

BILL ANALYSIS

C.S.S.B. 411
By: Whitmire
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: license barbers and cosmetologists, instructors, shops, salons, and schools; and enforce 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. C.S.S.B. 411 abolishes both agencies, transferring their functions to the Texas Department of Licensing and Regulation (TDLR), and makes other statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

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

ANALYSIS

The bill 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 Commission on technical matters relating to barbering and cosmetology. The bill provides for composition requirements and duties of the advisory boards. The bill requires that the transfer of all powers, duties, and resources of the two agencies to TDLR must be complete by January 1, 2006.

C.S.S.B. 411 requires the agency to focus its resources on inspection of barber and cosmetology facilities that require the most attention, those 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.S.B. 411 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 removes specific renewal dates and fee caps in the Barber Act. The bill requires barber and cosmetology schools, not the agencies, to maintain student records. The bill creates an inactive status for cosmetology licensees and removes a requirement that requires barbershop owners to be licensed barbers for at least 12 months. The bill also eliminates the antiquated requirement for barber health certificates for licensure.

C.S.S.B. 411 requires development of a method for violation and complaint trend analysis and an annual compilation of detailed statistics on violations and complaints. The bill requires the agency to develop a method for handling non-jurisdictional complaints. The bill also requires adoption of guidelines for informal settlement conferences.

C.S.S.B. 411 79(R)

C.S.S.B. 411 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.S.B. 411 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.S.B. 411 makes technical changes to the Barber and Cosmetology Acts to make licensing and enforcement provisions consistent with each other and to provide for administration of the programs by TDLR.

C.S.S.B. 411 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

This Act takes effect September 1, 2005, except as otherwise provided. SECTION 6.02 of this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this bill does not receive the vote necessary for immediate effect of SECTION 6.02, SECTION 6.02 does not take effect.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies the original in the following manner:

Changes wording in the provision requiring TDLR to do risk-based inspections to require TDLR to have reasonable cause, not probable cause as it is currently worded, to enter a shop for inspection.

Removes a section of the bill that allows TDLR's Commission to appoint committees to help it regulate barbers and cosmetologists.

Removes a provision that requires applicants to submit an application to TDLR not later than the 10th day before the exam.

Reinstates current law that requires the written exam to be validated independently or purchased from a national testing service.

Removes a requirement that examination applications for barbers must be sworn.

Removes a provision that details when and how often TDLR is required to give the cosmetology exam and requires TDLR to announce the site of the exam not later than 6 months before the scheduled exam date.

Makes barbershop owners, in addition to barbers, barber schools, and beauty culture schools, subject to civil penalties.

Changes the duties of the advisory boards to include advising the Commission on Licensing and Regulation on education, curriculum, examinations, rules, standards, other issues relating to barbering and cosmetology, and responding to questions from the Department and Commission regarding barbering and cosmetology.

Changes the age requirement for barbers who are licensed as manicurists to 17 instead of 16, aligning it with requirements for cosmetology manicurists.

C.S.S.B. 411 79(R)

Makes technical changes to the Barber Act by consolidating sections of law to make barbershop permit and barber specialty shop permit requirements consistent with each other, including requiring the display of shop permits, guidelines for relocating shop locations, and guidelines for temporary permits.

Removes the requirement that barbershop owners be barbers practicing for at least 12 months and removes a requirement that a barber must supervise a barbershop at all times.

Increases the student-to-teacher ratio in barbers schools to 25 student per teacher, from 20 students per teacher.

Adds an ex officio non-voting representative from the Texas Education Agency to the cosmetology advisory committee.

Removes specific requirements for cleanliness in the Barber Act and instead relies on TDLR's authority to pass rules relating to sanitation.

Changes instructional language to require the completion of the transfer of both agencies' functions to TDLR by January 1, 2006 instead of September 1, 2006.

Changes instructional language to transfer full-time equivalent positions from the two agencies to TDLR, instead of transferring employees.

Adds a limited immediate effectiveness provision, to take effect if the bill receives two-thirds vote of both houses, that would require the two agencies to work with TDLR in ensuring that on September 1, 2005 all agencies would be operating under TDLR's agency number, as assigned by the Comptroller. Also requires the two agencies to allow TDLR access to operations of the agencies by July 1, 2005 and to provide TDLR with information regarding agency responsibilities by July 15, 2005 to ensure a smooth transition.