



Texas State Board of Barber Examiners Texas Cosmetology Commission

Agency at a Glance – Texas State Board of Barber Examiners

The Texas State Board of Barber Examiners (Board) regulates barbers to protect the health and safety of the public. Regulation of barbers began in 1921, when persons owning or operating barbershops were required to register with the Texas State Board of Health. In 1929, the Legislature expanded the regulation, creating the Texas State Board of Barber Examiners, and establishing licensure for barbers, barbershops, and schools.

The Board's main functions include:

- licensing barbers, manicurists, barber technicians, and barber instructors, and permitting barber schools, barbershops, manicurist shops, and booth rentals;
- administering the state written and practical barbering exams;
- conducting routine inspections and investigating complaints against barbers, barbershops, and barber schools; and
- enforcing the Barber Act and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2004, the Board operated with a \$592,450 budget and collected about \$1.1 million in revenue, mostly from licensing and examination fees.
- **Staffing.** The Board currently has 13 full-time equivalent positions.
- **Licensing.** The Board regulates about 13,150 barbers, manicurists, technicians, students, and instructors, 32 barber schools, about 5,300 shops, and 2,700 booth rentals.
- **Enforcement.** The Board performs routine inspections and investigates consumer complaints, taking enforcement actions when necessary. In fiscal year 2004, the Board reported inspecting about 15,102 entities and 28,121 individuals, and received 124 complaints. The Board issued 396 sanctions.



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Texas State Board of Barber Examiners Members (7)

William H. Kuykendall, J.D., Chair (Austin)
Ronald Brown, Vice Chair (Dripping Springs)
Mary Lou Daughtrey (Tyler)
James H. Dickerson, Jr., J.D. (Lake Jackson)

San Juana “Janie” Garza (Mercedes)
Terissa Johnson (Sanger)
Janis Wiggins (Junction)

Agency Head

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Agency at a Glance – Texas Cosmetology Commission

The Texas Cosmetology Commission (Commission) regulates cosmetologists to protect the health and safety of the public. Regulation of cosmetologists began in 1935, when the Legislature created the State Board of Hairdressers and Cosmetologists. In 1971, the Legislature replaced this Board with the Texas Cosmetology Commission.

To accomplish its mission, the Commission licenses cosmetology operators and other specialists, cosmetology instructors, schools, and salons, and regulates their activities through enforcement.

The Commission’s main functions include:

- licensing cosmetology operators, instructors, independent contractors, manicurists, and other specialists, as well as issuing permits to schools and salons;
- administering written and practical exams for prospective licensees;
- conducting inspections and investigating complaints against individual licensees, schools, and shops; and
- enforcing the Cosmetology Act and Commission rules, and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2004, the Commission operated with a budget of about \$2.3 million and collected about \$9.4 million in revenue, mostly from licensing and examination fees.
- **Staffing.** The Commission currently has 42 full-time equivalent positions.
- **Licensing and Registration.** The Commission regulates about 151,500 operators, specialists, instructors, and students, 366 schools, and about 26,200 salons.
- **Enforcement.** The Commission performs routine inspections, investigates consumer complaints, and takes enforcement actions when necessary. In fiscal year 2004, the Commission reports it inspected about 20,260 facilities and 35,900 individuals, and received 184 complaints. The Commission issued 7,836 sanctions.

Texas Cosmetology Commission Members (7)

Helen Quiram, Chair (Waco)
Leif Christiansen (Spring)
Esther Camacho, Ex Officio,
Texas Education Agency (Austin)

Heliana Kiessling (Friendswood)
Philip Lapp (Weatherford)
Lucinda Sandoval (Edinburg)
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Recommendations

The Sunset Advisory Commission considered the Texas State Board of Barber Examiners and the Texas Cosmetology Commission together, recommended the agencies be merged, and made the same recommendations regarding the regulation of both occupations, as described below.

1. Abolish the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and Merge the Agencies' Functions Into a New Agency, the Texas Board of Barbering and Cosmetology, Giving the New Agency a Sunset date of September 1, 2009.
2. Reduce the Level of Regulation of Barbers and Cosmetologists, Including Requiring Inspection Efforts to be Risk-Based, Focusing on Sanitation Violations.
3. Discontinue Use of Practical Examinations Required for Licensure of Barbers and Cosmetologists.
4. Conform Key Elements of the Regulation of Barbers and Cosmetologists to Commonly Applied Licensing Practices.
5. Require Cosmetology Nail Salons to Use Autoclaves to Sanitize Instruments.

The Barber Board and the Cosmetology Commission Have Not Effectively Carried Out Their Regulatory Duties.

Key Findings

- The Legislature has charged the Barber Board and the Cosmetology Commission with regulating barbers and cosmetologists to protect the public, but the Board and Commission have not effectively carried out their required regulatory duties.
- State audits of both agencies have identified significant financial problems, including the State Auditor's Office finding of gross fiscal mismanagement at the Texas Cosmetology Commission.
- The agencies cannot provide the basic information necessary to ensure effective regulation of cosmetologists and barbers.

The Legislature has charged the Texas State Board of Barber Examiners and the Texas Cosmetology Commission with regulating barbers and cosmetologists for protection of the public's health. The independent agencies have not effectively carried out their duties as shown by the significant problems with the agencies' licensing and enforcement functions, as well as the agencies' ability to fulfill the basic functions of a state agency.

Recommendations

Change in Statute

- 1.1 Abolish the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and create a new agency, the Texas Board of Barbering and Cosmetology, to administer the agencies' regulatory functions.**

This recommendation would abolish the independent policymaking bodies, create one new policymaking body, and merge the agencies' functions into the new agency, the Texas Board of Barbering and Cosmetology.

- 1.2 Give the new Board a Sunset date of September 1, 2009 and require a limited-scope Sunset review of the new agency in the Fall of 2008 to evaluate whether significant progress has been made in addressing problems identified in the previous reviews.**

This recommendation gives the Board a Sunset date of September 1, 2009 to give the new agency an opportunity to establish itself before its next Sunset review. The recommendation limits the scope of the next Sunset review to evaluate whether significant progress has been made in addressing problems identified in the previous reviews. Despite the limited scope of the review, the Sunset Commission would be able to include any recommendations it considers appropriate in its Report to the Legislature in 2009.

- 1.3 Require the new Board to be composed of nine members appointed by the Governor.**

This recommendation creates a new Board for the agency, consisting of three public members, one barber member, one barbershop owner member, one barber school owner member, one cosmetologist member, one cosmetology salon owner member, and one cosmetology school owner member.

1.4 Require the Governor to designate a public member to serve as Chair of the Board.

This recommendation ensures that a public member of the Board will serve as Chair.

1.5 Require the newly created Board to hire one new executive director to carry out the operations of the agency.

The recommendation ensures that the new board has one individual responsible for operations at the agency. Current executive directors of the two agencies would not be eligible to serve as the executive director of the new agency.

1.6 Direct the new agency to develop and implement a business improvement plan that demonstrates commitment to and results in significant improvement.

The business improvement plan should demonstrate commitment to and results in significant improvement in the following areas:

- elimination of any backlogs in inspection and enforcement, including resolution of complaints and pending enforcement cases; and
- implementation of legislation passed by the 79th Legislature, management recommendations by the Sunset Commission, and recommendations of the State Auditor's Office.

1.7 Require reports on the implementation of the business improvement plan to the Sunset Commission, on a quarterly basis, beginning September 1, 2005.

The recommendation requires the new agency to submit reports that demonstrate business improvement on a quarterly basis, beginning September 1, 2005.

1.8 Require the State Auditor's Office to monitor the business improvement plan and conduct a follow-up audit to evaluate compliance with its past recommendations.

The recommendation requires the State Auditor to monitor the business improvement plan and conduct a one-time follow-up audit of the new agency to ensure compliance with the State Auditor's past recommendations.

Issue 2

The Over-Regulation of Barbering and Cosmetology Does Not Protect the Public and Wastes State Resources.

Key Findings

- The Texas Sunset Act requires an evaluation of less restrictive methods of regulation that could adequately protect the public.
- The agencies' inspection programs waste agency resources without significantly protecting public health and safety.

- The Barber Board requirement that all licensees obtain a health certificate serves no public protection function.

The Barber Board and the Cosmetology Commission regulate barbers and cosmetologists in the state, ostensibly to protect the public's health and safety. The agencies follow several practices that do not enhance health and safety in Texas, but instead waste the agencies' limited resources. Eliminating the unnecessary practices reduces the over-regulation of the occupations, and allows the agencies to better target their resources.

Recommendations

Change in Statute

2.1 Require barber and cosmetology inspection efforts to be risk based, focusing on sanitation violations.

Instead of the agencies' current programs of routine inspections, this recommendation would focus limited resources on inspection of facilities that require the most attention — those that violate sanitation rules. The risk assessment methodology should include a requirement that each facility receives an inspection at least every two years. Inspections upon complaint, and initial inspections of new schools and salons would continue. The cost of all initial inspections should be included in the new establishment's licensing fee.

2.2 Eliminate the barber health certificate requirement.

This recommendation would eliminate an unnecessary burden for licensees by removing the current requirement that barbers, barber technicians, manicurists, and barber instructors must submit a health certificate upon initial licensure and renewal.

2.3 Require barber and cosmetology schools, not the agencies, to maintain student records.

Both agencies currently keep extensive records of student information. Schools, and not state agencies, generally retain student transcripts. The recommendation would prohibit the agency from keeping student transcripts and records beyond other state requirements for document retention.

Issue 3

Practical Exams for Prospective Barbers and Cosmetologists are Unnecessary Requirements for Licensure That Do Not Protect the Public.

Key Findings

- To obtain a barber or cosmetologist license, the agencies require applicants to complete extensive training hours followed by passage of written and practical exams.
- Practical exams pose unnecessary barriers to licensure that provide no health and safety benefits to the public.

Among other extensive requirements for licensure, the Barber Board and the Cosmetology Commission require passage of a practical exam that is both unnecessary to ensure compliance with sanitation requirements and burdensome for the applicant. The exam tests applicants on aspects of

the barber and cosmetology occupations that aren't regulated by the state for public protection. Further, the agencies' other requirements for licensure, such as a written exam, already ensure that licensees have the ability to comply with applicable laws and give acceptable service to consumers.

Recommendation

Change in Statute

3.1 Discontinue use of practical examinations required for licensure of barbers and cosmetologists.

This recommendation would remove the requirement and authority for barber and cosmetology practical exams. Barber and cosmetology students would continue to be required to meet all applicable age, education, and course work requirements before being eligible to sit for the written exam. The requirement for students to pass the written exam before being licensed would continue. This change would apply to all categories of licenses that require exams.

Issue 4

Key Elements of Barber and Cosmetology Licensing and Regulation Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- Licensing provisions of the agencies' statutes do not follow model licensing practices and could potentially affect the fair treatment of licensees and the agencies' ability to protect consumers.
- Nonstandard enforcement provisions of the agencies' statutes could reduce the agencies' effectiveness in providing licensees fair treatment, and protecting consumers.
- Setting fee caps in statute reduces the Barber Board's administrative efficiency and flexibility to adapt to changing circumstances.

Various licensing and enforcement processes in the Barbering and Cosmetology Acts do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 80 occupational licensing reviews over the last 25 years. For example, the lack of guidelines for informal settlement conferences may result in inconsistent or unfair resolution of violations. A comparison of the agencies' statutes, rules, and practices to the model licensing standards identified variations needing change to bring the agencies in line with model standards and increase the agencies' ability to serve the public and increase efficiency of operations.

Recommendations

Licensing

Change in Statute

4.1 Authorize provisional barber licenses.

This recommendation would ensure that persons applying for a Texas barbering license who hold a current license from another state would be able to practice while waiting for evaluation of their application. The Barber Act would authorize issuance of a provisional license to an applicant who

holds a license substantially equivalent to current requirements, or has passed a recognized examination. The provisional license would be valid until approval or denial of the application, which must be completed within 180 days.

4.2 Remove specific license renewal dates in the Barber Act.

This recommendation would ensure that specific statutory provisions relating to renewal dates do not conflict with the current authority to stagger license renewals. Conforming these statutes will result in greater administrative efficiency and provide more convenient service to licensees.

4.3 Authorize denial of license renewals based on outstanding administrative fines.

This recommendation would provide for clear statutory authority to deny barber and cosmetology license renewals for licensees who do not pay their administrative fines. Making this authority explicit will help ensure fair treatment to all license holders, and ensure licensees have good standing before renewing their licenses.

4.4 Establish standard time frames and penalties for late license renewal, including requiring a barber or cosmetology licensee delinquent in renewal for one year or more to be reexamined.

This provision is aimed at ensuring comparable treatment for all licensees, regardless of their regulated profession. This provision also clarifies that a person whose license has expired may not engage in activities that require a license until the license has been renewed.

Management Action

4.5 The Board should eliminate notarization requirements for individuals applying for examinations or licensure.

This recommendation would remove requirements to notarize barber and cosmetology applications and would direct acceptance of applications that are not notarized. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to these applications.

Enforcement

Change in Statute

4.6 Require development of a method for violation and complaint trend analysis.

This recommendation would require development of methods for analyzing the sources and types of barber and cosmetology complaints and violations. The agency should categorize complaints and violations by types, such as late renewals, late fee payments, unsanitary practices, and others. The agency would conduct analysis of complaints and violations looking for trends which need attention, or where technical assistance may help reduce the number of complaints or violations. Developing a method to analyze complaints will provide improved information regarding the nature of complaints, leading to stronger enforcement and greater administrative efficiency.

4.7 Require compilation of detailed statistics on violations and complaints and report annually.

This recommendation would provide a broader picture of the public's problems with barbering and cosmetology by requiring compilation of detailed violation and complaint statistics. These statistics should include:

- the average time to close a complaint or violation from the time the agencies receive the complaint, or write a violation, until resolution of the complaint or violation by final order or sanction;
- the origin, reason, and basis for the complaint or violation;
- the outcome of the complaints or violations including the number dismissed, the reason for dismissal, and the number resulting in disciplinary action;
- the number of non-jurisdictional complaints; and
- the number and type of all open cases at year's end.

4.8 Require adoption of guidelines for informal settlement conferences.

This recommendation would ensure development and adoption of guidelines for barber and cosmetology informal settlement conferences. The guidelines would ensure more fair and consistent treatment of licensees when negotiating the disposition of enforcement actions.

4.9 Remove the requirement that automatically schedules hearings at the State Office of Administrative Hearings for both barber and cosmetology licensees who fail to respond to notices of violations from the agency.

This recommendation would remove the language that requires the executive director to set a hearing and give written notice of the hearing to the person, if a person fails to respond to a notice of violation in a timely manner. The recommendation will preserve a person's due process by allowing the person to request a hearing, but would not require that the agency schedule a hearing if the respondent does not respond to the notice of violation.

4.10 Standardize language on administrative sanctions to specify a full range of penalties to allow the agency to probate a suspended license. Require the agency to have clear probation standards in rule if it uses probation as a sanction.

This recommendation would include probation as an administrative sanction on a license holder and would require the agency to develop, in rule, clear probation standards, including procedures for imposing appropriate conditions, notifying probationers of those conditions and actions they need to take, and tracking probationers' progress.

4.11 Update language on complaints to require the agency to adopt procedures for all phases of the complaint process, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public.

This recommendation would require the agency to adopt procedures outlining the entire complaint process including receipt, investigation, adjudication, resulting sanctions, and disclosure to the public.

Management Action

4.12 The Board should eliminate the requirement that complaints filed with the agency be notarized.

The agency should accept unnotarized complaints, which would make filing a complaint more convenient for the public. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to these complaints.

4.13 The agency should establish a policy for making only final enforcement information available to the public.

The agency should establish a policy for making information about only final enforcement actions available to the public. This policy would protect licensees by ensuring that the public does not have access to information about ongoing, and potentially groundless enforcement proceedings.

Administration

Change in Statute

4.14 Direct the agency to develop a method for responding to and documenting non-jurisdictional complaints.

This recommendation would direct the agency to follow through with non-jurisdictional complaints by sending the complainant a letter closing the complaint, and require the agency to document its actions when responding to non-jurisdictional complaints. This policy would increase the agency's administrative efficiency and ensure that the agency adequately addresses concerns raised by the public.

4.15 Eliminate fee caps in the Barber Act.

This recommendation would give flexibility to set barber fees at the level necessary to recover program costs as conditions change. The Legislature would maintain control by setting spending levels in the General Appropriations Act.

Issue 5 _____

The Cosmetology Act Does Not Require Effective Sanitization of Instruments in Nail Salons.

Currently, the Texas Cosmetology Commission requires cosmetology instruments to be sanitized by being submersed in hospital grade, EPA-registered disinfectant solution for ten minutes. The Sunset Commission received testimony that current regulatory efforts to ensure sanitation of instruments used in nail salons are not sufficient to prevent the spread of infections.

5.1 Require cosmetology nail salons to use autoclaves to sanitize instruments.

Autoclaves go beyond sanitization to sterilize instruments, ensuring that they are free from microorganisms that may spread bacteria or infections. The recommendation requires that cosmetology nail salons have autoclaves available to sterilize instruments.

Fiscal Implication Summary _____

Several recommendations regarding the Texas State Board of Barber Examiners and Texas Cosmetology Commission would have a fiscal impact to the State. The fiscal impact of each of the recommendations is summarized below, followed by a five-year summary chart for each of the agencies.

- **Issue 1** – Abolishing the independent policymaking bodies and merging the agencies together would result in an annual savings of about \$127,800 by reducing the number of full-time equivalent positions assigned to the Cosmetology Commission by two.
- **Issue 2** – Reducing the level of regulation for both barbers and cosmetologists by focusing inspections on sanitation violations would result in a positive fiscal impact to the State, saving \$123,000 annually related to the Barber Board and \$205,000 annually related to the Cosmetology Commission by reducing related staff. The recommendations would reduce Board staff by three and by five from the Commission.
- **Issue 3** – Discontinuing the use of practical exams for both agencies will result in an annual savings of \$4,700 from the Board and \$125,880 from the Commission, reducing the number of full-time equivalents related to cosmetology by three.

<i>Texas State Board of Barber Examiners</i>		
<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>	<i>Change in FTEs from FY 2005</i>
2006	\$127,700	-3
2007	\$127,700	-3
2008	\$127,700	-3
2009	\$127,700	-3
2010	\$127,700	-3

<i>Texas Cosmetology Commission</i>		
<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>	<i>Change in FTEs from FY 2005</i>
2006	\$458,680	-10
2007	\$458,680	-10
2008	\$458,680	-10
2009	\$458,680	-10
2010	\$458,680	-10

