

BILL ANALYSIS

Senate Research Center
79R698 MXM-D

S.B. 411
By: Whitmire
Government Organization
4/11/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas State Board of Barber Examiners (board) and the Texas Cosmetology Commission (commission) regulate barbers and cosmetologists to protect the health and safety of the public. The agencies perform two major functions: licensing barbers and cosmetologists, instructors, shops, salons, and schools; and enforcing the Barber and Cosmetology Acts and agency rules by investigating complaints and conducting inspections.

The board currently regulates about 13,150 individuals and 8,000 entities, with a staff of 13, on an annual budget of about \$600,000.

The commission currently regulates about 151,500 individuals and 8,000 entities, with a staff of 42, on an annual budget of about \$2.3 million.

The board and the 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.

S.B. 411 abolishes the board and the commission and merges the agencies' functions into a newly created agency, the Texas Board of Barbering and Cosmetology, giving the new agency a sunset date of September 1, 2009.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Barbering and Cosmetology in SECTION 1.01 (Sections 1603.151, 1603.153, 1603.201, and 1603.452, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Cosmetology Commission is transferred to the Texas Board of Barbering and Cosmetology in SECTION 3.06 (Section 1602.255, Occupations Code), SECTION 3.13 (Section 1602.267, Occupations Code), SECTION 3.17 (Section 1602.306, Occupations Code) and SECTION 3.20 (Section 1602.354, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. TEXAS BOARD OF BARBERING AND COSMETOLOGY

SECTION 1.01. Amends Title 9, Occupations Code, by adding Chapter 1603, as follows:

CHAPTER 1603. TEXAS BOARD OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. (a) Defines "board" and "executive director."

(b) Provides that the definitions in Chapters 1601 (Barbers), Occupations Code and 1602 (Cosmetologists), Occupations Code, apply to this chapter, unless the context clearly indicates otherwise.

Sec. 1603.002. APPLICATION OF SUNSET ACT. Provides that the Texas Board of Barbering and Cosmetology (board) is subject to Chapter 325 (Texas Sunset Act), Government Code, and, unless continued in existence as provided by that chapter, the board is abolished and this chapter, Chapter 1601, and Chapter 1602, Occupations Code, expire September 1, 2009. Requires the Sunset Advisory Commission (commission), in its review of the board, as required by this section, to limit its review to the appropriateness of recommendations made by the commission to the 79th Legislature. Authorizes the commission, in its report to the 81st Legislature, to include any recommendations it considers appropriate.

[Reserves Sections 1603.003-1603.050 for expansion.]

SUBCHAPTER B. TEXAS BOARD OF BARBERING AND COSMETOLOGY

Sec. 1603.051. BOARD; MEMBERSHIP. Sets forth requirements for the composition of the board and appointment of members to the board.

Sec. 1603.052. MEMBER ELIGIBILITY. Sets forth eligibility requirements and prohibitions for members of the board.

Sec. 1603.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. Defines "Texas trade association" and sets forth restrictions for certain persons regarding membership on or employment with the board.

Sec. 1603.054. TERMS; VACANCY. Sets forth guidelines for the terms of members of the board and for appointment of a replacement in the event of a vacancy.

Sec. 1603.055. GROUNDS FOR REMOVAL. Sets forth specific grounds for removal of board members. Provides that the validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists. Sets forth specific notification requirements for the executive director if the executive director has knowledge that a potential ground for removal exists. Sets forth additional notification requirements if the potential ground for removal involves the presiding officer.

Sec. 1603.056. PER DIEM; REIMBURSEMENT. Provides that a board member is entitled to the per diem set by the General Appropriations Act and to reimbursement for travel expenses in accordance with the General Appropriations Act. Requires a board member seeking reimbursement for expenses to present a sworn, complete, itemized statement for the number of days engaged in the board's business and the amount of expenses incurred by the member.

Sec. 1603.057. PRESIDING OFFICER. Sets forth requirements for the governor in designating a board member as presiding officer of the board.

Sec. 1603.058. MEETINGS. Sets forth meeting requirements for the board.

Sec. 1603.059. BOARD MEMBER TRAINING. Sets forth specific training requirements and guidelines for members of the board.

[Reserves Sections 1603.060-1603.100 for expansion.]

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 1603.101. EXECUTIVE DIRECTOR. Sets forth requirements for the employment of an executive director and compensation of the executive director.

Sec. 1603.102. PERSONNEL. Authorizes the executive director to employ personnel as necessary to implement this chapter.

Sec. 1603.103. **DIVISION OF RESPONSIBILITIES.** Requires the board to develop and implement policies that clearly designate the responsibilities of the board, the executive director, and the staff of the board.

[Reserves Sections 1603.104-1603.150 for expansion.]

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 1603.151. **RULES.** Requires the board to adopt rules consistent with this chapter for the administration of this chapter, the operation of the board, and the administration of Chapters 1601 and 1602, Occupations Code.

Sec. 1603.152. **FEES.** Requires the board to adopt fees in amounts that are reasonable and necessary to provide sufficient revenue to administer the programs under the board's authority, including application, inspection, certificate, license, permit, and renewal fees.

Sec. 1603.153. **SANITATION RULES.** Requires the board to establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.154. **RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING.** Prohibits the board from adopting rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person. Sets forth restrictions for the board in adopting its rules to prohibit such practices.

Sec. 1603.155. **INSPECTION OF SCHOOLS, SHOPS, AND FACILITIES BEFORE OPERATION.** Prohibits a person from operating a school, shop, or other facility licensed or permitted under Chapters 1601 and 1602, Occupations Code, until the board determines, by inspection, that the person has established the school, shop, or facility in compliance with said chapters. Authorizes a school, shop, or other facility that is not approved by the board on initial inspection to be reinspected and requires said facility to pay for each inspection.

Sec. 1603.156. **PERIODIC AND RISK-BASED INSPECTIONS.** Requires the board to conduct specific, periodic inspections of certain facilities under this chapter, Chapter 1601, or Chapter 1602, Occupations Code, and authorizes the board to conduct specific risk-based inspections of certain facilities under said chapters. Requires the board to set priorities for inspections based on certain risk factors. Sets forth requirements for an inspector in finding a violation during inspection.

Sec. 1603.157. **USE OF TECHNOLOGY.** Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions and requires said policy to ensure that the public is able to interact with the board on the Internet.

Sec. 1603.158. **NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.** Requires the board to develop and implement a policy to encourage the use of specific negotiated rulemaking and alternative dispute resolution procedures. Requires the board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. Requires the board to designate a trained person to coordinate the implementation of the policy adopted under this section, serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by the board.

Sec. 1603.159. **RETENTION OF STUDENT RECORDS.** Prohibits the board from retaining student records, including student transcripts, beyond the time required by state law.

Sec. 1603.160. COMMITTEES. Authorizes the board to appoint committees as necessary to carry out its duties.

[Reserves Sections 1603.161-1603.200 for expansion.]

SUBCHAPTER E. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.201. PUBLIC INTEREST INFORMATION AND PARTICIPATION. Requires the board to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board. Requires the board to prepare information of public interest describing its functions and to make the information available to the public and appropriate state agencies. Requires the board, by rule, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board and authorizes the board to provide for such notice on certain forms and in certain places.

Sec. 1603.202. COMPLAINT PROCEDURES. Requires the board to adopt a comprehensive procedure for receiving and adjudicating complaints for consumers and service recipients and sets forth specific requirements for said procedures. Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board and sets forth specific requirements for said system. Requires the board to make information available describing its procedures for complaint investigation and resolution, to periodically notify the parties of the status of the complaint until its final disposition, and, if the board determines that it lacks jurisdiction to resolve the complaint, to notify the complainant in writing of such.

Sec. 1603.203. ANALYSIS OF COMPLAINTS AND VIOLATIONS. Requires the board to develop and maintain a system to analyze the processing, sources, and types of complaints filed with the board and the types of violations that occur under this chapter, Chapter 1601, and Chapter 1602, Occupations Code, and, based on said information, to analyze trends in violations and complaints that may require further attention or technical assistance to help reduce their frequency. Requires the board to annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year which must include specific information.

Sec. 1603.204. INFORMAL SETTLEMENT CONFERENCE. Requires the board to establish guidelines for an informal settlement conference related to a complaint filed with the board.

[Reserves Sections 1603.205-1603.250 for expansion.]

SUBCHAPTER F. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.251. APPLICATION FORM; TIMING. Requires an application for a certificate, license, or permit to be made on a form prescribed and provided by the board. Requires an application for an operator license, instructor license, manicurist license, or facialist specialty license to be filed with the board no later than 10 days before the date set for the applicable examination.

Sec. 1603.252. DUPLICATE CERTIFICATE, LICENSE, OR PERMIT. Requires the board to issue a duplicate certificate, license, or permit to an applicant who meets certain requirements.

Sec. 1603.253. PROVISIONAL CERTIFICATE OR LICENSE. Authorizes the board to issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who meets certain requirements. Sets forth guidelines for granting a certificate or license to a provisional holder. Sets forth a timeline for the board to grant or deny a provisional certificate or license.

Sec. 1603.254. RECIPROCAL CERTIFICATE, LICENSE, OR PERMIT. Authorizes a person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter or Chapters 1601 or 1602, Occupations Code, to apply for a license, certificate, or permit to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country and sets forth certain requirements for doing such. Authorizes a person issued a license, certificate, or permit under this section to perform the acts of barbering or cosmetology stated on the license, certificate, or permit and provides that the person is subject to the renewal procedures and fees provided for the performance of those acts of barbering or cosmetology.

[Reserves Sections 1603.255-1603.300 for expansion.]

SUBCHAPTER G. EXAMINATION REQUIREMENTS

Sec. 1603.301. WRITTEN EXAMINATION. Requires the board to select a written examination for each examination required under this chapter, or Chapters 1601 or 1602, Occupations Code, and provides requirements for said examination.

Sec. 1603.302. EXAMINATION APPLICATION FOR BARBERS. Requires an applicant for an examination for a certificate or license issued under Chapter 1601 to submit to the board a sworn application on a form prescribed and provided by the board accompanied by certain materials and fees.

Sec. 1603.303. EXAMINATION FREQUENCY. Sets forth requirements for frequency of examinations for applicants for a Class A barber's certificate and a teacher's certificate. Sets forth requirements and guidelines for when the board should administer examinations for certificates and licenses under Chapter 1602, Occupations Code.

Sec. 1603.304. LOCATION OF EXAMINATION. Requires the board to announce the site of an examination for a certificate or license issued under Chapter 1602, Occupations Code, at least six months before the scheduled examination date. Prohibits the board from administering an examination in a board member's school or from holding an examination at a barber school or barber shop owned, managed, or operated by a board member.

Sec. 1603.305. EARLY EXAMINATION. Authorizes the board, on written request by a student, to provide for the early written examination of an applicant for a Class A barber certificate, a teacher's certificate, or an operator license who has met certain requirements. Authorizes a board inspector to administer an examination under this section at barber school or beauty culture schools throughout the state.

Sec. 1603.306. EXAMINATION RESULTS. Sets forth requirements for the board in notifying each examinee of the results of the examination and, if the results will be delayed for longer than 90 days after the examination date, in notifying the examinee of the reason for the delay. Requires the board, if requested in writing by a person who fails the examination, to provide to the person an analysis of the person's performance on the examination.

[Reserves Sections 1603.307-1603.350 for expansion.]

SUBCHAPTER H. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1306.351. CERTIFICATE, LICENSE, AND PERMIT EXPIRATION AND RENEWAL. (a) Provides guidelines for certificate, license, and permit renewal for a person who meets all eligibility requirements and whose certificate, license, or permit is unexpired.

(b) Provides guidelines for certificate, license, and permit renewal for a person whose license has been expired for 90 days or less, including paying to the board a fee that is equal to one and a half times the normally required renewal fee.

(c) Provides guidelines for certificate, license, or permit renewal for a person whose license has been expired for more than 90 days but less than one year, including paying to the board a fee that is equal to two times the normally required renewal fee.

(d) Prohibits a person whose certificate, license, or permit has been expired for more than one year from renewal. Authorizes said person to obtain a new certificate, license, or permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate, license, or permit.

Sec. 1603.352. RENEWAL OF EXPIRED CERTIFICATE, LICENSE, OR PERMIT BY OUT-OF-STATE PRACTITIONER. Authorizes a person who held a certificate, license, or permit in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application to obtain a new certificate, license, or permit without reexamination by paying to the board a fee that is equal to two times the normally required renewal fee for the certificate, license, or permit.

Sec. 1603.353. NOTICE OF CERTIFICATE, LICENSE, OR PERMIT EXPIRATION. Sets forth notification requirements for the board regarding the impending expiration of a person's certificate, license, or permit.

Sec. 1603.354. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. Authorizes the board to deny a person's request to renew a certificate, license, or permit under this chapter, Chapter 1601, Occupations Code, or Chapter 1602, Occupations Code, if the person has not paid an administrative penalty imposed under Subchapter K. Provides specific exceptions.

[Reserves Sections 1603.355-1603.400 for expansion.]

SUBCHAPTER I. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.401. MINIMUM CURRICULUM FOR SCHOOLS. Requires the board to prescribe the minimum curriculum taught by all schools licensed under this chapter, Chapter 1601, or Chapter 1602, Occupations Code.

[Reserves Sections 1603.402-1603.450 for expansion.]

SUBCHAPTER J. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.451. DENIAL, SUSPENSION, OR REVOCATION. Requires the board to deny an application for issuance or renewal of, or to suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit engages in certain behaviors or acts.

Sec. 1603.452. PROBATION. Authorizes the board to place on probation a person whose certificate, license, or permit is suspended and, if a suspension is probated, to impose certain requirements on the person who is placed on probation. Requires the board, by rule, to adopt clear probation standards and procedures and provides specific areas for which procedures should be adopted.

Sec. 1603.453. ADMINISTRATIVE PROCEDURE. Provides that a hearing or an appeal from a hearing under this subchapter is subject to Chapter 2001 (Administrative Procedure), Government Code.

[Reserves Sections 1603.454-1603.500 for expansion.]

Sec. 1603.501. **IMPOSITION OF PENALTY.** Authorizes the board to impose an administrative penalty on a person regulated under this chapter, Chapter 1601, or Chapter 1602, Occupations Code, who violates one of those chapters or a board rule or order.

Sec. 1603.502. **AMOUNT OF PENALTY.** Provides limitations for the amount of the administrative penalty and sets forth guidelines for determining the amount of the penalty.

Sec. 1603.503. **REPORT AND NOTICE OF VIOLATION AND PENALTY.** Authorizes the executive director, upon determining that a violation has occurred, to issue to the board a report stating certain facts and recommendations regarding such. Requires the executive director, not later than 14 days after the report is issued, to give written notice of such to the person on whom the penalty may be imposed. Provides specific requirements for such notice.

Sec. 1603.504. **PENALTY TO BE PAID OR HEARING REQUESTED.** Authorizes the person, not later than 20 days after receiving the notice, to accept the executive director's determination and recommended administrative penalty or make a request for a hearing on the occurrence of the violation, or both.

Sec. 1603.505. **HEARING.** Requires an administrative law judge of the State Office of Administrative Hearings to hold a hearing requested under Section 1603.504 and to make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 1603.506. **DECISION BY BOARD.** Authorizes the board to make certain determinations based on the findings of fact, conclusions of law, and proposal for a decision.

Sec. 1603.507. **OPTIONS FOLLOWING DECISION: PAY OR APPEAL.** Requires the person, not later than 30 days after the board's order becomes final, to perform certain actions in response to the board's order. Authorizes the executive director, if the executive director receives a copy of an affidavit under this section, to file with the court a contest to the affidavit not later than the fifth day after the date the copy is received. 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 penalty and to give a supersedeas bond.

Sec. 1603.508. **COLLECTION OF PENALTY.** Authorizes the executive director, if the person on whom the penalty is imposed does not pay the penalty and the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection of the penalty.

Sec. 1603.509. **DECISION BY COURT.** Authorizes the court, upon sustaining the finding that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount and requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 1603.510. **REMITTANCE OF PENALTY AND INTEREST.** Requires the court, if, after judicial review, the administrative penalty is reduced or not imposed by the court, to order certain actions after the judgment becomes final.

Sec. 1603.511. **ADMINISTRATIVE PROCEDURE.** Provides that a proceeding under this subchapter to impose an administrative penalty is a contested case under Chapter 2001, Government Code.

[Reserves Sections 1603.512-1603.550 for expansion.]

SUBCHAPTER L. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.551. **INJUNCTIVE RELIEF.** Authorizes the board to bring an action in a specified court to enjoin a person from violating this chapter, Chapter 1601, or Chapter 1602, Occupations Code, or a board rule. Requires the board, if a certificate, license, or permit holder commits a violation of said chapters or a board rule which poses a serious threat to public health, to initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit. Provides that, in seeking an injunction under this section, the board is not required to allege or prove certain facts.

Sec. 1603.552. **CIVIL PENALTY.** Provides that a barber, barber school, or private beauty culture school that violates this chapter, Chapter 1601, or Chapter 1602, Occupations Code, or a board rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law. Sets forth guidelines for imposition and collection of said civil penalty.

Sec. 1603.553. **APPEAL BOND NOT REQUIRED.** Provides that the board is not required to give an appeal bond in a cause arising under this chapter, or Chapters 1601 or 1602, Occupations Code.

Sec. 1603.554. **ENFORCEMENT BY ATTORNEY GENERAL.** Requires the attorney general to represent the board in an action to enforce this chapter or Chapters 1601 or 1602, Occupations Code.

[Reserves Sections 1603.555-1603.600 for expansion.]

SUBCHAPTER M. BUSINESS IMPROVEMENT PLAN

Sec. 1603.601. **BUSINESS IMPROVEMENT PLAN.** Requires the board to adopt and implement a business improvement plan which demonstrates a commitment to and result in significant improvement in specific areas.

Sec. 1603.602. **QUARTERLY REPORTS.** Requires the board, not later than December 1, 2005, to provide to the Sunset Advisory Commission and state auditor an initial assessment report regarding the implementation of the business improvement plan and provides that additional reports are due each quarter, beginning March 1, 2006. Provides specific guidelines for the format of and information included in the reports.

Sec. 1603.603. **MANAGEMENT AUDIT.** Requires the state auditor, not later than September 1, 2006, to conduct a management audit of the board and sets forth guidelines regarding certain persons that are required to receive the report and information that must be included.

Sec. 1603.604. **EXPIRATION.** Provides that this subchapter expires June 1, 2009.

ARTICLE 2. REGULATION OF BARBERING

SECTION 2.01. Amends Section 1601.001(a)(3), Occupations Code, to redefine "board."

SECTION 2.02. Amends Section 1601.003, Occupations Code, as follows:

Sec. 1601.003. **APPLICATION OF CHAPTER.** Sets forth specific persons to whom this chapter does not apply, including a person regulated under Chapter 1602, Occupations code, if the person practices within the scope of a permit, license, or certificate issued by the board under that chapter, rather than a person regulated under Chapter 1602, Occupations Code, if the person practices within the scope of a license or certificate issued by the Texas Cosmetology Commission.

SECTION 2.03. Amends Section 1601.253(b), Occupations Code, to require the board to issue a class A barber certificate to applicants who meet certain requirements, including paying the required fee, rather paying a fee not to exceed \$100.

SECTION 2.04. Amends Sections 1601.254(a) and (c), Occupations Code, to delete existing text providing that the required fee under this section is not to exceed a specified amount, based on whether or not the applicant fulfills the certificate requirements and the year in which the requirements are fulfilled. Makes conforming changes.

SECTION 2.05. Amends Sections 1601.256(b) and (d), Occupations Code, to require that an applicant for a barber technician license submit the required fee, rather than a \$10 administration fee, with the application and make conforming changes.

SECTION 2.06. Amends Sections 1601.257(b) and (c), Occupations Code, to require that an applicant for a manicurist license pay the required license fee, rather than a fee not to exceed \$30, and make conforming changes.

SECTION 2.07. Amends Section 1601.260(a), Occupations Code, to require that an applicant for a permit to be a student in a barber school submit the required nonrefundable application fee, rather than a nonrefundable application fee not to exceed \$25, with the application.

SECTION 2.08. Amends Section 1601.302(a), Occupations Code, to require a person who opens a new barbershop to submit the required inspection fee, rather than an inspection fee not to exceed \$70, with the required application for a temporary barbershop permit.

SECTION 2.09. Amends Section 1601.304(b), Occupations Code, to require an applicant for a manicurist specialty shop permit to submit the required inspection fee, rather than a fee not to exceed \$50.

SECTION 2.10. Amends Section 1601.305, Occupations Code, as follows:

Sec. 1601.305. ISSUANCE OF MANICURIST SPECIALTY SHOP PERMIT. Requires the board to issue a manicurist specialty shop permit to an applicant who meets certain requirements, including that the shop meets the minimum health standards for manicurist specialty shops set by the board, as determined by a board inspection under Section 1603.155, rather than as determined by a board inspection, and any other requirements imposed by board rule.

SECTION 2.11. Amends Section 1601.309, Occupations Code, as follows:

Sec. 1601.309. PRACTICE BY COSMETOLOGIST AT SPECIALTY SHOP PROHIBITED. Makes a conforming change.

SECTION 2.12. Amends Section 1601.353(b), Occupations Code, to require an applicant for a barber school permit to submit certain materials to the board, including the required permit fee, rather than a permit fee not to exceed \$1,000.

SECTION 2.13. Amends Section 1601.402(c), Occupations Code, to require a renewal application under this section to be accompanied by a renewal fee in an amount equal to the original certificate or license fee, rather than an amount equal to the original certificate or license fee but not to exceed \$100.

SECTION 2.14. Amends the heading to Section 1601.404, Occupations Code, to read as follows:

Sec. 1601.404. REINSTATEMENT OF EXPIRED CERTIFICATE OR LICENSE BY RETIREE.

SECTION 2.15. Amends Section 1601.404(c), Occupations Code, to make conforming changes.

SECTION 2.16. Amends Section 1601.405(b), Occupations Code, to require the board to issue a renewal certificate or license on application and payment of the required renewal fee, rather than a renewal fee, within 90 days of the date the person is released or discharged from active duty in the armed forces. Deletes existing text providing for the amount of the renewal fee.

SECTION 2.17. Amends Section 1601.406, Occupations Code, as follows:

Sec. 1601.406. RENEWAL OF BARBERSHOP OR SPECIALTY SHOP PERMIT. Provides that a barbershop permit or specialty shop permit expires on the second anniversary of the date of issuance, rather than on July 1 of each odd-numbered year. Authorizes a barbershop permit holder to renew the permit by paying the required renewal fee, rather than a renewal fee not to exceed \$70, and authorizes a specialty shop permit holder to renew the permit by including, with the renewal application, the required renewal fee, rather than a renewal fee not to exceed \$50.

SECTION 2.18. Amends Section 1601.407, Occupations Code, as follows:

Sec. 1601.407. RENEWAL OF BARBER SCHOOL PERMIT. Provides that a barber school permit expires on the first anniversary of the date of issuance, rather than September 1 of each year, and that a barber school may renew its permit by paying the required renewal fee, rather than a renewal fee not to exceed \$300.

SECTION 2.19. Amends Sections 1601.454, Occupations Code, as follows:

Sec. 1601.454. New heading: PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY. Prohibits the board from adopting certain rules solely because a facility is licensed or permitted by the board under both this chapter and Chapter 1602, Occupations Code, rather than by both the board and the Texas Cosmetology Commission. Makes conforming changes.

SECTION 2.20. Amends Section 1601.502, Occupations Code, as follows:

Sec. 1601.502. SUPERVISION OF BARBERSHOP. Makes a conforming change.

SECTION 2.21. Amends Sections 1601.561(a) and (b), Occupations Code, to require a barber school to maintain a monthly progress report regarding each student attending the school, rather than to submit a monthly progress report to the board regarding each student attending the school. Requires the school, on a student's completion of a prescribed course of instruction, to notify, rather than certify to, the board that the student has completed the required number of hours and is eligible to take the appropriate examination.

ARTICLE 3. REGULATION OF COSMETOLOGY

SECTION 3.01. Amends Section 1602.001(1), Occupations Code, to define "board" and delete existing definition of "commission."

SECTION 3.02. Amends the heading to Subchapter D, Chapter 1602, Occupations Code, to read as follows:

SUBCHAPTER D. ADDITIONAL POWERS AND DUTIES RELATED TO COSMETOLOGY

SECTION 3.03. Amends Sections 1602.153(a) and (b), Occupations Code, to authorize the board, rather than the Texas Cosmetology Commission (commission), to request and, if necessary, compel by subpoena, certain witnesses and information. Makes conforming changes.

SECTION 3.04. Amends Section 1602.251(c), Occupations Code, to make conforming changes.

SECTION 3.05. Amends Section 1602.254(b), Occupations Code, to make a conforming change.

SECTION 3.06. Amends Sections 1602.255(b) and (c), Occupations Code, to make conforming changes.

SECTION 3.07. Amends Section 1602.256(b), Occupations Code, to make a conforming change.

SECTION 3.08. Amends Section 1602.257(b), Occupations Code, to make a conforming change.

SECTION 3.09. Amends Section 1602.258(b), Occupations Code, to make conforming changes.

SECTION 3.10. Amends Section 1602.263(b), Occupations Code, to make conforming changes.

SECTION 3.11. Amends Sections 1602.264(a), Occupations Code, to make conforming changes.

SECTION 3.12. Amends Sections 1602.266(a) and (b), Occupations Code, to make conforming changes.

SECTION 3.13. Amends Sections 1602.267(b) and (d), Occupations Code, to delete existing text requiring an applicant to submit a certificate of health as required by Section 1602.253 and make conforming changes.

SECTION 3.14. Amends Sections 1602.302(b) and (c), Occupations Code, to make conforming changes.

SECTION 3.15. Amends Sections 1602.303(b) and (c), Occupations Code, to make conforming changes.

SECTION 3.16. Amends Sections 1602.305(b) and (c), Occupations Code, to make conforming changes.

SECTION 3.17. Amends Sections 1602.306(b), (c), and (d), Occupations Code, to make conforming changes.

SECTION 3.18. Amends Section 1602.351(d), Occupations Code, to make a conforming change.

SECTION 3.19. Amends the heading to Section 1602.352, Occupations Code, to read as follows:

Sec. 1602.352. REQUIREMENT FOR FIRST RENEWAL OF LICENSE.

SECTION 3.20. Amends Section 1602.354, Occupations Code, to make a conforming and a nonsubstantive change.

SECTION 3.21. Amends Section 1602.405, Occupations Code, as follows:

Sec. 1602.405. New heading: PRACTICE AT FACILITY LICENSED OR PERMITTED AS BARBER AND COSMETOLOGIST FACILITY. Makes conforming changes.

SECTION 3.22. Amends Subchapter I, Chapter 1602, Occupations Code, by adding Section 1602.408, as follows:

Sec. 1602.408. SANITIZATION OF INSTRUMENTS. Provides that this section applies only to certain establishments and requires instruments used in an establishment to which this section applies to be sanitized by use of an autoclave.

SECTION 3.23. Amends Section 1602.451(a), Occupations Code, to delete existing text requiring the holder of a private beauty culture school license to submit certain information to the executive director and make a conforming change.

SECTION 3.24. Amends Section 1602.452, Occupations Code, to make conforming changes.

SECTION 3.25. Amends Sections 1602.453(b), (c), and (d), Occupations Code, to make conforming changes.

SECTION 3.26. Amends Section 1602.454, Occupations Code, as follows:

Sec. 1602.454. STUDENT RECORD. Deletes existing text requiring a private beauty culture school to send to the commission a certified copy of a student's records, including specific information, when the student withdraws or transfers from a course of training without completion of the training and requires the school to notify the board when a student graduates from a course of training offered by the school and is eligible to take the appropriate examination.

SECTION 3.27. Amends Section 1602.460(d), Occupations Code, to make conforming changes.

SECTION 3.28. Amends Section 1602.463(a), Occupations Code, to make a conforming change.

SECTION 3.29. Amends Sections 1602.464(a) and (b), Occupations Code, to make conforming changes.

SECTION 3.30. Amends Sections 1602.465(a), (b), and (c), Occupations Code, to make conforming changes.

ARTICLE 4. CONFORMING AMENDMENTS.

SECTION 4.01. Amends Section 232.002, Family Code, as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. Deletes existing text providing that the Texas Commission on Alcohol and Drug Abuse and the Texas Cosmetology Commission are licensing authorities subject to this chapter. Amends existing text to include that the Texas Board of Barbering and Cosmetology, rather than the State Board of Barber Examiners, the Department of State Health Services, rather than the Texas Department of Health, the Department of Aging and Disability Services, rather than the Texas Department of Human Services, the Texas Private Security Board, rather than the Texas Commission on Private Security, and the Department of Family and Protective Services, rather than the Department of Protective and Regulatory Services, are licensing authorities subject to this chapter.

SECTION 4.02. Amends Section 411.122(d), Government Code, to delete existing text providing that the Board of Vocational Nurse Examiners is subject to this section and make conforming changes.

SECTION 4.03. Amends Section 2054.352(a), Government Code, to require certain licensing entities to participate in the system established under Section 2054.353, rather than Section 2054.353, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, and make conforming changes.

ARTICLE 5. REPEALER

SECTION 5.01. Repealers: Subchapter B, Chapter 1601 (State Board of Barber Examiners), Subchapter C, Chapter 1601 (Executive Director and Personnel), Subchapter D, Chapter 1601 (Powers and Duties), Subchapter E, Chapter 1601 (Public Interest Information and Complaint Procedures), Subchapter O, Chapter 1601 (Administrative Penalties), Subchapter B, Chapter 1602 (Texas Cosmetology Commission), Subchapter C, Chapter 1602 (Executive Director and Personnel), Subchapter E, Chapter 1602 (Public Interest Information and Complaint Procedures),

Subchapter K, Chapter 1602 (Administrative Penalty), Section 1601.004 (Application of Sunset Act), Section 1601.252 (Application Process), Section 1601.261 (Examination Application), Section 1601.262 (Examination for Class A Barber and Teachers Certificates), Section 1601.263 (Examination Results), Section 1601.264 (Health Certificate Requirement), Section 1601.266 (Duplicate Certificate), Section 1601.356 (Inspection Before Operation), Section 1601.402(d) (Renewal of Certificate or License), Section 1601.403 (Renewal of Teachers Certificate), Section 1601.404(a) and (b) (Renewal or Reinstatement of Expired Certificate or License), Section 1601.408 (Renewal of Expired Permit), Section 1601.601 (Denial, Suspension, or Revocation), Section 1601.651 (Injunction; Civil Penalty), Section 1601.654 (Enforcement by Attorney General), Section 1602.004 (Application of Sunset Act), Section 1602.151 (General Powers and Duties of Commission), Section 1602.152 (Rules Restricting Advertising or Competitive Bidding), Section 1602.154 (Fees), Section 1602.155 (Annual Report), Section 1602.252 (License or Certificate Application), Section 1602.253, as amended by Chapter 1282, Acts of the 78th Legislature, Regular Session, 2003 (Certificate of Health Required for Certain Applicants), Section 1602.259 (License Examination), Section 1602.260 (Examination Procedures), Section 1602.261 (Examination Results), Section 1602.264 (Temporary License), Section 1602.265 (Duplicate License or Certificate; Transcript), Section 1602.303(d) (Private Beauty Culture School License), Section 1602.304(b) (Public Secondary or Postsecondary Beauty Culture School Certificate), Section 1602.352(b)-(f) (Procedure for Renewal or Reinstatement), Section 1602.407 (Grounds for Refusing, Revoking, or Suspending License), Section 1602.551 (Right of Access; Discovery of Violation), Section 1602.552 (Injunctive Relief), Section 1602.553 (Civil Penalty), and Section 1602.555 (Issuance of Certificate Without Examination; Offense), Occupations Code.

ARTICLE 6. TRANSITION AND EFFECTIVE DATE

SECTION 6.01. (a) Makes application of the abolishment of the State Board of Barber Examiners and the Texas Cosmetology Commission, of this Act, prospective to September 1, 2006. Provides that the board created under Chapter 1603, Occupations Code, as added by this Act, assumes all of the obligations, property, employees, rights, powers, and duties of the State Board of Barber Examiners and the Texas Cosmetology Commission, as they exist immediately before the effective date of this Act and that all unexpended funds appropriated to the abolished entities are transferred to the board. Requires that said transfer be completed no later than September 1, 2006.

(b) Provides that all rules of the State Board of Barber Examiners and the Texas Cosmetology Commission are continued in effect as rules of the board until superseded by a rule of the board and that a certificate, license, or permit 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. 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.

(c) Provides that a reference in another law or administrative rule to the State Board of Barber Examiners or the Texas Cosmetology Commission means the Texas Board of Barbering and Cosmetology.

SECTION 6.02. Sets forth requirements and provides a timeline for the governor in making the initial appointments to the board, as added by this Act. Requires each initial board member appointed under this section, not later than March 1, 2005, to complete the training required by Section 1603.059, Occupations Code, as added by this Act and provides that, before March 1, 2005, Section 1603.059(a) does not apply to an initial board member.

SECTION 6.03. Requires the board, not later than the 90th day after the date that a majority of the members of the board are appointed under Section 6.02 of this article and qualify for office, to appoint an executive director under Section 1603.101, Occupations Code, as added by this Act and provides that a person who is the executive director of the State Board of Barber Examiners or the Texas Cosmetology Commission on, or within one year preceding, the effective date of this Act, is not eligible to be employed as the initial executive director under this section.

SECTION 6.04. Effective date: September 1, 2005.