;

(3) [~~State Board of Barber Examiners;~~

[~~(4)~~] Texas Board of Chiropractic Examiners;

(4) [~~(5) Texas Cosmetology Commission;~~

[~~(6)~~] State Board of Dental Examiners;

(5) [~~(7)~~] Texas Board of Professional Engineers;

(6) [~~(8)~~] Texas Funeral Service Commission;

(7) [~~(9)~~] Texas Board of Professional Geoscientists;

(8) [~~(10) Texas~~] Department of State Health Services, except as provided by Section 411.110, and agencies attached to the department, including:

(A) Texas State Board of Examiners of Dietitians;

(B) Texas State Board of Examiners of Marriage and Family Therapists;

(C) Midwifery Board;

(D) Texas State Board of Examiners of Perfusionists;

(E) Texas State Board of Examiners of Professional Counselors;

(F) Texas State Board of Social Worker Examiners;

(G) State Board of Examiners for Speech-Language Pathology and Audiology;

(H) Advisory Board of Athletic Trainers;

(I) State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(J) Texas Board of Licensure for Professional

Medical Physicists; and

(K) Texas Board of Orthotics and Prosthetics;

(9) [~~(11)~~] Texas Board of Professional Land Surveying;

(10) [~~(12)~~] Texas Department of Licensing and Regulation, except as provided by Section 411.093;

(11) [~~(13)~~] Texas Commission on Environmental Quality;

(12) [~~(14)~~] Texas Board of Occupational Therapy Examiners;

(13) [~~(15)~~] Texas Optometry Board;

(14) [~~(16)~~] Texas State Board of Pharmacy;

(15) [~~(17)~~] Texas Board of Physical Therapy Examiners;

(16) [~~(18)~~] Texas State Board of Plumbing Examiners;

(17) [~~(19)~~] Texas State Board of Podiatric Medical Examiners;

(18) [~~(20)~~] Polygraph Examiners Board;

(19) [~~(21)~~] Texas State Board of Examiners of Psychologists;

(20) [~~(22)~~] Texas Real Estate Commission;

(21) [~~(23)~~] Board of Tax Professional Examiners;

(22) [~~(24)~~] Texas Department of Transportation;

(23) [~~(25)~~] State Board of Veterinary Medical Examiners;

(24) [~~(26) Board of Vocational Nurse Examiners;~~

[~~(27)~~] Texas Department of Housing and Community

Affairs;

(25) [~~(28)~~] secretary of state;

(26) [~~(29)~~] state fire marshal;

(27) [~~(30)~~] Texas Education Agency; and

(28) [~~(31)~~] Department of Agriculture.

SECTION 4.03. Section 2054.352(a), Government Code, is amended to read as follows:

(a) The following licensing entities shall participate in the system established under Section 2054.353[~~, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001~~]:

(1) [~~State Board of Barber Examiners;~~

[~~(2)~~] Texas Board of Chiropractic Examiners;

(2) [~~(3) Texas Cosmetology Commission;~~

[~~(4)~~] Court Reporters Certification Board;

(3) [~~(5)~~] State Board of Dental Examiners;

(4) [~~(6)~~] Texas Funeral Service Commission;

(5) [~~(7)~~] Texas Board of Professional Land Surveying;

(6) [~~(8)~~] Texas State Board of Medical Examiners;

(7) [~~(9)~~] Board of Nurse Examiners;

(8) [~~(10)~~] Texas Optometry Board;

(9) [~~(11)~~] Texas Structural Pest Control Board;

(10) [~~(12)~~] Texas State Board of Pharmacy;

(11) [~~(13)~~] Executive Council of Physical Therapy and Occupational Therapy Examiners;

(12) [~~(14)~~] Texas State Board of Plumbing Examiners;

(13) [~~(15)~~] Texas State Board of Podiatric Medical Examiners;

(14) [~~(16)~~] Board of Tax Professional Examiners;

(15) [~~(17)~~] Polygraph Examiners Board;

(16) [~~(18)~~] Texas State Board of Examiners of Psychologists;

(17) [~~(19)~~] State Board of Veterinary Medical Examiners;

(18) [~~(20)~~] Texas Real Estate Commission;

(19) [~~(21)~~] Texas Appraiser Licensing and Certification Board;

(20) [~~(22)~~] Texas Department of Licensing and Regulation;

(21) [~~(24)~~] Texas State Board of Public Accountancy;

(22) [~~(25)~~] State Board for Educator Certification;

(23) [~~(26)~~] Texas Board of Professional Engineers;

(24) [~~(27) Texas~~] Department of State Health Services;

(25) [~~(28)~~] Texas Board of Architectural Examiners;

(26) [~~(29)~~] Texas Racing Commission;

(27) [~~(30)~~] Commission on Law Enforcement Officer Standards and Education; and

(28) [~~(31)~~] Texas [~~Commission on~~] Private Security Board.

ARTICLE 5. REPEALER

SECTION 5.01. The following laws are repealed:

(1) Subchapters C, D, E, and O, Chapter 1601, Occupations Code;

(2) Subchapters C, E, and K, Chapter 1602, Occupations

Code; and

(3) Sections 1601.004, 1601.051(b) and (c), 1601.052, 1601.053, 1601.054, 1601.056, 1601.057, 1601.252, 1601.261, 1601.262, 1601.263, 1601.264, 1601.266, 1601.267, 1601.302, 1601.310, 1601.311, 1601.356, 1601.401, 1601.402(d), 1601.403, 1601.404(a) and (b), 1601.408, 1601.502, 1601.503, 1601.506, 1601.601, 1601.651, 1601.654, 1602.004, 1602.051(c), 1602.052, 1602.053, 1602.054, 1602.055(b), 1602.056, 1602.057, 1602.058(b), 1602.059, 1602.151, 1602.152, 1602.154, 1602.155, 1602.252, 1602.253, as amended by Chapter 1282, Acts of the 78th Legislature, Regular Session, 2003, 1602.259, 1602.260, 1602.261, 1602.263, 1602.264, 1602.265, 1602.303(d), 1602.304(b), 1602.351(d), 1602.352(b)-(f), 1602.407, 1602.551, 1602.552, 1602.553, and 1602.555, Occupations Code.

ARTICLE 6. TRANSITION AND EFFECTIVE DATE

SECTION 6.01. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission are abolished but continue in existence until January 1, 2006, for the sole purpose of transferring obligations, property, full-time equivalent positions, rights, powers, and duties to the Texas Department of Licensing and Regulation. The Texas Department of Licensing and Regulation assumes all of the obligations, property, full-time equivalent positions, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission, as they exist immediately before the effective date of this Act. All unexpended funds appropriated to the State Board of Barber Examiners and the Texas Cosmetology Commission are transferred to

the Texas Department of Licensing and Regulation. The transfer of the obligations, property, full-time equivalent positions, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation must be completed not later than January 1, 2006.

(b) All rules of the State Board of Barber Examiners and the Texas Cosmetology Commission are continued in effect as rules of the Texas Commission of Licensing and Regulation until superseded by a rule of the Texas Commission of Licensing and Regulation. A certificate, license, or permit issued by the State Board of Barber Examiners or the Texas Cosmetology Commission is continued in effect as provided by the law in effect immediately before the effective date of this Act. A complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. An inspection or other activity conducted by the State Board of Barber Examiners or the Texas Cosmetology Commission is considered to be an inspection or activity conducted by the Texas Department of Licensing and Regulation, including an inspection or other activity conducted for purposes of allowing a school, shop, or facility to continue to operate under Section 1603.103, Occupations Code, as added by this Act.

(c) A reference in another law or an administrative rule to the State Board of Barber Examiners or the Texas Cosmetology Commission means the Texas Department of Licensing and Regulation.

SECTION 6.02. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission, in cooperation with and at the

direction of the Texas Department of Licensing and Regulation shall complete all necessary computer programming and other tasks to ensure that the agency numbers assigned by the comptroller to the board and the commission are not necessary for any fiscal year after 2005, except to complete earlier fiscal year revenue and expenditure transactions and reporting. The number assigned by the comptroller to the Texas Department of Licensing and Regulation shall be used to record transactions related to the regulation of barbering and cosmetology beginning in fiscal year 2006.

(b) Not later than July 1, 2005, the State Board of Barber Examiners and the Texas Cosmetology Commission shall request that the comptroller grant the Texas Department of Licensing and Regulation inquiry-only security access to the uniform statewide accounting system, the state property accounting system, the uniform statewide payroll system, and the human resources information system for their respective agencies. The Texas Department of Licensing and Regulation and the comptroller may coordinate implementation of this section.

(c) Not later than July 15, 2005, the Texas Department of Licensing and Regulation shall provide to the State Board of Barber Examiners and the Texas Cosmetology Commission detailed information regarding those agencies' responsibilities under Subsection (a) of this section.

SECTION 6.03. Sections 1602.353 and 1603.352, Occupations Code, as added by this Act, take effect January 1, 2006.

SECTION 6.04. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) Section 6.02 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 6.02 does not take effect.

COMMITTEE REPORT

The Honorable Tom Craddick
Speaker of the House of Representatives

5.13.2005
(date)

Sir:

We, your COMMITTEE ON GOVERNMENT REFORM

to whom was referred S.B. 411 have had the same under consideration and beg to report back with the recommendation that it

( ) do pass, without amendment.
( ) do pass, with amendment(s).
(✓) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

(✓) yes ( ) no A fiscal note was requested.

( ) yes (✓) no A criminal justice policy impact statement was requested.

( ) yes (✓) no An equalized educational funding impact statement was requested.

( ) yes (✓) no An actuarial analysis was requested.

( ) yes (✓) no A water development policy impact statement was requested.

( ) yes (✓) no A tax equity note was requested.

( ) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor HAMRIC

Joint Sponsors: / / /

Co-Sponsors:

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Uresti, Chair	✓			
Otto, Vice-chair	✓			
Davis				✓
Frost	✓			
Gonzales	✓			
Hunter	✓			
Veasey	✓			

Total
6 aye
Ø nay
Ø present, not voting
1 absent

CHAIR

BILL ANALYSIS

C.S.S.B. 411
By: Whitmire
Government Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas State Board of Barber Examiners and the Texas Cosmetology Commission regulate barbers and cosmetologists to protect the health and safety of the public. The agencies perform two major functions: license barbers and cosmetologists, instructors, shops, salons, and schools; and enforce the Barber and Cosmetology Acts and agency rules by investigating complaints and conducting inspections.

The Board and Commission are subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. The Sunset review found that the agencies are not effective in carrying out their regulatory duties, and that some aspects of the regulation of barbering and cosmetology did not protect the public and wasted resources. C.S.S.B. 411 abolishes both agencies, transferring their functions to the Texas Department of Licensing and Regulation (TDLR), and makes other statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commission on Licensing and Regulation in SECTION 1.01, SECTION 2.14, SECTION 2.15, SECTION 2.17, SECTION 2.21, SECTION 3.20, and SECTION 6.01 of this bill.

ANALYSIS

The bill abolishes the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and transfers the agencies' functions to the Texas Department of Licensing and Regulation. The bill creates two new advisory committees at TDLR, to advise the Commission on technical matters relating to barbering and cosmetology. The bill provides for composition requirements and duties of the advisory boards. The bill requires that the transfer of all powers, duties, and resources of the two agencies to TDLR must be complete by January 1, 2006.

C.S.S.B. 411 requires the agency to focus its resources on inspection of barber and cosmetology facilities that require the most attention, those that violate sanitation rules. The bill requires that facilities be inspected at least once every two years and requires TDLR to establish a schedule of risk-based inspections based on certain criteria, including the inspection history of the facility and prior sanitation violations. The bill also clarifies TDLR's authority to charge inspection fees.

C.S.S.B. 411 authorizes provisional licenses for barbers, standardizes license renewal processes by authorizing denial of license renewal for both barbers and cosmetologists based on outstanding administrative fines, and removes specific renewal dates and fee caps in the Barber Act. The bill requires barber and cosmetology schools, not the agencies, to maintain student records. The bill creates an inactive status for cosmetology licensees and removes a requirement that requires barbershop owners to be licensed barbers for at least 12 months. The bill also eliminates the antiquated requirement for barber health certificates for licensure.

C.S.S.B. 411 requires development of a method for violation and complaint trend analysis and an annual compilation of detailed statistics on violations and complaints. The bill requires the agency to develop a method for handling non-jurisdictional complaints. The bill also requires adoption of guidelines for informal settlement conferences.

C.S.S.B. 411 requires cosmetology and barber nail salons to use autoclaves to sanitize non-disposable instruments. The bill also specifies that salons may only use a disposable instrument if it is bought at the location that the service is performed or provided by the person on whom the service is performed.

C.S.S.B. 411 authorizes the registration of examination proctors at TDLR who would hold a certificate enabling them to administer cosmetology and barber exams around the state.

C.S.S.B. 411 makes technical changes to the Barber and Cosmetology Acts to make licensing and enforcement provisions consistent with each other and to provide for administration of the programs by TDLR.

C.S.S.B. 411 repeals laws in the Occupations Code. The bill transfers obligations, property, full-time equivalent positions, rights, powers, and duties from the Board of Barber Examiners and the Cosmetology Commission to TDLR by January 1, 2006. The bill also provides for the continuation in effect of existing rules of the State Board of Barber Examiners and the Texas Cosmetology Commission as rules of the Texas Commission of Licensing and Regulation until superseded by the Commission.

EFFECTIVE DATE

This Act takes effect September 1, 2005, except as otherwise provided. SECTION 6.02 of this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this bill does not receive the vote necessary for immediate effect of SECTION 6.02, SECTION 6.02 does not take effect.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies the original in the following manner:

Changes wording in the provision requiring TDLR to do risk-based inspections to require TDLR to have reasonable cause, not probable cause as it is currently worded, to enter a shop for inspection.

Removes a section of the bill that allows TDLR's Commission to appoint committees to help it regulate barbers and cosmetologists.

Removes a provision that requires applicants to submit an application to TDLR not later than the 10th day before the exam.

Reinstates current law that requires the written exam to be validated independently or purchased from a national testing service.

Removes a requirement that examination applications for barbers must be sworn.

Removes a provision that details when and how often TDLR is required to give the cosmetology exam and requires TDLR to announce the site of the exam not later than 6 months before the scheduled exam date.

Makes barbershop owners, in addition to barbers, barber schools, and beauty culture schools, subject to civil penalties.

Changes the duties of the advisory boards to include advising the Commission on Licensing and Regulation on education, curriculum, examinations, rules, standards, other issues relating to barbering and cosmetology, and responding to questions from the Department and Commission regarding barbering and cosmetology.

Changes the age requirement for barbers who are licensed as manicurists to 17 instead of 16, aligning it with requirements for cosmetology manicurists.

Makes technical changes to the Barber Act by consolidating sections of law to make barbershop permit and barber specialty shop permit requirements consistent with each other, including requiring the display of shop permits, guidelines for relocating shop locations, and guidelines for temporary permits.

Removes the requirement that barbershop owners be barbers practicing for at least 12 months and removes a requirement that a barber must supervise a barbershop at all times.

Increases the student-to-teacher ratio in barbers schools to 25 student per teacher, from 20 students per teacher.

Adds an ex officio non-voting representative from the Texas Education Agency to the cosmetology advisory committee.

Removes specific requirements for cleanliness in the Barber Act and instead relies on TDLR's authority to pass rules relating to sanitation.

Changes instructional language to require the completion of the transfer of both agencies' functions to TDLR by January 1, 2006 instead of September 1, 2006.

Changes instructional language to transfer full-time equivalent positions from the two agencies to TDLR, instead of transferring employees.

Adds a limited immediate effectiveness provision, to take effect if the bill receives two-thirds vote of both houses, that would require the two agencies to work with TDLR in ensuring that on September 1, 2005 all agencies would be operating under TDLR's agency number, as assigned by the Comptroller. Also requires the two agencies to allow TDLR access to operations of the agencies by July 1, 2005 and to provide TDLR with information regarding agency responsibilities by July 15, 2005 to ensure a smooth transition.

SUMMARY OF COMMITTEE ACTION

SB 411

May 13, 2005 upon final adjourn./recess

Considered in formal meeting
Committee substitute considered in committee
Reported favorably as substituted

4

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 17, 2005

TO: Honorable Carlos Uresti, Chair, House Committee on Government Reform

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB411** by Whitmire (Relating to the regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB411, Committee Report 2nd House, Substituted: a positive impact of $2,336,806 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$1,005,903
2007	$1,330,903
2008	$1,330,903
2009	$1,330,903
2010	$1,330,903

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	$1,005,903	(19.5)
2007	$1,330,903	(19.5)
2008	$1,330,903	(19.5)
2009	$1,330,903	(19.5)
2010	$1,330,903	(19.5)

Fiscal Analysis

The provisions of the bill abolish the State Board of Barber Examiners (Board) and the Texas Cosmetology Commission (Commission), which then transfers their function to the Texas Department of Licensing and Regulation (TDLR).

The provisions of the bill create two new advisory committees to advise TDLR on barbering and cosmetology and provides for composition requirements and duties of the advisory boards. The provisions require barber and cosmetology inspection efforts to be risk-based that focus on sanitation violations and establish the criteria for a risk-based inspection procedure. The provisions allow TDLR to inspect barber and cosmetology facilities before the facility begins operations and to charge fees for

5

the inspections and authorize the registration of examination proctors at TDLR who would hold a certificate enabling them to administer cosmetology and barber exams around the state. The provisions eliminate the barber health certificate requirement and create an inactive license status for cosmetology licensees.

TDLR would adopt fees in amounts considered reasonable and necessary to provide sufficient revenue to administer the programs under its authority. The provisions would remove the fee caps established for various fees established by the two current regulatory agencies and would establish standard time frames and late fees for license renewals.

Sections 1602.353 and 1603.352, Occupations Code take effect January 1, 2006. Except as provided by sections mentioned, the bill would take effect September 1, 2005. Section 6.02 would take effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If the bill does not receive the vote necessary for immediate effect, Section 6.02 does not take effect.

Methodology

It is assumed that TDLR would not adjust the current fees set by the Board of Barber Examiners and Cosmetology Commission that would lower overall revenue estimated in the 2006-07 Comptrollers' Biennial Revenue Estimate.

Based on information provided by the Sunset Advisory Commission (SAC), abolishing independent agencies and transferring their function to TDLR would result in a total savings or $1,005,903 and a reduction of 19.5 Full-time Equivalents (FTEs) each fiscal year.

Abolishing the independent agencies and merging their functions would result in a reduction of 11.5 redundant and unneeded FTE positions. Eliminating these positions saves approximately $666,207 annually, based on the current salary and benefit levels of the positions at the Board and Commission.

The savings are based on a reduction of 3.5 FTEs at the Board resulting in an annual savings of $179,234 based on current salary and benefit levels associated with the Executive Director position, the CFO position, one administrative position, and one-half of the support services position, which can be absorbed by TDLR.

The reductions would also include an 8 FTE reduction from the Commission resulting in a cost savings of $478,207 per year based on current salary and benefit levels associated with the Executive Director position, one information specialist position, one director of enforcement position, one CFO position, three accounting positions, and one IT position.

Additionally, abolishing both the policymaking bodies consisting of seven members each for each agency would result in a reduction of travel costs for Board and Commission members. Based on an average travel reimbursement of $250 per member per meeting, and assuming that the current Board and Commission met four times a year, the reduction of 14 board members would save $14,000 per year.

Requiring inspections to be risk-based, at least every two years would reduce the number of inspections that the agencies currently administer per year by an estimated one-quarter reduction on average. Assuming that one inspector can, on average, perform 1,500 inspections per year, reducing the number of inspection would result in a reduction of three inspector positions at the Board and five inspector positions at the Commission. Based on average salary classifications for these inspectors (Inspector III, salary group B5) plus benefits at the 29.74 percent rate, the reduction would result in a cost savings of $40,712 per position, or $325,696 annually.

SAC estimates that authorizing the registration of examination proctors at TDLR would not result in a fiscal impact. Any cost associated with registering proctors would be minimal.

In addition, the Board and the Commission currently contract for its licensing system from Northrup Grumman at estimated annual costs of $50,000 and $275,000, respectively. It is estimated that TDLR

would transfer these licensing system to its own system in fiscal year 2006 and realize a savings of $325,000 beginning in fiscal year 2007.

Technology

Savings of $325,000 from the transfer of the Board's and Commission's licensing system to TDLR's in fiscal year 2007.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 308 State Auditor's Office, 452 Department of Licensing and Regulation, 502 Board of Barber Examiners, 505 Cosmetology Commission

LBB Staff: JOB, LB, MW, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 15, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB411** by Whitmire (Relating tot he regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB411, Committee Report 1st House. Substituted: a positive impact of $2,336,806 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$1,005,903
2007	$1,330,903
2008	$1,330,903
2009	$1,330,903
2010	$1,330,903

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	$1,005,903	(19.5)
2007	$1,330,903	(19.5)
2008	$1,330,903	(19.5)
2009	$1,330,903	(19.5)
2010	$1,330,903	(19.5)

Fiscal Analysis

The provisions of the bill abolish the State Board of Barber Examiners (Board) and the Texas Cosmetology Commission (Commission), which then transfers their function to the Texas Department of Licensing and Regulation (TDLR).

The provisions of the bill create two new advisory committees to advise TDLR on barbering and cosmetology and provides for composition requirements and duties of the advisory boards. The provisions require barber and cosmetology inspection efforts to be risk-based that focus on sanitation violations and establish the criteria for a risk-based inspection procedure. The provisions allow TDLR to inspect barber and cosmetology facilities before the facility begins operations and to charge fees for

the inspections and authorize the registration of examination proctors at TDLR who would hold a certificate enabling them to administer cosmetology and barber exams around the state. The provisions eliminate the barber health certificate requirement and create an inactive license status for cosmetology licensees.

TDLR would adopt fees in amounts considered reasonable and necessary to provide sufficient revenue to administer the programs under its authority. The provisions would remove the fee caps established for various fees established by the two current regulatory agencies and would establish standard time frames and late fees for license renewals.

The bill would take effect September 1, 2005.

Methodology

It is assumed that TDLR would not adjust the current fees set by the Board of Barber Examiners and Cosmetology Commission that would lower overall revenue estimated in the 2006-07 Comptrollers' Biennial Revenue Estimate.

Based on information provided by the Sunset Advisory Commission (SAC), abolishing independent agencies and transferring their function to TDLR would result in a total savings or $1,005,903 and a reduction of 19.5 Full-time Equivalents (FTEs) each fiscal year.

Abolishing the independent agencies and merging their functions would result in a reduction of 11.5 redundant and unneeded FTE positions. Eliminating these positions saves approximately $666,207 annually, based on the current salary and benefit levels of the positions at the Board and Commission.

The savings are based on a reduction of 3.5 FTEs at the Board resulting in an annual savings of $179,234 based on current salary and benefit levels associated with the Executive Director position, the CFO position, one administrative position, and one-half of the support services position, which can be absorbed by TDLR.

The reductions would also include an 8 FTE reduction from the Commission resulting in a cost savings of $478,207 per year based on current salary and benefit levels associated with the Executive Director position, one information specialist position, one director of enforcement position, one CFO position, three accounting positions, and one IT position.

Additionally, abolishing both the policymaking bodies consisting of seven members each for each agency would result in a reduction of travel costs for Board and Commission members. Based on an average travel reimbursement of $250 per member per meeting, and assuming that the current Board and Commission met four times a year, the reduction of 14 board members would save $14,000 per year.

Requiring inspections to be risk-based, at least every two years would reduce the number of inspections that the agencies currently administer per year by an estimated one-quarter reduction on average. Assuming that one inspector can, on average, perform 1,500 inspections per year, reducing the number of inspection would result in a reduction of three inspector positions at the Board and five inspector positions at the Commission. Based on average salary classifications for these inspectors (Inspector III, salary group B5) plus benefits at the 29.74 percent rate, the reduction would result in a cost savings of $40,712 per position, or $325,696 annually.

SAC estimates that authorizing the registration of examination proctors at TDLR would not result in a fiscal impact. Any cost associated with registering proctors would be minimal.

In addition, the Board and the Commission currently contract for its licensing system from Northrup Grumman at estimated annual costs of $50,000 and $275,000, respectively. It is estimated that TDLR would transfer these licensing system to its own system in fiscal year 2006 and realize a savings of $325,000 beginning in fiscal year 2007.

Technology

Savings of $325,000 from the transfer of the Board's and Commission's licensing system to TDLR's in fiscal year 2007.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 308 State Auditor's Office, 452 Department of Licensing and Regulation, 502 Board of Barber Examiners, 505 Cosmetology Commission

LBB Staff: JOB, LB, MW, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 11, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB411** by Whitmire (Relating to the regulation of barbers and cosmetologists by the Texas Board of Barbering and Cosmetology and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB411, As Introduced: a positive impact of $976,494 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$389,247
2007	$587,247
2008	$587,247
2009	$587,247
2010	$587,247

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	$587,247	($198,000)	(11.1)
2007	$587,247	$0	(13.0)
2008	$587,247	$0	(13.0)
2009	$587,247	$0	(13.0)
2010	$587,247	$0	(13.0)

Fiscal Analysis

The provisions of the bill abolish the State Board of Barber Examiners and the Texas Cosmetology Commission, which would be replaced by the newly created Texas Board of Barbering and Cosmetology (Board). The provisions would continue the new Board for four years and would require the Sunset Advisory Commission to review the Board and report to the 81st Legislature in 2009.

The new Board would consist of nine members serving staggered six-year terms. Board members would be entitled to receive the per diem set by, and reimbursement for travel expenses in accordance with, the General Appropriations Act.

The Board would adopt fees in amounts considered reasonable and necessary to provide sufficient revenue to administer the programs under its authority. The provisions would remove the fee caps established for various fees established by the two current regulatory agencies and would establish standard time frames and late fees for license renewals.

The provisions remove the requirement that applicants take barber or cosmetology practical examinations before their written examinations.

The transfer of all obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the newly created Board would have to be completed no later than September 1, 2006, at which time both existing agencies would be abolished. All existing rules would remain in effect until superseded by a rule of the newly created board.

The bill would require that no later than September 1, 2006, the State Auditor shall conduct a management audit of the Board and deliver the audit report to the Governor, Lieutenant Governor, Speaker of the House of Representatives and the Sunset Advisory Commission.

The bill would take effect September 1, 2005.

Methodology

It is assumed that the Board would not lower the current fees set by the Board of Barber Examiners and the Cosmetology Commission.

Based on information provided by the Sunset Advisory Commission (SAC), abolishing the independent agencies and merging their functions would result in a total savings of $587,247 and a reduction of 13 Full-time Equivalents (FTEs) each fiscal year.

The reductions would include two redundant FTE positions, including one Executive Director ($60,119) position and one Chief Financial Officer ($69,016) position. It is estimated that eliminating these positions would save $129,135 annually, based on the current salary and benefit levels of the current executive director and finance director positions at the Cosmetology Commission.

Additionally, abolishing the independent policymaking bodies consisting of seven members each for each agency and creating one Board consisting of nine members would result in a reduction of travel costs for Board members. Based on an average travel reimbursement of $250 per member per meeting, and assuming that the new Board will meet four times per year, the reduction of five board members would save $5,000 per year.

According to SAC, requiring inspections to be risk-based, at least every two years would reduce the number of inspections that the agencies currently administer per year by an estimated one-quarter reduction on average. It is assumed that one inspector can perform 1,500 inspections per year. This would result in a reduction of three inspector positions at the Board of Barber Examiners and five inspector positions at the Cosmetology Commission. Based on average salary classifications for these inspectors (Inspector III) plus benefits, the reduction would result in a cost savings of $40,712 per position, or $325,696 annually.

Because the Board of Barber Examiners members give the practical exam and travel to Austin six times a year, eliminating the practical exam would reduce the amount of travel reimbursements by $220 per member, for four members who are barbers, resulting in an annual savings of $5,280.

The Cosmetology Commission has four FTEs that give the written and practical exam. It is estimated that eliminating the practical exam portion would eliminate three of the four FTE positions at the Cosmetology Commission. Based on average salary classifications for these employees (Inspector III) plus benefits, the reduction would result in a cost savings of $40,712 per position, or $122,136 annually.

According to the State Auditor's Office, it is estimated that the required management audit would cost $198,000 and require an additional 1.9 FTEs in fiscal year 2006.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 360 State Office of Administrative Hearings, 502 Board of Barber Examiners, 505 Cosmetology Commission

LBB Staff: JOB, LB, MW, DE

ADOPTED as amended

MAY 2 ' 2005

Robert Haney
Chief Clerk
House of Representatives

By: WHITMIRE S.B. No. 411

Substitute the following for S.B. No. 411:

By: OTTO C.S.S.B. No. 411

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.01. Title 9, Occupations Code, is amended by adding Chapter 1603 to read as follows:

CHAPTER 1603. REGULATION OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(b) Unless the context clearly indicates otherwise, the definitions in Chapters 1601 and 1602 apply to this chapter.

Sec. 1603.002. REGULATION OF BARBERING AND COSMETOLOGY BY DEPARTMENT OF LICENSING AND REGULATION. The department shall administer this chapter and Chapters 1601 and 1602. A reference in this chapter to the commission's or department's powers or duties

5-29-05 2 H. Amts
(House Com. Rpt)

applies only in relation to those chapters, except that this section does not limit the department's or commission's general powers under Chapter 51.

[Sections 1603.003-1603.050 reserved for expansion]

SUBCHAPTER B. ADVISORY BOARDS FOR BARBERING AND COSMETOLOGY

Sec. 1603.051. DUTIES. The advisory boards established under Chapters 1601 and 1602 shall advise the commission on administering this chapter and Chapters 1601 and 1602 regarding barbering or cosmetology, as applicable.

[Sections 1603.052-1603.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1603.101. RULES. The commission shall adopt rules consistent with this chapter for:

(1) the administration of this chapter and the operations of the department in regulating barbering and cosmetology; and

(2) the administration of Chapters 1601 and 1602.

Sec. 1603.102. SANITATION RULES. The commission shall establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.103. INSPECTION OF SCHOOLS, SHOPS, AND FACILITIES BEFORE OPERATION. (a) Until the department determines, by inspection, that the person has established the school, shop, or facility in compliance with this chapter, Chapter 1601, or Chapter 1602, a person may not operate a school, shop, or other facility licensed or permitted under this chapter, Chapter 1601, or Chapter 1602.

(b) A school, shop, or other facility that is not approved by the department on initial inspection may be reinspected.

(c) The school, shop, or other facility shall pay a fee for each inspection. The commission shall by rule set the amount of the fee.

Sec. 1603.104. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(2) any place in which the department has reasonable cause to believe that a certificate, license, or permit holder is practicing in violation of this chapter, Chapter 1601, or Chapter 1602 or in violation of a rule or order of the commission or executive director.

(b) At least once every two years, the department shall inspect each school, shop, or other facility that holds a license, certificate, or permit under this chapter, Chapter 1601, or Chapter 1602.

(c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the school, shop, or other facility;

(2) whether there has been a prior sanitation violation at the school, shop, or facility;

(3) the inspection history of the school, shop, or

other facility;

(4) any history of complaints involving the school, shop, or other facility; and

(5) any other factor determined by the commission by rule.

(d) An inspector who discovers a violation of this chapter, Chapter 1601, or Chapter 1602 or of a rule or order of the commission or executive director shall:

(1) provide written notice of the violation to the license, certificate, or permit holder on a form prescribed by the department; and

(2) file a complaint with the executive director.

(e) The school, shop, or other facility shall pay a fee for each inspection performed under Subsection (c). The commission shall by rule set the amount of the fee.

Sec. 1603.105. RETENTION OF STUDENT RECORDS. The department may not retain student records, including student transcripts, beyond the time required by state law.

[Sections 1603.106-1603.150 reserved for expansion]

SUBCHAPTER D. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.151. NOTIFICATION OF PUBLIC INTEREST INFORMATION AND PARTICIPATION. The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding barbering and cosmetology. The department may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter, Chapter 1601, or Chapter 1602;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(3) in a bill for service provided by a person regulated under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.152. COMPLAINT JURISDICTION; NOTIFICATION. If the department determines that it lacks jurisdiction to resolve the complaint, the department shall notify the complainant in writing that the department is closing the complaint because it lacks jurisdiction.

Sec. 1603.153. ANALYSIS OF COMPLAINTS AND VIOLATIONS. (a) The department shall develop and maintain a system to analyze the processing, sources, and types of complaints filed with the department and the types of violations that occur under this chapter, Chapter 1601, and Chapter 1602.

(b) Based on the information under Subsection (a), the department shall analyze trends in violations and complaints that may require further attention or technical assistance to help reduce the frequency of those complaints and violations.

(c) The department shall annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year, including:

(1) the number of complaints filed;

(2) a categorization of complaints filed according to

the basis of the complaint and the number of complaints in each category;

(3) the number of complaints filed by department staff;

(4) the number of complaints filed by persons other than department staff;

(5) the number of complaints filed over which the department lacks jurisdiction;

(6) the average length of time required to close a complaint or violation from the time the department receives the complaint or otherwise initiates an investigation of a possible violation until the complaint or violation is resolved by a final order or penalty;

(7) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal; and

(B) the number of complaints resulting in disciplinary action and the type of disciplinary action taken; and

(8) the number of complaints filed that are unresolved, the number of those complaints filed by department staff, the number of those complaints filed by persons other than department staff, and the average length of time that the unresolved complaints have been on file.

Sec. 1603.154. INFORMAL SETTLEMENT CONFERENCE. The department shall establish guidelines for an informal settlement conference related to a complaint filed with the department.

[Sections 1603.155-1603.200 reserved for expansion]

SUBCHAPTER E. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.201. APPLICATION FORM. An application for a certificate, license, or permit must be made on a form prescribed and provided by the department.

Sec. 1603.202. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. The department shall issue a duplicate certificate, license, or permit to an applicant who:

(1) submits an application for a duplicate certificate, license, or permit to the department; and

(2) pays the required fee.

Sec. 1603.203. PROVISIONAL CERTIFICATE OR LICENSE. (a) The department may issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who:

(1) has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in another jurisdiction, including a foreign country, that has requirements substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602, as appropriate; and

(2) has passed a national or other examination recognized by the commission relating to the practice of that profession.

(b) A provisional certificate or license is valid until the date the department approves or denies the provisional certificate or license holder's application. The department shall issue a

certificate or license to the provisional certificate or license holder if:

(1) the provisional certificate or license holder is eligible to hold a certificate or license under Chapter 1601 or Chapter 1602; or

(2) the provisional certificate or license holder passes the part of the examination under Chapter 1601 or Chapter 1602 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of the profession in this state and:

(A) the department verifies that the provisional certificate or license holder meets the academic and experience requirements for the certificate or license; and

(B) the provisional certificate or license holder satisfies any other certificate or license requirements.

(c) The department must approve or deny a provisional certificate or license holder's application for a certificate or license not later than the 180th day after the date the provisional certificate or license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

Sec. 1603.204. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. (a) A person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602 may apply for a license, certificate,

or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country.

(b) The person must:

(1) submit an application for the license, certificate, or permit to the department; and

(2) pay fees in an amount prescribed by the commission, including any applicable license, certificate, or permit fee.

(c) A person issued a license, certificate, or permit under this section:

(1) may perform the acts of barbering or cosmetology stated on the license, certificate, or permit; and

(2) is subject to the renewal procedures and fees provided in this chapter, Chapter 1601, or Chapter 1602 for the performance of those acts of barbering or cosmetology.

[Sections 1603.205-1603.250 reserved for expansion]

SUBCHAPTER F. EXAMINATION REQUIREMENTS

Sec. 1603.251. DEFINITION. In this subchapter, "examination proctor" means an individual registered under this subchapter to administer a practical examination for the department.

Sec. 1603.252. GENERAL EXAMINATION REQUIREMENTS. (a) The department may accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations.

(b) The executive director shall determine uniform standards for acceptable performance on an examination for a

license or certificate under Chapter 1601 and for a license or certificate under Chapter 1602.

(c) The examination must include a written examination as provided by Section 1603.253 and may include a practical examination as provided by Section 1603.256.

Sec. 1603.253. WRITTEN EXAMINATION. The commission shall select an examination for each written examination required under this chapter, Chapter 1601, or Chapter 1602. The written examination must be:

(1) validated by an independent testing professional; or

(2) purchased from a national testing service.

Sec. 1603.254. EXAMINATION FOR BARBERS. (a) An applicant for an examination for a certificate or license issued under Chapter 1601 must submit to the department an application on a form prescribed and provided by the department accompanied by:

(1) two photographs of the applicant, one of which accompanies the application and one of which is to be returned to the applicant to be presented at the examination; and

(2) the appropriate examination fee.

(b) The department shall examine applicants for a Class A barber certificate and a teacher's certificate.

Sec. 1603.255. EARLY EXAMINATION. The department, on written request by a student, may 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 department-approved training

program.

Sec. 1603.256. PRACTICAL EXAMINATION. (a) The commission may require a practical examination as it considers necessary for a license or certificate issued under Chapter 1601 or 1602.

(b) The department shall prescribe the method and content of any practical examination.

(c) The following persons may administer a practical examination required under this subchapter:

(1) the department;

(2) a person with whom the department contracts under Section 1603.252; or

(3) an examination proctor.

Sec. 1603.257. EXAMINATION PROCTOR; REGISTRATION. (a) A person may not act as an examination proctor under this subchapter unless the person is registered with the department under this section.

(b) To be eligible for registration as an examination proctor, a person must:

(1) meet eligibility requirements determined by commission rule;

(2) file with the department an application on a form prescribed by the department; and

(3) pay the required fees as determined by the commission by rule.

(c) If the department requires an examination proctor to administer a practical examination under this subchapter, the examination proctor shall perform the examination administration

function of the department in a competent and professional manner and in compliance with:

(1) standards and specifications adopted by the commission under this chapter; and

(2) rules adopted by the commission under this chapter.

[Sections 1603.258-1603.300 reserved for expansion]

SUBCHAPTER G. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1603.301. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. The department may deny a person's request to renew a certificate, license, or permit issued under this chapter, Chapter 1601, or Chapter 1602 if the person has not paid an administrative penalty imposed under Subchapter F, Chapter 51. This section does not apply if:

(1) the person's time to pay or request a hearing has not expired under Section 51.304;

(2) the person has requested a hearing under Section 51.304, but the person's time to pay has not expired under Section 51.307; or

(3) the penalty is stayed.

[Sections 1603.302-1603.350 reserved for expansion]

SUBCHAPTER H. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.351. MINIMUM CURRICULUM FOR SCHOOLS. The commission shall prescribe the minimum curriculum, including the subjects and the number of hours in each subject, taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602,

including a private beauty culture school or a vocational cosmetology program in a public school.

Sec. 1603.352. SANITATION REQUIREMENTS FOR CERTAIN SERVICES. (a) 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(10) or (11):

(1) shall, before performing the service, disinfect and sterilize with an autoclave each nondisposable instrument used to perform the service; and

(2) may use a disposable supply or instrument only if that supply or instrument is purchased at the location where the service is performed or provided by the person on whom the service is performed.

(b) The owner or manager of a barber shop, barber school, beauty shop, specialty shop, or beauty culture school is responsible for providing an autoclave for use in the shop or school as required by Subsection (a). An autoclave used as required by Subsection (a) must be:

(1) registered and listed with the federal Food and Drug Administration; and

(2) used in accordance with the manufacturer's instructions.

[Sections 1603.353-1603.400 reserved for expansion]

SUBCHAPTER I. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.401. DENIAL, SUSPENSION, OR REVOCATION. The

department shall deny an application for issuance or renewal of, or shall suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit:

(1) engages in gross malpractice;

(2) knowingly continues to practice while having an infectious or contagious disease;

(3) knowingly makes a false or deceptive statement in advertising;

(4) advertises, practices, or attempts to practice under another person's name or trade name;

(5) engages in fraud or deceit in obtaining a certificate, license, or permit; or

(6) engages in an act that violates this chapter, Chapter 51, Chapter 1601, or Chapter 1602 or a rule or order adopted or issued under those chapters.

[Sections 1603.402-1603.450 reserved for expansion]

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.451. INJUNCTIVE RELIEF. (a) If a certificate, license, or permit holder commits a violation of this chapter, Chapter 1601, Chapter 1602, or a commission rule and the violation poses a serious threat to the public health, the attorney general shall initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit.

(b) In seeking an injunction under this section, the attorney general is not required to allege or prove:

(1) that an adequate remedy at law does not exist; or

(2) that substantial or irreparable damage would

result from the continued violation.

Sec. 1603.452. CIVIL PENALTY. (a) A barber, barbershop owner, barber school, or private beauty culture school that violates this chapter, Chapter 1601, Chapter 1602, or a commission rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law.

(b) The amount of the civil penalty for a barber or barbershop owner may not exceed $25 a day for each violation.

(c) The amount of the civil penalty for a barber school or private beauty culture school may not exceed $1,000 a day for each violation.

(d) The attorney general may sue to collect the civil penalty.

Sec. 1603.453. APPEAL BOND NOT REQUIRED. The department is not required to give an appeal bond in a cause arising under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.454. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general shall represent the department in an action to enforce this chapter, Chapter 1601, or Chapter 1602.

ARTICLE 2. REGULATION OF BARBERING

SECTION 2.01. Subsection (a), Section 1601.001~~(a)~~, Occupations Code, is amended by amending Subdivisions (3), (4), (5), and (8) and adding Subdivisions (4-a) and (4-b) to read as follows:

(3) "Board" means the Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~].

(4) "Certificate" means a certificate of registration issued by the department [~~board~~].

(4-a) "Commission" means the Texas Commission of Licensing and Regulation.

(4-b) "Department" means the Texas Department of Licensing and Regulation.

(5) "License" means a license issued by the department [~~board~~].

(8) "Permit" means a permit issued by the department [~~board~~].

SECTION 2.02. Section 1601.003, Occupations Code, is amended to read as follows:

Sec. 1601.003. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) does not represent or advertise to the public directly or indirectly that the person is authorized by the department [~~board~~] to practice barbering; and

(2) is:

(A) a physician or registered nurse licensed in this state and operating within the scope of the person's license;

(B) a commissioned or authorized medical or surgical officer of the United States armed forces;

(C) a person regulated under Chapter 1602, if the person practices within the scope of a permit, license, or certificate issued by the department under that chapter [~~Texas Cosmetology Commission~~]; or

(D) an inmate in the institutional division of the Texas Department of Criminal Justice who performs barbering during the person's incarceration. 14/17

SECTION 2.03. The heading to Subchapter B, Chapter 1601, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY [~~STATE~~] BOARD ON BARBERING [~~OF BARBER EXAMINERS~~]

SECTION 2.04. Subsection (a), Section 1601.051~~(a)~~, Occupations Code, is amended to read as follows:

[~~(a)~~] The Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~] consists of five [~~seven~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) two members, each of whom:

(A) is engaged in the practice of barbering as a Class A barber [~~and has been for at least five years before being appointed~~]; and

(B) does not hold a barbershop permit;

(2) two members, each of whom [~~one member who:~~

[~~(A)~~] is a barbershop owner who holds a barbershop permit; and

[~~(B) is engaged in the practice of barbering and has been for at least five years before being appointed;~~]

(3) one member who holds a permit to conduct or operate a barber school[~~; and~~

[~~(4) three members who represent the public~~].

SECTION 2.05. Section 1601.055, Occupations Code, is amended to read as follows: 17/18

Sec. 1601.055. TERMS; VACANCY. (a) Members of the board

serve staggered six-year terms, with the terms of one or two [~~or three~~] members expiring on the same date each odd-numbered year [~~every two years~~].

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 2.06. Section 1601.058, Occupations Code, is amended to read as follows:

Sec. 1601.058. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate a board member as presiding officer to serve in that capacity for a two-year term [~~at the will of the governor~~].

SECTION 2.07. Subchapter B, Chapter 1601, Occupations Code, is amended by adding Section 1601.059 to read as follows:

Sec. 1601.059. BOARD DUTIES. (a) The board shall advise the commission and the department on:

(1) education and curricula for applicants;

(2) the content of examinations;

(3) proposed rules and standards on technical issues related to barbering; and

(4) other issues affecting barbering.

(b) The board shall respond to questions from the department and the commission regarding barbering.

SECTION 2.08. Section 1601.253, Occupations Code, is amended to read as follows: 18/19

Sec. 1601.253. ELIGIBILITY FOR CLASS A BARBER CERTIFICATE.

(a) An applicant for a Class A barber certificate must:

(1) be at least 16 years of age; and

(2) pass a written and practical examination demonstrating to the department's [~~board's~~] satisfaction the applicant's fitness and competence to practice barbering.

(b) The department [~~board~~] shall issue a Class A barber certificate to an applicant who:

(1) complies with the application requirements of this chapter;

(2) passes the examination with an average grade of at least 75 percent;

(3) pays the required [~~a~~] fee [~~not to exceed $100~~]; and

(4) possesses the other qualifications required by this chapter.

SECTION 2.09. Subsections (a) and (c), Section~~s~~ 1601.254~~(a) and (c)~~, Occupations Code, are amended to read as follows:

(a) An applicant for a teacher's certificate must:

(1) be a Class A barber;

(2) have 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

(3) submit the required [~~an~~] examination fee [~~not to exceed $100~~] with the application.

(c) The department [~~board~~] shall issue a teacher's certificate to an applicant who:

(1) passes the appropriate examination; and 19/20

(2) pays the required [~~a~~] certificate fee [~~not to~~

~~exceed:~~

[~~(A) $100, if the applicant fulfills the certificate requirements during the period beginning November 1 of an odd-numbered year and extending through October 31 of the following year; or~~

[~~(B) $50, if the applicant fulfills the certificate requirements during the period beginning November 1 of an even-numbered year and extending through October 31 of the following year~~].

SECTION 2.10. Subsections (b) and (d), Section~~s~~ 1601.256~~(b) and (d)~~, Occupations Code, are amended to read as follows:

(b) An applicant for a barber technician license must:

(1) be at least 16 years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a course of instruction in a commission-approved [~~board-approved~~] training program consisting of not less than 300 hours in a period of not less than eight weeks; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(d) The department [~~board~~] shall issue a barber technician license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination; 20|21

(3) pays the required [~~a~~] license fee [~~not to exceed~~

~~$100~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.11. Subsections (b) and (c), Section~~s~~ 1601.257~~(b) and (c)~~, Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist license must:

(1) be at least 17 [~~16~~] years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a commission-approved [~~board-approved~~] training program consisting of 600 hours of instruction in manicuring; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(c) The department [~~board~~] shall issue a manicurist license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $30~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.12. Section 1601.260, Occupations Code, is amended to read as follows:

Sec. 1601.260. ELIGIBILITY FOR STUDENT PERMIT. (a) An applicant for a permit to be a student in a barber school must: 21/22

(1) submit an enrollment application to the department [~~board~~] in the form prescribed by the department [~~board~~];

(2) have completed the seventh grade;

(3) satisfy other requirements specified by the department [~~board~~]; and

(4) submit with the application the required [~~a~~] nonrefundable application fee [~~in an amount not to exceed $25~~].

(b) A separate application is required for each enrollment, reenrollment, or transfer enrollment. The application fee applies only to the first enrollment. The department [~~board~~] may not charge the application fee for any later enrollment, reenrollment, or transfer enrollment.

SECTION 2.13. Section 1601.265, Occupations Code, is amended to read as follows:

Sec. 1601.265. WAIVER OF LICENSE REQUIREMENTS; PERSONAL INTERVIEW. (a) The department [~~board~~] may waive any license requirement for an applicant holding a license from another state or country that has license requirements substantially equivalent to those of this state.

(b) The department [~~board~~] may not require a personal interview as part of the application process.

SECTION 2.14. Subsection (b), Section 1601.301~~(b)~~, Occupations Code, is amended to read as follows:

(b) Not later than the third day after the date the shop opens, a [~~A~~] person who owns, operates, or manages a barbershop or specialty shop must [~~:~~ 22/23

[~~(1)~~] submit an application to the department [~~board~~]

for an appropriate permit for each shop, accompanied by a fee set by commission rule [~~, and~~

[~~(2) register with the board the person's full name and the location of each shop~~].

SECTION 2.15. Section 1601.303, Occupations Code, is amended to read as follows:

Sec. 1601.303. ISSUANCE OF BARBERSHOP PERMIT. The department [~~board~~] shall issue a barbershop permit to an applicant if:

(1) the applicant owns the barbershop [~~holds a Class A barber certificate;~~

[~~(2) the applicant has practiced barbering for at least 12 months~~]; and

(2) [~~(3)~~] the shop meets the minimum health standards for barbershops set by the commission [~~board~~] and all other commission rules [~~of the board~~].

SECTION 2.16. Subsections (b) and (c), Section~~s~~ 1601.304~~(b) and (c)~~, Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist specialty shop permit must submit:

(1) an application that includes:

(A) the shop's address;

(B) the legal description of the premises for which the permit is sought; and

(C) any other information required by the department [~~board~~]; and 23/24

(2) the required [~~an~~] inspection fee [~~in an amount not~~

~~to exceed $50~~].

(c) As soon as practicable after receipt of the application and fee, the department [~~board~~] shall issue a temporary manicurist specialty shop permit to the applicant. The applicant may operate the applicant's shop under the temporary permit until a permanent permit is issued.

SECTION 2.17. Section 1601.305, Occupations Code, is amended to read as follows:

Sec. 1601.305. ISSUANCE OF MANICURIST SPECIALTY SHOP PERMIT. The department [~~board~~] shall issue a permanent manicurist specialty shop permit to an applicant if:

(1) the applicant holds a manicurist license; and

(2) the shop meets the minimum health standards for manicurist specialty shops set by the commission [~~board~~], as determined by a department [~~board~~] inspection under Section 1603.103, and any other requirements imposed by commission [~~board~~] rule.

SECTION 2.18. Section 1601.309, Occupations Code, is amended to read as follows:

Sec. 1601.309. PRACTICE BY COSMETOLOGIST AT SPECIALTY SHOP PROHIBITED. A person who holds a license, permit, or certificate issued by the department under Chapter 1602 [~~Texas Cosmetology Commission~~] may not practice under that authority at a specialty shop regulated under this chapter.

SECTION 2.19. Section 1601.352, Occupations Code, is amended to read as follows: 24\25

Sec. 1601.352. APPLICATION FOR BARBER SCHOOL PERMIT. (a)

An applicant for a barber school permit must demonstrate to the department [~~board~~] that the school meets the requirements of this subchapter for issuance of a permit.

(b) Before issuing a barber school permit, the department [~~board~~] must determine that the applicant is financially sound and capable of fulfilling the applicant's commitments for training.

SECTION 2.20. Section 1601.353, Occupations Code, is amended to read as follows:

Sec. 1601.353. REQUIRED FACILITIES AND EQUIPMENT. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school has:

(1) an adequate school site housed in a substantial building of permanent construction containing at least 2,800 square feet of floor space, divided into:

(A) a senior department;

(B) a junior department;

(C) a class theory room;

(D) a supply room;

(E) an office space;

(F) a dressing and cloak room; and

(G) two sanitary, modern, separate restrooms, each equipped with one commode and one of which is also equipped with a urinal;

(2) a hard-surface floor-covering of tile or other suitable material; 25/24

(3) at least 20 modern barber chairs, including a

cabinet and mirror for each chair;

(4) a lavatory behind every two barber chairs;

(5) a liquid sterilizer for each barber chair;

(6) an adequate number of latherers, vibrators, and hair dryers for student use;

(7) adequate lighting for each room;

(8) at least 20 classroom chairs, a blackboard, anatomical charts of the head, neck, and face, and one barber chair in the class theory room;

(9) a library with library facilities available to students containing at least one medical dictionary and a standard work on human anatomy;

(10) adequate drinking fountain facilities, with at least one for each floor;

(11) adequate toilet facilities for the students; and

(12) adequate fire-fighting equipment.

(b) An applicant for a barber school permit must submit to the department [~~board~~]:

(1) a detailed drawing and chart of the proposed physical layout of the school, showing the departments, floor space, equipment, lights, and outlets;

(2) photographs of the proposed site for the school, including the interior and exterior of the building, rooms, and departments;

(3) a detailed copy of the training program;

(4) a copy of the catalogue and promotional literature 24/27 of the school;

(5) a copy of the building lease or proposed building lease if the building is not owned by the school;

(6) a sworn statement showing the ownership of the school; and

(7) the required [~~a~~] permit fee [~~not to exceed $1,000~~].

SECTION 2.21. Section 1601.354, Occupations Code, is amended to read as follows:

Sec. 1601.354. PREREQUISITES FOR GRADUATION. (a) The department [~~board~~] may not approve an application for a barber school permit unless the school requires as a prerequisite for graduation the following hours of instruction:

(1) for a barber technician, 300 hours of instruction completed in a course of not less than eight weeks;

(2) for a Class A barber, 1,500 hours of instruction completed in a course of not less than nine months, at least 800 hours of which is in the actual practice of cutting hair as a primary service;

(3) for a manicurist, 600 hours of instruction completed in a course of not less than 16 weeks; and

(4) for a teacher, 1,000 hours of instruction completed in a course of not less than six months.

(b) If a barber school offers a refresher course, the course must require at least 300 hours of instruction. The commission [~~board~~] by rule shall set the curriculum for a refresher course.

SECTION 2.22. Section 1601.355, Occupations Code, is amended to read as follows:

Sec. 1601.355. SUPERVISION AND TEACHING REQUIREMENTS. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school is under the direct supervision and control of a Class A barber certificate holder who presents evidence of at least five years' experience as a practicing barber.

(b) Each barber school for which a permit is sought must 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. In addition to satisfying other department [~~board~~] requirements, the teacher must demonstrate to the department [~~board~~]:

(1) through a written and practical examination an ability to teach the curriculum; and

(2) that the teacher is qualified to teach and:

(A) has had at least six months' experience as a teacher in an approved school in this state or in another state approved by the department [~~board~~]; or

(B) has completed 1,000 hours of instruction in a postgraduate course as a student teacher in a department-approved [~~board-approved~~] barber school in this state.

SECTION 2.23. Subsections (a) and (b), Section~~s~~ 1601.3571~~(a) and (b)~~, Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the barber school tuition protection account is less than $25,000, the 28/29 department [~~board~~] shall collect a fee from each barber school

during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $25,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~board~~] for the purpose of refunding unused tuition if a barber school ceases operation before its course of instruction is complete. The department [~~board~~] shall administer claims made against the account.

SECTION 2.24. Subsection (c), Section 1601.402~~(c)~~, Occupations Code, is amended to read as follows:

(c) The department [~~board~~] shall issue a renewal certificate or license on receipt of a renewal application in the form prescribed by the department [~~board~~], accompanied by a renewal fee in an amount equal to the original certificate or license fee [~~but not to exceed $100~~].

SECTION 2.25. The heading to Section 1601.404, Occupations Code, is amended to read as follows:

Sec. 1601.404. [~~RENEWAL OR~~] REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE.

SECTION 2.26. Subsection (c), Section 1601.404~~(c)~~, Occupations Code, is amended to read as follows:

(c) A Class A barber or license holder who retires from practice and whose certificate or license has been expired for more than five years may qualify for a new certificate or license by applying to the department [~~board~~] and by:

(1) making a proper showing to the department [~~board~~], 29/30 supported by a personal affidavit;

(2) paying the required [~~an~~] examination fee [~~not to exceed $100~~];

(3) passing a satisfactory examination conducted by the department [~~board~~]; and

(4) paying the fee for an original certificate or license.

SECTION 2.27. Section 1601.405, Occupations Code, is amended to read as follows:

Sec. 1601.405. RENEWAL WHILE IN ARMED FORCES. (a) The department [~~board~~] may not require a Class A barber, barber technician, teacher, or manicurist who is serving on active duty in the United States armed forces to renew the person's certificate or license.

(b) The department [~~board~~] shall issue a renewal certificate or license on application and payment of the required [~~a~~] renewal fee not later than the 90th day after the date the person is released or discharged from active duty in the armed forces. [~~The renewal fee is:~~

[~~(1) $10 if the application and payment are made during the period beginning November 1 of an odd-numbered year and ending October 31 of the following year; or~~

[~~(2) $5 if the application and payment are made during the period beginning November 1 of an even-numbered year and ending October 31 of the following year.~~]

SECTION 2.28. Section 1601.406, Occupations Code, is amended to read as follows:

Sec. 1601.406. RENEWAL OF BARBERSHOP OR SPECIALTY SHOP

PERMIT. (a) A barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance [~~on July 1 of each odd-numbered year~~].

(b) A barbershop permit holder may renew the permit by paying the required [~~a~~] renewal fee [~~not to exceed $70~~].

(c) A specialty shop permit holder may renew the permit by submitting to the department [~~board~~] a renewal application accompanied by the required [~~a~~] renewal fee [~~not to exceed $50~~].

SECTION 2.29. Section 1601.407, Occupations Code, is amended to read as follows:

Sec. 1601.407. RENEWAL OF BARBER SCHOOL PERMIT. (a) A barber school permit expires on the first anniversary [~~September 1~~] of the date of issuance [~~each year~~].

(b) A barber school may renew its permit by paying the required [~~a~~] renewal fee [~~not to exceed $300~~].

SECTION 2.30. Section 1601.452, Occupations Code, is amended to read as follows:

Sec. 1601.452. DISPLAY OF SANITATION RULES. Each barbershop or specialty shop shall post in the shop a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.31. Section 1601.453, Occupations Code, is amended to read as follows:

Sec. 1601.453. LOCATION OF PRACTICE. A person licensed by the department [~~board~~] may practice barbering only at a location for which the department [~~board~~] has issued a barbershop permit, specialty shop permit, or barber school permit. 31/32

SECTION 2.32. Section 1601.454, Occupations Code, is amended to read as follows:

Sec. 1601.454. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY BOARD AND TEXAS COSMETOLOGY COMMISSION~~]. (a) The commission [~~board~~] may not adopt rules to restrict or prohibit practice by a Class A barber or manicurist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1602 [~~board and the Texas Cosmetology Commission~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1602 [~~the board and the Texas Cosmetology Commission license or permit the same facility~~], the commission [~~board~~] may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 2.33. Section 1601.501, Occupations Code, is amended to read as follows:

Sec. 1601.501. DISPLAY OF SHOP [~~BARBERSHOP~~] PERMIT. A barbershop or specialty shop permit holder must display the permit in a conspicuous place in the shop for which the permit is issued.

SECTION 2.34. Section 1601.552, Occupations Code, is amended to read as follows: 32/33

Sec. 1601.552. DISPLAY OF SANITATION RULES. Each barber school shall post in the school a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.35. Section 1601.554, Occupations Code, is amended to read as follows:

Sec. 1601.554. CHANGE OF BARBER SCHOOL OWNERSHIP OR LOCATION. (a) If a barber school changes ownership, the department [~~board~~] must be notified of the change not later than the 10th day before the date the change takes effect.

(b) A barber school may not change the location of the school unless the school obtains approval from the department [~~board~~] before the change by showing that the proposed location meets the requirements of Subchapter H for issuance of a permit to the school.

SECTION 2.36. Section 1601.556, Occupations Code, is amended to read as follows:

Sec. 1601.556. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a barber school permit shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the school's refund policy required under Section 1601.563;

(4) the school's grading policy and rules relating to incomplete grades;

(5) the school's rules of operation and conduct, 33/34 including rules relating to absences;

(6) the department's [~~board's~~] name, mailing address, and telephone number for the purpose of directing complaints to the department [~~board~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 2.37. Section 1601.557, Occupations Code, is amended to read as follows:

Sec. 1601.557. COURSE LENGTH AND CURRICULUM CONTENT. (a) A barber school shall submit to the department [~~board~~] for approval the course length and curriculum content for a course offered by the school. The course length and curriculum content shall be designed to reasonably ensure that a student develops the job skills and knowledge necessary for employment. The school may not implement a course length or curriculum content unless it is approved by the department [~~board~~].

(b) Before issuing or renewing a permit under this chapter, the department [~~board~~] shall require a school to account for all course lengths and curriculum contents.

SECTION 2.38. Subsection (b), Section 1601.559~~(b)~~, Occupations Code, is amended to read as follows:

(b) The department [~~board~~] may inspect a school's attendance record book at any time.

SECTION 2.39. Subsection (a), Section 1601.560~~(a)~~, Occupations Code, is amended to read as follows:

(a) In addition to the teacher required by Section 1601.355(b), a barber school that provides training leading to 34/35 issuance of a Class A barber certificate shall have at least one

qualified instructor, holding a Class A certificate, for every 25 [~~20~~] students on the school's premises [~~for instruction in practical work~~]. A teacher may serve as an instructor in practical work in addition to holding a position as a theory teacher.

SECTION 2.40. Section 1601.561, Occupations Code, is amended to read as follows:

Sec. 1601.561. REPORTS TO DEPARTMENT [~~BOARD~~]. (a) A barber school shall maintain [~~submit~~] a monthly progress report [~~to the board~~] regarding each student attending the school. The report must certify the daily attendance record of each student and the number of credit hours earned by each student during the previous month.

(b) On a student's completion of a prescribed course of instruction, the school shall notify [~~certify to~~] the department [~~board~~] that the student has completed the required number of hours and is eligible to take the appropriate examination.

(c) A barber school permit holder shall furnish to the department [~~board~~]:

(1) the current course completion rates of students who attend a course of instruction offered by the school; and

(2) job placement rates and employment rates of students who complete a course of instruction.

SECTION 2.41. Subsection (d), Section 1601.566~~(d)~~, Occupations Code, is amended to read as follows:

(d) The department [~~board~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school

shall provide to the department [~~board~~] on request documentation of the school's effort to locate the student.

SECTION 2.42. Section 1601.603, Occupations Code, is amended to read as follows:

Sec. 1601.603. DENIAL OF PERMIT; SUIT. (a) If the department [~~board~~] denies an application for a barber school permit, the school may request in writing the reasons for the refusal.

(b) If the barber school meets the requirements for issuance of the permit and shows that the requirements of this chapter have been met, and the department [~~board~~] refuses to issue the permit, the school may file suit in a district court in Travis County to require the department [~~board~~] to issue the permit.

(c) A suit under Subsection (b) must be filed not later than the 20th day after the date of the department's [~~board's~~] final order denying issuance of the permit, if registered notice of the order is mailed or it is otherwise shown that the school had notice of the order not later than the 10th day after the date the department [~~board~~] entered the order.

SECTION 2.43. Subsection (a), Section 1601.604~~(a)~~, Occupations Code, is amended to read as follows:

(a) The commission [~~board~~] shall suspend or revoke the permit of a barber school that directly or indirectly violates this chapter.

SECTION 2.44. Section 1601.605, Occupations Code, is amended to read as follows: 36/37

Sec. 1601.605. PROBATION FOR ALTERING COURSE LENGTH. The

commission [~~board~~] shall place on probation a barber school that alters a course length below or above industry standards until the school:

(1) provides justification for the alteration; or

(2) adjusts the course length to meet industry standards.

SECTION 2.45. Subsections (a), (b), and (c), Section~~s~~ 1601.606~~(a), (b), and (c)~~, Occupations Code, are amended to read as follows:

(a) If the department [~~board~~] has reasonable cause to believe that a barber school has violated this chapter or a rule adopted under this chapter, the department [~~board~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~board~~]. The department [~~board~~] shall attempt to provide a balance on a peer review team between members assigned to the team who are from this state and members who are from other states.

(c) The peer review team shall provide the department [~~board~~] with an objective assessment of the school's curriculum content and its application.

SECTION 2.46. Subsection (a), Section 1601.653~~(a)~~, Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person is a barber inspector or other department [~~board~~] employee and the person sells barber supplies or engages in a business, other than barbering, 32/38 that deals directly with a barber, barbershop, specialty shop, or

barber school.

ARTICLE 3. REGULATION OF COSMETOLOGY

SECTION 3.01. Section 1602.001, Occupations Code, is amended to read as follows:

Sec. 1602.001. GENERAL DEFINITIONS. In this chapter:

(1) "Board" means the Advisory Board on Cosmetology.

(2) "Commission" means the Texas [~~Cosmetology~~] Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) [~~(2)~~] "Public school" includes a public high school, a public junior college, or any other nonprofit tax-exempt institution that conducts a cosmetology program.

Insert H.A.#1 2nd R

SECTION 3.~~02~~ 03. The heading to Subchapter B, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY BOARD ON [~~TEXAS~~] COSMETOLOGY [~~COMMISSION~~]

SECTION 3.~~03~~ 04. The heading to Section 1602.051, Occupations Code, is amended to read as follows:

Sec. 1602.051. BOARD [~~COMMISSION~~]; MEMBERSHIP.

SECTION 3.~~04~~ 05. Subsections (a) and (b), Section~~s~~ 1602.051 ~~(a) and (b)~~, Occupations Code, are amended to read as follows:

(a) The Advisory Board on [~~Texas~~] Cosmetology [~~Commission~~] consists of five [~~six~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) one member who holds a license for a beauty shop that is part of a chain of beauty shops [~~license~~];

(2) one member who holds a license for a beauty shop that is not part of a chain of beauty shops;

(3) one member who holds a private beauty culture school license; and

(4) [~~(3)~~] two members who each hold an operator license[~~; and~~ /40/41

[~~(4) two members who represent the public~~].

(b) The associate commissioner for occupational education and technology of the Texas Education Agency or the associate commissioner's authorized representative shall serve as an ex officio member of the commission without [~~with~~] voting privileges.

SECTION 3.~~05~~ 06. Subsections (a) and (c), Section~~s~~ 1602.055~~(a) and (c)~~, Occupations Code, are amended to read as follows:

(a) Members of the board [~~commission~~] serve staggered six-year terms, with the terms of one or two members expiring on the same date [~~December 31 of~~] each odd-numbered year.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 3.~~06~~ 07. The heading to Section 1602.058, Occupations Code, is amended to read as follows:

Sec. 1602.058. PRESIDING OFFICER[~~; COMMITTEES~~].

SECTION 3.~~07~~ 08. Subsection (a), Section 1602.058~~(a)~~, Occupations Code, is amended to read as follows:

[~~(a)~~] The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate one member of the commission as presiding officer to serve in that capacity for a two-year term [~~at the pleasure of the governor~~].

SECTION 3.~~08~~ 09. Subchapter B, Chapter 1602, Occupations Code, is amended by adding Section 1602.060 to read as follows:

Sec. 1602.060. BOARD DUTIES. (a) The board shall advise the commission and the department on: 41/42

(1) education and curricula for applicants;

(2) the content of examinations;

(3) proposed rules and standards on technical issues related to cosmetology; and

(4) other issues affecting cosmetology.

(b) The board shall respond to questions from the department and the commission regarding cosmetology.

SECTION 3.~~09~~ 10. The heading to Subchapter D, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES RELATED TO COSMETOLOGY

SECTION 3.~~10~~ 11. Subsections (a) and (b), Section~~s~~ 1602.153 ~~(a) and (b)~~, Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of records and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the department [~~commission~~], acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the department [~~commission~~] may be held.

SECTION 3.~~11~~ 12. Subsection (c), Section 1602.251~~(c)~~, Occupations Code, is amended to read as follows: 42/43

(c) A person licensed by the department [~~commission~~] may practice cosmetology only at a facility operated by a person holding a beauty shop license, private beauty culture school license, or other license issued by the department [~~commission~~].

SECTION 3.~~12~~ 13. Subsection (b), Section 1602.258~~(b)~~, Occupations Code, is amended to read as follows:

(b) To be eligible for a specialty certificate, an applicant must:

(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 the necessary requisites as determined by the department [~~commission~~] in the particular specialty for which certification is sought, including training through a commission-approved training program.

SECTION 3.~~13~~ 14. Subsections (a) and (b), Section~~s~~ 1602.266~~(a) and (b)~~, Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] shall require a student

enrolled in a school of cosmetology in this state to hold a permit stating the student's name and the name of the school. The permit shall be displayed in a reasonable manner at the school.

(b) The department [~~commission~~] shall issue a student permit to an applicant who submits an application to the department [~~commission~~] for a student permit accompanied by the required fee.

SECTION 3.~~14~~.15 Subsection (b), Section 1602.267~~(b)~~, Occupations Code, is amended to read as follows: 43/44

(b) The department [~~commission~~] shall issue a shampoo apprentice permit to an applicant who[~~:~~

[~~(1)~~] is at least 16 years of age[~~; and~~

[~~(2) submits a certificate of health as required by Section 1602.253~~].

SECTION 3.~~15~~.16 Subsection (b), Section 1602.302~~(b)~~, Occupations Code, is amended to read as follows:

(b) An application for a beauty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a beauty shop established by the commission; and

(3) be verified by the applicant.

SECTION 3.~~16~~.17 Subsections (b) and (c), Section~~s~~ 1602.303~~(b) and (c)~~, Occupations Code, are amended to read as follows:

(b) An application for a private beauty culture school license must be accompanied by the required license fee and inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) be verified by the applicant;

(3) contain a detailed floor plan of the school building divided into two separate areas, one area for instruction in theory and one area for clinic work; and

(4) contain a statement that the building:/ 44/45

(A) is fireproof;

(B) is of permanent construction;

(C) contains a minimum of 3,500 square feet of floor space;

(D) has separate restrooms for male and female students; and

(E) contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 50 students.

(c) The applicant is entitled to a private beauty culture school license if:

(1) the department [~~commission~~] determines that the applicant is financially sound and capable of fulfilling the school's commitments for training;

(2) the applicant's facilities pass an inspection conducted by the department under Section 1603.103 [~~commission~~]; and

(3) the applicant has not committed an act that constitutes a ground for denial of a license.

SECTION 3.~~17~~18. Subsection (b), Section 1602.305~~(b)~~, Occupations Code, is

amended to read as follows:

(b) An application for a specialty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a specialty shop as established by the commission; and 45/46

(3) be verified by the applicant.

SECTION 3.~~18~~.19 Subsection (b), Section 1602.306~~(b)~~, Occupations Code, is amended to read as follows:

(b) An application for a booth rental license must:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain information as required by commission rule; and

(3) be verified by the applicant.

SECTION 3.~~19~~.20. The heading to Section 1602.352, Occupations Code, is amended to read as follows:

Sec. 1602.352. REQUIREMENT FOR FIRST [~~PROCEDURE FOR~~] RENEWAL OF LICENSE [~~OR REINSTATEMENT~~].

SECTION 3.~~20~~.21. Subchapter H, Chapter 1602, Occupations Code, is amended by adding Section 1602.353 to read as follows:

Sec. 1602.353. INACTIVE STATUS. (a) Not later than the 10th day before the expiration date of a certificate or license issued under this chapter, the certificate or license holder may place the certificate or license on inactive status by:

(1) submitting an application for inactive status to

the department on a form prescribed by the department; and

(2) paying the required fee.

(b) Except as provided by Subsection (e), a person whose certificate or license is on inactive status is not required to complete continuing education required under this chapter.

(c) A person whose certificate or license is on inactive status may reapply for inactive status before the expiration date of the certificate or license. The person must pay the required fee.

(d) A license holder may not employ a person on inactive status.

(e) A person on inactive status may return the certificate or license to active status by:

(1) applying to the department for active status on a form prescribed by the department;

(2) paying the required fee; and

(3) providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding two-year license period.

(f) The commission may set fees and adopt rules to implement this section.

SECTION 3.22. Section 1602.405, Occupations Code, is amended to read as follows:

Sec. 1602.405. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY COMMISSION AND STATE BOARD OF BARBER EXAMINERS~~]. (a) The commission may not adopt rules to

restrict or prohibit practice by a cosmetologist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1601 [~~commission and the State Board of Barber Examiners~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1601 [~~the commission and the State Board of Barber Examiners license the same facility~~], the commission may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 3.~~22~~ 23. Subsection (a), Section 1602.451~~(a)~~, Occupations Code, is amended to read as follows:

(a) The holder of a private beauty culture school license shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours one full-time licensed instructor for each 25 students in attendance;

(3) maintain a daily record of students' attendance;

(4) establish regular class and instruction hours and grades;

(5) require a school term of not less than nine months

and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than 600 hours instruction for a complete course in manicuring;

(7) hold examinations before issuing diplomas;

(8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed; 48/49

(9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and

(10) [~~submit to the executive director the name of each student within 10 days after the date the student enrolls in the school and notify the executive director of the withdrawal or graduation of a student not later than the 10th day after the date the student withdraws or graduates; and~~

[~~(11)~~] provide the department [~~commission~~] with information on:

(A) the current course completion rates of students who attend a course of instruction offered by the school; and

(B) job placement rates and employment rates of students who complete the course of instruction.

SECTION 3.~~23~~24. Section 1602.452, Occupations Code, is amended to read as follows:

Sec. 1602.452. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a private beauty culture school license shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the refund policy required under Section 1602.458;

(4) the school grading policy and rules relating to incomplete grades;

(5) the school rules of operation and conduct, including rules relating to absences; 49/50

(6) the name, mailing address, and telephone number of the department [~~commission~~] for the purpose of directing complaints to the department [~~commission~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 3.~~24~~25. Subsection (c), Section 1602.453~~(c)~~, Occupations Code, is amended to read as follows:

(c) Before issuing or renewing a license under this chapter, the department [~~commission~~] shall require a school to account for each course length and curriculum content.

SECTION 3.~~25~~26. Section 1602.454, Occupations Code, is amended to read as follows:

Sec. 1602.454. STUDENT RECORD. A private beauty culture school shall notify [~~send to~~] the department [~~commission a certified copy of a student's record, indicating all course hours completed by the student and whether the agreed tuition has been paid,~~] when a [~~the~~] student[~~:~~

[~~(1)~~] graduates from a course of training offered by the school and is eligible to take the appropriate examination[~~; or~~

[~~(2) withdraws or transfers from a course of training~~

~~without completion of the training~~].

SECTION 3.~~26~~27. Subsection (d), Section 1602.460~~(d)~~, Occupations Code, is amended to read as follows:

(d) The department [~~commission~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department [~~commission~~] on request 50/51 documentation of the effort to locate the student.

SECTION 3.~~27~~28. Subsection (a), Section 1602.463~~(a)~~, Occupations Code, is amended to read as follows:

(a) If a private beauty culture school closes, the department [~~commission~~] shall attempt to arrange for students enrolled in the closed school to attend another private beauty culture school.

SECTION 3.~~28~~29. Subsections (a) and (b), Sections 1602.464~~(a) and (b)~~, Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the private beauty culture school tuition protection account is less than $200,000, the department [~~commission~~] shall collect a fee from each private beauty culture school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $200,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~commission~~] for the purpose described by Section 1602.463. The department [~~commission~~] shall administer claims made against the account.

30 Subsections (a), (b), and (c),

SECTION 3.~~29~~. Section~~s~~ 1602.465~~(a), (b), and (c)~~, Occupations Code, are amended to read as follows:

(a) If the department [~~commission~~] has reasonable cause to believe that a private beauty culture school has violated this chapter or a rule adopted under this chapter, the department [~~commission~~] may:

(1) order a peer review of the school; or 51/52

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~commission~~]. The department [~~commission~~] shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states.

(c) The team shall provide the department [~~commission~~] with an objective assessment of the content of the school's curriculum and its application.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Section 232.002, Family Code, is amended to read as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following are licensing authorities subject to this chapter:

(1) Department of Agriculture;

(2) [~~Texas Commission on Alcohol and Drug Abuse;~~

[~~(3)~~] Texas Alcoholic Beverage Commission;

(3) [~~(4)~~] Texas Appraiser Licensing and Certification Board;

(4) [~~(5)~~] Texas Board of Architectural Examiners;

(5) [~~(6) State Board of Barber Examiners;~~

[~~(7)~~] Texas Board of Chiropractic Examiners;

(6) [~~(8)~~] Comptroller of Public Accounts;

(7) [~~(9) Texas Cosmetology Commission;~~

[~~(10)~~] Court Reporters Certification Board;

(8) [~~(11)~~] State Board of Dental Examiners;

(9) [~~(12)~~] Texas State Board of Examiners of Dietitians; 54/53

(10) [~~(13)~~] Texas Funeral Service Commission;

(11) [~~(14) Texas~~] Department of State Health Services [~~Health~~];

(12) [~~(15) Texas~~] Department of Aging and Disability [~~Human~~] Services;

(13) [~~(16)~~] Texas Board of Professional Land Surveying;

(14) [~~(17)~~] Texas Department of Licensing and Regulation;

(15) [~~(18)~~] Texas State Board of Examiners of Marriage and Family Therapists;

(16) [~~(19)~~] Texas State Board of Medical Examiners;

(17) [~~(20)~~] Midwifery Board;

(18) [~~(21)~~] Texas Commission on Environmental Quality;

(19) [~~(22)~~] Board of Nurse Examiners;

(20) [~~(23)~~] Texas Board of Occupational Therapy Examiners;

(21) [~~(24)~~] Texas Optometry Board;

(22) [~~(25)~~] Parks and Wildlife Department;

(23) [~~(26)~~] Texas State Board of Examiners of Perfusionists;

(24) [~~(27)~~] Texas State Board of Pharmacy;

(25) [~~(28)~~] Texas Board of Physical Therapy Examiners;

(26) [~~(29)~~] Texas State Board of Plumbing Examiners; 53/64

(27) [~~(30)~~] Texas State Board of Podiatric Medical Examiners;

(28) [~~(31)~~] Polygraph Examiners Board;

(29) [~~(32)~~] Texas [~~Commission on~~] Private Security Board;

(30) [~~(33)~~] Texas State Board of Examiners of Professional Counselors;

(31) [~~(34)~~] Texas Board of Professional Engineers;

(32) [~~(35)~~] Department of Family and Protective [~~and Regulatory~~] Services;

(33) [~~(36)~~] Texas State Board of Examiners of Psychologists;

(34) [~~(37)~~] Texas State Board of Public Accountancy;

(35) [~~(38)~~] Department of Public Safety of the State of Texas;

(36) [~~(39)~~] Public Utility Commission of Texas;

(37) [~~(40)~~] Railroad Commission of Texas;

(38) [~~(41)~~] Texas Real Estate Commission;

(39) [~~(42)~~] State Bar of Texas;

(40) [~~(43)~~] Texas State Board of Social Worker

Examiners;

(41) [~~(44)~~] State Board of Examiners for Speech-Language Pathology and Audiology;

(42) [~~(45)~~] Texas Structural Pest Control Board;

(43) [~~(46)~~] Board of Tax Professional Examiners;

(44) [~~(47)~~] Secretary of State;

(45) [~~(48)~~] Supreme Court of Texas; 54/55

(46) [~~(49)~~] Texas Transportation Commission;

(47) [~~(50)~~] State Board of Veterinary Medical Examiners;

(48) [~~(51)~~] Texas Ethics Commission;

(49) [~~(52)~~] Advisory Board of Athletic Trainers;

(50) [~~(53)~~] State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(51) [~~(54)~~] Texas Board of Licensure for Professional Medical Physicists;

(52) [~~(55)~~] Texas Department of Insurance;

(53) [~~(56)~~] Texas Board of Orthotics and Prosthetics;

(54) [~~(57)~~] savings and loan commissioner;

(55) [~~(58)~~] Texas Juvenile Probation Commission; and

(56) [~~(59)~~] Texas Lottery Commission under Chapter 466, Government Code.

SECTION 4.02. Subsection (d), Section 411.122(~~d~~), Government Code, is amended to read as follows:

(d) The following state agencies are subject to this section:

(1) Texas Appraiser Licensing and Certification

Board;

(2) Texas Board of Architectural Examiners;

(3) [~~State Board of Barber Examiners;~~

[~~(4)~~] Texas Board of Chiropractic Examiners;

(4) [~~(5) Texas Cosmetology Commission;~~

[~~(6)~~] State Board of Dental Examiners;

(5) [~~(7)~~] Texas Board of Professional Engineers; 55/56

(6) [~~(8)~~] Texas Funeral Service Commission;

(7) [~~(9)~~] Texas Board of Professional Geoscientists;

(8) [~~(10) Texas~~] Department of State Health Services, except as provided by Section 411.110, and agencies attached to the department, including:

(A) Texas State Board of Examiners of Dietitians;

(B) Texas State Board of Examiners of Marriage and Family Therapists;

(C) Midwifery Board;

(D) Texas State Board of Examiners of Perfusionists;

(E) Texas State Board of Examiners of Professional Counselors;

(F) Texas State Board of Social Worker Examiners;

(G) State Board of Examiners for Speech-Language Pathology and Audiology;

(H) Advisory Board of Athletic Trainers;

(I) State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(J) Texas Board of Licensure for Professional

Medical Physicists; and

(K) Texas Board of Orthotics and Prosthetics;

(9) [~~(11)~~] Texas Board of Professional Land Surveying;

(10) [~~(12)~~] Texas Department of Licensing and Regulation, except as provided by Section 411.093;

(11) [~~(13)~~] Texas Commission on Environmental Quality; 56/57

(12) [~~(14)~~] Texas Board of Occupational Therapy Examiners;

(13) [~~(15)~~] Texas Optometry Board;

(14) [~~(16)~~] Texas State Board of Pharmacy;

(15) [~~(17)~~] Texas Board of Physical Therapy Examiners;

(16) [~~(18)~~] Texas State Board of Plumbing Examiners;

(17) [~~(19)~~] Texas State Board of Podiatric Medical Examiners;

(18) [~~(20)~~] Polygraph Examiners Board;

(19) [~~(21)~~] Texas State Board of Examiners of Psychologists;

(20) [~~(22)~~] Texas Real Estate Commission;

(21) [~~(23)~~] Board of Tax Professional Examiners;

(22) [~~(24)~~] Texas Department of Transportation;

(23) [~~(25)~~] State Board of Veterinary Medical Examiners;

(24) [~~(26) Board of Vocational Nurse Examiners;~~

[~~(27)~~] Texas Department of Housing and Community

Affairs;

(25) [~~(28)~~] secretary of state;

(26) [~~(29)~~] state fire marshal;

(27) [~~(30)~~] Texas Education Agency; and

(28) [~~(31)~~] Department of Agriculture.

SECTION 4.03. Subsection (a), Section 2054.352~~(a)~~, Government Code, is amended to read as follows: SA/SB

(a) The following licensing entities shall participate in the system established under Section 2054.353[~~, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001~~]:

(1) [~~State Board of Barber Examiners;~~

[~~(2)~~] Texas Board of Chiropractic Examiners;

(2) [~~(3) Texas Cosmetology Commission;~~

[~~(4)~~] Court Reporters Certification Board;

(3) [~~(5)~~] State Board of Dental Examiners;

(4) [~~(6)~~] Texas Funeral Service Commission;

(5) [~~(7)~~] Texas Board of Professional Land Surveying;

(6) [~~(8)~~] Texas State Board of Medical Examiners;

(7) [~~(9)~~] Board of Nurse Examiners;

(8) [~~(10)~~] Texas Optometry Board;

(9) [~~(11)~~] Texas Structural Pest Control Board;

(10) [~~(12)~~] Texas State Board of Pharmacy;

(11) [~~(13)~~] Executive Council of Physical Therapy and Occupational Therapy Examiners;

(12) [~~(14)~~] Texas State Board of Plumbing Examiners;

(13) [~~(15)~~] Texas State Board of Podiatric Medical Examiners;

(14) [~~(16)~~] Board of Tax Professional Examiners;

(15) [~~(17)~~] Polygraph Examiners Board;

(16) [~~(18)~~] Texas State Board of Examiners of Psychologists;

(17) [~~(19)~~] State Board of Veterinary Medical Examiners;

(18) [~~(20)~~] Texas Real Estate Commission; 58/59

(19) [~~(21)~~] Texas Appraiser Licensing and Certification Board;

(20) [~~(22)~~] Texas Department of Licensing and Regulation;

(21) [~~(24)~~] Texas State Board of Public Accountancy;

(22) [~~(25)~~] State Board for Educator Certification;

(23) [~~(26)~~] Texas Board of Professional Engineers;

(24) [~~(27) Texas~~] Department of State Health Services;

(25) [~~(28)~~] Texas Board of Architectural Examiners;

(26) [~~(29)~~] Texas Racing Commission;

(27) [~~(30)~~] Commission on Law Enforcement Officer Standards and Education; and

(28) [~~(31)~~] Texas [~~Commission on~~] Private Security Board.

ARTICLE 5. REPEALER

SECTION 5.01. The following laws are repealed:

(1) Subchapters C, D, E, and O, Chapter 1601, Occupations Code;

(2) Subchapters C, E, and K, Chapter 1602, Occupations

Code; and

(3) Sections 1601.004, 1601.051(b) and (c), 1601.052, 1601.053, 1601.054, 1601.056, 1601.057, 1601.252, 1601.261, 1601.262, 1601.263, 1601.264, 1601.266, 1601.267, 1601.302, 1601.310, 1601.311, 1601.356, 1601.401, 1601.402(d), 1601.403, 1601.404(a) and (b), 1601.408, 1601.502, 1601.503, 1601.506, 1601.601, 1601.651, 1601.654, 1602.004, 1602.051(c), 1602.052, 59/60 1602.053, 1602.054, 1602.055(b), 1602.056, 1602.057, 1602.058(b), 1602.059, 1602.151, 1602.152, 1602.154, 1602.155, 1602.252, 1602.253, as amended by Chapter 1282, Acts of the 78th Legislature, Regular Session, 2003, 1602.259, 1602.260, 1602.261, 1602.263, 1602.264, 1602.265, 1602.303(d), 1602.304(b), 1602.351(d), 1602.352(b) through (f), 1602.407, 1602.551, 1602.552, 1602.553, and 1602.555, Occupations Code.

ARTICLE 6. TRANSITION AND EFFECTIVE DATE

SECTION 6.01. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission are abolished but continue in existence until January 1, 2006, for the sole purpose of transferring obligations, property, full-time equivalent positions, rights, powers, and duties to the Texas Department of Licensing and Regulation. The Texas Department of Licensing and Regulation assumes all of the obligations, property, full-time equivalent positions, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission, as they exist immediately before the effective date of this Act. All unexpended funds appropriated to the State Board of Barber Examiners and the Texas Cosmetology Commission are transferred to

the Texas Department of Licensing and Regulation. The transfer of the obligations, property, full-time equivalent positions, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation must be completed not later than January 1, 2006.

(b) All rules of the State Board of Barber Examiners and the Texas Cosmetology Commission are continued in effect as rules of the Texas Commission of Licensing and Regulation until superseded by a rule of the Texas Commission of Licensing and Regulation. A certificate, license, or permit issued by the State Board of Barber Examiners or the Texas Cosmetology Commission is continued in effect as provided by the law in effect immediately before the effective date of this Act. A complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. An inspection or other activity conducted by the State Board of Barber Examiners or the Texas Cosmetology Commission is considered to be an inspection or activity conducted by the Texas Department of Licensing and Regulation, including an inspection or other activity conducted for purposes of allowing a school, shop, or facility to continue to operate under Section 1603.103, Occupations Code, as added by this Act.

(c) A reference in another law or an administrative rule to the State Board of Barber Examiners or the Texas Cosmetology Commission means the Texas Department of Licensing and Regulation.

SECTION 6.02. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission, in cooperation with and at the

direction of the Texas Department of Licensing and Regulation shall complete all necessary computer programming and other tasks to ensure that the agency numbers assigned by the comptroller of public accounts to the board and the commission are not necessary for any fiscal year after 2005, except to complete earlier fiscal year revenue and expenditure transactions and reporting. The number assigned by the comptroller of public accounts to the Texas Department of Licensing and Regulation shall be used to record transactions related to the regulation of barbering and cosmetology beginning in fiscal year 2006.

(b) Not later than July 1, 2005, the State Board of Barber Examiners and the Texas Cosmetology Commission shall request that the comptroller of public accounts grant the Texas Department of Licensing and Regulation inquiry-only security access to the uniform statewide accounting system, the state property accounting system, the uniform statewide payroll system, and the human resources information system for their respective agencies. The Texas Department of Licensing and Regulation and the comptroller of public accounts may coordinate implementation of this section.

(c) Not later than July 15, 2005, the Texas Department of Licensing and Regulation shall provide to the State Board of Barber Examiners and the Texas Cosmetology Commission detailed information regarding those agencies' responsibilities under Subsection (a) of this section.

SECTION 6.03. Sections 1602.353 and 1603.352, Occupations Code, as added by this Act, take effect January 1, 2006.

SECTION 6.04. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) Section 6.02 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 6.02 of this Act does not take effect.

ADOPTED

MAY 2 ? 2005

05 MAY 20 PM 3:11

HOUSE OF REPRESENTATIVES

Chief Clerk
House of Representatives

FLOOR AMENDMENT NO. 1 BY: Warren Chisum

Amend C.S.S.B. No. 411 (House Committee Report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

H.A.#1 2nd R Insert at p.38, l.16 or H.A.#1 3rd R (1)

SECTION 3.02. Section 1602.002, Occupations Code, is amended to read as follows:

Sec. 1602.002. DEFINITION OF COSMETOLOGY. (a) In this chapter, "cosmetology" means the practice of performing or offering to perform for compensation any of the following services:

(1) treating a person's hair by:

(A) providing any method of treatment as a primary service, including arranging, beautifying, bleaching, cleansing, coloring, cutting, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, or waving; 38/39

(B) providing a necessary service that is preparatory or ancillary to a service under Paragraph (A), including bobbing, clipping, cutting, or trimming; or

(C) cutting the person's hair as a separate and independent service for which a charge is directly or indirectly made separately from charges for any other service;

(2) weaving [~~or braiding~~] a person's hair;

(3) shampooing and conditioning a person's hair;

(4) servicing a person's wig or artificial hairpiece on a person's head or on a block after the initial retail sale and servicing in any manner listed in Subdivision (1);

(5) treating a person's mustache or beard by arranging, beautifying, coloring, processing, styling, or trimming;

(6) cleansing, stimulating, or massaging a person's

H.A.#1 2nd Rdg (as amended by H.A.#1 3rd Rdg) 5-29-05

scalp, face, neck, or arms:

(A) by hand or by using a device, apparatus, or appliance; and

(B) with or without the use of any cosmetic preparation, antiseptic, tonic, lotion, or cream;

(7) beautifying a person's face, neck, or arms using a cosmetic preparation, antiseptic, tonic, lotion, powder, oil, clay, cream, or appliance;

(8) administering facial treatments;

(9) removing superfluous hair from a person's body using depilatories or mechanical tweezers;

(10) treating a person's nails by: 39/40

(A) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring; or

(B) attaching false nails; or

(11) massaging, cleansing, treating, or beautifying a person's hands or feet.

Insert H.A#1 (3)

LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

SB411-Third Reading

AMENDMENT#	AUTHOR	DESCRIPTION	ACTION
1	Hamric	Amendment	Adopted

792508

ADOPTED

3rd Reading

FLOOR AMENDMENT NO. _____ BY: Hamric

House of Representatives

Amend S.B. No. 411 on third reading as follows:

(1) In amended Section 1602.002, Occupations Code, between "COSMETOLOGY." and "In", insert "(a)".

(2) In amended Section 1602.002(2), Occupations Code, strike "[~~or braiding~~]" and substitute "or braiding".

Exc H.A.#1 (3) 3rd Insert at p.2 End of H.A.#1 2nd R

(3) At the end of amended Section 1602.002, Occupations Code, insert the following:

(b) The commission by rule may amend the definition of cosmetology to eliminate a service included in that definition under Subsection (a).

SB 411(YDB)5-22-2005@4-14-03 PM

Exc H.A.#1 3rd Rdg 5-29-05

Enrolled May 28, 2005
Mardi Clegg
Enrolling Clerk

S.B. No. 411

AN ACT

relating to the regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.01. Title 9, Occupations Code, is amended by adding Chapter 1603 to read as follows:

CHAPTER 1603. REGULATION OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(b) Unless the context clearly indicates otherwise, the definitions in Chapters 1601 and 1602 apply to this chapter.

Sec. 1603.002. REGULATION OF BARBERING AND COSMETOLOGY BY DEPARTMENT OF LICENSING AND REGULATION. The department shall administer this chapter and Chapters 1601 and 1602. A reference in this chapter to the commission's or department's powers or duties

applies only in relation to those chapters, except that this section does not limit the department's or commission's general powers under Chapter 51.

[Sections 1603.003-1603.050 reserved for expansion]

SUBCHAPTER B. ADVISORY BOARDS FOR BARBERING AND COSMETOLOGY

Sec. 1603.051. DUTIES. The advisory boards established under Chapters 1601 and 1602 shall advise the commission on administering this chapter and Chapters 1601 and 1602 regarding barbering or cosmetology, as applicable.

[Sections 1603.052-1603.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1603.101. RULES. The commission shall adopt rules consistent with this chapter for:

(1) the administration of this chapter and the operations of the department in regulating barbering and cosmetology; and

(2) the administration of Chapters 1601 and 1602.

Sec. 1603.102. SANITATION RULES. The commission shall establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.103. INSPECTION OF SCHOOLS, SHOPS, AND FACILITIES BEFORE OPERATION. (a) Until the department determines, by inspection, that the person has established the school, shop, or facility in compliance with this chapter, Chapter 1601, or Chapter 1602, a person may not operate a school, shop, or other facility licensed or permitted under this chapter, Chapter 1601, or Chapter 1602.

(b) A school, shop, or other facility that is not approved by the department on initial inspection may be reinspected.

(c) The school, shop, or other facility shall pay a fee for each inspection. The commission shall by rule set the amount of the fee.

Sec. 1603.104. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(2) any place in which the department has reasonable cause to believe that a certificate, license, or permit holder is practicing in violation of this chapter, Chapter 1601, or Chapter 1602 or in violation of a rule or order of the commission or executive director.

(b) At least once every two years, the department shall inspect each school, shop, or other facility that holds a license, certificate, or permit under this chapter, Chapter 1601, or Chapter 1602.

(c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the school, shop, or other facility;

(2) whether there has been a prior sanitation violation at the school, shop, or facility;

(3) the inspection history of the school, shop, or

other facility;

(4) any history of complaints involving the school, shop, or other facility; and

(5) any other factor determined by the commission by rule.

(d) An inspector who discovers a violation of this chapter, Chapter 1601, or Chapter 1602 or of a rule or order of the commission or executive director shall:

(1) provide written notice of the violation to the license, certificate, or permit holder on a form prescribed by the department; and

(2) file a complaint with the executive director.

(e) The school, shop, or other facility shall pay a fee for each inspection performed under Subsection (c). The commission shall by rule set the amount of the fee.

Sec. 1603.105. RETENTION OF STUDENT RECORDS. The department may not retain student records, including student transcripts, beyond the time required by state law.

[Sections 1603.106-1603.150 reserved for expansion]

SUBCHAPTER D. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.151. NOTIFICATION OF PUBLIC INTEREST INFORMATION AND PARTICIPATION. The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding barbering and cosmetology. The department may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter, Chapter 1601, or Chapter 1602;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter, Chapter 1601, or Chapter 1602; or

(3) in a bill for service provided by a person regulated under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.152. COMPLAINT JURISDICTION; NOTIFICATION. If the department determines that it lacks jurisdiction to resolve the complaint, the department shall notify the complainant in writing that the department is closing the complaint because it lacks jurisdiction.

Sec. 1603.153. ANALYSIS OF COMPLAINTS AND VIOLATIONS. (a) The department shall develop and maintain a system to analyze the processing, sources, and types of complaints filed with the department and the types of violations that occur under this chapter, Chapter 1601, and Chapter 1602.

(b) Based on the information under Subsection (a), the department shall analyze trends in violations and complaints that may require further attention or technical assistance to help reduce the frequency of those complaints and violations.

(c) The department shall annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year, including:

(1) the number of complaints filed;

(2) a categorization of complaints filed according to

the basis of the complaint and the number of complaints in each category;

(3) the number of complaints filed by department staff;

(4) the number of complaints filed by persons other than department staff;

(5) the number of complaints filed over which the department lacks jurisdiction;

(6) the average length of time required to close a complaint or violation from the time the department receives the complaint or otherwise initiates an investigation of a possible violation until the complaint or violation is resolved by a final order or penalty;

(7) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal; and

(B) the number of complaints resulting in disciplinary action and the type of disciplinary action taken; and

(8) the number of complaints filed that are unresolved, the number of those complaints filed by department staff, the number of those complaints filed by persons other than department staff, and the average length of time that the unresolved complaints have been on file.

Sec. 1603.154. INFORMAL SETTLEMENT CONFERENCE. The department shall establish guidelines for an informal settlement conference related to a complaint filed with the department.

[Sections 1603.155-1603.200 reserved for expansion]

SUBCHAPTER E. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.201. APPLICATION FORM. An application for a certificate, license, or permit must be made on a form prescribed and provided by the department.

Sec. 1603.202. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. The department shall issue a duplicate certificate, license, or permit to an applicant who:

(1) submits an application for a duplicate certificate, license, or permit to the department; and

(2) pays the required fee.

Sec. 1603.203. PROVISIONAL CERTIFICATE OR LICENSE. (a) The department may issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who:

(1) has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in another jurisdiction, including a foreign country, that has requirements substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602, as appropriate; and

(2) has passed a national or other examination recognized by the commission relating to the practice of that profession.

(b) A provisional certificate or license is valid until the date the department approves or denies the provisional certificate or license holder's application. The department shall issue a

certificate or license to the provisional certificate or license holder if:

(1) the provisional certificate or license holder is eligible to hold a certificate or license under Chapter 1601 or Chapter 1602; or

(2) the provisional certificate or license holder passes the part of the examination under Chapter 1601 or Chapter 1602 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of the profession in this state and:

(A) the department verifies that the provisional certificate or license holder meets the academic and experience requirements for the certificate or license; and

(B) the provisional certificate or license holder satisfies any other certificate or license requirements.

(c) The department must approve or deny a provisional certificate or license holder's application for a certificate or license not later than the 180th day after the date the provisional certificate or license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

Sec. 1603.204. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. (a) A person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602 may apply for a license, certificate,

or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country.

(b) The person must:

(1) submit an application for the license, certificate, or permit to the department; and

(2) pay fees in an amount prescribed by the commission, including any applicable license, certificate, or permit fee.

(c) A person issued a license, certificate, or permit under this section:

(1) may perform the acts of barbering or cosmetology stated on the license, certificate, or permit; and

(2) is subject to the renewal procedures and fees provided in this chapter, Chapter 1601, or Chapter 1602 for the performance of those acts of barbering or cosmetology.

[Sections 1603.205-1603.250 reserved for expansion]

SUBCHAPTER F. EXAMINATION REQUIREMENTS

Sec. 1603.251. DEFINITION. In this subchapter, "examination proctor" means an individual registered under this subchapter to administer a practical examination for the department.

Sec. 1603.252. GENERAL EXAMINATION REQUIREMENTS. (a) The department may accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations.

(b) The executive director shall determine uniform standards for acceptable performance on an examination for a

license or certificate under Chapter 1601 and for a license or certificate under Chapter 1602.

(c) The examination must include a written examination as provided by Section 1603.253 and may include a practical examination as provided by Section 1603.256.

Sec. 1603.253. WRITTEN EXAMINATION. The commission shall select an examination for each written examination required under this chapter, Chapter 1601, or Chapter 1602. The written examination must be:

(1) validated by an independent testing professional; or

(2) purchased from a national testing service.

Sec. 1603.254. EXAMINATION FOR BARBERS. (a) An applicant for an examination for a certificate or license issued under Chapter 1601 must submit to the department an application on a form prescribed and provided by the department accompanied by:

(1) two photographs of the applicant, one of which accompanies the application and one of which is to be returned to the applicant to be presented at the examination; and

(2) the appropriate examination fee.

(b) The department shall examine applicants for a Class A barber certificate and a teacher's certificate.

Sec. 1603.255. EARLY EXAMINATION. The department, on written request by a student, may 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 department-approved training

program.

Sec. 1603.256. PRACTICAL EXAMINATION. (a) The commission may require a practical examination as it considers necessary for a license or certificate issued under Chapter 1601 or 1602.

(b) The department shall prescribe the method and content of any practical examination.

(c) The following persons may administer a practical examination required under this subchapter:

(1) the department;

(2) a person with whom the department contracts under Section 1603.252; or

(3) an examination proctor.

Sec. 1603.257. EXAMINATION PROCTOR; REGISTRATION. (a) A person may not act as an examination proctor under this subchapter unless the person is registered with the department under this section.

(b) To be eligible for registration as an examination proctor, a person must:

(1) meet eligibility requirements determined by commission rule;

(2) file with the department an application on a form prescribed by the department; and

(3) pay the required fees as determined by the commission by rule.

(c) If the department requires an examination proctor to administer a practical examination under this subchapter, the examination proctor shall perform the examination administration

function of the department in a competent and professional manner and in compliance with:

(1) standards and specifications adopted by the commission under this chapter; and

(2) rules adopted by the commission under this chapter.

[Sections 1603.258-1603.300 reserved for expansion]

SUBCHAPTER G. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1603.301. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. The department may deny a person's request to renew a certificate, license, or permit issued under this chapter, Chapter 1601, or Chapter 1602 if the person has not paid an administrative penalty imposed under Subchapter F, Chapter 51. This section does not apply if:

(1) the person's time to pay or request a hearing has not expired under Section 51.304;

(2) the person has requested a hearing under Section 51.304, but the person's time to pay has not expired under Section 51.307; or

(3) the penalty is stayed.

[Sections 1603.302-1603.350 reserved for expansion]

SUBCHAPTER H. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.351. MINIMUM CURRICULUM FOR SCHOOLS. The commission shall prescribe the minimum curriculum, including the subjects and the number of hours in each subject, taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602,

including a private beauty culture school or a vocational cosmetology program in a public school.

Sec. 1603.352. SANITATION REQUIREMENTS FOR CERTAIN SERVICES. (a) 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(10) or (11):

(1) shall, before performing the service, disinfect and sterilize with an autoclave each nondisposable instrument used to perform the service; and

(2) may use a disposable supply or instrument only if that supply or instrument is purchased at the location where the service is performed or provided by the person on whom the service is performed.

(b) The owner or manager of a barber shop, barber school, beauty shop, specialty shop, or beauty culture school is responsible for providing an autoclave for use in the shop or school as required by Subsection (a). An autoclave used as required by Subsection (a) must be:

(1) registered and listed with the federal Food and Drug Administration; and

(2) used in accordance with the manufacturer's instructions.

[Sections 1603.353-1603.400 reserved for expansion]

SUBCHAPTER I. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.401. DENIAL, SUSPENSION, OR REVOCATION. The

department shall deny an application for issuance or renewal of, or shall suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit:

(1) engages in gross malpractice;

(2) knowingly continues to practice while having an infectious or contagious disease;

(3) knowingly makes a false or deceptive statement in advertising;

(4) advertises, practices, or attempts to practice under another person's name or trade name;

(5) engages in fraud or deceit in obtaining a certificate, license, or permit; or

(6) engages in an act that violates this chapter, Chapter 51, Chapter 1601, or Chapter 1602 or a rule or order adopted or issued under those chapters.

[Sections 1603.402-1603.450 reserved for expansion]

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.451. INJUNCTIVE RELIEF. (a) If a certificate, license, or permit holder commits a violation of this chapter, Chapter 1601, Chapter 1602, or a commission rule and the violation poses a serious threat to the public health, the attorney general shall initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit.

(b) In seeking an injunction under this section, the attorney general is not required to allege or prove:

(1) that an adequate remedy at law does not exist; or

(2) that substantial or irreparable damage would

result from the continued violation.

Sec. 1603.452. CIVIL PENALTY. (a) A barber, barbershop owner, barber school, or private beauty culture school that violates this chapter, Chapter 1601, Chapter 1602, or a commission rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law.

(b) The amount of the civil penalty for a barber or barbershop owner may not exceed $25 a day for each violation.

(c) The amount of the civil penalty for a barber school or private beauty culture school may not exceed $1,000 a day for each violation.

(d) The attorney general may sue to collect the civil penalty.

Sec. 1603.453. APPEAL BOND NOT REQUIRED. The department is not required to give an appeal bond in a cause arising under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.454. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general shall represent the department in an action to enforce this chapter, Chapter 1601, or Chapter 1602.

ARTICLE 2. REGULATION OF BARBERING

SECTION 2.01. Subsection (a), Section 1601.001, Occupations Code, is amended by amending Subdivisions (3), (4), (5), and (8) and adding Subdivisions (4-a) and (4-b) to read as follows:

(3) "Board" means the Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~].

(4) "Certificate" means a certificate of registration

issued by the department [~~board~~].

(4-a) "Commission" means the Texas Commission of Licensing and Regulation.

(4-b) "Department" means the Texas Department of Licensing and Regulation.

(5) "License" means a license issued by the department [~~board~~].

(8) "Permit" means a permit issued by the department [~~board~~].

SECTION 2.02. Section 1601.003, Occupations Code, is amended to read as follows:

Sec. 1601.003. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) does not represent or advertise to the public directly or indirectly that the person is authorized by the department [~~board~~] to practice barbering; and

(2) is:

(A) a physician or registered nurse licensed in this state and operating within the scope of the person's license;

(B) a commissioned or authorized medical or surgical officer of the United States armed forces;

(C) a person regulated under Chapter 1602, if the person practices within the scope of a permit, license, or certificate issued by the department under that chapter [~~Texas Cosmetology Commission~~]; or

(D) an inmate in the institutional division of the Texas Department of Criminal Justice who performs barbering

during the person's incarceration.

SECTION 2.03. The heading to Subchapter B, Chapter 1601, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY [~~STATE~~] BOARD ON BARBERING [~~OF BARBER EXAMINERS~~]

SECTION 2.04. Subsection (a), Section 1601.051, Occupations Code, is amended to read as follows:

[~~(a)~~] The Advisory [~~State~~] Board on Barbering [~~of Barber Examiners~~] consists of five [~~seven~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) two members, each of whom:

(A) is engaged in the practice of barbering as a Class A barber [~~and has been for at least five years before being appointed~~]; and

(B) does not hold a barbershop permit;

(2) two members, each of whom [~~one member who:~~

[~~(A)~~] is a barbershop owner who holds a barbershop permit; and

[~~(B) is engaged in the practice of barbering and has been for at least five years before being appointed;~~]

(3) one member who holds a permit to conduct or operate a barber school[~~; and~~

[~~(4) three members who represent the public~~].

SECTION 2.05. Section 1601.055, Occupations Code, is amended to read as follows:

Sec. 1601.055. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of one or two [~~or three~~] members expiring on the same date each odd-numbered year [~~every two years~~].

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 2.06. Section 1601.058, Occupations Code, is amended to read as follows:

Sec. 1601.058. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate a board member as presiding officer to serve in that capacity for a two-year term [~~at the will of the governor~~].

SECTION 2.07. Subchapter B, Chapter 1601, Occupations Code, is amended by adding Section 1601.059 to read as follows:

Sec. 1601.059. BOARD DUTIES. (a) The board shall advise the commission and the department on:

(1) education and curricula for applicants;

(2) the content of examinations;

(3) proposed rules and standards on technical issues related to barbering; and

(4) other issues affecting barbering.

(b) The board shall respond to questions from the department and the commission regarding barbering.

SECTION 2.08. Section 1601.253, Occupations Code, is amended to read as follows:

Sec. 1601.253. ELIGIBILITY FOR CLASS A BARBER CERTIFICATE. (a) An applicant for a Class A barber certificate must:

(1) be at least 16 years of age; and

(2) pass a written and practical examination demonstrating to the department's [~~board's~~] satisfaction the applicant's fitness and competence to practice barbering.

(b) The department [~~board~~] shall issue a Class A barber certificate to an applicant who:

(1) complies with the application requirements of this chapter;

(2) passes the examination with an average grade of at least 75 percent;

(3) pays the required [~~a~~] fee [~~not to exceed $100~~]; and

(4) possesses the other qualifications required by this chapter.

SECTION 2.09. Subsections (a) and (c), Section 1601.254, Occupations Code, are amended to read as follows:

(a) An applicant for a teacher's certificate must:

(1) be a Class A barber;

(2) have 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

(3) submit the required [~~an~~] examination fee [~~not to exceed $100~~] with the application.

(c) The department [~~board~~] shall issue a teacher's certificate to an applicant who:

(1) passes the appropriate examination; and

(2) pays the required [~~a~~] certificate fee [~~not to exceed:~~

[~~(A) $100, if the applicant fulfills the certificate requirements during the period beginning November 1 of an odd-numbered year and extending through October 31 of the following year; or~~

[~~(B) $50, if the applicant fulfills the certificate requirements during the period beginning November 1 of an even-numbered year and extending through October 31 of the following year~~].

SECTION 2.10. Subsections (b) and (d), Section 1601.256, Occupations Code, are amended to read as follows:

(b) An applicant for a barber technician license must:

(1) be at least 16 years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a course of instruction in a commission-approved [~~board-approved~~] training program consisting of not less than 300 hours in a period of not less than eight weeks; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(d) The department [~~board~~] shall issue a barber technician license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $100~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.11. Subsections (b) and (c), Section 1601.257, Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist license must:

(1) be at least 17 [~~16~~] years of age;

(2) have completed the seventh grade or the equivalent of the seventh grade;

(3) have completed a commission-approved [~~board-approved~~] training program consisting of 600 hours of instruction in manicuring; and

(4) submit the required [~~a $10 administration~~] fee with the application.

(c) The department [~~board~~] shall issue a manicurist license to an applicant who:

(1) possesses the qualifications described by Subsection (b);

(2) passes the appropriate examination;

(3) pays the required [~~a~~] license fee [~~not to exceed $30~~]; and

(4) has not committed an act that is a ground for denial of a license.

SECTION 2.12. Section 1601.260, Occupations Code, is amended to read as follows:

Sec. 1601.260. ELIGIBILITY FOR STUDENT PERMIT. (a) An

applicant for a permit to be a student in a barber school must:

(1) submit an enrollment application to the department [~~board~~] in the form prescribed by the department [~~board~~];

(2) have completed the seventh grade;

(3) satisfy other requirements specified by the department [~~board~~]; and

(4) submit with the application the required [~~a~~] nonrefundable application fee [~~in an amount not to exceed $25~~].

(b) A separate application is required for each enrollment, reenrollment, or transfer enrollment. The application fee applies only to the first enrollment. The department [~~board~~] may not charge the application fee for any later enrollment, reenrollment, or transfer enrollment.

SECTION 2.13. Section 1601.265, Occupations Code, is amended to read as follows:

Sec. 1601.265. WAIVER OF LICENSE REQUIREMENTS; PERSONAL INTERVIEW. (a) The department [~~board~~] may waive any license requirement for an applicant holding a license from another state or country that has license requirements substantially equivalent to those of this state.

(b) The department [~~board~~] may not require a personal interview as part of the application process.

SECTION 2.14. Subsection (b), Section 1601.301, Occupations Code, is amended to read as follows:

(b) Not later than the third day after the date the shop opens, a [~~A~~] person who owns, operates, or manages a barbershop or specialty shop must[~~:~~

[~~(1)~~] submit an application to the department [~~board~~] for an appropriate permit for each shop, accompanied by a fee set by commission rule[~~; and~~

[~~(2) register with the board the person's full name and the location of each shop~~].

SECTION 2.15. Section 1601.303, Occupations Code, is amended to read as follows:

Sec. 1601.303. ISSUANCE OF BARBERSHOP PERMIT. The department [~~board~~] shall issue a barbershop permit to an applicant if:

(1) the applicant owns the barbershop [~~holds a Class A barber certificate;~~

[~~(2) the applicant has practiced barbering for at least 12 months~~]; and

(2) [~~(3)~~] the shop meets the minimum health standards for barbershops set by the commission [~~board~~] and all other commission rules [~~of the board~~].

SECTION 2.16. Subsections (b) and (c), Section 1601.304, Occupations Code, are amended to read as follows:

(b) An applicant for a manicurist specialty shop permit must submit:

(1) an application that includes:

(A) the shop's address;

(B) the legal description of the premises for which the permit is sought; and

(C) any other information required by the department [~~board~~]; and

(2) the required [~~an~~] inspection fee [~~in an amount not to exceed $50~~].

(c) As soon as practicable after receipt of the application and fee, the department [~~board~~] shall issue a temporary manicurist specialty shop permit to the applicant. The applicant may operate the applicant's shop under the temporary permit until a permanent permit is issued.

SECTION 2.17. Section 1601.305, Occupations Code, is amended to read as follows:

Sec. 1601.305. ISSUANCE OF MANICURIST SPECIALTY SHOP PERMIT. The department [~~board~~] shall issue a permanent manicurist specialty shop permit to an applicant if:

(1) the applicant holds a manicurist license; and

(2) the shop meets the minimum health standards for manicurist specialty shops set by the commission [~~board~~], as determined by a department [~~board~~] inspection under Section 1603.103, and any other requirements imposed by commission [~~board~~] rule.

SECTION 2.18. Section 1601.309, Occupations Code, is amended to read as follows:

Sec. 1601.309. PRACTICE BY COSMETOLOGIST AT SPECIALTY SHOP PROHIBITED. A person who holds a license, permit, or certificate issued by the department under Chapter 1602 [~~Texas Cosmetology Commission~~] may not practice under that authority at a specialty shop regulated under this chapter.

SECTION 2.19. Section 1601.352, Occupations Code, is amended to read as follows:

Sec. 1601.352. APPLICATION FOR BARBER SCHOOL PERMIT. (a) An applicant for a barber school permit must demonstrate to the department [~~board~~] that the school meets the requirements of this subchapter for issuance of a permit.

(b) Before issuing a barber school permit, the department [~~board~~] must determine that the applicant is financially sound and capable of fulfilling the applicant's commitments for training.

SECTION 2.20. Section 1601.353, Occupations Code, is amended to read as follows:

Sec. 1601.353. REQUIRED FACILITIES AND EQUIPMENT. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school has:

(1) an adequate school site housed in a substantial building of permanent construction containing at least 2,800 square feet of floor space, divided into:

(A) a senior department;

(B) a junior department;

(C) a class theory room;

(D) a supply room;

(E) an office space;

(F) a dressing and cloak room; and

(G) two sanitary, modern, separate restrooms, each equipped with one commode and one of which is also equipped with a urinal;

(2) a hard-surface floor-covering of tile or other suitable material;

(3) at least 20 modern barber chairs, including a cabinet and mirror for each chair;

(4) a lavatory behind every two barber chairs;

(5) a liquid sterilizer for each barber chair;

(6) an adequate number of latherers, vibrators, and hair dryers for student use;

(7) adequate lighting for each room;

(8) at least 20 classroom chairs, a blackboard, anatomical charts of the head, neck, and face, and one barber chair in the class theory room;

(9) a library with library facilities available to students containing at least one medical dictionary and a standard work on human anatomy;

(10) adequate drinking fountain facilities, with at least one for each floor;

(11) adequate toilet facilities for the students; and

(12) adequate fire-fighting equipment.

(b) An applicant for a barber school permit must submit to the department [~~board~~]:

(1) a detailed drawing and chart of the proposed physical layout of the school, showing the departments, floor space, equipment, lights, and outlets;

(2) photographs of the proposed site for the school, including the interior and exterior of the building, rooms, and departments;

(3) a detailed copy of the training program;

(4) a copy of the catalogue and promotional literature

of the school;

(5) a copy of the building lease or proposed building lease if the building is not owned by the school;

(6) a sworn statement showing the ownership of the school; and

(7) the required [~~a~~] permit fee [~~not to exceed $1,000~~].

SECTION 2.21. Section 1601.354, Occupations Code, is amended to read as follows:

Sec. 1601.354. PREREQUISITES FOR GRADUATION. (a) The department [~~board~~] may not approve an application for a barber school permit unless the school requires as a prerequisite for graduation the following hours of instruction:

(1) for a barber technician, 300 hours of instruction completed in a course of not less than eight weeks;

(2) for a Class A barber, 1,500 hours of instruction completed in a course of not less than nine months, at least 800 hours of which is in the actual practice of cutting hair as a primary service;

(3) for a manicurist, 600 hours of instruction completed in a course of not less than 16 weeks; and

(4) for a teacher, 1,000 hours of instruction completed in a course of not less than six months.

(b) If a barber school offers a refresher course, the course must require at least 300 hours of instruction. The commission [~~board~~] by rule shall set the curriculum for a refresher course.

SECTION 2.22. Section 1601.355, Occupations Code, is

amended to read as follows:

Sec. 1601.355. SUPERVISION AND TEACHING REQUIREMENTS. (a) The department [~~board~~] may not approve an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school is under the direct supervision and control of a Class A barber certificate holder who presents evidence of at least five years' experience as a practicing barber.

(b) Each barber school for which a permit is sought must 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. In addition to satisfying other department [~~board~~] requirements, the teacher must demonstrate to the department [~~board~~]:

(1) through a written and practical examination an ability to teach the curriculum; and

(2) that the teacher is qualified to teach and:

(A) has had at least six months' experience as a teacher in an approved school in this state or in another state approved by the department [~~board~~]; or

(B) has completed 1,000 hours of instruction in a postgraduate course as a student teacher in a department-approved [~~board-approved~~] barber school in this state.

SECTION 2.23. Subsections (a) and (b), Section 1601.3571, Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the barber school tuition protection account is less than $25,000, the

department [~~board~~] shall collect a fee from each barber school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $25,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~board~~] for the purpose of refunding unused tuition if a barber school ceases operation before its course of instruction is complete. The department [~~board~~] shall administer claims made against the account.

SECTION 2.24. Subsection (c), Section 1601.402, Occupations Code, is amended to read as follows:

(c) The department [~~board~~] shall issue a renewal certificate or license on receipt of a renewal application in the form prescribed by the department [~~board~~], accompanied by a renewal fee in an amount equal to the original certificate or license fee [~~but not to exceed $100~~].

SECTION 2.25. The heading to Section 1601.404, Occupations Code, is amended to read as follows:

Sec. 1601.404. [~~RENEWAL OR~~] REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE.

SECTION 2.26. Subsection (c), Section 1601.404, Occupations Code, is amended to read as follows:

(c) A Class A barber or license holder who retires from practice and whose certificate or license has been expired for more than five years may qualify for a new certificate or license by applying to the department [~~board~~] and by:

(1) making a proper showing to the department [~~board~~],

supported by a personal affidavit;

(2) paying the required [~~an~~] examination fee [~~not to exceed $100~~];

(3) passing a satisfactory examination conducted by the department [~~board~~]; and

(4) paying the fee for an original certificate or license.

SECTION 2.27. Section 1601.405, Occupations Code, is amended to read as follows:

Sec. 1601.405. RENEWAL WHILE IN ARMED FORCES. (a) The department [~~board~~] may not require a Class A barber, barber technician, teacher, or manicurist who is serving on active duty in the United States armed forces to renew the person's certificate or license.

(b) The department [~~board~~] shall issue a renewal certificate or license on application and payment of the required [~~a~~] renewal fee not later than the 90th day after the date the person is released or discharged from active duty in the armed forces. [~~The renewal fee is:~~

[~~(1) $10 if the application and payment are made during the period beginning November 1 of an odd-numbered year and ending October 31 of the following year; or~~

[~~(2) $5 if the application and payment are made during the period beginning November 1 of an even-numbered year and ending October 31 of the following year.~~]

SECTION 2.28. Section 1601.406, Occupations Code, is amended to read as follows:

Sec. 1601.406. RENEWAL OF BARBERSHOP OR SPECIALTY SHOP PERMIT. (a) A barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance [~~on July 1 of each odd-numbered year~~].

(b) A barbershop permit holder may renew the permit by paying the required [~~a~~] renewal fee [~~not to exceed $70~~].

(c) A specialty shop permit holder may renew the permit by submitting to the department [~~board~~] a renewal application accompanied by the required [~~a~~] renewal fee [~~not to exceed $50~~].

SECTION 2.29. Section 1601.407, Occupations Code, is amended to read as follows:

Sec. 1601.407. RENEWAL OF BARBER SCHOOL PERMIT. (a) A barber school permit expires on the first anniversary [~~September 1~~] of the date of issuance [~~each year~~].

(b) A barber school may renew its permit by paying the required [~~a~~] renewal fee [~~not to exceed $300~~].

SECTION 2.30. Section 1601.452, Occupations Code, is amended to read as follows:

Sec. 1601.452. DISPLAY OF SANITATION RULES. Each barbershop or specialty shop shall post in the shop a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.31. Section 1601.453, Occupations Code, is amended to read as follows:

Sec. 1601.453. LOCATION OF PRACTICE. A person licensed by the department [~~board~~] may practice barbering only at a location for which the department [~~board~~] has issued a barbershop permit,

specialty shop permit, or barber school permit.

SECTION 2.32. Section 1601.454, Occupations Code, is amended to read as follows:

Sec. 1601.454. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY BOARD AND TEXAS COSMETOLOGY COMMISSION~~]. (a) The commission [~~board~~] may not adopt rules to restrict or prohibit practice by a Class A barber or manicurist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1602 [~~board and the Texas Cosmetology Commission~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1602 [~~the board and the Texas Cosmetology Commission license or permit the same facility~~], the commission [~~board~~] may not adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 2.33. Section 1601.501, Occupations Code, is amended to read as follows:

Sec. 1601.501. DISPLAY OF SHOP [~~BARBERSHOP~~] PERMIT. A barbershop or specialty shop permit holder must display the permit in a conspicuous place in the shop for which the permit is issued.

SECTION 2.34. Section 1601.552, Occupations Code, is

amended to read as follows:

Sec. 1601.552. DISPLAY OF SANITATION RULES. Each barber school shall post in the school a copy of the commission's sanitation [~~board's~~] rules [~~adopted under Section 1601.152~~].

SECTION 2.35. Section 1601.554, Occupations Code, is amended to read as follows:

Sec. 1601.554. CHANGE OF BARBER SCHOOL OWNERSHIP OR LOCATION. (a) If a barber school changes ownership, the department [~~board~~] must be notified of the change not later than the 10th day before the date the change takes effect.

(b) A barber school may not change the location of the school unless the school obtains approval from the department [~~board~~] before the change by showing that the proposed location meets the requirements of Subchapter H for issuance of a permit to the school.

SECTION 2.36. Section 1601.556, Occupations Code, is amended to read as follows:

Sec. 1601.556. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a barber school permit shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the school's refund policy required under Section 1601.563;

(4) the school's grading policy and rules relating to incomplete grades;

(5) the school's rules of operation and conduct,

including rules relating to absences;

(6) the department's [~~board's~~] name, mailing address, and telephone number for the purpose of directing complaints to the department [~~board~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 2.37. Section 1601.557, Occupations Code, is amended to read as follows:

Sec. 1601.557. COURSE LENGTH AND CURRICULUM CONTENT. (a) A barber school shall submit to the department [~~board~~] for approval the course length and curriculum content for a course offered by the school. The course length and curriculum content shall be designed to reasonably ensure that a student develops the job skills and knowledge necessary for employment. The school may not implement a course length or curriculum content unless it is approved by the department [~~board~~].

(b) Before issuing or renewing a permit under this chapter, the department [~~board~~] shall require a school to account for all course lengths and curriculum contents.

SECTION 2.38. Subsection (b), Section 1601.559, Occupations Code, is amended to read as follows:

(b) The department [~~board~~] may inspect a school's attendance record book at any time.

SECTION 2.39. Subsection (a), Section 1601.560, Occupations Code, is amended to read as follows:

(a) In addition to the teacher required by Section 1601.355(b), a barber school that provides training leading to

issuance of a Class A barber certificate shall have at least one qualified instructor, holding a Class A certificate, for every 25 [~~20~~] students on the school's premises [~~for instruction in practical work~~]. A teacher may serve as an instructor in practical work in addition to holding a position as a theory teacher.

SECTION 2.40. Section 1601.561, Occupations Code, is amended to read as follows:

Sec. 1601.561. REPORTS TO DEPARTMENT [~~BOARD~~]. (a) A barber school shall maintain [~~submit~~] a monthly progress report [~~to the board~~] regarding each student attending the school. The report must certify the daily attendance record of each student and the number of credit hours earned by each student during the previous month.

(b) On a student's completion of a prescribed course of instruction, the school shall notify [~~certify to~~] the department [~~board~~] that the student has completed the required number of hours and is eligible to take the appropriate examination.

(c) A barber school permit holder shall furnish to the department [~~board~~]:

(1) the current course completion rates of students who attend a course of instruction offered by the school; and

(2) job placement rates and employment rates of students who complete a course of instruction.

SECTION 2.41. Subsection (d), Section 1601.566, Occupations Code, is amended to read as follows:

(d) The department [~~board~~] may exempt a school from the payment of interest if the school makes a good faith effort to

refund the tuition but is unable to locate the student. The school shall provide to the department [~~board~~] on request documentation of the school's effort to locate the student.

SECTION 2.42. Section 1601.603, Occupations Code, is amended to read as follows:

Sec. 1601.603. DENIAL OF PERMIT; SUIT. (a) If the department [~~board~~] denies an application for a barber school permit, the school may request in writing the reasons for the refusal.

(b) If the barber school meets the requirements for issuance of the permit and shows that the requirements of this chapter have been met, and the department [~~board~~] refuses to issue the permit, the school may file suit in a district court in Travis County to require the department [~~board~~] to issue the permit.

(c) A suit under Subsection (b) must be filed not later than the 20th day after the date of the department's [~~board's~~] final order denying issuance of the permit, if registered notice of the order is mailed or it is otherwise shown that the school had notice of the order not later than the 10th day after the date the department [~~board~~] entered the order.

SECTION 2.43. Subsection (a), Section 1601.604, Occupations Code, is amended to read as follows:

(a) The commission [~~board~~] shall suspend or revoke the permit of a barber school that directly or indirectly violates this chapter.

SECTION 2.44. Section 1601.605, Occupations Code, is amended to read as follows:

Sec. 1601.605. PROBATION FOR ALTERING COURSE LENGTH. The commission [~~board~~] shall place on probation a barber school that alters a course length below or above industry standards until the school:

(1) provides justification for the alteration; or

(2) adjusts the course length to meet industry standards.

SECTION 2.45. Subsections (a), (b), and (c), Section 1601.606, Occupations Code, are amended to read as follows:

(a) If the department [~~board~~] has reasonable cause to believe that a barber school has violated this chapter or a rule adopted under this chapter, the department [~~board~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~board~~]. The department [~~board~~] shall attempt to provide a balance on a peer review team between members assigned to the team who are from this state and members who are from other states.

(c) The peer review team shall provide the department [~~board~~] with an objective assessment of the school's curriculum content and its application.

SECTION 2.46. Subsection (a), Section 1601.653, Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person is a barber inspector or other department [~~board~~] employee and the person sells barber supplies or engages in a business, other than barbering,

that deals directly with a barber, barbershop, specialty shop, or barber school.

ARTICLE 3. REGULATION OF COSMETOLOGY

SECTION 3.01. Section 1602.001, Occupations Code, is amended to read as follows:

Sec. 1602.001. GENERAL DEFINITIONS. In this chapter:

(1) "Board" means the Advisory Board on Cosmetology.

(2) "Commission" means the Texas [~~Cosmetology~~] Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) [~~(2)~~] "Public school" includes a public high school, a public junior college, or any other nonprofit tax-exempt institution that conducts a cosmetology program.

SECTION 3.02. Section 1602.002, Occupations Code, is amended to read as follows:

Sec. 1602.002. DEFINITION OF COSMETOLOGY. (a) In this chapter, "cosmetology" means the practice of performing or offering to perform for compensation any of the following services:

(1) treating a person's hair by:

(A) providing any method of treatment as a primary service, including arranging, beautifying, bleaching, cleansing, coloring, cutting, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, or waving;

(B) providing a necessary service that is preparatory or ancillary to a service under Paragraph (A), including bobbing, clipping, cutting, or trimming; or

(C) cutting the person's hair as a separate and independent service for which a charge is directly or indirectly made separately from charges for any other service;

(2) weaving or braiding a person's hair;

(3) shampooing and conditioning a person's hair;

(4) servicing a person's wig or artificial hairpiece on a person's head or on a block after the initial retail sale and servicing in any manner listed in Subdivision (1);

(5) treating a person's mustache or beard by arranging, beautifying, coloring, processing, styling, or trimming;

(6) cleansing, stimulating, or massaging a person's scalp, face, neck, or arms:

(A) by hand or by using a device, apparatus, or appliance; and

(B) with or without the use of any cosmetic preparation, antiseptic, tonic, lotion, or cream;

(7) beautifying a person's face, neck, or arms using a cosmetic preparation, antiseptic, tonic, lotion, powder, oil, clay, cream, or appliance;

(8) administering facial treatments;

(9) removing superfluous hair from a person's body using depilatories or mechanical tweezers;

(10) treating a person's nails by:

(A) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring; or

(B) attaching false nails; or

(11) massaging, cleansing, treating, or beautifying a person's hands or feet.

(b) The commission by rule may amend the definition of cosmetology to eliminate a service included in that definition under Subsection (a).

SECTION 3.03. The heading to Subchapter B, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ADVISORY BOARD ON [~~TEXAS~~] COSMETOLOGY [~~COMMISSION~~]

SECTION 3.04. The heading to Section 1602.051, Occupations Code, is amended to read as follows:

Sec. 1602.051. BOARD [~~COMMISSION~~]; MEMBERSHIP.

SECTION 3.05. Subsections (a) and (b), Section 1602.051, Occupations Code, are amended to read as follows:

(a) The Advisory Board on [~~Texas~~] Cosmetology [~~Commission~~] consists of five [~~six~~] members appointed by the presiding officer of the commission, with the commission's approval, [~~governor with the advice and consent of the senate~~] as follows:

(1) one member who holds a license for a beauty shop that is part of a chain of beauty shops [~~license~~];

(2) one member who holds a license for a beauty shop that is not part of a chain of beauty shops;

(3) one member who holds a private beauty culture school license; and

(4) [~~(3)~~] two members who each hold an operator

license[~~, and~~

[~~(4) two members who represent the public~~].

(b) The associate commissioner for occupational education and technology of the Texas Education Agency or the associate commissioner's authorized representative shall serve as an ex officio member of the commission without [~~with~~] voting privileges.

SECTION 3.06. Subsections (a) and (c), Section 1602.055, Occupations Code, are amended to read as follows:

(a) Members of the board [~~commission~~] serve staggered six-year terms, with the terms of one or two members expiring on the same date [~~December 31 of~~] each odd-numbered year.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, [~~governor~~] shall appoint a replacement to fill the unexpired term.

SECTION 3.07. The heading to Section 1602.058, Occupations Code, is amended to read as follows:

Sec. 1602.058. PRESIDING OFFICER[~~, COMMITTEES~~].

SECTION 3.08. Subsection (a), Section 1602.058, Occupations Code, is amended to read as follows:

[~~(a)~~] The presiding officer of the commission, with the commission's approval, [~~governor~~] shall designate one member of the commission as presiding officer to serve in that capacity for a two-year term [~~at the pleasure of the governor~~].

SECTION 3.09. Subchapter B, Chapter 1602, Occupations Code, is amended by adding Section 1602.060 to read as follows:

Sec. 1602.060. BOARD DUTIES. (a) The board shall advise

the commission and the department on:

(1) education and curricula for applicants;

(2) the content of examinations;

(3) proposed rules and standards on technical issues related to cosmetology; and

(4) other issues affecting cosmetology.

(b) The board shall respond to questions from the department and the commission regarding cosmetology.

SECTION 3.10. The heading to Subchapter D, Chapter 1602, Occupations Code, is amended to read as follows:

SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES RELATED TO COSMETOLOGY

SECTION 3.11. Subsections (a) and (b), Section 1602.153, Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of records and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the department [~~commission~~], acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the department [~~commission~~] may be held.

SECTION 3.12. Subsection (c), Section 1602.251, Occupations Code, is amended to read as follows:

(c) A person licensed by the department [~~commission~~] may practice cosmetology only at a facility operated by a person holding a beauty shop license, private beauty culture school license, or other license issued by the department [~~commission~~].

SECTION 3.13. Subsection (b), Section 1602.258, Occupations Code, is amended to read as follows:

(b) To be eligible for a specialty certificate, an applicant must:

(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 the necessary requisites as determined by the department [~~commission~~] in the particular specialty for which certification is sought, including training through a commission-approved training program.

SECTION 3.14. Subsections (a) and (b), Section 1602.266, Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] shall require a student enrolled in a school of cosmetology in this state to hold a permit stating the student's name and the name of the school. The permit shall be displayed in a reasonable manner at the school.

(b) The department [~~commission~~] shall issue a student permit to an applicant who submits an application to the department [~~commission~~] for a student permit accompanied by the required fee.

SECTION 3.15. Subsection (b), Section 1602.267,

Occupations Code, is amended to read as follows:

(b) The department [~~commission~~] shall issue a shampoo apprentice permit to an applicant who[~~:~~

[~~(1)~~] is at least 16 years of age[~~; and~~

[~~(2) submits a certificate of health as required by Section 1602.253~~].

SECTION 3.16. Subsection (b), Section 1602.302, Occupations Code, is amended to read as follows:

(b) An application for a beauty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a beauty shop established by the commission; and

(3) be verified by the applicant.

SECTION 3.17. Subsections (b) and (c), Section 1602.303, Occupations Code, are amended to read as follows:

(b) An application for a private beauty culture school license must be accompanied by the required license fee and inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) be verified by the applicant;

(3) contain a detailed floor plan of the school building divided into two separate areas, one area for instruction in theory and one area for clinic work; and

(4) contain a statement that the building:

(A) is fireproof;

(B) is of permanent construction;

(C) contains a minimum of 3,500 square feet of floor space;

(D) has separate restrooms for male and female students; and

(E) contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 50 students.

(c) The applicant is entitled to a private beauty culture school license if:

(1) the department [~~commission~~] determines that the applicant is financially sound and capable of fulfilling the school's commitments for training;

(2) the applicant's facilities pass an inspection conducted by the department under Section 1603.103 [~~commission~~]; and

(3) the applicant has not committed an act that constitutes a ground for denial of a license.

SECTION 3.18. Subsection (b), Section 1602.305, Occupations Code, is amended to read as follows:

(b) An application for a specialty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain proof of the particular requisites for a specialty shop as established by the commission; and

(3) be verified by the applicant.

SECTION 3.19. Subsection (b), Section 1602.306, Occupations Code, is amended to read as follows:

(b) An application for a booth rental license must:

(1) be on a form prescribed by the department [~~commission~~];

(2) contain information as required by commission rule; and

(3) be verified by the applicant.

SECTION 3.20. The heading to Section 1602.352, Occupations Code, is amended to read as follows:

Sec. 1602.352. REQUIREMENT FOR FIRST [~~PROCEDURE FOR~~] RENEWAL OF LICENSE [~~OR REINSTATEMENT~~].

SECTION 3.21. Subchapter H, Chapter 1602, Occupations Code, is amended by adding Section 1602.353 to read as follows:

Sec. 1602.353. INACTIVE STATUS. (a) Not later than the 10th day before the expiration date of a certificate or license issued under this chapter, the certificate or license holder may place the certificate or license on inactive status by:

(1) submitting an application for inactive status to the department on a form prescribed by the department; and

(2) paying the required fee.

(b) Except as provided by Subsection (e), a person whose certificate or license is on inactive status is not required to complete continuing education required under this chapter.

(c) A person whose certificate or license is on inactive status may reapply for inactive status before the expiration date

of the certificate or license. The person must pay the required fee.

(d) A license holder may not employ a person on inactive status.

(e) A person on inactive status may return the certificate or license to active status by:

(1) applying to the department for active status on a form prescribed by the department;

(2) paying the required fee; and

(3) providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding two-year license period.

(f) The commission may set fees and adopt rules to implement this section.

SECTION 3.22. Section 1602.405, Occupations Code, is amended to read as follows:

Sec. 1602.405. PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY [~~BY COMMISSION AND STATE BOARD OF BARBER EXAMINERS~~]. (a) The commission may not adopt rules to restrict or prohibit practice by a cosmetologist in a facility solely because the facility is licensed or permitted by [~~both~~] the department under both this chapter and Chapter 1601 [~~commission and the State Board of Barber Examiners~~].

(b) If a facility has a license or permit under both this chapter and Chapter 1601 [~~the commission and the State Board of Barber Examiners license the same facility~~], the commission may not

adopt rules requiring separate treatment of the barbers and cosmetologists practicing in the facility or of their customers, including separate:

(1) work areas for barbers and cosmetologists;

(2) waiting areas for customers of the barbers and cosmetologists; or

(3) restrooms for the barbers and cosmetologists practicing in the facility or for their customers.

SECTION 3.23. Subsection (a), Section 1602.451, Occupations Code, is amended to read as follows:

(a) The holder of a private beauty culture school license shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours one full-time licensed instructor for each 25 students in attendance;

(3) maintain a daily record of students' attendance;

(4) establish regular class and instruction hours and grades;

(5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than 600 hours instruction for a complete course in manicuring;

(7) hold examinations before issuing diplomas;

(8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed;

(9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and

(10) [~~submit to the executive director the name of each student within 10 days after the date the student enrolls in the school and notify the executive director of the withdrawal or graduation of a student not later than the 10th day after the date the student withdraws or graduates; and~~

[~~(11)~~] provide the department [~~commission~~] with information on:

(A) the current course completion rates of students who attend a course of instruction offered by the school; and

(B) job placement rates and employment rates of students who complete the course of instruction.

SECTION 3.24. Section 1602.452, Occupations Code, is amended to read as follows:

Sec. 1602.452. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a private beauty culture school license shall furnish each prospective student with:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the refund policy required under Section 1602.458;

(4) the school grading policy and rules relating to incomplete grades;

(5) the school rules of operation and conduct, including rules relating to absences;

(6) the name, mailing address, and telephone number of the department [~~commission~~] for the purpose of directing complaints to the department [~~commission~~]; and

(7) the current rates of job placement and employment of students who complete a course of training.

SECTION 3.25. Subsection (c), Section 1602.453, Occupations Code, is amended to read as follows:

(c) Before issuing or renewing a license under this chapter, the department [~~commission~~] shall require a school to account for each course length and curriculum content.

SECTION 3.26. Section 1602.454, Occupations Code, is amended to read as follows:

Sec. 1602.454. STUDENT RECORD. A private beauty culture school shall notify [~~send to~~] the department [~~commission a certified copy of a student's record, indicating all course hours completed by the student and whether the agreed tuition has been paid,~~] when a [~~the~~] student[~~:~~

[~~(1)~~] graduates from a course of training offered by the school and is eligible to take the appropriate examination[~~; or~~

[~~(2) withdraws or transfers from a course of training without completion of the training~~].

SECTION 3.27. Subsection (d), Section 1602.460, Occupations Code, is amended to read as follows:

(d) The department [~~commission~~] may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department [~~commission~~] on request

documentation of the effort to locate the student.

SECTION 3.28. Subsection (a), Section 1602.463, Occupations Code, is amended to read as follows:

(a) If a private beauty culture school closes, the department [~~commission~~] shall attempt to arrange for students enrolled in the closed school to attend another private beauty culture school.

SECTION 3.29. Subsections (a) and (b), Section 1602.464, Occupations Code, are amended to read as follows:

(a) If on January 1 of any year the amount in the private beauty culture school tuition protection account is less than $200,000, the department [~~commission~~] shall collect a fee from each private beauty culture school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $200,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the department [~~commission~~] for the purpose described by Section 1602.463. The department [~~commission~~] shall administer claims made against the account.

SECTION 3.30. Subsections (a), (b), and (c), Section 1602.465, Occupations Code, are amended to read as follows:

(a) If the department [~~commission~~] has reasonable cause to believe that a private beauty culture school has violated this chapter or a rule adopted under this chapter, the department [~~commission~~] may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) The peer review shall be conducted by a peer review team consisting of knowledgeable persons selected by the department [~~commission~~]. The department [~~commission~~] shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states.

(c) The team shall provide the department [~~commission~~] with an objective assessment of the content of the school's curriculum and its application.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Section 232.002, Family Code, is amended to read as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following are licensing authorities subject to this chapter:

(1) Department of Agriculture;

(2) [~~Texas Commission on Alcohol and Drug Abuse;~~

[~~(3)~~] Texas Alcoholic Beverage Commission;

(3) [~~(4)~~] Texas Appraiser Licensing and Certification Board;

(4) [~~(5)~~] Texas Board of Architectural Examiners;

(5) [~~(6) State Board of Barber Examiners;~~

[~~(7)~~] Texas Board of Chiropractic Examiners;

(6) [~~(8)~~] Comptroller of Public Accounts;

(7) [~~(9) Texas Cosmetology Commission;~~

[~~(10)~~] Court Reporters Certification Board;

(8) [~~(11)~~] State Board of Dental Examiners;

(9) [~~(12)~~] Texas State Board of Examiners of

Dietitians;

(10) [~~(13)~~] Texas Funeral Service Commission;

(11) [~~(14) Texas~~] Department of State Health Services [~~Health~~];

(12) [~~(15) Texas~~] Department of Aging and Disability [~~Human~~] Services;

(13) [~~(16)~~] Texas Board of Professional Land Surveying;

(14) [~~(17)~~] Texas Department of Licensing and Regulation;

(15) [~~(18)~~] Texas State Board of Examiners of Marriage and Family Therapists;

(16) [~~(19)~~] Texas State Board of Medical Examiners;

(17) [~~(20)~~] Midwifery Board;

(18) [~~(21)~~] Texas Commission on Environmental Quality;

(19) [~~(22)~~] Board of Nurse Examiners;

(20) [~~(23)~~] Texas Board of Occupational Therapy Examiners;

(21) [~~(24)~~] Texas Optometry Board;

(22) [~~(25)~~] Parks and Wildlife Department;

(23) [~~(26)~~] Texas State Board of Examiners of Perfusionists;

(24) [~~(27)~~] Texas State Board of Pharmacy;

(25) [~~(28)~~] Texas Board of Physical Therapy Examiners;

(26) [~~(29)~~] Texas State Board of Plumbing Examiners;

(27) [~~(30)~~] Texas State Board of Podiatric Medical Examiners;

(28) [~~(31)~~] Polygraph Examiners Board;

(29) [~~(32)~~] Texas [~~Commission on~~] Private Security Board;

(30) [~~(33)~~] Texas State Board of Examiners of Professional Counselors;

(31) [~~(34)~~] Texas Board of Professional Engineers;

(32) [~~(35)~~] Department of Family and Protective [~~and Regulatory~~] Services;

(33) [~~(36)~~] Texas State Board of Examiners of Psychologists;

(34) [~~(37)~~] Texas State Board of Public Accountancy;

(35) [~~(38)~~] Department of Public Safety of the State of Texas;

(36) [~~(39)~~] Public Utility Commission of Texas;

(37) [~~(40)~~] Railroad Commission of Texas;

(38) [~~(41)~~] Texas Real Estate Commission;

(39) [~~(42)~~] State Bar of Texas;

(40) [~~(43)~~] Texas State Board of Social Worker Examiners;

(41) [~~(44)~~] State Board of Examiners for Speech-Language Pathology and Audiology;

(42) [~~(45)~~] Texas Structural Pest Control Board;

(43) [~~(46)~~] Board of Tax Professional Examiners;

(44) [~~(47)~~] Secretary of State;

(45) [~~(48)~~] Supreme Court of Texas;

(46) [~~(49)~~] Texas Transportation Commission;

(47) [~~(50)~~] State Board of Veterinary Medical Examiners;

(48) [~~(51)~~] Texas Ethics Commission;

(49) [~~(52)~~] Advisory Board of Athletic Trainers;

(50) [~~(53)~~] State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(51) [~~(54)~~] Texas Board of Licensure for Professional Medical Physicists;

(52) [~~(55)~~] Texas Department of Insurance;

(53) [~~(56)~~] Texas Board of Orthotics and Prosthetics;

(54) [~~(57)~~] savings and loan commissioner;

(55) [~~(58)~~] Texas Juvenile Probation Commission; and

(56) [~~(59)~~] Texas Lottery Commission under Chapter 466, Government Code.

SECTION 4.02. Subsection (d), Section 411.122, Government Code, is amended to read as follows:

(d) The following state agencies are subject to this section:

(1) Texas Appraiser Licensing and Certification Board;

(2) Texas Board of Architectural Examiners;

(3) [~~State Board of Barber Examiners;~~

[~~(4)~~] Texas Board of Chiropractic Examiners;

(4) [~~(5) Texas Cosmetology Commission;~~

[~~(6)~~] State Board of Dental Examiners;

(5) [~~(7)~~] Texas Board of Professional Engineers;

(6) [~~(8)~~] Texas Funeral Service Commission;

(7) [~~(9)~~] Texas Board of Professional Geoscientists;

(8) [~~(10) Texas~~] Department of State Health Services, except as provided by Section 411.110, and agencies attached to the department, including:

(A) Texas State Board of Examiners of Dietitians;

(B) Texas State Board of Examiners of Marriage and Family Therapists;

(C) Midwifery Board;

(D) Texas State Board of Examiners of Perfusionists;

(E) Texas State Board of Examiners of Professional Counselors;

(F) Texas State Board of Social Worker Examiners;

(G) State Board of Examiners for Speech-Language Pathology and Audiology;

(H) Advisory Board of Athletic Trainers;

(I) State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;

(J) Texas Board of Licensure for Professional Medical Physicists; and

(K) Texas Board of Orthotics and Prosthetics;

(9) [~~(11)~~] Texas Board of Professional Land Surveying;

(10) [~~(12)~~] Texas Department of Licensing and Regulation, except as provided by Section 411.093;

(11) [~~(13)~~] Texas Commission on Environmental

Quality;

(12) [~~(14)~~] Texas Board of Occupational Therapy Examiners;

(13) [~~(15)~~] Texas Optometry Board;

(14) [~~(16)~~] Texas State Board of Pharmacy;

(15) [~~(17)~~] Texas Board of Physical Therapy Examiners;

(16) [~~(18)~~] Texas State Board of Plumbing Examiners;

(17) [~~(19)~~] Texas State Board of Podiatric Medical Examiners;

(18) [~~(20)~~] Polygraph Examiners Board;

(19) [~~(21)~~] Texas State Board of Examiners of Psychologists;

(20) [~~(22)~~] Texas Real Estate Commission;

(21) [~~(23)~~] Board of Tax Professional Examiners;

(22) [~~(24)~~] Texas Department of Transportation;

(23) [~~(25)~~] State Board of Veterinary Medical Examiners;

(24) [~~(26) Board of Vocational Nurse Examiners;~~

[~~(27)~~] Texas Department of Housing and Community Affairs;

(25) [~~(28)~~] secretary of state;

(26) [~~(29)~~] state fire marshal;

(27) [~~(30)~~] Texas Education Agency; and

(28) [~~(31)~~] Department of Agriculture.

SECTION 4.03. Subsection (a), Section 2054.352, Government Code, is amended to read as follows:

(a) The following licensing entities shall participate in the system established under Section 2054.353[~~, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001~~]:

(1) [~~State Board of Barber Examiners;~~

[~~(2)~~] Texas Board of Chiropractic Examiners;

(2) [~~(3) Texas Cosmetology Commission;~~

[~~(4)~~] Court Reporters Certification Board;

(3) [~~(5)~~] State Board of Dental Examiners;

(4) [~~(6)~~] Texas Funeral Service Commission;

(5) [~~(7)~~] Texas Board of Professional Land Surveying;

(6) [~~(8)~~] Texas State Board of Medical Examiners;

(7) [~~(9)~~] Board of Nurse Examiners;

(8) [~~(10)~~] Texas Optometry Board;

(9) [~~(11)~~] Texas Structural Pest Control Board;

(10) [~~(12)~~] Texas State Board of Pharmacy;

(11) [~~(13)~~] Executive Council of Physical Therapy and Occupational Therapy Examiners;

(12) [~~(14)~~] Texas State Board of Plumbing Examiners;

(13) [~~(15)~~] Texas State Board of Podiatric Medical Examiners;

(14) [~~(16)~~] Board of Tax Professional Examiners;

(15) [~~(17)~~] Polygraph Examiners Board;

(16) [~~(18)~~] Texas State Board of Examiners of Psychologists;

(17) [~~(19)~~] State Board of Veterinary Medical Examiners;

(18) [~~(20)~~] Texas Real Estate Commission;

(19) [~~(21)~~] Texas Appraiser Licensing and Certification Board;

(20) [~~(22)~~] Texas Department of Licensing and Regulation;

(21) [~~(24)~~] Texas State Board of Public Accountancy;

(22) [~~(25)~~] State Board for Educator Certification;

(23) [~~(26)~~] Texas Board of Professional Engineers;

(24) [~~(27) Texas~~] Department of State Health Services;

(25) [~~(28)~~] Texas Board of Architectural Examiners;

(26) [~~(29)~~] Texas Racing Commission;

(27) [~~(30)~~] Commission on Law Enforcement Officer Standards and Education; and

(28) [~~(31)~~] Texas [~~Commission on~~] Private Security Board.

ARTICLE 5. REPEALER

SECTION 5.01. The following laws are repealed:

(1) Subchapters C, D, E, and O, Chapter 1601, Occupations Code;

(2) Subchapters C, E, and K, Chapter 1602, Occupations Code; and

(3) Sections 1601.004, 1601.051(b) and (c), 1601.052, 1601.053, 1601.054, 1601.056, 1601.057, 1601.252, 1601.261, 1601.262, 1601.263, 1601.264, 1601.266, 1601.267, 1601.302, 1601.310, 1601.311, 1601.356, 1601.401, 1601.402(d), 1601.403, 1601.404(a) and (b), 1601.408, 1601.502, 1601.503, 1601.506, 1601.601, 1601.651, 1601.654, 1602.004, 1602.051(c), 1602.052,

1602.053, 1602.054, 1602.055(b), 1602.056, 1602.057, 1602.058(b), 1602.059, 1602.151, 1602.152, 1602.154, 1602.155, 1602.252, 1602.253, as amended by Chapter 1282, Acts of the 78th Legislature, Regular Session, 2003, 1602.259, 1602.260, 1602.261, 1602.263, 1602.264, 1602.265, 1602.303(d), 1602.304(b), 1602.351(d), 1602.352(b) through (f), 1602.407, 1602.551, 1602.552, 1602.553, and 1602.555, Occupations Code.

ARTICLE 6. TRANSITION AND EFFECTIVE DATE

SECTION 6.01. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission are abolished but continue in existence until January 1, 2006, for the sole purpose of transferring obligations, property, full-time equivalent positions, rights, powers, and duties to the Texas Department of Licensing and Regulation. The Texas Department of Licensing and Regulation assumes all of the obligations, property, full-time equivalent positions, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission, as they exist immediately before the effective date of this Act. All unexpended funds appropriated to the State Board of Barber Examiners and the Texas Cosmetology Commission are transferred to the Texas Department of Licensing and Regulation. The transfer of the obligations, property, full-time equivalent positions, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation must be completed not later than January 1, 2006.

(b) All rules of the State Board of Barber Examiners and the Texas Cosmetology Commission are continued in effect as rules of

the Texas Commission of Licensing and Regulation until superseded by a rule of the Texas Commission of Licensing and Regulation. A certificate, license, or permit issued by the State Board of Barber Examiners or the Texas Cosmetology Commission is continued in effect as provided by the law in effect immediately before the effective date of this Act. A complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. An inspection or other activity conducted by the State Board of Barber Examiners or the Texas Cosmetology Commission is considered to be an inspection or activity conducted by the Texas Department of Licensing and Regulation, including an inspection or other activity conducted for purposes of allowing a school, shop, or facility to continue to operate under Section 1603.103, Occupations Code, as added by this Act.

(c) A reference in another law or an administrative rule to the State Board of Barber Examiners or the Texas Cosmetology Commission means the Texas Department of Licensing and Regulation.

SECTION 6.02. (a) The State Board of Barber Examiners and the Texas Cosmetology Commission, in cooperation with and at the direction of the Texas Department of Licensing and Regulation shall complete all necessary computer programming and other tasks to ensure that the agency numbers assigned by the comptroller of public accounts to the board and the commission are not necessary for any fiscal year after 2005, except to complete earlier fiscal year revenue and expenditure transactions and reporting. The number assigned by the comptroller of public accounts to the Texas

Department of Licensing and Regulation shall be used to record transactions related to the regulation of barbering and cosmetology beginning in fiscal year 2006.

(b) Not later than July 1, 2005, the State Board of Barber Examiners and the Texas Cosmetology Commission shall request that the comptroller of public accounts grant the Texas Department of Licensing and Regulation inquiry-only security access to the uniform statewide accounting system, the state property accounting system, the uniform statewide payroll system, and the human resources information system for their respective agencies. The Texas Department of Licensing and Regulation and the comptroller of public accounts may coordinate implementation of this section.

(c) Not later than July 15, 2005, the Texas Department of Licensing and Regulation shall provide to the State Board of Barber Examiners and the Texas Cosmetology Commission detailed information regarding those agencies' responsibilities under Subsection (a) of this section.

SECTION 6.03. Sections 1602.353 and 1603.352, Occupations Code, as added by this Act, take effect January 1, 2006.

SECTION 6.04. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) Section 6.02 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 6.02 of this Act does not take effect.

S.B. No. 411

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 411 passed the Senate on April 26, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 28, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 411 passed the House, with amendments, on May 23, 2005, by the following vote: Yeas 141, Nays 0, four present not voting.

Chief Clerk of the House

Approved:

Date

Governor

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 24, 2005

TO: Honorable David Dewhurst, Lieutenant Governor, Senate

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB411** by Whitmire (Relating to the regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB411, As Passed 2nd House: a positive impact of $2,336,806 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$1,005,903
2007	$1,330,903
2008	$1,330,903
2009	$1,330,903
2010	$1,330,903

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	$1,005,903	(19.5)
2007	$1,330,903	(19.5)
2008	$1,330,903	(19.5)
2009	$1,330,903	(19.5)
2010	$1,330,903	(19.5)

Fiscal Analysis

The provisions of the bill abolish the State Board of Barber Examiners (Board) and the Texas Cosmetology Commission (Commission), which then transfers their function to the Texas Department of Licensing and Regulation (TDLR).

The provisions of the bill create two new advisory committees to advise TDLR on barbering and cosmetology and provides for composition requirements and duties of the advisory boards. The provisions require barber and cosmetology inspection efforts to be risk-based that focus on sanitation violations and establish the criteria for a risk-based inspection procedure. The provisions allow TDLR to inspect barber and cosmetology facilities before the facility begins operations and to charge fees for the inspections and authorize the registration of examination proctors at TDLR who would hold a

certificate enabling them to administer cosmetology and barber exams around the state. The provisions eliminate the barber health certificate requirement and create an inactive license status for cosmetology licensees. The provisions also allow the Texas Commission of Licensing and Regulation (TCLR) by rule to amend the definition of cosmetology to eliminate a service included in the definition.

TDLR would adopt fees in amounts considered reasonable and necessary to provide sufficient revenue to administer the programs under its authority. The provisions would remove the fee caps established for various fees established by the two current regulatory agencies and would establish standard time frames and late fees for license renewals.

Sections 1602.353 and 1603.352, Occupations Code take effect January 1, 2006. Except as provided by sections mentioned, the bill would take effect September 1, 2005. Section 6.02 would take effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If the bill does not receive the vote necessary for immediate effect, Section 6.02 does not take effect.

Methodology

It is assumed that TDLR would not adjust the current fees set by the Board of Barber Examiners and Cosmetology Commission that would lower overall revenue estimated in the 2006-07 Comptrollers' Biennial Revenue Estimate.

For the purpose of this analysis, it is assumed that TCLR would continue the definitions of cosmetology and therefore there would not be a related savings.

Based on information provided by the Sunset Advisory Commission (SAC), abolishing independent agencies and transferring their function to TDLR would result in a total savings or $1,005,903 and a reduction of 19.5 Full-time Equivalents (FTEs) each fiscal year.

Abolishing the independent agencies and merging their functions would result in a reduction of 11.5 redundant and unneeded FTE positions. Eliminating these positions saves approximately $666,207 annually, based on the current salary and benefit levels of the positions at the Board and Commission.

The savings are based on a reduction of 3.5 FTEs at the Board resulting in an annual savings of $179,234 based on current salary and benefit levels associated with the Executive Director position, the CFO position, one administrative position, and one-half of the support services position, which can be absorbed by TDLR.

The reductions would also include an 8 FTE reduction from the Commission resulting in a cost savings of $478,207 per year based on current salary and benefit levels associated with the Executive Director position, one information specialist position, one director of enforcement position, one CFO position, three accounting positions, and one IT position.

Additionally, abolishing both the policymaking bodies consisting of seven members each for each agency would result in a reduction of travel costs for Board and Commission members. Based on an average travel reimbursement of $250 per member per meeting, and assuming that the current Board and Commission met four times a year, the reduction of 14 board members would save $14,000 per year.

Requiring inspections to be risk-based, at least every two years would reduce the number of inspections that the agencies currently administer per year by an estimated one-quarter reduction on average. Assuming that one inspector can, on average, perform 1,500 inspections per year, reducing the number of inspection would result in a reduction of three inspector positions at the Board and five inspector positions at the Commission. Based on average salary classifications for these inspectors (Inspector III, salary group B5) plus benefits at the 29.74 percent rate, the reduction would result in a cost savings of $40,712 per position, or $325,696 annually.

SAC estimates that authorizing the registration of examination proctors at TDLR would not result in a

fiscal impact. Any cost associated with registering proctors would be minimal.

In addition, the Board and the Commission currently contract for its licensing system from Northrup Grumman at estimated annual costs of $50,000 and $275,000, respectively. It is estimated that TDLR would transfer these licensing systems to its own system in fiscal year 2006 and realize a savings of $325,000 beginning in fiscal year 2007.

Technology

Savings of $325,000 from the transfer of the Board's and Commission's licensing systems to TDLR's in fiscal year 2007.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 308 State Auditor's Office, 452 Department of Licensing and Regulation, 502 Board of Barber Examiners, 505 Cosmetology Commission

LBB Staff: JOB, SD, LB, MW, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 17, 2005

TO: Honorable Carlos Uresti, Chair, House Committee on Government Reform

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB411** by Whitmire (Relating to the regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB411, Committee Report 2nd House, Substituted: a positive impact of $2,336,806 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$1,005,903
2007	$1,330,903
2008	$1,330,903
2009	$1,330,903
2010	$1,330,903

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	$1,005,903	(19.5)
2007	$1,330,903	(19.5)
2008	$1,330,903	(19.5)
2009	$1,330,903	(19.5)
2010	$1,330,903	(19.5)

Fiscal Analysis

The provisions of the bill abolish the State Board of Barber Examiners (Board) and the Texas Cosmetology Commission (Commission), which then transfers their function to the Texas Department of Licensing and Regulation (TDLR).

The provisions of the bill create two new advisory committees to advise TDLR on barbering and cosmetology and provides for composition requirements and duties of the advisory boards. The provisions require barber and cosmetology inspection efforts to be risk-based that focus on sanitation violations and establish the criteria for a risk-based inspection procedure. The provisions allow TDLR to inspect barber and cosmetology facilities before the facility begins operations and to charge fees for

the inspections and authorize the registration of examination proctors at TDLR who would hold a certificate enabling them to administer cosmetology and barber exams around the state. The provisions eliminate the barber health certificate requirement and create an inactive license status for cosmetology licensees.

TDLR would adopt fees in amounts considered reasonable and necessary to provide sufficient revenue to administer the programs under its authority. The provisions would remove the fee caps established for various fees established by the two current regulatory agencies and would establish standard time frames and late fees for license renewals.

Sections 1602.353 and 1603.352, Occupations Code take effect January 1, 2006. Except as provided by sections mentioned, the bill would take effect September 1, 2005. Section 6.02 would take effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If the bill does not receive the vote necessary for immediate effect, Section 6.02 does not take effect.

Methodology

It is assumed that TDLR would not adjust the current fees set by the Board of Barber Examiners and Cosmetology Commission that would lower overall revenue estimated in the 2006-07 Comptrollers' Biennial Revenue Estimate.

Based on information provided by the Sunset Advisory Commission (SAC), abolishing independent agencies and transferring their function to TDLR would result in a total savings or $1,005,903 and a reduction of 19.5 Full-time Equivalents (FTEs) each fiscal year.

Abolishing the independent agencies and merging their functions would result in a reduction of 11.5 redundant and unneeded FTE positions. Eliminating these positions saves approximately $666,207 annually, based on the current salary and benefit levels of the positions at the Board and Commission.

The savings are based on a reduction of 3.5 FTEs at the Board resulting in an annual savings of $179,234 based on current salary and benefit levels associated with the Executive Director position, the CFO position, one administrative position, and one-half of the support services position, which can be absorbed by TDLR.

The reductions would also include an 8 FTE reduction from the Commission resulting in a cost savings of $478,207 per year based on current salary and benefit levels associated with the Executive Director position, one information specialist position, one director of enforcement position, one CFO position, three accounting positions, and one IT position.

Additionally, abolishing both the policymaking bodies consisting of seven members each for each agency would result in a reduction of travel costs for Board and Commission members. Based on an average travel reimbursement of $250 per member per meeting, and assuming that the current Board and Commission met four times a year, the reduction of 14 board members would save $14,000 per year.

Requiring inspections to be risk-based, at least every two years would reduce the number of inspections that the agencies currently administer per year by an estimated one-quarter reduction on average. Assuming that one inspector can, on average, perform 1,500 inspections per year, reducing the number of inspection would result in a reduction of three inspector positions at the Board and five inspector positions at the Commission. Based on average salary classifications for these inspectors (Inspector III, salary group B5) plus benefits at the 29.74 percent rate, the reduction would result in a cost savings of $40,712 per position, or $325,696 annually.

SAC estimates that authorizing the registration of examination proctors at TDLR would not result in a fiscal impact. Any cost associated with registering proctors would be minimal.

In addition, the Board and the Commission currently contract for its licensing system from Northrup Grumman at estimated annual costs of $50,000 and $275,000, respectively. It is estimated that TDLR

would transfer these licensing system to its own system in fiscal year 2006 and realize a savings of $325,000 beginning in fiscal year 2007.

Technology

Savings of $325,000 from the transfer of the Board's and Commission's licensing system to TDLR's in fiscal year 2007.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 308 State Auditor's Office, 452 Department of Licensing and Regulation, 502 Board of Barber Examiners, 505 Cosmetology Commission

LBB Staff: JOB, LB, MW, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 15, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB411** by Whitmire (Relating tot he regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB411, Committee Report 1st House, Substituted: a positive impact of $2,336,806 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$1,005,903
2007	$1,330,903
2008	$1,330,903
2009	$1,330,903
2010	$1,330,903

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	$1,005,903	(19.5)
2007	$1,330,903	(19.5)
2008	$1,330,903	(19.5)
2009	$1,330,903	(19.5)
2010	$1,330,903	(19.5)

Fiscal Analysis

The provisions of the bill abolish the State Board of Barber Examiners (Board) and the Texas Cosmetology Commission (Commission), which then transfers their function to the Texas Department of Licensing and Regulation (TDLR).

The provisions of the bill create two new advisory committees to advise TDLR on barbering and cosmetology and provides for composition requirements and duties of the advisory boards. The provisions require barber and cosmetology inspection efforts to be risk-based that focus on sanitation violations and establish the criteria for a risk-based inspection procedure. The provisions allow TDLR to inspect barber and cosmetology facilities before the facility begins operations and to charge fees for

the inspections and authorize the registration of examination proctors at TDLR who would hold a certificate enabling them to administer cosmetology and barber exams around the state. The provisions eliminate the barber health certificate requirement and create an inactive license status for cosmetology licensees.

TDLR would adopt fees in amounts considered reasonable and necessary to provide sufficient revenue to administer the programs under its authority. The provisions would remove the fee caps established for various fees established by the two current regulatory agencies and would establish standard time frames and late fees for license renewals.

The bill would take effect September 1, 2005.

Methodology

It is assumed that TDLR would not adjust the current fees set by the Board of Barber Examiners and Cosmetology Commission that would lower overall revenue estimated in the 2006-07 Comptrollers' Biennial Revenue Estimate.

Based on information provided by the Sunset Advisory Commission (SAC), abolishing independent agencies and transferring their function to TDLR would result in a total savings or $1,005,903 and a reduction of 19.5 Full-time Equivalents (FTEs) each fiscal year.

Abolishing the independent agencies and merging their functions would result in a reduction of 11.5 redundant and unneeded FTE positions. Eliminating these positions saves approximately $666,207 annually, based on the current salary and benefit levels of the positions at the Board and Commission.

The savings are based on a reduction of 3.5 FTEs at the Board resulting in an annual savings of $179,234 based on current salary and benefit levels associated with the Executive Director position, the CFO position, one administrative position, and one-half of the support services position, which can be absorbed by TDLR.

The reductions would also include an 8 FTE reduction from the Commission resulting in a cost savings of $478,207 per year based on current salary and benefit levels associated with the Executive Director position, one information specialist position, one director of enforcement position, one CFO position, three accounting positions, and one IT position.

Additionally, abolishing both the policymaking bodies consisting of seven members each for each agency would result in a reduction of travel costs for Board and Commission members. Based on an average travel reimbursement of $250 per member per meeting, and assuming that the current Board and Commission met four times a year, the reduction of 14 board members would save $14,000 per year.

Requiring inspections to be risk-based, at least every two years would reduce the number of inspections that the agencies currently administer per year by an estimated one-quarter reduction on average. Assuming that one inspector can, on average, perform 1,500 inspections per year, reducing the number of inspection would result in a reduction of three inspector positions at the Board and five inspector positions at the Commission. Based on average salary classifications for these inspectors (Inspector III, salary group B5) plus benefits at the 29.74 percent rate, the reduction would result in a cost savings of $40,712 per position, or $325,696 annually.

SAC estimates that authorizing the registration of examination proctors at TDLR would not result in a fiscal impact. Any cost associated with registering proctors would be minimal.

In addition, the Board and the Commission currently contract for its licensing system from Northrup Grumman at estimated annual costs of $50,000 and $275,000, respectively. It is estimated that TDLR would transfer these licensing system to its own system in fiscal year 2006 and realize a savings of $325,000 beginning in fiscal year 2007.

Technology

Savings of $325,000 from the transfer of the Board's and Commission's licensing system to TDLR's in fiscal year 2007.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 308 State Auditor's Office, 452 Department of Licensing and Regulation, 502 Board of Barber Examiners, 505 Cosmetology Commission

LBB Staff: JOB, LB, MW, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 11, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB411** by Whitmire (Relating to the regulation of barbers and cosmetologists by the Texas Board of Barbering and Cosmetology and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB411, As Introduced: a positive impact of $976,494 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$389,247
2007	$587,247
2008	$587,247
2009	$587,247
2010	$587,247

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	$587,247	($198,000)	(11.1)
2007	$587,247	$0	(13.0)
2008	$587,247	$0	(13.0)
2009	$587,247	$0	(13.0)
2010	$587,247	$0	(13.0)

Fiscal Analysis

The provisions of the bill abolish the State Board of Barber Examiners and the Texas Cosmetology Commission, which would be replaced by the newly created Texas Board of Barbering and Cosmetology (Board). The provisions would continue the new Board for four years and would require the Sunset Advisory Commission to review the Board and report to the 81st Legislature in 2009.

The new Board would consist of nine members serving staggered six-year terms. Board members would be entitled to receive the per diem set by, and reimbursement for travel expenses in accordance with, the General Appropriations Act.

The Board would adopt fees in amounts considered reasonable and necessary to provide sufficient revenue to administer the programs under its authority. The provisions would remove the fee caps established for various fees established by the two current regulatory agencies and would establish standard time frames and late fees for license renewals.

The provisions remove the requirement that applicants take barber or cosmetology practical examinations before their written examinations.

The transfer of all obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission to the newly created Board would have to be completed no later than September 1, 2006, at which time both existing agencies would be abolished. All existing rules would remain in effect until superseded by a rule of the newly created board.

The bill would require that no later than September 1, 2006, the State Auditor shall conduct a management audit of the Board and deliver the audit report to the Governor, Lieutenant Governor, Speaker of the House of Representatives and the Sunset Advisory Commission.

The bill would take effect September 1, 2005.

Methodology

It is assumed that the Board would not lower the current fees set by the Board of Barber Examiners and the Cosmetology Commission.

Based on information provided by the Sunset Advisory Commission (SAC), abolishing the independent agencies and merging their functions would result in a total savings of $587,247 and a reduction of 13 Full-time Equivalents (FTEs) each fiscal year.

The reductions would include two redundant FTE positions, including one Executive Director ($60,119) position and one Chief Financial Officer ($69,016) position. It is estimated that eliminating these positions would save $129,135 annually, based on the current salary and benefit levels of the current executive director and finance director positions at the Cosmetology Commission.

Additionally, abolishing the independent policymaking bodies consisting of seven members each for each agency and creating one Board consisting of nine members would result in a reduction of travel costs for Board members. Based on an average travel reimbursement of $250 per member per meeting, and assuming that the new Board will meet four times per year, the reduction of five board members would save $5,000 per year.

According to SAC, requiring inspections to be risk-based, at least every two years would reduce the number of inspections that the agencies currently administer per year by an estimated one-quarter reduction on average. It is assumed that one inspector can perform 1,500 inspections per year. This would result in a reduction of three inspector positions at the Board of Barber Examiners and five inspector positions at the Cosmetology Commission. Based on average salary classifications for these inspectors (Inspector III) plus benefits, the reduction would result in a cost savings of $40,712 per position, or $325,696 annually.

Because the Board of Barber Examiners members give the practical exam and travel to Austin six times a year, eliminating the practical exam would reduce the amount of travel reimbursements by $220 per member, for four members who are barbers, resulting in an annual savings of $5,280.

The Cosmetology Commission has four FTEs that give the written and practical exam. It is estimated that eliminating the practical exam portion would eliminate three of the four FTE positions at the Cosmetology Commission. Based on average salary classifications for these employees (Inspector III) plus benefits, the reduction would result in a cost savings of $40,712 per position, or $122,136 annually.

According to the State Auditor's Office, it is estimated that the required management audit would cost $198,000 and require an additional 1.9 FTEs in fiscal year 2006.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 360 State Office of Administrative Hearings, 502 Board of Barber Examiners, 505 Cosmetology Commission

LBB Staff: JOB, LB, MW, DE

3/6cert

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 411 passed the Senate on April 26, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 28, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 411 passed the House, with amendments, on May 23, 2005, by the following vote: Yeas 141, Nays 0; four present not voting

Chief Clerk of the House

Approved:

Date

Governor

S.B. No. 411 By WHITMIRE

A BILL TO BE ENTITLED

AN ACT:

relating to the regulation of barbers and cosmetologists by the Texas Board of Barbering and Cosmetology and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.

FEB 14 2005 Filed with the Secretary of the Senate

FEB 15 2005 Read and referred to Committee on GOVERNMENT ORGANIZATION

Reported favorably

APR 18 2005 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

APR 26 2005 Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent / ____ yeas, ____ nays

APR 26 2005 Read second time, _____, and ordered engrossed by: { ~~unanimous consent~~ / a viva voce vote / ~~____ yeas, ____ nays~~

~~APR 26 2005~~ Senate and Constitutional 3 Day Rule suspended by a vote of 31 yeas, 0 nays.

~~APR 26 2005~~ Read third time, _____, and passed by: { ~~A viva voce vote~~ / 31 yeas, 0 nays

Betty King

SECRETARY OF THE SENATE

OTHER ACTION:

April 26, 2005 Engrossed

Sent to House

Engrossing Clerk Mardi Alexander

APR 26 2005 Received from the Senate

MAY 02 2005 Read first time and referred to Committee on Government Reform

MAY 13 2005 Reported ____favorably [redacted] (as substituted)

MAY 20 2005 Sent to Committee on (Calendars) [redacted]

MAY 22 2005 Read second time (comm. subst.) (amended); passed to third reading ([redacted]) by a (non-record vote) ([redacted] of _____ [redacted] _____ [redacted] _____ [redacted])

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of _____ yeas, _____ nays, _____ present, not voting.

MAY 23 2005 Read third time (amended); finally passed ([redacted]) by a ([redacted]) (record vote of 141 yeas, Ø nays, 4 present, not voting)

MAY 23 2005 Returned to Senate.

Robert Haney

CHIEF CLERK OF THE HOUSE

Returned from House without amendment.

MAY 23 2005 Returned from House with 3 amendments.

MAY 28 2005 Concurred in House amendments by ~~a viva voce~~ vote 31 yeas, 0 nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____

_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____ , Chairman;

_____ , _____ , _____ .

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
{ _____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
{ _____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
{ _____ yeas, _____ nays

05 MAY 20 AM 2:17
HOUSE OF REPRESENTATIVES