

SUBJECT: Revisions to barber and cosmetology regulations

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Flores, Geren, Hamilton, Jones, Quintanilla, Thompson
0 nays
3 absent — Isett, Goolsby, Miles

WITNESSES: For — Papa Dieye (Jay), Hair Braiders Association of Texas; Linda Holcombe, Texas Industrial Vocational Association (TIVA); Charlie Schnabel, Lone Star Cosmetology Association; Betty Davis; Martin Horak; (*Registered, but did not testify*: Erin Dunn, Lone Star Cosmetology Association; Jennifer Davis; Linda Colwen)

Against — None

On — Joe Shirley; (*Registered, but did not testify*: William H. Kuntz, Jr., Texas Department of Licensing and Regulation)

BACKGROUND: In 2005, the 79th Legislature enacted SB 411 by Whitmire, which abolished the separate Texas Cosmetology Commission and State Board of Barber Examiners. The bill created the Advisory Board on Cosmetology and the Advisory Board on Barbering under the Texas Department of Licensing and Regulation (TDLR). These boards advise TDLR on policy issues. The TDLR commission serves as the rulemaking authority for rules pertaining to barbering and cosmetology, while the department administers the statutes and rules pertaining to these professions.

In 1997, the 75th Legislature enacted SB 1131 by Ellis, which added “braiding” to the definition of work performed by a cosmetologist and allowed for a specialty license for hair braiders.

DIGEST: CSHB 2106 would make several changes in Occupations Code, secs. 1601, 1602, and 1603 that regulate barbering and cosmetology. These provisions would:

- permit TDLR to issue an emergency order to revoke or suspend a license if immediate action was required to protect public health or safety;
- revise standards for sterilization of instruments;
- allow for a dual barber and beauty shop license;
- create a registration process for hair weaving specialists and salons;
- change the inspection process;
- require notice of tuition payment for issuance of licenses;
- revise continuing education requirements for experienced cosmetologists; and
- make various other changes.

Emergency orders. CSHB 2106 would amend Occupations Code, ch. 1603, subch. J to allow the TDLR executive director to issue an emergency order to revoke or suspend a license or permit if the director determined that immediate action was required to protect public health or safety. The emergency order could be issued with or without notice or a hearing according to the executive director's assessment of the situation. If the order were issued without a hearing, the executive director would be required within 10 days of the emergency order to set a time and place for a hearing before the State Office of Administrative Hearings (SOAH). That hearing would have to be within 30 days of the notice.

The bill would define a hearing on an emergency order as a contested case. Other provisions also would allow the TDLR commission to establish rules for issuance and appeal of emergency orders, including rules that would allow the commission to affirm, modify, or set aside a decision by SOAH.

CSHB 2106 also would allow the TDLR commissioner to issue a cease-and-desist order, after notice and opportunity for hearing, to prevent a violation of Occupation Code, chs. 1601 or 1602 or a TDLR rule.

Revised sterilization standards. CSHB 2106 would require a barber, cosmetologist, or nail salon operator to clean, disinfect, and sterilize all metal instruments, including metal nail clippers, cuticle pushers, cuticle nippers, and other metal instruments, with an autoclave or a dry heat or ultraviolet sterilizer. The bill also would allow owners of all barber and cosmetology shops to use dry heat or ultraviolet sterilizers as well as autoclaves to sterilize instruments. Each sterilized instrument would have to be stored according to the manufacturer's instructions.

The provision would not apply to:

- single-use instruments;
- nonmetal nail files;
- buffer blockers;
- pumice stones;
- nail brushes; or
- similar instruments.

The TDLR commission would be authorized to issue rules to implement sterilization standards. The bill also would repeal Occupations Code, sec. 1601.506, which establishes sterilization standards for those holding barbering licenses, and would repeal Occupations Code, sec. 1602.408, which establishes current sterilization standards for operators and salons that treat nails or provide services for hands and feet.

Dual barber and beauty shop licenses. CSHB 2106 would allow a person to apply for a dual barber and beauty shop license to allow for the practice of all specialties allowed under Occupations Code, ch. 1601 and ch. 1602. The bill would require the applicant to meet the requirements for both chapters and to file and pay the application fee to TDLR for the dual license.

The commission would be required to establish rules for dual barber and beauty shop licenses by January 1, 2008, and no permit would be issued before May 1, 2008.

Hair weaving specialists. CSHB 2106 would amend Occupations Code, sec. 1601.002 to revise the definition of “barbering” to include those who weave a person’s hair by using any method to attach commercial hair to a person’s hair or scalp. Braiding hair, trimming only hair extensions, and attaching commercial hair only by chemicals or adhesives also would fall under the definition of barbering. The bill would establish a specialty certificate of registration and require that an applicant be at least 17 years old and satisfy requirements set by the TDLR commission, including a commission-approved training program. A hair weaving specialty certificate would be granted if the applicant:

- met the training requirements;
- paid a registration fee; and

- had not committed an act that would be grounds for denial of the certificate.

The bill also would set similar standards for training requirements and application processes for a hair braiding specialty certificate.

A specialty shop permit holder would be allowed to operate a shop only for nail treatment, hand and foot care, hair braiding, or hair weaving.

TDLR would be required to issue a hair braiding specialty certificate to an applicant who practiced hair braiding for at least 10 years before hair braiding was regulated the state in 1997 as long as the person applied for the certificate and paid a registration fee before October 1, 2007.

TDLR also would be required to issue rules for the eligibility for hair braiding and hair weaving certificates before January 1, 2008.

Changing inspections schedules. The bill would authorize TDLR to inspect all barbering and cosmetology schools twice a year and would keep the current schedule of inspecting all shops and permit holders once every two years. TDLR could charge the schools for the inspections and contract outside the department to conduct the inspections.

Tuition payments. Other provisions would require a beauty school to notify TDLR within five days of when the school or program received the final payment of tuition owed by a student. An applicant would not be eligible to take an examination for the cosmetologist license until the tuition was paid and the notice received by TDLR.

The bill would repeal Occupations Code, sec. 1602.266(c), which requires a nonrefundable examination and transcript fee as part of an application for cosmetologist license.

The TDLR commission would be required to issue rules to implement this provision by January 1, 2008. The tuition payment requirement and notice provision would take effect on April 1, 2008.

Continuing education requirements. The bill would permit TDLR to require only four hours of continuing education in health and safety for a cosmetologist who was at least 65 years old and had held a license for at least 15 years.

The TDLR commission would be required to issue rules to implement this provision by January 1, 2008.

Other provisions. The bill would make various other changes, including deleting the requirement that an applicant score at least 75 percent to pass a barbering examination; that a specialist cosmetologist certificate holder hold a high school diploma or its equivalent; and that barber schools have libraries.

Except as otherwise specified, the bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 2106 would make needed changes to the Occupations Code to continue the process that has resulted in a smooth transition of barbers and cosmetologists to TDLR in a way that benefits both professions. While initially there were concerns about abolishing the old regulatory structure, the changes made last session have improved oversight. The TDLR staff has been very efficient and professional in regulating these industries, but they need the tools to continue that overall good work.

Emergency orders and sterilization standards. TDLR needs the authority to address emergencies when the public's health and safety are endangered. Too many nail salons have failed to follow sterilization and safety standards. Two people died last year because of infections contracted in nail salons, and another person died this spring. Unfortunately, too many establishments continue to ignore these standards and to operate despite many notices of violations. CSHB 2106 would provide clear and enforceable sterilization and cleanliness standards and a way to move quickly against egregious or repeat violators.

Hair weaving. Hair weaving is an increasingly popular service that is offered throughout Texas. Those specializing in the craft need to have training, but they should not have to meet all the requirements for a person seeking a barber's license. CSHB 2106 would build on the process to recognize and provide certification for hair braiders and should allow for the continued expansion of hair weaving as a specialty.

Changing inspection schedules. Barbers and cosmetologists welcome increased scrutiny by the TDLR. Much of the clamor in the past leading to changes in regulation of the industry resulted from a lack of consistent and

effective inspections by the former regulators. Barbering and cosmetology schools want the additional inspections and are willing to pay the fees for them. This industry relies on a high level of public confidence, and the unfortunate acts of a few bad practitioners create doubts about all barbers and cosmetologists. Those who follow the rules willingly do not want to be undercut by those whose practices may compromise the health and safety of the public.

Tuition payments. Cosmetology schools still require state assistance in collecting tuition from their students because of the special nature of their operations. Typically, these students lack resources or cannot qualify for loans in the same way as those attending college or other vocational programs. Cosmetology schools permit students to learn their craft and then pay all of their tuition. For the most part, this special and unusual arrangement works. However, a number of cosmetology schools — including some in the Rio Grande Valley that enroll many Mexican nationals and schools near Fort Hood that train spouses of service members — find that many of their graduates leave the state without paying their tuition. Withholding the right to apply for a Texas cosmetology license would be a small step toward remedying this problem.

OPPONENTS
SAY:

Emergency orders and sterilization standards. Policymakers must be wary of expanding the authority of regulators to interfere with business. Even though the bill would provide procedural safeguards, many small salons do not possess the resources to protect their rights effectively.

New burdensome requirements for all shops would not convince the bad actors to comply. There are too many salons to monitor all of them effectively.

Tuition payments. The state should not allow its licensing agencies to serve as collection agents for private industry. Cosmetology schools should collect their tuition in advance as do most schools and training programs.

NOTES:

CSHB 2106 consolidated provisions of HB 1030 by Chisum, HB 1050 by Hopson and Swinford, HB 1118 by B. Brown, HB 1280 by Deshotel, HB 1566 by Goolsby, and HB 2903 by Harper-Brown.

A related bill, SB 984 by Whitmire, which would regulate barbers and cosmetologists operating from mobile locations, passed the Senate on the Local and Uncontested Calendar on April 26.