



Texas State Board of Barber Examiners Texas Cosmetology Commission

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S.B. 411 Whitmire (Hamric)

Summary

The Texas State Board of Barber Examiners and the Texas Cosmetology Commission regulate barbers and cosmetologists to protect the health and safety of the public. The agencies perform two major functions: license barbers and cosmetologists, instructors, shops, salons, and schools; and enforce the Barber and Cosmetology Acts and agency rules by investigating complaints and conducting inspections. The Board of Barber Examiners currently regulates about 13,150 individuals and 8,000 entities, with a staff of 13, on an annual budget of about \$600,000. The Cosmetology Commission currently regulates about 151,500 individuals and 26,570 entities, with a staff of 43, and a budget of about \$2.3 million.

The Legislature abolished both agencies, transferring their functions to the Texas Department of Licensing and Regulation (TDLR), and added other statutory modifications to the Barber and Cosmetology Acts to standardize licensing and enforcement functions. The list below summarizes the major provisions of S.B. 411, and a more detailed discussion follows.

Sunset Provisions

1. Abolish the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and Transfer the Agencies' Functions to the Texas Department of Licensing and Regulation.
2. Reduce the Level of Regulation of Barbers and Cosmetologists, Including Requiring Inspection Efforts to be Risk-Based, Focusing on Sanitation Violations.
3. Conform Key Elements of the Regulation of Barbers and Cosmetologists to Commonly Applied Licensing Practices.
4. Require Nail Salons to Use Autoclaves to Sanitize Instruments.

Provisions Added by the Legislature

5. Authorize TDLR to Register Examination Proctors to Administer Barber and Cosmetology Exams Around the State.
6. Make Technical and Conforming Changes to Both Acts to Provide for Effective Administration of the Programs by TDLR.
7. Create an Inactive License Status for Cosmetology Licensees.
8. Authorize the Commission on Licensing and Regulation to Amend the Definition of Cosmetology by Rule.

Sunset Provisions

1. Abolish the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and Transfer the Agencies' Functions to the Texas Department of Licensing and Regulation.

The original recommendation from the Sunset Advisory Commission was to abolish the Board of Barber Examiners and the Cosmetology Commission and merge their functions into a new agency. Instead, the Legislature modified the Sunset provision and abolished both agencies, transferring their functions to the Texas Department of Licensing and Regulation (TDLR). Senate Bill 411 creates two new advisory committees at TDLR, to advise the Commission on Licensing and Regulation on technical matters relating to barbering and cosmetology, and provides for composition requirements and duties of the advisory boards.

The legislation requires the transfer of all powers, duties, and resources of the two agencies to be completed by January 1, 2006, and requires the two agencies to work with TDLR and the Comptroller's Office to transfer some functions and operations to TDLR before September 1, 2005.

2. Reduce the Level of Regulation of Barbers and Cosmetologists, Including Requiring Inspection Efforts to be Risk-Based, Focusing on Sanitation Violations.

Instead of the agencies' current programs of routine inspections, S.B. 411 will focus limited resources on inspection of facilities that require the most attention – those that violate sanitation rules – by requiring risk-based inspections at least every two years. The Legislature modified this provision by requiring TDLR to establish a schedule of risk-based inspections based on certain criteria, including the inspection history of the facility and prior sanitation violations.

Senate Bill 411 will eliminate an unnecessary burden for licensees by removing the current requirement that barbers, barber technicians, manicurists, and barber instructors submit a health certificate upon initial licensure and renewal. Additionally, the legislation will prohibit TDLR from keeping student transcripts and records beyond other state requirements for document retention.

3. Conform Key Elements of the Regulation of Barbers and Cosmetologists to Commonly Applied Licensing Practices.

Senate Bill 411 includes eight provisions that bring the Barber and Cosmetology Acts in line with standard licensing agency practices, consisting of the following.

- Authorizes provisional barber licenses to ensure that persons applying for a Texas barbering license who hold a current license from another state will be able to practice while waiting for evaluation of their application.
- Removes specific license renewal dates in the Barber Act, resulting in greater administrative efficiency and more convenient service to licensees.
- Authorizes denial of barber and cosmetology license renewals based on outstanding administrative fines.

- Requires development of a method for violation and complaint trend analysis for barber and cosmetology enforcement actions.
- Requires compilation of detailed statistics on barber and cosmetology violations and complaints, and an annual report.
- Requires adoption of guidelines for informal settlement conferences for barber and cosmetology enforcement actions.
- Directs TDLR to develop a method for responding to and documenting barber and cosmetology non-jurisdictional complaints.
- Eliminates fee caps in the Barber Act.

4. Require Nail Salons to Use Autoclaves to Sanitize Instruments.

The Legislature modified the Sunset provision to require cosmetology nail salons to use autoclaves to sanitize instruments, and expanded the provision to require all nail salons to use autoclaves to sterilize non-disposable instruments. Additionally, the legislation requires that salons may only use a disposable instrument if it is bought at the location that the service is performed or provided by the person on whom the service is performed.

Provisions Added by the Legislature

5. Authorize TDLR to Register Examination Proctors to Administer Barber and Cosmetology Exams Around the State.

The Legislature added a provision authorizing the registration of exam proctors to assist TDLR in giving barber and cosmetology practical exams across the state.

6. Make Technical and Conforming Changes to Both Acts to Provide for Effective Administration of the Programs by TDLR.

The Legislature added several provisions that make clarifying changes to both the Barber and Cosmetology Acts to simplify the administration of the programs at TDLR and to provide for a smooth transition of functions, including the following.

- Increases the age requirement for barber manicurists from 16 to 17.
- Increases the student-to-teacher ratio in barber schools to 25 students per teacher, from 20 students per teacher.
- Subjects barbershops, as well as owners and schools, to civil penalties.
- Removes requirements regarding the Barber Board adopting rules on specific areas of sanitation and instead relies on TDLR's general rulemaking authority over sanitation issues provided elsewhere in the legislation.
- Removes a provision that details when and how often TDLR is required to give the cosmetology exam and requires TDLR to announce the site of the exam not later than six months before the scheduled exam date.

- Changes the requirements for owning a barbershop by removing the provisions requiring owners to be barbers practicing for at least 12 months and a requirement that a barber must supervise a barbershop at all times.

7. Create an Inactive License Status for Cosmetology Licensees.

The Legislature adopted a provision that allows cosmetology licensees to apply for inactive status and maintain their cosmetology licenses without complying with cosmetology continuing education requirements. Licensees with inactive status may not practice cosmetology.

8. Authorize the Commission on Licensing and Regulation to Amend the Definition of Cosmetology by Rule.

The Legislature adopted a provision that allows the Commission, by rule, to amend the statutory definition of cosmetology to eliminate a cosmetic service included in that definition, thus removing the service from regulation.

Provisions Removed by the Legislature _____

1. Discontinue Use of Practical Examinations Required for Licensure of Barbers and Cosmetologists.

The Legislature did not adopt the provision removing the requirement and authority for barber and cosmetology practical exams.

2. Conform Key Elements of the Regulation of Barbers and Cosmetologists.

The Legislature did not adopt several Sunset provisions aimed at conforming the Barber and Cosmetology Acts with standard licensing processes, since TDLR's enabling Act already provides for the same requirements. These provisions include standard penalties for late license renewal, scheduling of hearings at the State Office of Administrative Hearings, probating a suspended license, and procedures for complaint processing.

Fiscal Implication Summary _____

The provisions in S.B. 411 will result in a positive fiscal impact to the State. Abolishing the independent agencies and transferring their functions to TDLR will result in a total savings of \$680,207 each fiscal year, attributable to the reduction of 11.5 unneeded staff positions and a reduction of travel reimbursements for members of the State Board of Barber Examiners and the Texas Cosmetology Commission. Additionally, TDLR will transfer the agencies' computer licensing systems to TDLR's in-house licensing system, resulting in a savings of \$325,000 per year, beginning in fiscal year 2007, based on a reduction in technology contracting costs.

Requiring risk-based inspections at least every two years will reduce the number of inspections, resulting in a savings of \$325,696 annually based on a reduction of eight staff positions.

<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>	<i>Change in Staff Positions From FY 2005</i>
2006	\$1,005,903	-19.5
2007	\$1,330,903	-19.5
2008	\$1,330,903	-19.5
2009	\$1,330,903	-19.5
2010	\$1,330,903	-19.5

