

REGULATION OF BARBERING AND COSMETOLOGY
Occupations Code, Chapter 1603
Title 9. General Provisions Relating to Licensing
(Effective September 1, 2005)

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. General Definitions

- (a) In this chapter:
 - (1) "Commission" means the Texas Commission of Licensing and Regulation.
 - (2) "Department" means the Texas Department of Licensing and Regulation.
 - (3) "Executive director" means the executive director of the department.
- (b) Unless the context clearly indicates otherwise, the definitions in Chapters 1601 and 1602 apply to this chapter.

Sec. 1603.002. Regulation of Barbering and Cosmetology by Department of Licensing and Regulation

The department shall administer this chapter and Chapters 1601 and 1602. A reference in this chapter to the commission's or department's powers or duties applies only in relation to those chapters, except that this section does not limit the department's or commission's general powers under Chapter 51.

SUBCHAPTER B. ADVISORY BOARDS FOR BARBERING AND COSMETOLOGY

Sec. 1603.051. Duties

The advisory boards established under Chapters 1601 and 1602 shall advise the commission on administering this chapter and Chapters 1601 and 1602 regarding barbering or cosmetology, as applicable.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1603.101. Rules

The commission shall adopt rules consistent with this chapter for:

- (1) the administration of this chapter and the operations of the department in regulating barbering and cosmetology; and
- (2) the administration of Chapters 1601 and 1602.

Sec. 1603.102. Sanitation Rules

The commission shall establish sanitation rules to prevent the spread of an infectious or contagious disease.

Sec. 1603.103. Inspection of Schools, Shops, and Facilities Before Operation

- (a) Until the department determines, by inspection, that the person has established the school, shop, or facility in compliance with this chapter, Chapter 1601, or Chapter 1602, a person may not operate a school, shop, or other facility licensed or permitted under this chapter, Chapter 1601, or Chapter 1602.
- (b) A school, shop, or other facility that is not approved by the department on initial inspection may be reinspected.

- (c) The school, shop, or other facility shall pay a fee for each inspection. The commission shall by rule set the amount of the fee.

Sec. 1603.104. Periodic and Risk-Based Inspections

- (a) The department may enter and inspect at any time during business hours:
 - (1) the place of business of any person regulated under this chapter, Chapter 1601, or Chapter 1602; or
 - (2) any place in which the department has reasonable cause to believe that a certificate, license, or permit holder is practicing in violation of this chapter, Chapter 1601, or Chapter 1602 or in violation of a rule or order of the commission or executive director.
- (b) At least once every two years, the department shall inspect each school, shop, or other facility that holds a license, certificate, or permit under this chapter, Chapter 1601, or Chapter 1602.
- (c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:
 - (1) the type and nature of the school, shop, or other facility;
 - (2) whether there has been a prior sanitation violation at the school, shop, or facility;
 - (3) the inspection history of the school, shop, or other facility;
 - (4) any history of complaints involving the school, shop, or other facility; and
 - (5) any other factor determined by the commission by rule.
- (d) An inspector who discovers a violation of this chapter, Chapter 1601, or Chapter 1602 or of a rule or order of the commission or executive director shall:
 - (1) provide written notice of the violation to the license, certificate, or permit holder on a form prescribed by the department; and
 - (2) file a complaint with the executive director.
- (e) The school, shop, or other facility shall pay a fee for each inspection performed under Subsection (c). The commission shall by rule set the amount of the fee.

Sec. 1603.105. Retention of Student Records

The department may not retain student records, including student transcripts, beyond the time required by state law.

SUBCHAPTER D. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.151. Notification of Public Interest Information and Participation

The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding barbering and cosmetology. The department may provide for that notice:

- (1) on each registration form, application, or written contract for services of a person regulated under this chapter, Chapter 1601, or Chapter 1602;

- (2) on a sign prominently displayed in the place of business of each person regulated under this chapter, Chapter 1601, or Chapter 1602; or
- (3) in a bill for service provided by a person regulated under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.152. Complaint Jurisdiction; Notification

If the department determines that it lacks jurisdiction to resolve the complaint, the department shall notify the complainant in writing that the department is closing the complaint because it lacks jurisdiction.

Sec. 1603.153. Analysis of Complaints and Violations

- (a) The department shall develop and maintain a system to analyze the processing, sources, and types of complaints filed with the department and the types of violations that occur under this chapter, Chapter 1601, and Chapter 1602.
- (b) Based on the information under Subsection (a), the department shall analyze trends in violations and complaints that may require further attention or technical assistance to help reduce the frequency of those complaints and violations.
- (c) The department shall annually compile a statistical analysis of the complaints filed and violations occurring during the preceding year, including:
 - (1) the number of complaints filed;
 - (2) a categorization of complaints filed according to the basis of the complaint and the number of complaints in each category;
 - (3) the number of complaints filed by department staff;
 - (4) the number of complaints filed by persons other than department staff;
 - (5) the number of complaints filed over which the department lacks jurisdiction;
 - (6) the average length of time required to close a complaint or violation from the time the department receives the complaint or otherwise initiates an investigation of a possible violation until the complaint or violation is resolved by a final order or penalty;
 - (7) the number of complaints resolved and the manner in which they were resolved, including:
 - (A) the number of complaints dismissed and the reasons for dismissal; and
 - (B) the number of complaints resulting in disciplinary action and the type of disciplinary action taken; and
 - (8) the number of complaints filed that are unresolved, the number of those complaints filed by department staff, the number of those complaints filed by persons other than department staff, and the average length of time that the unresolved complaints have been on file.

Sec. 1603.154. Informal Settlement Conference

The department shall establish guidelines for an informal settlement conference related to a complaint filed with the department.

SUBCHAPTER E. CERTIFICATE, LICENSE, AND PERMIT REQUIREMENTS

Sec. 1603.201. Application Form

An application for a certificate, license, or permit must be made on a form prescribed and provided by the department.

Sec. 1603.202. Duplicate Certificate, License, or Permit

The department shall issue a duplicate certificate, license, or permit to an applicant who:

- (1) submits an application for a duplicate certificate, license, or permit to the department; and
- (2) pays the required fee.

Sec. 1603.203. Provisional Certificate or License

- (a) The department may issue a provisional certificate or license to an applicant currently licensed in another jurisdiction who seeks a certificate or license in this state and who:
 - (1) has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in another jurisdiction, including a foreign country, that has requirements substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602, as appropriate; and
 - (2) has passed a national or other examination recognized by the commission relating to the practice of that profession.
- (b) A provisional certificate or license is valid until the date the department approves or denies the provisional certificate or license holder's application. The department shall issue a certificate or license to the provisional certificate or license holder if:
 - (1) the provisional certificate or license holder is eligible to hold a certificate or license under Chapter 1601 or Chapter 1602; or
 - (2) the provisional certificate or license holder passes the part of the examination under Chapter 1601 or Chapter 1602 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of the profession in this state and:
 - (A) the department verifies that the provisional certificate or license holder meets the academic and experience requirements for the certificate or license; and
 - (B) the provisional certificate or license holder satisfies any other certificate or license requirements.
- (c) The department must approve or deny a provisional certificate or license holder's application for a certificate or license not later than the 180th day after the date the provisional certificate or license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

Sec. 1603.204. Reciprocal Certificate, License, or Permit

- (a) A person who holds a license, certificate, or permit to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter, Chapter 1601, or Chapter 1602 may apply for a license, certificate, or permit

to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country.

- (b) The person must:
 - (1) submit an application for the license, certificate, or permit to the department; and
 - (2) pay fees in an amount prescribed by the commission, including any applicable license, certificate, or permit fee.
- (c) A person issued a license, certificate, or permit under this section:
 - (1) may perform the acts of barbering or cosmetology stated on the license, certificate, or permit; and
 - (2) is subject to the renewal procedures and fees provided in this chapter, Chapter 1601, or Chapter 1602 for the performance of those acts of barbering or cosmetology.

SUBCHAPTER F. EXAMINATION REQUIREMENTS

Sec. 1603.251. Definition

In this subchapter, "examination proctor" means an individual registered under this subchapter to administer a practical examination for the department.

Sec. 1603.252. General Examination Requirements

- (a) The department may accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations.
- (b) The executive director shall determine uniform standards for acceptable performance on an examination for a license or certificate under Chapter 1601 and for a license or certificate under Chapter 1602.
- (c) The examination must include a written examination as provided by Section 1603.253 and may include a practical examination as provided by Section 1603.256.

Sec. 1603.253. Written Examination

The commission shall select an examination for each written examination required under this chapter, Chapter 1601, or Chapter 1602. The written examination must be:

- (1) validated by an independent testing professional; or
- (2) purchased from a national testing service.

Sec. 1603.254. Examination for Barbers

- (a) An applicant for an examination for a certificate or license issued under Chapter 1601 must submit to the department an application on a form prescribed and provided by the department accompanied by:
 - (1) two photographs of the applicant, one of which accompanies the application and one of which is to be returned to the applicant to be presented at the examination; and
 - (2) the appropriate examination fee.
- (b) The department shall examine applicants for a Class A barber certificate and a teacher's certificate.

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 certificate, a teacher's certificate, or an operator license who has completed at least 1,000 hours of instruction in a department-approved training program.

Sec. 1603.256. Practical Examination

- (a) The commission may require a practical examination as it considers necessary for a license or certificate issued under Chapter 1601 or 1602.
- (b) The department shall prescribe the method and content of any practical examination.
- (c) The following persons may administer a practical examination required under this subchapter:
 - (1) the department;
 - (2) a person with whom the department contracts under Section 1603.252; or
 - (3) an examination proctor.

Sec. 1603.257. Examination Proctor; Registration

- (a) A person may not act as an examination proctor under this subchapter unless the person is registered with the department under this section.
- (b) To be eligible for registration as an examination proctor, a person must:
 - (1) meet eligibility requirements determined by commission rule;
 - (2) file with the department an application on a form prescribed by the department; and
 - (3) pay the required fees as determined by the commission by rule.
- (c) If the department requires an examination proctor to administer a practical examination under this subchapter, the examination proctor shall perform the examination administration function of the department in a competent and professional manner and in compliance with:
 - (1) standards and specifications adopted by the commission under this chapter; and
 - (2) rules adopted by the commission under this chapter.

SUBCHAPTER G. CERTIFICATE, LICENSE, AND PERMIT RENEWAL

Sec. 1603.301. Denial of Renewal Due to Administrative Penalty

The department may deny a person's request to renew a certificate, license, or permit issued under this chapter, Chapter 1601, or Chapter 1602 if the person has not paid an administrative penalty imposed under Subchapter F, Chapter 51. This section does not apply if:

- (1) the person's time to pay or request a hearing has not expired under Section 51.304;
- (2) the person has requested a hearing under Section 51.304, but the person's time to pay has not expired under Section 51.307; or

- (3) the penalty is stayed.

SUBCHAPTER H. PRACTICE PROVISIONS APPLICABLE TO CHAPTERS 1601 AND 1602

Sec. 1603.351. Minimum Curriculum for Schools

The commission shall prescribe the minimum curriculum, including the subjects and the number of hours in each subject, taught by a school licensed under this chapter, Chapter 1601, or Chapter 1602, including a private beauty culture school or a vocational cosmetology program in a public school.

Sec. 1603.352. Sanitation Requirements for Certain Services

(This section effective January 1, 2006. On May 18, 2006, Attorney General Opinion GA-0432 was issued, clarifying a conflict between Senate Bill 411 and House Bill 1304, 79th Regular Session, Texas Legislature, holding that §1603.352, as added by Senate Bill 411, prevails and requires certain individuals and establishments to use and provide an autoclave 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(10) or (11):
- (1) shall, before performing the service, disinfect and sterilize with an autoclave each nondisposable instrument used to perform the service; and
 - (2) may use a disposable supply or instrument only if that supply or instrument is purchased at the location where the service is performed or provided by the person on whom the service is performed.
- (b) The owner or manager of a barber shop, barber school, beauty shop, specialty shop, or beauty culture school is responsible for providing an autoclave for use in the shop or school as required by Subsection (a). An autoclave used as required by Subsection (a) must be:
- (1) registered and listed with the federal Food and Drug Administration; and
 - (2) used in accordance with the manufacturer's instructions.

SUBCHAPTER I. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.401. Denial, Suspension, or Revocation

The department shall deny an application for issuance or renewal of, or shall suspend or revoke, a certificate, license, or permit if the applicant or person holding the certificate, license, or permit:

- (1) engages in gross malpractice;
- (2) knowingly continues to practice while having an infectious or contagious disease;
- (3) knowingly makes a false or deceptive statement in advertising;
- (4) advertises, practices, or attempts to practice under another person's name or trade name;
- (5) engages in fraud or deceit in obtaining a certificate, license, or permit; or
- (6) engages in an act that violates this chapter, Chapter 51, Chapter 1601, or Chapter 1602 or a rule or order adopted or issued under those chapters.

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1603.451. Injunctive Relief

- (a) If a certificate, license, or permit holder commits a violation of this chapter, Chapter 1601, Chapter 1602, or a commission rule and the violation poses a serious threat to the public health, the attorney general shall initiate a suit for injunction and proceedings for suspension or revocation of the certificate, license, or permit.
- (b) In seeking an injunction under this section, the attorney general is not required to allege or prove:
 - (1) that an adequate remedy at law does not exist; or
 - (2) that substantial or irreparable damage would result from the continued violation.

Sec. 1603.452. Civil Penalty

- (a) A barber, barbershop owner, barber school, or private beauty culture school that violates this chapter, Chapter 1601, Chapter 1602, or a commission rule is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law.
- (b) The amount of the civil penalty for a barber or barbershop owner may not exceed \$25 a day for each violation.
- (c) The amount of the civil penalty for a barber school or private beauty culture school may not exceed \$1,000 a day for each violation.
- (d) The attorney general may sue to collect the civil penalty.

Sec. 1603.453. Appeal Bond Not Required

The department is not required to give an appeal bond in a cause arising under this chapter, Chapter 1601, or Chapter 1602.

Sec. 1603.454. Enforcement by Attorney General

The attorney general shall represent the department in an action to enforce this chapter, Chapter 1601, or Chapter 1602.