

## **BILL ANALYSIS**

C.S.S.B. 1170

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Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

A recent legislature abolished the State Board of Barber Examiners and the Texas Cosmetology Commission and transferred the duties and powers of barbering and cosmetology oversight and regulation to the Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation. Interested parties assert that certain statutes relating to the regulation of barbers and cosmetologists are in need of revision to update and harmonize those provisions. C.S.S.B. 1170 proposes to make such revisions.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 2, 3, 4, 13, 14, 16, 29, and 30 of this bill.

### **ANALYSIS**

C.S.S.B. 1170 amends the Occupations Code to require the Texas Commission of Licensing and Regulation to adopt rules for the issuance of a Class A barber certificate to a person who holds an operator license under provisions of law governing cosmetologists. The bill requires the Texas Department of Licensing and Regulation (TDLR) to issue the certificate to an applicant who holds an active operator license and meets certain other requirements.

C.S.S.B. 1170 authorizes a person holding a barber instructor license to perform any act of barbering and to instruct a person in any act of barbering and establishes the eligibility requirements for such a license. The bill requires the commission to adopt rules for the licensing of specialty instructors to teach specialty courses in the practice of barbering as defined by specified provisions of law. The bill removes provisions setting out requirements relating to the eligibility, application, fees, and examination for a teacher's certificate issued under provisions of law governing barbers and requiring TDLR to issue such a certificate to an applicant who passes the appropriate examination and pays the required certificate fee.

C.S.S.B. 1170 authorizes a person holding a shampoo apprentice permit to perform only the shampooing or conditioning of a person's hair. The bill requires TDLR to issue such a permit to an applicant who is at least 16 years of age, sets the permit's expiration date as the second anniversary of the date of issuance, and prohibits the permit from being renewed. The bill requires the commission to adopt rules as necessary to administer the bill's provisions relating to a shampoo apprentice permit and prohibits the commission from requiring an applicant to complete any hours of instruction at a barber training program as a prerequisite for the issuance of a shampoo apprentice permit or to pay a fee for the permit. The bill authorizes a facility licensed under provisions of law governing barbers to employ a person who holds a shampoo apprentice permit to perform shampooing or conditioning services and requires the facility to pay the person at least the federal minimum wage.

C.S.S.B. 1170 authorizes a person holding a barber technician/manicurist specialty license or a

barber technician/hair weaving specialty license to perform only certain services relating to the practice of barbering as defined under specified provisions of law and establishes the eligibility requirements for such licenses.

C.S.S.B. 1170 requires an applicant for a barber school permit to provide to TDLR adequate proof of financial responsibility, submit an application on a form prescribed by the department, satisfy certain facility and equipment requirements, and pay the required fee. The bill removes provisions requiring an applicant for such a permit to demonstrate to TDLR that the school meets the requirements for issuance of a permit and requiring the department, before issuing such a permit, to determine that the applicant is financially sound and capable of fulfilling the applicant's commitments for training.

C.S.S.B. 1170 authorizes TDLR to approve an application for a barber school permit if the school is located in a municipality with a population of more than 50,000 that has a building of permanent construction containing at least 2,000 square feet of floor space, including classroom and practical areas, covered in a hard-surface floor-covering of tile or other suitable material or is located in a municipality with a population of 50,000 or less or an unincorporated area of a county that has a building of permanent construction containing at least 1,000 square feet of floor space, including classroom and practical areas, covered in such material. The bill removes a provision prohibiting TDLR from approving an application for a permit for a barber school that provides training leading to issuance of a Class A barber certificate unless the school has a building of permanent construction containing at least 2,800 square feet of floor space, divided into certain specified areas, and with a hard-surface floor-covering of tile or other suitable material.

C.S.S.B. 1170 sets out the equipment a barber school must have to meet the requirements for approval by TDLR of an application for a barber school permit and removes certain specified equipment from such requirements. The bill removes provisions requiring an applicant for a barber school permit to submit certain documents to TDLR. The bill requires the school, for approval by the department of such a permit, to meet any other requirement set by the commission.

C.S.S.B. 1170 requires a barber school to have at least one instructor for every 25 students and at least one instructor for every three student instructors on the school's premises and removes a provision requiring a barber school that provides training leading to issuance of a Class A barber certificate to have at least one qualified instructor holding a Class A certificate for every 25 students on the school's premises. The bill removes provisions authorizing a teacher to serve as an instructor in practical work in addition to holding a position as a theory teacher and prohibiting a barber school from enrolling more than one student teacher for each certified teacher who teaches at the school.

C.S.S.B. 1170, in a provision setting out the requirements for a barber school's policy for refunding the unused part of tuition, fees, and other charges paid by a student who meets certain conditions, establishes that a refund is based on the period of the student's enrollment, computed on the basis of course time expressed in scheduled hours, rather than clock hours, as specified by an enrollment agreement, contract, or other document acceptable to TDLR.

C.S.S.B. 1170, in a provision of law specifying that the list of services performed or offered to be performed for compensation under the definition of "cosmetology" includes the removal of superfluous hair from a person's body using certain methods, adds preparations and tweezing techniques to those methods and removes mechanical tweezers. The bill expands that list of services to include the application of semipermanent, thread-like extensions composed of single fibers to a person's eyelashes.

C.S.S.B. 1170 requires the commission to adopt rules for the issuance of an operator license issued under provisions of law governing cosmetologists to a person who holds a Class A barber

certificate. The bill establishes eligibility requirements for such a license and requires TDLR to issue the license to an applicant who meets those requirements.

C.S.S.B. 1170 specifies that an applicant for an instructor license issued under provisions of law governing cosmetologists is required to have a high school diploma or a high school equivalency certificate, rather than requiring such an applicant to have completed the 12th grade or its equivalent. The bill clarifies that the requirement that an applicant for such a license hold an operator license refers to a license issued under provisions of law governing cosmetologists. The bill requires an applicant for such a license to have completed 750 hours of instruction in methods of teaching in certain specified institutions, rather than requiring such an applicant to have completed a course consisting of 750 hours of instruction in cosmetology courses and methods of teaching in certain specified institutions. The bill requires the applicant to have completed at least one year, rather than two years, of verifiable experience as a licensed cosmetology operator and to have completed at least 500 hours, rather than 250 hours, of instruction in cosmetology in a commission-approved training program. The bill expands the options for meeting the education requirements for such a license to include the completion of 15 semester hours in education courses through an accredited college or university within the 10 years before the date of application or obtaining a degree in education from an accredited college or university. The bill includes among those license requirements that the applicant pass the required examination. The bill expands the requirement that the commission adopt rules for the licensing of specialty instructors to teach specialty courses in the practice of cosmetology relating to certain services to include eyelash extension application among those services.

C.S.S.B. 1170 provides for the renaming of a facialist specialty license as an esthetician license and includes eyelash extension application among the services the holder of an esthetician license is authorized to perform.

C.S.S.B. 1170 authorizes a person holding a specialty license in eyelash extension application to perform only the application of semipermanent, thread-like extensions composed of single fibers to a person's eyelashes and establishes the eligibility requirements for such a license. The bill sets out requirements for an eyelash extension application training program and requires an instructor at such a program to comply with certain license requirements and to perform the instruction in specified facilities. The bill authorizes the commission to establish or designate approved training programs for eyelash extension application and requires the commission, not later than February 1, 2012, to adopt rules to implement provisions regarding such programs and the eligibility for a specialty license in eyelash extension application. The bill establishes that a person is not required to hold such a license until June 1, 2012.

C.S.S.B. 1170 authorizes a person holding a manicurist/esthetician specialty license to perform only certain services relating to the practice of cosmetology as defined by specified provisions of law and establishes the eligibility requirements for such a license.

C.S.S.B. 1170 establishes that the entitlement of an applicant to a license if certain conditions are met refers to any license issued under provisions of law governing cosmetologists, rather than to specific licenses issued under those provisions, and includes among those conditions that the applicant submit an application on a form prescribed by TDLR. The bill includes among the conditions an applicant for a specialty certificate must meet to be entitled to the certificate that the applicant submit an application on a form prescribed by TDLR.

C.S.S.B. 1170 establishes that a shampoo apprentice permit expires on the second anniversary of the date of issuance, rather than on the first anniversary of that date.

C.S.S.B. 1170 specifies that the provision of law authorizing a person holding a private beauty culture school license to maintain an establishment in which any practice of cosmetology is taught includes providing an eyelash extension application training program as described in the bill's provisions. The bill, in the requirement that an application for a private beauty culture

school license contain a statement specifying the minimum amount of square feet of floor space in the school's building, provides that the statement establishes either that the building contains a minimum of 2,000 square feet of floor space if the building is located in a municipality with a population of more than 50,000 or a minimum of 1,000 square feet of floor space if the building is located in a municipality with a population of 50,000 or less or in an unincorporated area of a county. The bill removes a provision requiring the statement to specify that the building contains a minimum of 3,500 square feet of floor space. The bill requires such a statement to specify that the building has access to permanent restrooms and adequate drinking fountain facilities, rather than separate restrooms for male and female students, and to provide that the building contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 10, rather than 50, students.

C.S.S.B. 1170, in a provision authorizing a person holding a specialty shop license to maintain an establishment in which certain services relating to the practice of cosmetology are performed, includes among those services the application of eyelash extensions.

C.S.S.B. 1170, in the requirement that the holder of a private beauty culture school license maintain one full-time licensed instructor for each 25 students in attendance, removes the specification that the instructor is on the license holder's staff and is on duty during business hours.

C.S.S.B. 1170, in a provision requiring the holder of a private beauty culture school license to maintain a refund policy for refunding the unused part of tuition, fees, and other charges paid by a student who meets certain conditions, establishes that the refund is based on the period of the student's enrollment, computed on the basis of course time expressed in scheduled hours, rather than clock hours, as specified by an enrollment agreement, contract, or other document acceptable to TDLR.

C.S.S.B. 1170, in a provision of law authorizing TDLR to allow for the early written examination of a student who has completed a certain number of hours of instruction in a department-approved training program, removes the requirement that such authorization is on written request by the student. The bill specifies that such authorization for a student seeking a Class A barber certificate or operator license who has completed 1,000 hours in a department-approved program applies to a student seeking such a license in a private barber or cosmetology school. The bill authorizes TDLR to allow for the early written examination of a student who has completed 900 hours in a department-approved program if the student is seeking a Class A barber certificate or operator license in a publicly funded barber or cosmetology school.

C.S.S.B. 1170, in the requirement that a person who holds a license, certificate, or permit issued under provisions of law relating to the practice of barbering or cosmetology sterilize each metal instrument using specified sterilization devices before performing certain services, includes among those devices an ultraviolet sanitizer and removes a department-approved sterilizer other than an autoclave, a dry heat sterilizer, or an ultraviolet sanitizer. The bill includes an ultraviolet sanitizer in the tools the owner or manager of a facility licensed under those provisions is responsible for providing for use in the facility as required under certain specified provisions of law and removes from such tools a department-approved sterilizer other than an autoclave, a dry heat sterilizer, or an ultraviolet sanitizer. The bill removes a provision requiring an autoclave or a dry heat, ultraviolet, or other department-approved sterilizer used as required to be listed with the United States Food and Drug Administration.

C.S.S.B. 1170 repeals a provision of law defining "license," for purposes of provisions governing barbers, as a license issued by TDLR and repeals provisions of law relating to prerequisites for graduation from a barber school, to supervision and teaching requirements of barber schools, and to restrictions on the operation of a beauty shop or specialty shop by the holder of a license issued under provisions of law governing cosmetologists.

C.S.S.B. 1170 creates a temporary provision, set to expire September 1, 2013, requiring TDLR to conduct a study that analyzes the performance of barber schools and beauty culture schools under provisions of law relating to the operation of such schools, including the payment of refunds and recommendations for improvements to the process for the payment of refunds to eligible students. The bill requires TDLR, in conducting the study, to consult with the applicable state advisory boards and national accrediting organizations; representatives of barber and beauty culture schools; and barbers, cosmetologists, and other interested parties. The bill requires TDLR to report the results of the study to specified legislative committees not later than September 1, 2012.

C.S.S.B. 1170 creates a temporary provision, set to expire March 1, 2013, requiring TDLR to issue a specialty license in eyelash extension application to an applicant who submits an application on a form prescribed by TDLR not later than April 1, 2012, meets other specified requirements, submits certain specified proof of completion of certain training and experience, and pays the required application fee. The bill authorizes such a license to be renewed in the same manner as a specialty license in eyelash extension application issued under the bill's provisions. The bill requires the commission to adopt rules to implement this provision not later than February 1, 2012.

C.S.S.B. 1170 requires the commission, not later than March 31, 2012, and except as specified in provisions of the bill relating to the adoption of rules relating to a specialty license in eyelash extension application, to adopt rules necessary to implement the bill's provisions.

C.S.S.B. 1170 defines "barber school" and makes conforming and nonsubstantive changes.

C.S.S.B. 1170 repeals the following provisions of the Occupations Code:

- Section 1601.001(a)(5)
- Section 1601.354
- Section 1601.355
- Section 1602.403(b)

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1170 contains a provision not included in the original requiring the Texas Commission of Licensing and Regulation to adopt rules for the licensing of specialty instructors to teach specialty courses in the performance of designated services relating to the practice of barbering, as described by provisions of law.

C.S.S.B. 1170, in a condition for approval by the Texas Department of Licensing and Regulation (TDLR) of an application for a barber school permit that a school located in a municipality with a population of 50,000 or less meet certain facility requirements, contains a specification not included in the original that those requirements also apply to a barber school in an unincorporated area of the county.

C.S.S.B. 1170 contains a provision not included in the original specifying that a barber school's policy for refunding the unused part of tuition, fees, and other charges paid by a student who meets certain conditions is based on the period of the student's enrollment, computed on the basis of course time expressed in scheduled hours, as specified by an enrollment agreement, contract, or other document acceptable to TDLR.

C.S.S.B. 1170 contains provisions not included in the original expanding the services included in the definition of "cosmetology" to include the application of semipermanent, thread-like extensions composed of single fibers to a person's eyelashes and expanding the requirement that the commission adopt rules for the licensing of specialty instructors to teach specialty courses in the practice of cosmetology relating to certain services to include eyelash extension application among those services. The substitute contains a specification not included in the original including eyelash extension application among the services the holder of an esthetician license is authorized to perform.

C.S.S.B. 1170 contains provisions not included in the original establishing eligibility requirements for a specialty license in eyelash extension, establishing the requirements for an eyelash extension application training program, requiring the commission to adopt rules regarding such programs, and authorizing the commission to establish or designate approved training programs relating to eyelash extension application.

C.S.S.B. 1170 contains a provision not included in the original specifying that the statutory provision authorizing a person holding a private beauty culture school license to maintain an establishment in which any practice of cosmetology is taught includes providing an eyelash extension application training program as described in the substitute's provisions. The substitute, in a provision requiring the statement contained in the application for a private beauty culture school license to specify that the building of a school located in a municipality with a population of 50,000 or less has a certain minimum amount of floor space, contains a specification not included in the original that the requirement also apply to a school in an unincorporated area of the county.

C.S.S.B. 1170 contains a provision not included in the original adding the application of eyelash extensions to the services relating to the practice of cosmetology a person holding a specialty shop license is authorized to perform.

C.S.S.B. 1170 contains a provision not included in the original specifying that a private beauty culture school's policy for refunding the unused part of tuition, fees, and other charges paid by a student who meets certain conditions is based on the period of the student's enrollment, computed on the basis of course time expressed in scheduled hours, as specified by an enrollment agreement, contract, or other document acceptable to TDLR.

C.S.S.B. 1170 contains a temporary provision not included in the original, set to expire March 1, 2013, requiring TDLR to issue a specialty license in eyelash extension application under certain circumstances specified by the substitute not later than April 1, 2012, authorizing such a license to be renewed in a specified manner, and requiring the commission to adopt applicable rules relating to this temporary provision not later than February 1, 2012.

C.S.S.B. 1170 contains provisions not included in the original requiring the commission to adopt rules to implement the substitute's provisions related to eligibility requirements and training for a specialty license in eyelash extension application not later than February 1, 2012, and providing that a person is not required to hold such a license until June 1, 2012.

C.S.S.B. 1170 contains a conforming change not included in the original and differs from the original in nonsubstantive ways.