



TEXAS DEPARTMENT OF LICENSING AND REGULATION

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MEMO

To: Key Stakeholders (see attached for full list of recipients)
From: Steve Bruno, Government Relations Officer, TDLR
Date: January 28, 2011
Re: 82nd Legislative Session Ideas Regarding the Barber and Cosmetology Statutes

As key stakeholders with a commitment to improving the professionalism of your respective industries, as demonstrated by your involvement in the strategic planning process and your participation in advisory board meeting discussions, we would like to get your input on the attached draft of ideas for the Legislature to consider regarding the Barber and Cosmetology statutes. Please note that the draft ideas do not advocate nor are they intended to merge the two professions. Some of the key changes included in the draft are:

- Replace the term "facialist" with the more common "Esthetician"
- Provide barber students the option of obtaining a Shampoo Apprentice Permit, similar to the option in Cosmetology
- Clarify that Barbering can be taught in public schools
- Create more avenues for qualified Barbers to become Barber instructors
- Create more avenues for qualified Cosmetology Operators to become Cosmetology Instructors
- Provide a path for Cosmetologists, who complete a 300 hour course and pass the Class A Barber examination to become Class A Barbers
- Provide a path for Class A Barbers, who complete a 300 hour course and pass the Cosmetology Operator Examination to become a Cosmetology Operator
- Allow the Commission to adopt rules to create more Cosmetology specialty certificates
- Amend the private Cosmetology School requirements to allow for smaller schools, the creation of specialty schools and schools in under-served areas
- Eliminate unnecessary restrictions for opening and operating a Barber School
- Clarify instructor to student ratio
- Create a manicurist/esthetician specialty license
- Clarify the three acceptable forms of equipment sterilizing/sanitizing and eliminate the requirement for the FDA listing

Please review the draft ideas and feel free to send us comments by replying to this email. As always we appreciate and value your input and feedback.

Frank S. Denton, Chair – Conroe, Texas

Mike Arismendez, Vice-Chair – Shallowater, Texas

Lewis Benavides – Oak Point, Texas

LuAnn Morgan – Midland, Texas

Fred Moses – Plano, Texas

Lilian Norman-Keeney – Taylor Lake Village, Texas

Deborah A. Yurco – Austin, Texas

List of Recipients:

Members of the Advisory Board on Barbering
Members of the Cosmetology Advisory Board
Peggy Barron, San Jacinto College
Isis Brantley
Erin Colwell, Bella Beauty College
Jennifer Davis, Texas Instructor Vocational Association
Johnny Garcia, State Association of Barber Schools
Sylvester Iwotor, Dallas Barber and Stylist College
Ron Jemison, Franklin Beauty College
Lauria Mullins, Cosmetology Instructors in Public Schools
Jamal Pratt, Alamo City Barber College
Anthony Reed, Texas Barber Colleges
Joe Sheppard, Lone Star Barbers
Joe Shirley, TexasBarber.com
James E. Smith, Texas Association of Tonsorial Artists
Jerry Valdez, Career Colleges and Schools of Texas
Amatullah Wadoud, Texas Alliance of Barber Schools and Colleges

Section 1601.001. General Definitions.

(a) In this chapter:

(1) "Barber" means a person who:

(A) performs or offers or attempts to perform any act of barbering;

(B) claims to be engaged in the practice of barbering; or

(C) directly or indirectly advertises or represents the person to be a barber or to be authorized to practice barbering.

(2) "Barbershop" means a place, other than a barber school that holds a permit under this chapter, in which barbering is practiced or is offered or attempted to be practiced. The term includes a barber salon.

(3) "Board" means the Advisory Board on Barbering.

(4) "Certificate" means a certificate of registration issued by the department.

(4-a) "Commission" means the Texas Commission of Licensing and Regulation.

(4-b) "Department" means the Texas Department of Licensing and Regulation.

(5) "License" means a license issued by the department.

(6) "Manager" means the person who controls or directs the business of a barbershop or directs the work of a person employed in a barbershop.

(7) "Manicurist specialty shop" means a place in which only the practice of barbering defined by Sections 1601.002(1)(E) and (F) is performed for compensation.

(8) "Permit" means a permit issued by the department.

(b) The term "barber school" includes a barber college- and also includes private and publicly funded schools.

Sec.1601.261. Shampoo Apprentice Permit

- (a) A person holding a shampoo apprentice permit may perform only the practice of barbering defined by 1601.002(1)(i).
- (b) The department shall issue a shampoo apprentice permit to an applicant who is at least 16 years of age
- (c) A shampoo apprentice permit expires on the first anniversary of the date of issuance and may not be renewed.
- (d) The commission shall adopt rules as necessary to administer this section. The commission may not require an applicant to:

 - (1) complete any hours of instruction at a barber training program as a prerequisite for the issuance of a shampoo apprentice permit; or
 - (2) pay a fee for a shampoo apprentice permit.
- (e) A facility licensed under this chapter may employ a person who holds a shampoo apprentice permit to perform shampooing or conditioning services and shall pay the person at least the federal minimum wage as provided by Section 6, Fair Labor Standards Act of 1938 (29 U.S.C. Section 206).

Section 1601.254. Eligibility for a Barber Instructor License

- (a) A person holding a barber instructor license may perform any practice of barbering and may instruct a person in any practice of barbering.
- (b) To be eligible for a barber instructor license, an applicant must:

 - (1) be at least 18 years of age;
 - (2) have obtained a high school diploma or its equivalent;
 - (3) hold a current Class A barber license; ~~and~~
 - (4) have completed:

 - (A) a course consisting of 750 hours of instruction in barber courses and methods of teaching in a barber school approved under this Act; or

(B) at least:

(i) one year of work experience as licensed Class A barber; and

(ii) 500 hours of instruction in barber courses and methods of teaching in a department-approved training program; or

(iii) complete 15 college semester hours in education courses through an accredited college or university; and

(5) pass the applicable examination

Sec. 1601.262. Eligibility for Class A Barber License by holder of Cosmetology Operator License

The commission shall adopt rules for the issuance of a Class A barber license for a person who holds a Cosmetology operator license. The department shall issue the license to an applicant who;

(a) Holds an active Cosmetology Operator license issued under this act;

(b) Completes 300 hours of instruction in barbering through a commission-approved training program in a barber school which will include barber history and shaving;

(c) Passes the examination required under 1601.253; and

(d) Submits to the department;

(1) an application on a department-approved form; and

(2) the required fee

Section 1602.002. Definition of Cosmetology

(a) In this chapter, "cosmetology" means the practice of performing or offering to perform for compensation any of the following services:

(1) treating a person's hair by:

(A) providing any method of treatment as a primary service, including arranging, beautifying, bleaching, cleansing, coloring, cutting, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, or waving;

(B)) providing a necessary service that is preparatory or ancillary to a service under Paragraph (A), including bobbing, clipping, cutting, or trimming; or

(C) cutting the person's hair as a separate and independent service for which a charge is directly or indirectly made separately from charges for any other service;

(2) weaving or braiding a person's hair;

(3) shampooing and conditioning a person's hair;

(4) servicing a person's wig or artificial hairpiece on a person's head or on a block after the initial retail sale and servicing in any manner listed in Subdivision (1);

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

(6) cleansing, stimulating, or massaging a person's scalp, face, neck, or arms:

(A) by hand or by using a device, apparatus, or appliance; and

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

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

(8) administering facial treatments;

(9) removing superfluous hair from a person's body using chemical depilatories or by use of any device, appliance or technique; ~~mechanical tweezers,~~

(10) treating a person's nails by:

(A) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring; or

(B) attaching false nails; or

(11) massaging, cleansing, treating, or beautifying a person's hands or feet.

(b) The commission by rule may amend the definition of cosmetology to eliminate a service included in that definition under Subsection (a), or may create and prescribe eligibility requirements for the issuance of a specialty license or specialty certificate of either a single practice or a combination of the practices defined under Subsection (a).

Section 1602.257. Eligibility for an esthetician ~~a facialist~~ Specialty License

(a) A person holding an esthetician ~~a facialist~~ specialty license may perform only the practice of cosmetology defined in Sections 1602.002(a) (6) through (9).

(b) To be eligible for an esthetician ~~a facialist~~ specialty license, an applicant must:

- (1) be at least 17 years of age;
- (2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and
- (3) have completed 750 hours of instruction in esthetics ~~facialist~~ specialty through a commission-approved training program

Section 1602.258. Eligibility for a Specialty Certificate

(a) A person holding a specialty certificate may perform only the practice of cosmetology defined in Sections 1602.002(a) (2) through (4) or a combination of the practices defined under 1602.002(a) as prescribed by commission rule.

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

- (1) be at least 17 years of age; and
- (2) have the necessary requisites as determined by the department in the particular specialty for which certification is sought, including training through a commission-approved training program.

Section 1602.303. Private Beauty Culture School License

(a) A person holding a private beauty culture school license may maintain an establishment in which any practice of cosmetology is taught.

(b) An application for a private beauty culture school license must be accompanied by the required license fee and inspection fee and:

- (1) be on a form prescribed by the department;
- (2) be verified by the applicant; and
- (3) contain a statement that the building:
 - (A) is of permanent construction and is divided into at least two separate areas:
 - (i) one area for instruction in theory; and

(ii) one area for clinic work;

(B) contains a minimum of 1,000 ~~3,500~~ square feet of floor space;

(C) has access to permanent restrooms and adequate drinking fountain facilities ~~separate restrooms for male and female students~~; and

(D) contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 10 ~~50~~ students.

(c) The applicant is entitled to a private beauty culture school license if:

(1) the department determines that the applicant is financially sound and capable of fulfilling the school's commitments for training;

(2) the applicant's facilities pass an inspection conducted by the department under Section 1603.103; and

(3) the applicant has not committed an act that constitutes a ground for denial of a license.

Section 1602.305. Specialty Shop License

(a) A person holding a specialty shop license may maintain an establishment in which only the practice of cosmetology as defined in Section 1602.002(2), (4), (7), (9), or (10) is performed or a combination of the practices defined under 1602.002(a) as prescribed by commission rule.

(b) An application for a specialty shop license must be accompanied by the required inspection fee and:

(1) be on a form prescribed by the department;

(2) contain proof of the particular requisites for a specialty shop as established by the commission; and

(3) be verified by the applicant.

(c) The applicant is entitled to a specialty shop license if:

(1) the application complies with commission rules;

(2) the applicant pays the required license fee; and

(3) the applicant has not committed an act that constitutes a ground for denial of a license.

Section 1601.353. ~~Required Facilities and Equipment.~~ Application for Barber School Permit

(a) ~~The department may not approve 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:~~ The department may approve a barber school application if the applicant:

~~(1) a building of permanent construction containing at least 2,800 square feet of floor space, divided into at least:~~

~~(A) a senior department;~~

~~(B) a junior department;~~

~~(C) a class theory room;~~

~~(D) a supply room;~~

~~(E) an office space; and~~

~~(F) separate restrooms for male and female students;~~

~~(2) a hard surface floor covering of tile or other suitable material;~~

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

~~(4) a sink behind every two barber chairs;~~

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

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

~~(7) adequate lighting for each room;~~

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

~~(9) at least one medical dictionary and a standard work on human anatomy;~~

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

~~(11) at least one fire extinguisher.~~

(b) An applicant for a barber school permit must submit to the department:

- ~~(1) a detailed drawing and chart of the proposed physical layout of the school, showing the departments, floor space, equipment, lights, and outlets;~~
- ~~(2) photographs of the proposed site for the school, including the interior and exterior of the building, rooms, and departments;~~
- ~~(3) a detailed copy of the training program;~~
- ~~(4) a copy of the catalogue and promotional literature of the school;~~
- ~~(5) a copy of the building lease or proposed building lease if the building is not owned by the school;~~
- ~~(6) a sworn statement showing the ownership of the school; and~~
- ~~(7) the required permit fee.~~

(1) has a building of permanent construction containing at least 1,000 square feet of floor space, inclusive of classroom and practical areas, which is covered in tile or other suitable hard-surface material;

(2) has equipment including:

(A) at least 10 student workstations that include a chair that reclines, a back bar, and a wall mirror, for each student;

(B) one sink behind every two barber chairs;

(C) a liquid sanitizer at each work station

(D) adequate lighting for each room;

(E) at least 10 classroom chairs and other materials necessary to successfully teach the required subjects; and

(F) access to permanent restrooms and adequate drinking fountains facilities;

(G) the department, by rule, may determine any other minimum requirements for the operation of a barber school;

(b) provides to the department adequate proof of financial stability

(c) provides to the department a completed application for barber school permit; and

(d) pays the required fee.

Section 1601.402. Renewal of Certificate or License

(a) A certificate or license expires two years from the date of issuance.

(b) A Class A barber, barber technician, ~~teacher~~, instructor, manicurist, or other licensed specialist must renew the person's certificate or license on or before the expiration date.

Section 1601.405. Renewal While in Armed Forces

(a) The department may not require a Class A barber, barber technician, ~~teacher~~, instructor, or manicurist who is serving on active duty in the United States armed forces to renew the person's certificate or license.

Section 1601.560. ~~Qualified Instructor~~ Instructor to Student Ratio

(a) ~~In addition to the teacher required by Section 1601.355(b), a A barber school that provides training leading to issuance of a Class A barber certificate shall have at least one qualified instructor, holding a Class A certificate, for every 25 students on the school's premises. A teacher may serve as an instructor in practical work in addition to holding a position as a theory teacher.~~

(b) ~~A barber school certificate shall have at least one qualified instructor, holding a Class A certificate, for every three instructor students on the school's premises. may not enroll more than one instructor students teacher for each certified teacher who teaches at the school. A student teacher shall concentrate on developing teaching skills and may not be booked with customers.~~

Sections 1601.354 and 1601.355, Occupations Code are repealed.

Section 1602.255. Eligibility for an Instructor License

(a) A person holding an instructor license may perform any practice of cosmetology and may instruct a person in any practice of cosmetology.

(b) To be eligible for an instructor license, an applicant must:

(1) be at least 18 years of age;

(2) have a high school diploma ~~completed the 12th grade~~ or its equivalent;

(3) hold an cosmetology operator license; ~~and~~

(4) have completed:

(A) ~~a course consisting of 750 hours of instruction in cosmetology courses and methods of teaching in;~~

(i) a licensed private beauty culture school; or

(ii) a vocational training program of a publicly financed postsecondary institution; or

(B) at least:

(i) one ~~two~~ years of verifiable experience as a licensed cosmetology operator; and

(ii) 500 ~~250~~ hours of instruction in cosmetology in a commission-approved training program;
or

(C) complete 15 semester hours in education courses through an accredited college or university;
and

(5) pass the examination required under Section 1602.262.

(c) The commission shall adopt rules for the licensing of specialty instructors to teach specialty courses in the practice of cosmetology defined in Sections 1602.002(7), (9), and (10) or any other specialty practice defined under Section 1602.002(a) as prescribed by commission rule.

Section 1602.259 Eligibility for Cosmetology Operator License by holder of Class A Barber Certificate

The commission shall adopt rules for the issuance of a cosmetology operator license for a person who holds a Class A barber certificate. The department shall issue the license to an applicant who:

(a) holds an active Class A barber certificate;

(b) completes 300 hours of instruction in cosmetology through a commission-approved training program in a cosmetology school;

(c) passes the examination required under Section 1602.262; and

(d) submits to the department;

(1) an application on a department-approved form; and

(2) the required fee

Section 1602.261. Eligibility for a Manicurist/Esthetician Specialty Dual License

(a) The commission shall adopt rules for the issuance of a manicurist/esthetician dual license. A person is eligible for the license if the person;

(1) Holds both an active manicurist specialty license and an active esthetician specialty license; or

(2) Has obtained a high school diploma or the equivalent of a high school diploma or has passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training and is at least 17 years of age; and

(A) Has completed either 1,000 hours of instruction in a manicure/esthetics specialty curriculum through a commission-approved training program; or

(B) Has completed 600 hours of instruction in a manicuring curriculum and 750 hours of instruction in an esthetics specialty curriculum through commission-approved training programs.

(b) A person holding a manicurist/esthetician specialty dual license may perform only the practice of cosmetology defined in Sections 1602.002(a)(6) through (11).

Section 1602.262. Issuance of License or Certificate

(a) An applicant for an operator license, instructor license, manicurist specialty license, ~~or esthetician facialist~~-specialty license, or manicure/esthetician specialty dual license is entitled to the license if the applicant;

(1) meets the applicable eligibility requirements;

(2) passes the applicable examinations;

(3) pays the required fee; ~~and~~

(4) has not committed an act that constitutes a ground for denial of the license; and

(5) files an application on a department-approved form.

(b) An applicant for a specialty certificate is entitled to the certificate if the applicant:

- (1) meets the eligibility requirements;
- (2) pays the required fee; ~~and~~
- (3) has not committed an act that constitutes a ground for denial of the certificate; ~~and~~
- (4) files an application on a department-approved form.

Section 1602.451. Duties of a License Holder

(a) The holder of a private beauty culture school license shall:

- (1) maintain a sanitary establishment;
- (2) maintain ~~on its staff and on duty during business hours~~ one full-time licensed instructor for each 25 students in attendance;
- (3) maintain a daily record of students' attendance;
- (4) establish regular class and instruction hours and grades;
- (5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;
- (6) require a school term of not less than 600 hours instruction for a complete course in manicuring;
- (7) hold examinations before issuing diplomas;
- (8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed;
- (9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and
- (10) provide the department with information on:
 - (A) the current course completion rates of students who attend a course of instruction offered by the school; and

(B) job placement rates and employment rates of students who complete the course of instruction.

(b) The holder of a private beauty culture school license may not require a student to work, be instructed, or earn credit for more than 48 hours in a calendar week.

Sec. 1603.255. Early Examination

The department, ~~on written request by a student,~~ may provide for the early written examination of ~~an applicant~~ for a Class A barber student certificate, ~~a teacher's certificate~~ or an cosmetology operator student license who has completed at least ~~900~~ 4,000 hours of instruction in a department-approved training program.

Section 1603.352. Sterilization Requirements for Certain Services

(a) A person who holds a license, certificate, or permit issued under this chapter, Chapter 1601, or Chapter 1602 and who performs a barbering service described by Section 1601.002(1)(E) or (F) or a cosmetology service described by Section 1602.002(a)(10) or (11) shall, before performing the service, clean, disinfect, and sterilize with an autoclave, or a dry heat sterilizer, or sanitize with an ultraviolet sanitizer, ~~or other department-approved sterilizer,~~ in accordance with the sterilizer or sanitizer manufacturer's instructions, each metal instrument, including metal nail clippers, cuticle pushers, cuticle nippers, and other metal instruments, used to perform the service.

(b) The owner or manager of a barber shop, barber school, beauty shop, specialty shop, beauty culture school, or other facility licensed under this chapter, Chapter 1601, or Chapter 1602, is responsible for providing an autoclave, or a dry heat sterilizer or, ultraviolet sanitizer, ~~or other department-approved sterilizer~~ for use in the shop or school as required by Subsection (a). ~~An autoclave or a dry heat, ultraviolet, or other department-approved sterilizer used as required by Subsection (a) must be listed with the United States Food and Drug Administration.~~

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

(d) This section does not apply to:

(1) single-use instruments; or

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

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

Section 51.351. Inspections and Investigations.

- (a) The department may conduct inspections or investigations as necessary to enforce the laws administered by the department.
- (b) The department, during reasonable business hours, may:
 - (1) enter the business premises of a person regulated by the department or a person suspected of being in violation of or threatening to violate a law establishing a regulatory program administered by the department or a rule or order of the commission or executive director related to a regulatory program administered by the department; and
 - (2) examine and copy records pertinent to the inspection or investigation.
- (c) A department employee may check the license, registration, or endorsement of a person regulated by the Texas State Board of Plumbing Examiners in accordance with the memorandum of understanding under Section 1301.259 and report any noncompliance to that agency.
- (d) The department shall conduct joint investigations with the Texas State Board of Plumbing Examiners as circumstances require.
- (e) Notwithstanding any other provision of law, the commission by rule may prescribe the time between periodic inspections conducted by the department. In prescribing a time period under this subsection, the commission shall consider the risks to public health and safety posed by the occupation or industry that is subject to inspection and the available resources of the department.

Section 51.401. License Expiration and Renewal.

- (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.
- (b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.
- (c) A person whose license has been expired for more than 90 days but less than three years ~~one year~~ may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

- (d) A person whose license has been expired for ~~one year~~ three years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.
- (e) A person who was licensed 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 may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.
- (f) Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

DRAFT