

## **BILL ANALYSIS**

C.S.H.B. 1436  
By: Hamric  
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: licensing barbers, cosmetologists, instructors, shops, salons, and schools; and enforcing 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. As a result of its review, the Sunset Advisory Commission recommended abolishing both agencies, transferring their functions to the Texas Department of Licensing and Regulation (TDLR), and making other statutory modifications that are contained in this bill.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1.01; SECTIONS 2.14, 2.15, 2.17, 2.21; SECTION 3.20; and SECTION 6.01.

### **ANALYSIS**

C.S.H.B. 1436 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 Texas Commission of Licensing and Regulation on technical matters relating to barbering and cosmetology. The bill provides for composition requirements and duties of the advisory boards, and gives rulemaking authority to the Texas Commission of Licensing and Regulation.

C.S.H.B. 1436 requires the agency to focus its resources on inspection of barber and cosmetology facilities 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.H.B. 1436 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 establishes standard time frames and penalties for late license renewal. The bill eliminates the requirement for barber health certificates for licensure.

C.S.H.B. 1436 requires development of a method for violation and complaint trend analysis and an annual compilation of detailed statistics on violations and complaints. The bill updates language on complaints to require the agency to adopt procedures for all phases of the complaint process, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public. The bill also standardizes language on administrative sanctions to specify a full range of penalties to allow the agency to probate a suspended license and requires the agency to have clear probation standards in rule if it uses probation as a sanction. The bill requires adoption of guidelines for informal settlement conferences and removes the requirement

that automatically schedules hearings at the State Office of Administrative Hearings for both barber and cosmetology licensees who fail to respond to notices of violations from the agencies.

C.S.H.B. 1436 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.H.B. 1436 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.H.B. 1436 provides for the ability of a certificate or license holder to place his or her certificate or license on inactive status, sets forth the limitations associated with the inactive certificate or license, and establishes procedures to make a certificate or license inactive. The bill provides for the reactivation of inactive certificates or licenses, and gives the Texas Commission of Licensing and Regulation the ability to set fees and adopt rules to implement these provisions.

C.S.H.B. 1436 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**

The effective date is September 1, 2005. Sections 1602.353 and 1603.352 take effect January 1, 2006.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute modifies the original by:

- Removing the provisions that abolish the Barber Board and Cosmetology Commission and merge their functions, and instead abolishes the agencies and transfers their functions to the Texas Department of Licensing and Regulation.
- Creating two new advisory committees at TDLR, to advise the Commission on technical matters relating to barbering and cosmetology. Provides for composition requirements and duties of the advisory boards.
- Expanding language requiring risk-based inspections of barber and cosmetology facilities by requiring 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 substitute clarifies TDLR's authority to charge inspection fees.
- Clarifying language allowing TDLR to inspect barber and cosmetology facilities before the facility begins operations.
- Reinstating the authority of TDLR to give a practical exam to prospective barbers and cosmetologists as a requirement for licensure.
- Authorizing the registration of examination proctors at TDLR who would hold a certificate enabling them to administer cosmetology and barber exams around the state.
- Clarifying provisions that require both barber and cosmetology nail salons to use autoclaves to sterilize non-disposable instruments. The substitute also specifies that salons may only use a disposable instrument if it is bought at the location where the service is performed or provided by the person on whom the service is performed.
- Creating an inactive license status for cosmetology licensees.
- Changing the age requirement for barbers who are licensed as manicurists to 17 instead of 16, aligning it with requirements for cosmetology manicurists.
- Increasing the student-to-teacher ratio in barbers schools to 25 student per teacher, from 20 students per teacher.
- Making changes to existing law that make barbershop permit requirements consistent.
- Changing the language to transfer FTE positions instead of individual employees to be consistent with the Appropriations bill. The bill provides that the transfer of duties,

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powers, and resources from the Board of Barber Examiners and the Cosmetology Commission to TDLR must be completed by January 1, 2006.