

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1131
By: Ellis
State Affairs
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Committee Report (Substituted)

DIGEST

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

PURPOSE

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

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Cosmetology Commission under SECTION 2 (Section 4(l), Article 8451a, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 4(f), Article 8451a, V.T.C.S., to require, rather than authorize the Texas Cosmetology Commission (commission) to recognize, prepare, or administer continuing education programs for persons holding an instructor license under Section 12 of this Act, rather than for the practice of cosmetology. Provides that participation in a continuing education program is mandatory, rather than voluntary.

SECTION 2. Amends Section 4(l), Article 8451a, V.T.C.S., to require the commission by rule to establish and assess fees in amounts reasonable and necessary to cover the cost of administering this Act on all persons and entities licensed or regulated under this Act.

SECTION 3. Amends Section 10(d), Article 8451a, V.T.C.S., to provide that the applicant is entitled to an operator license if the applicant pays a license fee established by the commission, rather than a \$35 license fee. Makes a nonsubstantive change.

SECTION 4. Amends Section 11(d), Article 8451a, V.T.C.S., to provide that the applicant is entitled to a manicurist license if the applicant pays a license fee established by the commission, rather than a \$35 license fee. Makes a nonsubstantive change.

SECTION 5. Amends Section 12(d), Article 8451a, V.T.C.S., to provide that the applicant is entitled to an instructor license if the applicant pays a license fee established by the commission, rather than a \$50 license fee. Makes a nonsubstantive change.

SECTION 6. Amends Section 13(d), Article 8451a, V.T.C.S., to provide that the applicant is entitled to a specialty certificate if the applicant pays a certificate fee established by the commission, rather than a \$35 certificate fee. Makes a nonsubstantive change.

SECTION 7. Amends Section 13A(d), Article 8451a, V.T.C.S., to provide that the applicant is entitled to a facialist specialty license if the applicant pays a license fee established by the commission, rather than a \$35 license fee.

SECTION 8. Amends Section 15(b), Article 8451a, V.T.C.S., to require a temporary license to be issued on payment of a temporary license fee established by the commission, rather than on a \$45 temporary license fee.

SECTION 9. Amends Section 16(a), Article 8451a, V.T.C.S., to require a duplicate license or certificate to be issued upon payment of a fee established by the commission, rather than upon a payment of a \$35 fee.

SECTION 10. Amends Section 17(b), Article 8451a, V.T.C.S., to require the applicant to pay a fee established by the commission, rather than a \$100 fee.

SECTION 11. Amends Section 18(b), Article 8451a, V.T.C.S., to require a student permit to be issued on payment of a fee established by the commission that must accompany the application, rather than on payment of a \$25 fee which must accompany the application.

SECTION 12. Amends Sections 19(b) and (c), Article 8451a, V.T.C.S., to require an applicant for a beauty shop license to submit an inspection fee established by the commission, rather than a \$35 inspection fee. Provides that the applicant is entitled to a beauty shop license if the applicant pays a license fee established by the commission, rather than a \$45 license fee. Makes conforming and nonsubstantive changes.

SECTION 13. Amends Sections 20(b) and (c), Article 8451a, V.T.C.S., to require the applicant for a specialty shop license to submit an inspection fee established by the commission, rather than a \$35 inspection fee. Provides that the applicant is entitled to a specialty shop license if the application shows compliance with the rules of the commission and the applicant pays a license fee established by the commission, rather than a \$45 license fee. Makes conforming and nonsubstantive changes.

SECTION 14. Amends Article 8451a, V.T.C.S., by adding Section 20B, as follows:

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

SECTION 15. Amends Section 21(d), Article 8451a, V.T.C.S., to require each application for a private beauty culture school to be accompanied by a payment of a license fee established by the commission, rather than a \$500 license fee, and an inspection fee established by the commission, rather than a \$200 inspection fee. Requires each application for certification as a public secondary or public postsecondary beauty culture school to be accompanied by an inspection fee established by the commission, rather than a \$200 inspection fee.

SECTION 16. Amends Section 21A(b), Article 8451a, V.T.C.S., to delete text prohibiting the fee assessed under this section from exceeding \$200 per year.

SECTION 17. Amends Sections (e), (f), (g), and (i), Article 8451a, V.T.C.S., to require a renewal license to be issued upon payment of the renewal fee, plus a delinquency fee established by the commission, rather than a \$10 delinquency fee. Deletes text regarding set delinquency fees. Requires an applicant for renewal of a license that has been expired for more than five years to be issued a license on payment of a reinstatement fee established by the commission, rather than a \$50 reinstatement fee. Requires an applicant for renewal of a license to have a high school diploma or an equivalent of a high school diploma. Deletes text requiring the commission to establish the delinquency fee for a booth rental license. Makes conforming changes.

SECTION 18. Amends Section 40, Article 8451a, V.T.C.S., as follows:

Sec. 40. New heading: CRIMINAL PENALTIES.

SECTION 19. Amends Article 8451a, V.T.C.S., by adding Section 40A, as follows:

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

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

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

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

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

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

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

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

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

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

(k) Authorizes, within 30 days after the date the commissioner's order becomes final, a person who acts under Subsection (j)(3) of this section to stay the enforcement by taking certain actions or request the court to stay enforcement by taking certain actions.

(l) Authorizes the executive director, upon receipt of a copy of an affidavit under Subsection (k)(2) of this section, to file with the court, within five days after the date the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

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

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

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

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

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

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

SECTION 20. Repealer: Section 34, Article 8451a, (Cosmetology Regulatory Act - Occupations and Businesses) V.T.C.S.

SECTION 21. (a) Effective date: September 1, 1997, except as provided by Subsection (b) of this section.

(b) Effective date for Section 4(f), Article 8451a, V.T.C.S.: January 1, 1998.

(c) Makes application of this Act prospective.

SECTION 22. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Redesignates proposed SECTION 1 to SECTION 3. Adds new SECTION 1.

SECTION 2.

Redesignates proposed SECTION 2 to SECTION 4. Adds new SECTION 2.

SECTION 3.

Deletes proposed license fee and provides that the license fee is established by the commission.

SECTIONS 4-7.

Makes conforming changes.

SECTION 8.

Redesignates proposed SECTION 8 to SECTION 14. Amends Section 15(b), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 9

Removes proposed SECTION 9. Amends Section 16(a), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 10.

Redesignates proposed SECTION 10 to SECTION 18. Amends Section 17(b), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 11.

Redesignates proposed SECTION 11 as SECTION 19. Amends Section 18(b), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 12.

Redesignates proposed SECTION 12 to SECTION 21. Amends Sections (b) and (c), Article 8451A, V.T.C.S., to make conforming changes.

SECTION 13.

Redesignates proposed SECTION 13 to SECTION 22. Amends Sections 20(b) and (c), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 14.

Redesignated from proposed SECTION 8.

SECTION 15.

Amends Section 21(d), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 16.

Amends Section 21A(b), Article 8451a, V.T.C.S., to make a deletion.

SECTION 17.

Amends Sections 33(e), (f), (g), and (i), Article 8451a, V.T.C.S., to make conforming changes. Deletes certain delinquency fees. Sets forth text regarding a high school diploma.

SECTION 18.

Redesignated from proposed SECTION 10.

SECTION 19.

Redesignated from proposed SECTION 11. Amends proposed Section 40A(k), Article 8451, regarding the commissioner's order.

SECTION 20.

Sets forth a new repealer.

SECTION 21.

Redesignated from proposed SECTION 12 to make changes regarding effective date. Sets forth prospective clause regarding a rule adopted under Article 8451a. Makes conforming changes.

SECTION 22.

Redesignated from proposed SECTION 13.