

BILL ANALYSIS

C.S.H.B. 2667
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The most recent strategic plan by the Texas Department of Licensing and Regulation (TDLR) has identified and recommended a number of statutory changes and updates regarding midwives, massage therapy, barbering and cosmetology, and used automotive parts recyclers. C.S.H.B. 2667 seeks to address such issues by acting on those TDLR recommendations and to set out provisions relating to certain educational programs regulated by TDLR.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 1.001, 2.001, and 4.005 of this bill.

ANALYSIS

C.S.H.B. 2667 amends the Alcoholic Beverage Code, the Code of Criminal Procedure, the Family Code, the Government Code, the Health and Safety Code, the Occupations Code, and the Transportation Code relating to the licensing and regulation of certain occupations and activities, providing administrative penalties, requiring occupational licenses, authorizing fees, and creating criminal offenses.

Court-Ordered Educational Programs

C.S.H.B. 2667 amends the Government Code to establish the regulation of educational programs by the Texas Department of Licensing and Regulation (TDLR). The bill requires the Texas Commission of Licensing and Regulation (TCLR), TDLR, or the executive director of TDLR, as appropriate, to administer and enforce the bill's provisions regulating the programs. The bill requires TDLR to take the following actions:

- prescribe the application form for a license under those provisions;
- evaluate the qualifications of applicants; and
- enforce minimum standards applicable to program providers, instructors, and court-ordered programs.

The bill requires TCLR to adopt rules necessary for the administration and enforcement of its provisions relating to court programs regulation and authorizes TDLR to consult with other state agencies in the development of those rules. The bill requires TCLR by rule to set fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing those provisions and establishes that the fees are not refundable and may be collected by TDLR or an

authorized representative. The bill sets out provisions relating to a code of ethics, electronic transmission of program information, a certain directory and memorandum of understanding, and public interest information and complaint procedures.

C.S.H.B. 2667, effective September 1, 2020, prohibits a person from providing or offering to provide a court-ordered program unless the person holds a program provider license and sets out the eligibility requirements for a program provider license and provides for the issuance of such licenses by TDLR. Effective September 1, 2020, the bill prohibits a person from instructing or representing that the person is an instructor of the following court-ordered programs unless the person holds the appropriate instructor license:

- the alcohol educational program for minors;
- the drug offense educational program;
- the intervention program for intoxication; and
- the intoxication offense educational program.

The bill provides for the issuance of an instructor license and sets out the eligibility requirements for certain alcohol or drug related instructor licenses, for an intervention program for an intoxication instructor license, and for an instructor training course and examination. The bill sets out certain restrictions on a license issued under the bill's provisions relating to transferability and use only for the program for which it was issued and provides for the term of a license and license renewal.

C.S.H.B. 2667 sets out the following provisions with regard to requirements for certain court-ordered program requirements:

- general court-ordered program requirements, including requiring TCLR to adopt rules for each court-ordered program regarding the operation of the program and the development of a certificate of completion program;
- certain additional requirements for certain alcohol and drug related programs, including authorizing TCLR to adopt certain rules for those programs;
- certain additional program requirements for the responsible pet owner program, including authorizing TCLR to adopt certain rules for the program; and
- the issuance of a certificate of program completion or certificate number showing completion of a court-ordered program.

C.S.H.B. 2667 sets out provisions, effective September 1, 2020, relating to general standards and requirements of practice by a court-ordered program license holder, by a program provider, and by an instructor for certain alcohol or drug related programs. The bill sets out provisions relating to prohibited practices and enforcement, including the provisions relating to:

- prohibited practices by all court-ordered program license holders;
- the grounds for disciplinary action against a license applicant or license holder;
- an administrative penalty for a violation of the bill's provisions relating to court-ordered educational program licenses or an order issued or a rule adopted under those provisions;
- onsite inspection, monitoring, and auditing of a program provider or court-ordered program; and
- complaint investigations.

The bill creates a third degree felony offense for a person who knowingly sells, trades, issues, or otherwise transfers or possesses with intent to sell, trade, issue, or otherwise transfer a certificate of program completion or a certificate number to a person not authorized to possess the

certificate or number. The bill creates a third degree felony offense for a person who knowingly possesses a certificate of program completion or a certificate number that the person is not authorized to possess.

C.S.H.B. 2667 amends the Alcoholic Beverage Code, the Code of Criminal Procedure, the Family Code, the Health and Safety Code, and the Transportation Code to make conforming changes.

Texas Department of Licensing and Regulation

C.S.H.B. 2667 amends the Occupations Code to authorize TCLR by rule to establish the following for each program regulated by TDLR, including a program under which a license is issued by TDLR:

- the length of a license term;
- a fee for the issuance or renewal of a license; and
- any continuing education required to renew a license.

The bill removes a provision establishing a September 1, 2019, expiration date for statutory provisions governing rules adopted by TCLR relating to the scope of practice of or a health-related standard of care for certain health-related professions.

Midwives

C.S.H.B. 2667 amends the Occupations Code to remove a specification that the presiding officer of the Midwives Advisory Board designated by TCLR be a public member of the board, but establishes that this provision does not affect the entitlement of a board member who is serving as the presiding officer of the board immediately before the bill's effective date to continue serving in that capacity for the remainder of the member's term as presiding officer. The bill specifies that the requirements for basic midwifery education include basic requirements for midwifery preceptors and students. The bill repeals statutory provisions relating to certain fees in regard to midwives.

Massage Therapists, Barbers, and Cosmetologists

C.S.H.B. 2667 amends the Occupations Code to authorize TDLR to issue a barbershop and massage establishment license that authorizes a license holder to own, operate, or manage a shop or establishment in which any practice of barbering or massage therapy or other massage services is performed. The bill requires TDLR to issue a barbershop and massage establishment license to an applicant that meets certain requirements, submits an application on a form prescribed by TDLR, and pays the required fees. The bill requires the holder of such a license to comply with applicable provisions of the bill regulating barbering and massage therapy; statutory provisions relating to massage therapy, barbers, and the regulation of barbering and cosmetology; and TCLR rules related to barbering and massage therapy.

C.S.H.B. 2667 authorizes TDLR to issue a dual shop and massage establishment license that authorizes a person holding such a license to own, operate, or manage an establishment in which any practice of barbering, cosmetology, or massage therapy or any other massage services are performed. The bill requires TDLR to issue a dual shop and massage establishment license to an applicant that meets specified requirements, submits an application on a form prescribed by TDLR, and pays the required fees. The bill requires the holder of such a license to comply with the bill's provisions regulating barbering and massage therapy; statutory provisions relating to massage therapy, barbers, cosmetologists, and the regulation of barbering and cosmetology; and

TCLR rules related to barbering, cosmetology, and massage therapy.

C.S.H.B. 2667 requires TDLR to administer the bill's provisions relating to the regulation of barbering and massage therapy and establishes that a reference to the powers or duties of TCLR, the executive director of TDLR, or TDLR in those provisions does not limit the general powers granted by state law to TCLR, the executive director, or TDLR. The bill requires the advisory boards for massage therapy, barbering, and cosmetology to advise TCLR on administering applicable provisions of the bill and requires TCLR, not later than June 1, 2020, to adopt rules for the administration of those provisions.

C.S.H.B. 2667 changes the inspection requirement for each shop or other facility that holds a license, certificate, or permit in which barbering or cosmetology is performed to occur at least once every four years, with exceptions. The bill requires TDLR to inspect, at least once every two years, each specialty shop that holds such a license, certificate, or permit and at which the following are performed:

- treating a person's nails; or
- massaging, cleansing, treating, or beautifying a person's hands.

Used Automotive Parts Recyclers

C.S.H.B. 2667 amends the Occupations Code to decrease the minimum frequency with which TDLR is required to inspect each used automotive parts recycling facility from every two years to every four years.

Repealers

C.S.H.B. 2667 repeals the following provisions:

- Section 106.115(b), Alcoholic Beverage Code
- Article 42A.405, Code of Criminal Procedure
- Article 42A.511(b), Code of Criminal Procedure, as added by Chapter 1132 (H.B. 162), Acts of the 85th Legislature, Regular Session, 2017
- Section 54.047(e), Family Code
- Section 203.152, Occupations Code

EFFECTIVE DATE

Except as otherwise provided, September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2667 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions relating to driver education, occupational license renewal, orthotic and prosthetic technicians, and mold assessors and remediators. The substitute

includes provisions relating to the following:

- the licensing and regulation of court-ordered educational programs;
- midwifery;
- used automotive parts recyclers; and
- a barbershop and massage establishment license.

The substitute authorizes TCLR to establish the length of a term for any license, a fee for the issuance or renewal of a license, and any continuing education required to renew a license under the jurisdiction of TDLR.

The substitute removes a provision establishing a September 1, 2019, expiration date for statutory provisions governing rules adopted by TCLR relating to the scope of practice of or a health-related standard of care for certain health-related professions.

The substitute changes the dual beauty shop and massage establishment license to the dual shop and massage establishment license by expanding the authority of a license holder to include owning, operating, or managing a shop or establishment in which any practice of barbering is performed.