

BILL ANALYSIS

Senate Research Center
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S.B. 564
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DIGEST

Currently, Texas barbers and cosmetologists are regulated by two separate state agencies. A significant amount of duplication of effort exists between these agencies. The Texas Sunset Advisory Commission and the Comptroller's Performance Review team have recommended that the State Board of Barber Examiners and the Texas Cosmetology Commission be merged into a single regulatory agency. This bill would merge the two existing agencies into a single regulatory agency.

PURPOSE

As proposed, S.B. 564 establishes the Texas Board of Barber and Cosmetologist Examiners and sets forth provisions regarding its administration and operation.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Barber and Cosmetologist Examiners (board) under SECTION 1 (Sections 5(a) and 8(b), Article 8475a, V.T.C.S.), and SECTION 17 (Section 4, Article 8451a, V.T.C.S.), the public members and the three barber members of the board under SECTION 1 (Section 5(c), Article 8475a, V.T.C.S.), and the public members, the ex officio member, and the three cosmetologist members of the board under SECTION 1 (Section 5(d), Article 8475a, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 132, V.T.C.S., by adding Article 8475, as follows:

Art. 8475. TEXAS BOARD OF BARBER AND COSMETOLOGIST EXAMINERS

Sec. 1. DEFINITIONS. Defines "barber," "board," "cosmetologist," and "executive director."

Sec. 2. BOARD. Provides that the Texas Board of Barber and Cosmetologist Examiners (board) is composed of nine members appointed by the governor to serve staggered six-year terms, three of which expire on February 1 of each odd-numbered year. Provides certain requirements for the professional background of board members. Provides that the executive director of the Texas Workforce Commission is an ex officio member of the board with voting privileges, only for the purposes of Section 5(D) of this article. Provides certain criteria for classifying a person as ineligible for appointment as a public member of the board. Prohibits an officer, manager, paid consultant, or spouse, of a Texas trade association in the field of barbering or cosmetology from being a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the position classification salary schedule. Defines a Texas trade association. Requires a vacancy on the board to be filled by a person appointed by the governor. Requires an appointment to be made without regard to the appointee's race, color, disability, sex, religion, age or national origin. Provides that the board is subject to Chapter 325, Government Code (Texas Sunset Act).

Sec. 3. GROUNDS FOR REMOVAL. Sets forth certain grounds for removal of board members. Provides that the validity of an action of the board is not affected by the existence of a ground for removal of a board member. Establishes a procedure for notifying the governor and attorney general of the existence of a potential ground for removal of a board member.

Sec. 4. OFFICERS; MEETINGS. Requires the board to annually elect a presiding officer,

assistant presiding officer, and a secretary-treasurer. Requires the board to meet annually and at the call of the presiding officer.

Sec. 5. **BOARD POWERS AND DUTIES.** Requires the board to adopt rules for the administration of this article and the operation of the board, the administration of Article 8407a, V.T.C.S., and the administration of Article 8451a, V.T.C.S.. Requires the board to adopt application, examination, licensing, and renewal fees to provide sufficient revenue to cover the costs of administering the programs under the authority of the board and other responsibilities. Authorizes only the public members and the three barber members of the board to adopt rules or participate in disciplinary proceedings in administering Article 8407a, V.T.C.S.. Provides that the participation of four barber and public members is required for a quorum under this subsection. Authorizes only the public members, the ex officio member, and the three cosmetologist members of the board to adopt rules or participate in disciplinary proceedings in administering Article 8451a, V.T.C.S.. Provides that the participation of four cosmetologist, public, and ex officio members is required for a quorum under this subsection. Authorizes the board to appoint an executive director who may hire other personnel as necessary.

Sec. 6. **CONFLICT OF INTEREST.** Prohibits a person from serving as a member of the board or acting as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code.

Sec. 7. **PERSONNEL POLICIES.** Requires the executive director to develop an intra-agency career ladder program which is required to post all positions concurrently with any public posting. Requires the executive director to develop a system of annual performance evaluations based on documented performance. Requires all merit pay for board employees to be based on this system. Requires the board to develop and implement policies that separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the board's staff.

Sec. 8. **PUBLIC INTEREST INFORMATION.** Requires the board to prepare and make public the functions of the board and the procedures by which complaints are filed and resolved. Requires the board to establish, by rule, methods by which consumers are notified of the name, mailing address, and telephone number of the board to direct complaints to the board. Sets forth places in which the board may provide the required notification to a person regulated under this article. Requires the board to develop materials and programs to educate the public on certain issues.

Sec. 9. **AGENCY FUNDS.** Provides that all money paid to the board under this article is subject to Chapter 404F, Government Code.

Sec. 10. **COMPLAINTS.** Requires the board to keep certain information about each complaint. Sets forth requirements for the information. Requires the board to keep complaints filed that the board has the authority to resolve and to provide policies and procedures to the person filing the complaint and to persons complained about. Requires the board to provide quarterly notification of the complaint's status to those directly affected until final disposition, unless the notice would jeopardize an undercover investigation.

Sec. 11. **EQUAL EMPLOYMENT OPPORTUNITY.** Requires the executive director to prepare and maintain a written policy statement to ensure the implementation of an equal employment opportunity program. Sets forth information the policy statement must include. Requires the policy statement to be updated annually. Requires the governor's office to deliver a biennial report based on the information received under this section, separately or as a part of other reports made to the legislature.

Sec. 12. **STANDARDS OF CONDUCT.** Requires the executive director to provide the board and the board's employees with information regarding the qualifications for their office and standards of conduct for state officers or employees.

Sec. 13. **PUBLIC ACCESS.** Requires the board to provide the public with a reasonable opportunity to appear before the board. Requires the board to comply with federal and state law relating to accessibility and include a written plan which would allow a person who does not speak

English to gain access to the board's programs or services.

Sec. 14. BOARD MEMBER TRAINING. Requires a board member to complete at least one course of a training program. Sets forth the information required to be included in the training program.

SECTION 2. Amends Article 8402, V.T.C.S., as follows:

Art. 8402. New heading: REGISTERING NAME AND LOCATION. Requires every entity operating or managing a barber shop or specialty shop to register with the Texas Board of Barber and Cosmetologist Examiners, rather than the State Board of Barber Examiners. Provides that in order for the public to fix responsibility for services performed by a barber or cosmetologist, rather than a person, licensed by the board the licensed person may only practice at the location to which the board has issued a permit. Requires a sign to be placed in each location regulated under this Act to display certain information. Deletes text avoiding conflicts of jurisdiction. Deletes text prohibiting the board to adopt rules where a location is licensed by two governing agencies. Deletes a provision prohibiting the board from making rules regarding certain requirements. Makes conforming and nonsubstantive changes.

SECTION 3. Amends Section 1, Article 8407a, V.T.C.S., to make a conforming and nonsubstantive change.

SECTION 4. Amends Sections 3(g) and (h), Article 8407a, V.T.C.S., to make conforming and a nonsubstantive changes.

SECTION 5. Amends Sections 4(a) - (1), Article 8407a, V.T.C.S., to delete a provision regarding the Texas Barber Law. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 6, Article 8407a, V.T.C.S., to exempt an inmate incarcerated in the Texas Department of Criminal Justice, rather than the Texas Department of Corrections, from the provisions of this Act. Makes conforming changes.

SECTION 7. Amends Section 11(b), Article 8407a, V.T.C.S., to make a conforming change.

SECTION 8. Amends Section 13, Article 8407a, V.T.C.S., to make conforming and nonsubstantive changes.

SECTION 9. Amends Section 15A(f), Article 8407a, V.T.C.S., to prohibit a person who holds a certificate to practice cosmetology issued by the board, rather than the Texas Cosmetology Commission (commission), from practicing under that authority at a manicurist specialty shop.

SECTION 10. Amends Section 16(c), Article 8407a, V.T.C.S., to make a conforming change.

SECTION 11. Amends Section 18(f), Article 8407a, V.T.C.S., to make conforming changes.

SECTION 12. Amends Section 23a, Article 8407a, V.T.C.S., to make a conforming change.

SECTION 13. Amends Section 27a(a), Article 8407a, V.T.C.S., to make a conforming change.

SECTION 14. Amends Section 28(a), Article 8407a, V.T.C.S., to make conforming changes.

SECTION 15. Amends Section 29, Article 8407a, V.T.C.S., to delete existing Subsections (b) - (e), regarding functions of the board, procedures for directing complaints, public open comment, and services for non-English speaking people. Makes a nonsubstantive change.

SECTION 16. Amends Section 1(2), Article 8451a, V.T.C.S., to define "board."

SECTION 17. Amends Section 4, Article 8451a, V.T.C.S., as follows:

Sec. 4. New heading: POWERS AND DUTIES OF BOARD. Prohibits the board from adopting rules restricting persons regulated by the board under this Act. Deletes provision authorizing the

board to issue rules after a public hearing. Deletes existing Subsection (a), regarding the provision of certain information to employees, respective responsibilities, open public comment, services for non-English speaking people, hiring practices, and necessary fees. Makes conforming changes.

SECTION 18. Amends Sections 10(b), (c), and (d), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 19. Amends Sections 11(b), (c), and (d), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 20. Amends Sections 12(b), (c), (d), and (e), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 21. Amends Sections 13(b), (c), (d), and (e), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 22. Amends Sections 13A(b), (c), (d), and (e), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 23. Amends Section 15(b), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 24. Amends Section 16, Article 8451a, V.T.C.S., to make conforming changes.

SECTION 25. Amends Section 17(b), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 26. Amends Section 18(b), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 27. Amends Sections 19(b), (c), (d), and (e), Article 8451a, V.T.C.S., to outline provisions for certain persons, in order that the public may fix responsibility for services performed by persons licensed as barbers by the board, rather than the State Board of Barber Examiners. Provides that a person licensed to practice barbering by the board, rather than barber board, may practice at only certain locations. Authorizes a person licensed to practice cosmetology by the board to practice at only certain locations. Deletes text regarding avoiding confusion of the public and avoiding conflicts of jurisdiction between such board and commission which might impede effective administration or enforcement of the laws under their respective jurisdiction, from and after January 31, 1980. Makes conforming changes.

SECTION 28. Amends Sections 20(b), (c), and (d), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 29. Amends Sections 20A(b), (c), and (d), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 30. Amends Sections 21(b), (c), (d), (e), and (k), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 31. Amends Sections 21A(a) - (e), Article 8451a, V.T.C.S., to require the board to collect certain fees at a certain time. Deletes a provision regarding bond requirements. Makes conforming changes.

SECTION 32. Amends Section 21B, Article 8451a, V.T.C.S., to make conforming changes.

SECTION 33. Amends Sections 22(b), (c), (d), (f), and (g), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 34. Amends Section 29, Article 8451a, V.T.C.S., to make conforming changes.

SECTION 35. Amends Section 30, Article 8451a, V.T.C.S., to make conforming changes.

SECTION 36. Amends Sections 33(d) - (h), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 37. Amends Section 34, Article 8451a, V.T.C.S., to make conforming changes.

SECTION 38. Amends Section 35, Article 8451a, V.T.C.S., to make conforming changes.

SECTION 39. Amends Section 35A(a), (d), (g), (h), (i), (j), and (n), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 40. Amends Section 38(a), Article 8451a, V.T.C.S., to make conforming changes.

SECTION 41. Amends Section 232.002, Article 8451a, V.T.C.S., to provide that this chapter applies to the Texas Board of Barber and Cosmetologist Examiners, rather than the State Board of Barber Examiners and the Texas Cosmetology Commission. Makes conforming changes.

SECTION 42. (a) Effective date: September 1, 1999.

(b) Repealers: (1) Sections 23, 26, 26a, 26b, 26c, 27, 29A, 29C, and 29D, Article 8407a, V.T.C.S. (Fees, State Board of Barber Examiners: Appointment; Qualifications; Term; Removal; Vacancy, Sunset provision, Members and employees; notice of qualifications and responsibilities, Intraagency career ladder program, Officers of Board; Compensation of members; compensation and Bond of Secretary, Information about complaints, Open Meetings Law and Administrative Procedure and Texas Register Act Applicable, and Lobbying by General Counsel or Board Member Prohibited).

(2) Section 29B, Article 8407a, V.T.C.S. (Restrictions on Board Members and Employees).

(3) Sections 2, 3, 5, 6, 8, 28, 37, and 41, Article 8451a, V.T.C.S. (Texas Cosmetology Commission, Commission Organization and Meetings, Compensation, Executive director; staff; biennial report, Disposition of Funds, Consumer Information, Application of the Administrative Procedure and Texas Register Act, and Complaints).

(4) Section 7, Article 8451a, V.T.C.S. (Conflict of Interest).

(c) Provides that the State Board of Barber Examiners and the Texas Cosmetology Commission are abolished but continue in existence until September 1, 2000 when powers, funds, and duties are transferred to the board. Provides that the transfer must be completed no later than September 1, 2000.

(d) Provides that all rules of the State Board of Barber Examiners and the Texas Cosmetology Commission remain in effect until superseded by a rule of the board. Provides that a license, permit, or registration 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.

SECTION 43. Requires the governor to make certain appointments to the board. Provides that an initial member appointed under this section is exempt from the board training requirements under Section 14, Article 8475, V.T.C.S., as added by this Act.

SECTION 44. Emergency clause.