

BILL ANALYSIS

Senate Research Center

H.B. 2106
By: Chisum et al. (Whitmire)
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The public uses barbers and cosmetologists every day for haircuts, manicures, pedicures, and other beauty needs. The licensing and regulation of the more than 13,000 barbers and more than 150,000 cosmetologists in Texas is performed by the Texas Department of Licensing and Regulation (TDLR). Both the Board of Barber Examiners and the Texas Cosmetology Commission were dissolved by the 79th Legislature and the functions of those agencies were transferred to TDLR. As the state's umbrella licensing agency, TDLR's practices and those of the former agencies differ in certain areas.

H.B. 2106 amends Chapters 1601, 1602, and 1603, Occupations Code, in an effort to make statutory clean up changes, streamline the processes for practicing and learning barbering and cosmetology as well as owning and operating barbershops and salons, and to help ensure that the public is protected when visiting barbershops and cosmetology salons throughout the state.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 19 (Section 1603.352, Occupations Code) and SECTION 20 (Section 1603.455, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Commission of Licensing and Regulation is modified in SECTION 13 (Section 1602.354, Occupations Code), SECTION 15 (Section 1603.103, Occupations Code), and SECTION 16 (Section 1603.104, Occupations Code).

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1601.002, Occupations Code, to redefine "barbering," "practicing barbering," and "practice of barbering."

SECTION 2. Amends Section 1601.253(b), Occupations Code, to require the Texas Department of Licensing and Regulation (TDLR) to issue a Class A barber certificate to an applicant who passes the applicable examination, rather than passes the examination with an average grade of at least 75 percent.

SECTION 3. Amends Subchapter F, Chapter 1601, Occupations Code, by adding Sections 1601.258 and 1601.259, as follows:

Sec. 1601.258. ELIGIBILITY FOR HAIR WEAVING SPECIALTY CERTIFICATE OF REGISTRATION. (a) Authorizes a person holding a hair weaving specialty certificate of registration to perform only barbering as defined by Section 1601.002(1)(H).

(b) Requires an applicant for a hair weaving specialty certificate of registration to be at least 17 years of age and satisfy the requirements specified by TDLR, including training through a training program approved by the Texas Commission of Licensing and Regulation (commission).

(c) Requires TDLR to issue a hair weaving specialty certificate of registration to an applicant who meets certain requirements.

Sec. 1601.259. ELIGIBILITY FOR HAIR BRAIDING SPECIALTY CERTIFICATE OF REGISTRATION. (a) Authorizes a person holding a hair braiding specialty certificate of registration to perform only barbering as defined by Section 1601.002(1)(K).

(b) Requires an applicant for a hair braiding specialty certificate of registration to be at least 17 years of age and satisfy the requirements specified by TDLR, including training through a training program approved by the commission.

(c) Requires TDLR to issue a hair braiding specialty certificate of registration to an applicant who meets certain requirements.

SECTION 4. Amends Section 1601.303, Occupations Code, to require TDLR to issue a barbershop permit to an applicant if, among other things, the applicant verifies the application.

SECTION 5. Amends Sections 1601.304 and 1601.305, Occupations Code, as follows:

Sec. 1601.304. New heading: SPECIALTY SHOP PERMIT. (a) Authorizes a person who holds a specialty shop permit, rather than a manicurist specialty shop permit, to maintain an establishment in which only barbering as defined by Section 1601.002(1)(E), (F), (H), or (K) is performed. Deletes existing text authorizing a manicurist specialty shop to be operated only under the direction of a person who holds a manicurist license.

(b) Requires an applicant for a specialty shop permit to submit an application on a TDLR-approved form and the required inspection fee. Deletes existing text requiring the application to include certain information. Deletes existing Subsection (c) requiring TDLR to issue a temporary manicurist specialty shop permit to the applicant as soon as practicable after receipt of the application and fee. Deletes existing text authorizing the applicant to operate the applicant's shop under the temporary permit until a permanent permit is issued. Makes conforming changes.

Sec. 1601.305. New heading: ISSUANCE OF SPECIALTY SHOP PERMIT. Requires TDLR to issue a specialty shop permit to an applicant if the applicant meets certain conditions. Deletes existing text requiring TDLR to issue a permanent manicurist specialty shop permit to an applicant if the applicant holds a manicurist license and the shop meets the minimum health standards for manicurist specialty shops set by the commission, as determined by a TDLR inspection under Section 1603.103, and any other requirements imposed by commission rule.

SECTION 6. Amends Section 1601.353(a), Occupations Code, to delete existing text requiring a barber school to have a dressing and cloak room, a library with library facilities available to students, adequate toilet facilities for the students, and adequate fire-fighting equipment in order to be approved for a barber school permit. Makes nonsubstantive changes.

SECTION 7. Amends Section 1601.453, Occupations Code, making a reference to a barber school permit under this chapter or a permit issued under Chapter 1603.

SECTION 8. Amends Section 1602.256, Occupations Code, as follows:

Sec. 1602.256. New heading: ELIGIBILITY FOR A MANICURIST SPECIALTY LICENSE. (a) Authorizes a person holding a manicurist specialty license, rather than a manicurist license, to perform only the practice of cosmetology defined in Section 1602.002(a)(10) or (11), rather than 1602.002(9) or (10).

(b) Makes a conforming change.

SECTION 9. Amends Section 1602.257(a), Occupations Code, authorizing a person holding a facialist specialty license to perform only the practice of cosmetology defined in Sections 1602.002(a)(6) through (9), rather than 1602.002(7).

SECTION 10. Amends Section 1602.258, Occupations Code, as follows:

Sec. 1602.258. **ELIGIBILITY FOR A SPECIALTY CERTIFICATE.** (a) Authorizes a person holding a specialty certificate to perform only the practice of cosmetology defined in Sections 1602.002(a)(2) through (4), rather than Section 1602.002(2), (3), (4), or (7). Deletes existing text requiring an applicant to 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 in order to be eligible for a specialty certificate.

SECTION 11. Amends Section 1602.262(a), Occupations Code, to make a conforming change.

SECTION 12. Amends Section 1602.303(b), Occupations Code, as follows:

(b) Requires an application for a private beauty culture school license to be accompanied by the required fees and to contain a statement that the building is of permanent construction and is divided into at least one area for instruction in theory and one area for clinic work. Deletes existing text requiring the application to contain a statement that the building is fireproof.

SECTION 13. Amends Section 1602.354, Occupations Code, as follows:

Sec. 1602.354. **CONTINUING EDUCATION.** (a) Creates this subsection from existing text.

(b) Authorizes the commission to only require a license holder to complete continuing education of not more than four hours in health and safety courses if the license holder is at least 65 years of age and has held a cosmetology license for at least 15 years.

SECTION 14. Amends Section 1602.403(a), Occupations Code, to make a conforming change.

SECTION 15. Amends Section 1603.103, Occupations Code, as follows:

Sec. 1603.103. **New heading: INSPECTION OF SCHOOLS BEFORE OPERATION.**

(a) Changes a reference to a school, shop, or other facility, to a shop only. Makes a conforming change.

(b) Makes a conforming change.

(c) Authorizes TDLR to charge the school a fee for each inspection. Deletes existing text requiring the school, shop, or other facility to pay a fee for each inspection.

SECTION 16. Amends Sections 1603.104(b) and (e), Occupations Code, as follows:

(a) Requires TDLR, at least once every two years, to inspect each shop or other facility that holds a license, certificate, or permit in which the practice of barbering or cosmetology is performed under this chapter, Chapter 1601, or Chapter 1602, and require TDLR, at least twice per year, to inspect each school in which barbering or cosmetology is taught under this chapter, Chapter 1601, or Chapter 1602.

(e) Authorizes TDLR to charge the school, shop, or other facility a fee for each inspection performed under this section, rather than Subsection (c).

SECTION 17. Amends Subchapter C, Chapter 1603, Occupations Code, by adding Section 1603.1045, as follows:

Sec. 1603.1045. **CONTRACT TO PERFORM INSPECTIONS.** Authorizes TDLR to contract with a person to perform for TDLR inspections of a school, shop, or other facility under this chapter, Chapter 1601, or Chapter 1602.

SECTION 18. Amends Subchapter E, Chapter 1603, Occupations Code, by adding Section 1603.205, as follows:

Sec. 1603.205. DUAL BARBER AND BEAUTY SHOP LICENSE. (a) Authorizes a person holding a dual barber and beauty shop license to own, operate, or manage a shop in which any practice of barbering defined by Section 1601.002(1) or cosmetology defined by Section 1602.002(a).

(b) Requires an applicant for a dual barber and beauty shop license to submit an application on a TDLR-approved form verified by the applicant, proof that the applicant meets the applicable requirements under Chapter 1601 and 1602 for obtaining a barbershop permit and a beauty shop license, and the required license fee.

(c) Requires TDLR to issue a dual barber and beauty shop license to an applicant that meets the requirements under this chapter and Chapters 1601 and 1602, complies with commission rules, and pays the required fees.

(d) Requires the holder of a dual barber and beauty shop license to comply with this chapter, Chapters 1601 and 1602, and commission rules related to barbering and cosmetology.

SECTION 19. Amends Section 1603.352, Occupations Code, as follows:

Sec. 1603.352. New heading: STERILIZATION REQUIREMENTS FOR CERTAIN SERVICES. (a) Requires a person who holds certain licenses, certificates, or permits and performs a barbering service described by Section 1601.002(1)(E) or (F) or a cosmetology service described by Section 1602(a)(10) or (11), rather than 1602.002(10) or (11), to clean, disinfect, and sterilize with an autoclave or a dry heat, ultraviolet, or other TDLR-approved sterilizer (sterilizing equipment), in accordance with the sterilizer manufacturer's instructions, each metal instrument, including metal nail clippers, cuticle pushers, cuticle nippers, and other metal instruments, before the service is performed. Deletes existing text authorizing a person who holds certain licenses, certificates, or permits and performs certain barbering and cosmetology services to 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) Provides that the owner or manager of a barber shop, barber school, beauty shop, specialty shop, beauty culture school, or other facility licensed under this chapter, Chapter 1601, or Chapter 1602, is responsible for providing sterilizing equipment for use in the shop or school as required by Subsection (a). Requires sterilizing equipment used as required by Subsection (a) to be listed with the United States Food and Drug Administration (FDA). Deletes existing text requiring sterilizing equipment to be registered with the FDA and used in accordance with the manufacturer's instructions.

(c) Requires each sterilized instrument to be used in accordance with the manufacturer's instructions.

(d) Provides that this section does not apply to single-use instruments or nonmetal nail files, buffer blocks, pumice stones, nail brushes, or other similar instruments.

(e) Authorizes the commission to adopt rules to administer this section.

SECTION 20. Amends Subchapter J, Chapter 1603, Occupations Code, by adding Sections 1603.455 and 1603.456, as follows:

Sec. 1603.455. EMERGENCY ORDERS. (a) Authorizes the executive director of TDLR (executive director) to issue an emergency order to suspend or revoke a license or permit issued, or to cease the operation of an unsafe facility regulated, by TDLR under

this title if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) Authorizes the executive director to issue the emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.

(c) Requires the executive director, not later than 10 days after the date an emergency order is issued under this section without a hearing, to set the time and place for a hearing conducted by the State Office of Administrative Hearings (SOAH) to affirm, modify, or set aside the emergency order. Requires the executive director to set the hearing for a date not later than 30 days after the date the time and place for a hearing are set. Requires the hearing examiner to affirm the order to the extent that reasonable cause existed to issue the order.

(d) Authorizes the commission by rule to prescribe procedures for the issuance and appeal of an emergency order under this section, including a rule to allow the commission to affirm, modify, or set aside a decision by SOAH under Subsection (c).

(e) Provides that a proceeding under this section is a contested case under Chapter 2001, Government Code.

Sec. 1603.456. CEASE AND DESIST ORDERS. Authorizes the executive director to issue a cease and desist order, after notice and opportunity for a hearing, if the executive director determines that the order is necessary to prevent a violation of this chapter, Chapter 1601, or Chapter 1602, or a rule adopted by the commission.

SECTION 21. Repealer: Sections 1601.506 (Cleanliness), 1602.266(c) (providing that the amount of the student permit fee includes one examination fee and a transcript fee and is nonrefundable), and 1602.408 (Sanitation Requirements for Certain Services), Occupations Code.

SECTION 22. (a) Requires TDLR to issue a hair braiding specialty certificate of registration under Section 1601.259, Occupations Code, as added by this Act, to an applicant who applies for a certificate of registration under this section not later than October 1, 2007, has the experience required by this section, and pays the application fee.

(b) Provides that an applicant for a hair braiding specialty certificate of registration under this section is required to have practiced hair braiding in this state for at least 10 years before the regulation of hair braiding by Chapter 267, Acts of the 75th Legislature, Regular Session, 1997.

(c) Provides that this section expires on October 31, 2007.

SECTION 23. Requires the commission to adopt rules necessary to implement the changes in law made by this Act, not later than January 1, 2008.

SECTION 24. Makes application of this Act prospective.

SECTION 25. Prohibits TDLR from issuing a license under Section 1603.205, Occupations Code, as added by this Act, before May 1, 2008.

SECTION 26. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2007.

(b) Effective date, Sections 1602.466 and 1603.258, Occupations Code, as added by this Act: April 1, 2008.