

By: Chisum, Deshotel, Hopson

H.B. No. 2106

Substitute the following for H.B. No. 2106:

By: Thompson

C.S.H.B. No. 2106

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of barbering and cosmetology.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1601.002, Occupations Code, is amended to read as follows:

Sec. 1601.002. DEFINITION OF BARBERING. In this chapter, "barbering," "practicing barbering," or the "practice of barbering" means:

(1) performing or offering or attempting to perform for compensation or the promise of compensation any of the following services:

(A) treating a person's mustache or beard by arranging, beautifying, coloring, processing, shaving, styling, or trimming;

(B) treating a person's hair by:

(i) arranging, beautifying, bleaching, cleansing, coloring, curling, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, or waving;

(ii) providing a necessary service that is preparatory or ancillary to a service under Subparagraph (i), including bobbing, clipping, cutting, or trimming; or

(iii) cutting the person's hair as a separate and independent service for which a charge is directly or

1 indirectly made separately from a charge for any other service;

2 (C) cleansing, stimulating, or massaging a
3 person's scalp, face, neck, arms, or shoulders:

4 (i) by hand or by using a device, apparatus,
5 or appliance; and

6 (ii) with or without the use of any cosmetic
7 preparation, antiseptic, tonic, lotion, or cream;

8 (D) beautifying a person's face, neck, arms, or
9 shoulders using a cosmetic preparation, antiseptic, tonic, lotion,
10 powder, oil, clay, cream, or appliance;

11 (E) treating a person's nails by:

12 (i) cutting, trimming, polishing, tinting,
13 coloring, cleansing, manicuring, or pedicuring; or

14 (ii) attaching false nails;

15 (F) massaging, cleansing, treating, or
16 beautifying a person's hands;

17 (G) administering facial treatments;

18 (H) weaving a person's hair by using any method
19 to attach commercial hair to a person's hair or scalp;

20 (I) shampooing or conditioning a person's hair;

21 [~~or~~]

22 (J) servicing in any manner listed in Paragraph
23 (B) a person's wig, toupee, or artificial hairpiece on a person's
24 head or on a block after the initial retail sale; or

25 (K) braiding a person's hair, trimming hair
26 extensions only as applicable to the braiding process, and
27 attaching commercial hair only by braiding and without the use of

1 chemicals or adhesives;

2 (2) advertising or representing to the public in any
3 manner that a person is a barber or is authorized to practice
4 barbering; or

5 (3) advertising or representing to the public in any
6 manner that a location or place of business is a barbershop,
7 specialty shop, or barber school.

8 SECTION 2. Section 1601.253(b), Occupations Code, is
9 amended to read as follows:

10 (b) The department shall issue a Class A barber certificate
11 to an applicant who:

12 (1) complies with the application requirements of this
13 chapter;

14 (2) passes the applicable examination [~~with an average~~
15 ~~grade of at least 75 percent~~];

16 (3) pays the required fee; and

17 (4) possesses the other qualifications required by
18 this chapter.

19 SECTION 3. Subchapter F, Chapter 1601, Occupations Code, is
20 amended by adding Sections 1601.258 and 1601.259 to read as
21 follows:

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

26 (b) An applicant for a hair weaving specialty certificate of
27 registration must:

1 (1) be at least 17 years of age; and

2 (2) satisfy the requirements specified by the
3 department, including training through a commission-approved
4 training program.

5 (c) The department shall issue a hair weaving specialty
6 certificate of registration to an applicant who:

7 (1) possesses the qualifications described by
8 Subsection (b);

9 (2) pays the required registration fee; and

10 (3) has not committed an act that constitutes a ground
11 for denial of the certificate.

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

16 (b) An applicant for a hair braiding specialty certificate
17 must:

18 (1) be at least 17 years of age; and

19 (2) satisfy the requirements specified by the
20 department, including training through a commission-approved
21 training program.

22 (c) The department shall issue a hair braiding specialty
23 certificate of registration to an applicant who:

24 (1) possesses the qualifications described by
25 Subsection (b);

26 (2) pays the required registration fee; and

27 (3) has not committed an act that constitutes a ground

1 for denial of the certificate.

2 SECTION 4. Section 1601.303, Occupations Code, is amended
3 to read as follows:

4 Sec. 1601.303. ISSUANCE OF BARBERSHOP PERMIT. The
5 department shall issue a barbershop permit to an applicant if:

- 6 (1) the applicant owns the barbershop; ~~[and]~~
7 (2) the applicant verifies the application; and
8 (3) the shop meets the minimum health standards for
9 barbershops set by the commission and complies with all other
10 commission rules.

11 SECTION 5. Sections 1601.304 and 1601.305, Occupations
12 Code, are amended to read as follows:

13 Sec. 1601.304. ~~[MANICURIST]~~ SPECIALTY SHOP PERMIT. (a) A
14 person who holds a ~~[manicurist]~~ specialty shop permit may maintain
15 an establishment in which only barbering as defined by Section
16 ~~[Sections]~~ 1601.002(1)(E), ~~[and]~~ (F), (H), or (K) is performed. ~~[A~~
17 ~~manicurist specialty shop may be operated only under the direction~~
18 ~~of a person who holds a manicurist license.]~~

19 (b) An applicant for a ~~[manicurist]~~ specialty shop permit
20 must submit:

21 (1) an application on a department-approved form ~~[that~~
22 ~~includes:~~

23 ~~[(A) the shop's address,~~
24 ~~[(B) the legal description of the premises for~~
25 ~~which the permit is sought, and~~

26 ~~[(C) any other information required by the~~
27 ~~department]; and~~

1 (2) the required inspection fee.

2 [~~(c) As soon as practicable after receipt of the application~~
3 ~~and fee, the department shall issue a temporary manicurist~~
4 ~~specialty shop permit to the applicant. The applicant may operate~~
5 ~~the applicant's shop under the temporary permit until a permanent~~
6 ~~permit is issued.]~~

7 Sec. 1601.305. ISSUANCE OF [~~MANICURIST~~] SPECIALTY SHOP
8 PERMIT. The department shall issue a [~~permanent manicurist~~]
9 specialty shop permit to an applicant if:

10 (1) the applicant submits proof that the applicant
11 satisfies the requirements established by the commission for a
12 specialty shop [~~holds a manicurist license~~]; [~~and~~]

13 (2) the applicant pays the required inspection fee and
14 permit fee;

15 (3) the applicant verifies the application and the
16 application complies with commission rules; and

17 (4) the applicant has not committed an act that
18 constitutes a ground for denial of a permit, certificate, or
19 license under this chapter [~~the shop meets the minimum health~~
20 ~~standards for manicurist specialty shops set by the commission, as~~
21 ~~determined by a department inspection under Section 1603.103, and~~
22 ~~any other requirements imposed by commission rule].~~

23 SECTION 6. Section 1601.353(a), Occupations Code, is
24 amended to read as follows:

25 (a) The department may not approve an application for a
26 permit for a barber school that provides training leading to
27 issuance of a Class A barber certificate unless the school has:

1 (1) a [~~an adequate school site housed in a~~
2 ~~substantial~~] building of permanent construction containing at
3 least 2,800 square feet of floor space, divided into at least:

4 (A) a senior department;

5 (B) a junior department;

6 (C) a class theory room;

7 (D) a supply room;

8 (E) an office space; and

9 (F) [~~a dressing and cloak room; and~~

10 [~~(G) two sanitary, modern,~~] separate restrooms
11 for male and female students[~~, each equipped with one commode and~~
12 ~~one of which is also equipped with a urinal~~];

13 (2) a hard-surface floor-covering of tile or other
14 suitable material;

15 (3) at least 20 modern barber chairs, including a
16 cabinet and mirror for each chair;

17 (4) a sink for [~~lavatory behind~~] every two barber
18 chairs;

19 (5) a liquid sterilizer for each barber chair;

20 (6) an adequate number of latherers, vibrators, and
21 hair dryers for student use;

22 (7) adequate lighting for each room;

23 (8) at least 20 classroom chairs, a blackboard,
24 anatomical charts of the head, neck, and face, and one barber chair
25 in the class theory room;

26 (9) [~~a library with library facilities available to~~
27 ~~students containing~~] at least one medical dictionary and a standard

1 work on human anatomy;

2 (10) adequate drinking fountain facilities, with at
3 least one for each floor; and

4 (11) at least one fire extinguisher [~~adequate~~
5 ~~toilet facilities for the students; and~~

6 [~~(12) adequate fire-fighting equipment~~].

7 SECTION 7. Section 1601.453, Occupations Code, is amended
8 to read as follows:

9 Sec. 1601.453. LOCATION OF PRACTICE. A person licensed by
10 the department may practice barbering only at a location for which
11 the department has issued a barbershop permit, specialty shop
12 permit, or barber school permit under this chapter or a permit
13 issued under Chapter 1603.

14 SECTION 8. Section 1602.256, Occupations Code, is amended
15 to read as follows:

16 Sec. 1602.256. ELIGIBILITY FOR A MANICURIST SPECIALTY
17 LICENSE. (a) A person holding a manicurist specialty license may
18 perform only the practice of cosmetology defined in Section
19 1602.002(a)(10) or (11) [~~1602.002(9) or (10)~~].

20 (b) To be eligible for a manicurist specialty license, an
21 applicant must:

22 (1) be at least 17 years of age;

23 (2) have obtained a high school diploma or the
24 equivalent of a high school diploma or have passed a valid
25 examination administered by a certified testing agency that
26 measures the person's ability to benefit from training; and

27 (3) have completed 600 hours of instruction in

1 manicuring through a commission-approved training program.

2 SECTION 9. Section 1602.257(a), Occupations Code, is
3 amended to read as follows:

4 (a) A person holding a facialist specialty license may
5 perform only the practice of cosmetology defined in Sections
6 1602.002(a)(6) through (9) [~~Section 1602.002(7)~~].

7 SECTION 10. Section 1602.258, Occupations Code, is amended
8 to read as follows:

9 Sec. 1602.258. ELIGIBILITY FOR A SPECIALTY
10 CERTIFICATE. (a) A person holding a specialty certificate may
11 perform only the practice of cosmetology defined in Sections
12 1602.002(a)(2) through (4) [~~Section 1602.002(2), (3), (4), or (7)~~].

13 (b) To be eligible for a specialty certificate, an applicant
14 must:

15 (1) be at least 17 years of age; and

16 (2) [~~have obtained a high school diploma or the~~
17 ~~equivalent of a high school diploma or have passed a valid~~
18 ~~examination administered by a certified testing agency that~~
19 ~~measures the person's ability to benefit from training; and~~

20 [~~(3)~~] have the necessary requisites as determined by
21 the department in the particular specialty for which certification
22 is sought, including training through a commission-approved
23 training program.

24 SECTION 11. Section 1602.262(a), Occupations Code, is
25 amended to read as follows:

26 (a) An applicant for an operator license, instructor
27 license, manicurist specialty license, or facialist specialty

1 license is entitled to the license if the applicant:

- 2 (1) meets the applicable eligibility requirements;
- 3 (2) passes the applicable examination;
- 4 (3) pays the required fee; and
- 5 (4) has not committed an act that constitutes a ground
- 6 for denial of the license.

7 SECTION 12. Section 1602.303(b), Occupations Code, is

8 amended to read as follows:

9 (b) An application for a private beauty culture school

10 license must be accompanied by the required license fee and

11 inspection fee and:

- 12 (1) be on a form prescribed by the department;
- 13 (2) be verified by the applicant; and
- 14 ~~(3) [contain a detailed floor plan of the school~~
- 15 ~~building divided into two separate areas, one area for instruction~~
- 16 ~~in theory and one area for clinic work; and~~

17 ~~[(4)]~~ contain a statement that the building:

- 18 (A) ~~[is fireproof,~~
- 19 ~~[(B)]~~ is of permanent construction and is divided
- 20 into at least two separate areas:

21 (i) one area for instruction in theory; and

22 (ii) one area for clinic work;

23 (B) ~~[(C)]~~ contains a minimum of 3,500 square feet

24 of floor space;

25 (C) ~~[(D)]~~ has separate restrooms for male and

26 female students; and

27 (D) ~~[(E)]~~ contains, or will contain before

1 classes begin, the equipment established by commission rule as
2 sufficient to properly instruct a minimum of 50 students.

3 SECTION 13. Section 1602.354, Occupations Code, is amended
4 to read as follows:

5 Sec. 1602.354. CONTINUING EDUCATION. (a) The commission
6 will by rule recognize, prepare, or administer continuing education
7 programs for the practice of cosmetology. Participation in the
8 programs is mandatory for all license renewals.

9 (b) The commission may only require a license holder to
10 complete continuing education of not more than four hours in health
11 and safety courses if the license holder:

12 (1) is at least 65 years of age; and

13 (2) has held a cosmetology license for at least 15
14 years.

15 SECTION 14. Section 1602.403(a), Occupations Code, is
16 amended to read as follows:

17 (a) A private beauty culture school may not employ:

18 (1) a person holding an operator license, manicurist
19 specialty license, or specialty certificate solely to perform the
20 practices of cosmetology for which the person is licensed or
21 certified; or

22 (2) a person holding an instructor license to perform
23 any act or practice of cosmetology.

24 SECTION 15. Subchapter J, Chapter 1602, Occupations Code,
25 is amended by adding Section 1602.466 to read as follows:

26 Sec. 1602.466. NOTIFICATION OF FINAL TUITION PAYMENT. Each
27 beauty culture school shall notify the department not later than

1 the fifth day after the date the school or program receives final
2 payment of all tuition that a student owes to the school.

3 SECTION 16. Section 1603.103, Occupations Code, is amended
4 to read as follows:

5 Sec. 1603.103. INSPECTION OF SCHOOLS [~~, SHOPS, AND~~
6 ~~FACILITIES~~] BEFORE OPERATION. (a) Until the department
7 determines, by inspection, that the person has established the
8 school [~~, shop, or facility~~] in compliance with this chapter,
9 Chapter 1601, or Chapter 1602, a person may not operate a school [~~,~~
10 ~~shop, or other facility~~] licensed or permitted under this chapter,
11 Chapter 1601, or Chapter 1602.

12 (b) A school [~~, shop, or other facility~~] that is not approved
13 by the department on initial inspection may be reinspected.

14 (c) The department may charge the school [~~, shop, or other~~
15 facility shall pay] a fee for each inspection. The commission shall
16 by rule set the amount of the fee.

17 SECTION 17. Sections 1603.104(b) and (e), Occupations Code,
18 are amended to read as follows:

19 (b) At least once every two years, the department shall
20 inspect each [~~school,~~] shop [~~,~~] or other facility that holds a
21 license, certificate, or permit in which the practice of barbering
22 or cosmetology is performed under this chapter, Chapter 1601, or
23 Chapter 1602, and at least twice per year, the department shall
24 inspect each school in which barbering or cosmetology is taught
25 under this chapter, Chapter 1601, or Chapter 1602.

26 (e) The department may charge the school, shop, or other
27 facility [~~shall pay]~~ a fee for each inspection performed under this

1 section [~~Subsection (c)~~]. The commission shall by rule set the
2 amount of the fee.

3 SECTION 18. Subchapter C, Chapter 1603, Occupations Code,
4 is amended by adding Section 1603.1045 to read as follows:

5 Sec. 1603.1045. CONTRACT TO PERFORM INSPECTIONS. The
6 department may contract with a person to perform for the department
7 inspections of a school, shop, or other facility under this
8 chapter, Chapter 1601, or Chapter 1602.

9 SECTION 19. Subchapter E, Chapter 1603, Occupations Code,
10 is amended by adding Section 1603.205 to read as follows:

11 Sec. 1603.205. DUAL BARBER AND BEAUTY SHOP LICENSE. (a) A
12 person holding a dual barber and beauty shop license may own,
13 operate, or manage a shop in which any practice of barbering defined
14 by Section 1601.002(1) or cosmetology defined by Section
15 1602.002(a) is performed.

16 (b) An applicant for a dual barber and beauty shop license
17 must submit:

18 (1) an application on a department-approved form that
19 is verified by the applicant;

20 (2) proof that the applicant meets the applicable
21 requirements under Chapters 1601 and 1602 for obtaining a
22 barbershop permit and a beauty shop license; and

23 (3) the required license fee.

24 (c) The department shall issue a dual barber and beauty shop
25 license to an applicant that:

26 (1) meets the requirements under this chapter and
27 Chapters 1601 and 1602;

1 (2) complies with commission rules; and

2 (3) pays the required fees.

3 (d) The holder of a dual barber and beauty shop license must
4 comply with this chapter, Chapters 1601 and 1602, and commission
5 rules related to barbering and cosmetology.

6 SECTION 20. Subchapter F, Chapter 1603, Occupations Code,
7 is amended by adding Section 1603.258 to read as follows:

8 Sec. 1603.258. ELIGIBILITY FOR COSMETOLOGIST EXAMINATION.

9 An applicant is not eligible to take an examination for a license or
10 certificate under Chapter 1602 unless the department has received
11 notice from each beauty culture school from which the applicant
12 accrued hours that the applicant has paid all tuition owed to the
13 school.

14 SECTION 21. Section 1603.352, Occupations Code, is amended
15 to read as follows:

16 Sec. 1603.352. STERILIZATION [~~SANITATION~~] REQUIREMENTS FOR
17 CERTAIN SERVICES. (a) A person who holds a license, certificate,
18 or permit issued under this chapter, Chapter 1601, or Chapter 1602
19 and who performs a barbering service described by Section
20 1601.002(1)(E) or (F) or a cosmetology service described by Section
21 1602.002(a)(10) or (11) [~~1602.002(10) or (11)~~].

22 ~~[(1)]~~ shall, before performing the service, clean,
23 disinfect, and sterilize with an autoclave or a dry heat or
24 ultraviolet sterilizer, in accordance with the sterilizer
25 manufacturer's instructions, each metal [~~nondisposable~~]
26 instrument, including metal nail clippers, cuticle pushers,
27 cuticle nippers, and other metal instruments, used to perform the

1 service[~~, and~~

2 [~~(2) may use a disposable supply or instrument only if~~
3 ~~that supply or instrument is purchased at the location where the~~
4 ~~service is performed or provided by the person on whom the service~~
5 ~~is performed].~~

6 (b) The owner or manager of a barber shop, barber school,
7 beauty shop, specialty shop, [~~or~~] beauty culture school, or other
8 facility licensed under this chapter, Chapter 1601, or Chapter
9 1602, is responsible for providing an autoclave or a dry heat or
10 ultraviolet sterilizer for use in the shop or school as required by
11 Subsection (a). An autoclave or a dry heat or ultraviolet
12 sterilizer used as required by Subsection (a) must be[~~+~~

13 [~~(1) registered and~~] listed with the United States
14 [~~federal~~] Food and Drug Administration[~~, and~~

15 [~~(2) used in accordance with the manufacturer's~~
16 ~~instructions].~~

17 (c) Each sterilized instrument must be stored in accordance
18 with the manufacturer's instructions.

19 (d) This section does not apply to:

20 (1) single-use instruments; or

21 (2) nonmetal nail files, buffer blocks, pumice stones,
22 nail brushes, or other similar instruments.

23 (e) The commission may adopt rules to administer this
24 section.

25 SECTION 22. Subchapter J, Chapter 1603, Occupations Code,
26 is amended by adding Sections 1603.455 and 1603.456 to read as
27 follows:

1 Sec. 1603.455. EMERGENCY ORDERS. (a) The executive
2 director may issue an emergency order to suspend or revoke a license
3 or permit issued, or to cease the operation of an unsafe facility
4 regulated, by the department under this title if the executive
5 director determines that an emergency exists requiring immediate
6 action to protect the public health and safety.

7 (b) The executive director may issue the emergency order
8 with or without notice and hearing as the executive director
9 considers practicable under the circumstances.

10 (c) If an emergency order is issued under this section
11 without a hearing, the executive director, not later than the 10th
12 day after the date the emergency order was issued, shall set the
13 time and place for a hearing conducted by the State Office of
14 Administrative Hearings to affirm, modify, or set aside the
15 emergency order. The executive director shall set the hearing for a
16 date not later than the 30th day after the date the time and place
17 for the hearing are set. The hearing examiner shall affirm the
18 order to the extent that reasonable cause existed to issue the
19 order.

20 (d) The commission by rule may prescribe procedures for the
21 issuance and appeal of an emergency order under this section,
22 including a rule to allow the commission to affirm, modify, or set
23 aside a decision by the State Office of Administrative Hearings
24 under Subsection (c).

25 (e) A proceeding under this section is a contested case
26 under Chapter 2001, Government Code.

27 Sec. 1603.456. CEASE AND DESIST ORDERS. The executive

1 director may issue a cease and desist order, after notice and
2 opportunity for hearing, if the executive director determines that
3 the order is necessary to prevent a violation of:

4 (1) this chapter, Chapter 1601, or Chapter 1602; or

5 (2) a rule adopted by the commission.

6 SECTION 23. Sections 1601.506, 1602.266(c), and 1602.408,
7 Occupations Code, are repealed.

8 SECTION 24. (a) The Texas Department of Licensing and
9 Regulation shall issue a hair braiding specialty certificate of
10 registration under Section 1601.259, Occupations Code, as added by
11 this Act, to an applicant qualified under this section who:

12 (1) applies for a certificate of registration under
13 this section not later than October 1, 2007;

14 (2) has the experience required by this section; and

15 (3) pays the application fee.

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

21 (c) This section expires on October 31, 2007.

22 SECTION 25. Not later than January 1, 2008, the Texas
23 Commission of Licensing and Regulation shall adopt rules necessary
24 to implement the changes in law made by this Act, including rules to
25 administer:

26 (1) Sections 1601.258 and 1601.259, Occupations Code,
27 as added by this Act, related to eligibility for hair weaving and

1 hair braiding specialty certificates;

2 (2) Section 1602.354, Occupations Code, as amended by
3 this Act, related to continuing education and renewal requirements;

4 (3) Sections 1602.466 and 1603.258, Occupations Code,
5 as added by this Act, related to the requirement that an applicant
6 for a cosmetologist examination may not owe tuition to a beauty
7 culture school; and

8 (4) Section 1603.205, Occupations Code, as added by
9 this Act, related to dual barber and beauty shop licenses.

10 SECTION 26. The changes in law made by this Act apply only
11 to an application for the issuance or renewal of a license, permit,
12 or certificate that is filed with the Texas Department of Licensing
13 and Regulation on or after the effective date of this Act. An
14 application for the issuance or renewal of a license, permit, or
15 certificate that is filed before the effective date of this Act is
16 governed by the law in effect on the date the application was filed,
17 and the former law is continued in effect for that purpose.

18 SECTION 27. Notwithstanding Section 1603.205, Occupations
19 Code, as added by this Act, the Texas Department of Licensing and
20 Regulation may not issue a license under that section before May 1,
21 2008.

22 SECTION 28. (a) Except as provided by Subsection (b) of
23 this section, this Act takes effect immediately if it receives a
24 vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2007.

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1 (b) Sections 1602.466 and 1603.258, Occupations Code, as
2 added by this Act, take effect April 1, 2008.