

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2383

As Amended by House Committee on General
Government Budget

Brief*

HB 2383, as amended, would amend law relating to the licensure and regulation of barbers and to associated fees.

The bill would establish the laws concerning the registration and regulation of barbers, which would be known as the Kansas Barbering Act (Act).

Definitions

The bill would amend the definition of “barber shop” to include suite and barber chair lease area. The bill would amend the definition of “barbering” by removing the requirement for barbering to only be performed upon the upper part of the body for cosmetic purposes and not for the purpose of diseases or physical or mental ailments, and when done for payment, either directly or indirectly, or without payment, and by inserting shaving of the head, face, or neck with a razor.

The bill would also add the following definitions:

- “Barber pole” would mean a red and white or red, white, and blue striped vertical cylinder commonly recognized as a barber pole that is used to advertise a licensed barber shop;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Chair lease” would mean a station or work area part of a barber shop area under the management or ownership of a barber shop owner other than the licensed barber using the chair lease;
- “Infectious or contagious disease” would mean any disease diagnosed by a licensed health care professional that is contagious or could be transmitted during the performance of barbering, as defined by the Kansas Department of Health and Environment pursuant to current law;
- “Senior status license” would mean a license issued to a barber pursuant to current law;
- “Shaving” would mean removing hair from the head, face, or neck at skin level with a razor of any type;
- “Student permit” would mean a permit issued by the Kansas Board of Barbering (Board) allowing a person enrolled at a licensed barber school or college to practice barbering as part of such school’s or college’s curriculum provided a licensed barber instructor is present on the premises;
- “Suite” would mean a room located within a building containing other businesses that is licensed as a barber shop and is used by a licensed barber; and
- “Temporary permit” would mean a permit issued by the Board.

Requirements for Barber Schools and Colleges

The bill would amend the list of required courses of instruction offered by a barber school or college (school) to include massages and manipulations of the muscles of the face and barbering practices for all hair types.

Under the bill, a school would be required to meet the minimum requirements for opening or relocating a school and possess the minimum equipment and materials to operate a school as prescribed in rules and regulations adopted by the Board.

The bill would include discrimination of applicants for admission based on sex or disability to the list of prohibited discriminating policies or practices.

The bill would allow schools to design courses for barbers who have not renewed their license for at least two years. Current law allows schools to design courses for barbers who have not renewed their license for at least three years.

Under the bill, schools would be required to maintain and preserve all records of students enrolled in such school in accordance with rules and regulations.

Requirements for Barber School and College Students

The bill would require students applying for admission at a school to meet the qualifications for students as prescribed in rules and regulations. The bill would also require the school to file a copy of the application with the Board prior to the admission of such student. Once enrolled, a student would be required to pay a fee to the Board for a student permit.

The bill would require students to be attired in clean, neat, washable clothing at all times during school hours. The bill would also require all bottles and other containers be distinctly and correctly labeled, showing the nature of and the intended use of the contents. Under the bill, students would not be permitted to receive compensation, directly or indirectly, for services rendered by such student in any school. The bill would require all tuition or other charges made for services or expenses to be paid to the school and each school to maintain and preserve all records of students

who enroll in such school in accordance with rules and regulations.

Licenses and Permits

The bill would make several changes regarding various types of licenses and permits issued by the Board.

Instructor's License

The bill would amend the requirements for an instructor's license by requiring the Board to grant an instructor's license only after the applicant has been a licensed barber practicing continuously for at least 40 of the 60 months immediately prior to applying for the instructor's license examination.

Barbering License

The bill would amend the list of qualifications to receive a barbering license to increase the minimum age from 16 to 18 years of age. Under the bill, an individual certified in a related industry would no longer be included in the list of those qualified to receive a barbering license. The bill would remove language referring to determining the fitness of such person to practice barbering in relation to the examination. Under the bill, any person who fails an examination would be permitted to apply to retake the examination.

The bill would require any person who would like to practice barbering to complete and file the forms as prescribed by the Board, and include the applicant's name, Social Security number, date of birth, and current residential and business address.

Senior Status License

The bill would allow the Board to issue a senior status license to a barber who no longer practices barbering, so long as such individual:

- Has been licensed as a barber for a total of at least 40 years;
- Is at least 70 years of age; and
- Has paid the one-time fee prescribed by the Board.

Barbering License without Examination

The bill would amend the conditions under which the Board could issue a license without requiring the examination by:

- Removing the requirement for an individual to be of good moral character and temperate habits;
- Requiring an individual be legally authorized to practice in another state, territory, or country with substantially the same requirements at the time of initial licensure and such licensure is in good standing;
- Requiring an individual to have been actively licensed and practicing barbering for at least 6 of the 12 months immediately prior to making an application for licensure and to submit to the Board a notarized statement from previous and current employers attesting to such practice;
- Requiring an individual pass an examination of state laws and rules and regulations pertaining to barbering with a grade of not less than 80 percent; and

- Requiring an individual to submit to the Board a driver's license, U.S. passport, or other government-issued identification containing a photograph of the applicant; a Social Security card; or a permanent resident card, an employment authorization document, or an employment-related visa.

The bill would remove the requirement for a license to be issued only if the state, territory, or country in which the individual is licensed to practice barbering grants, under similar conditions and without an examination, reciprocal authorization to barbers licensed in Kansas.

Temporary Permit

The bill would clarify a temporary permit to practice barbering to be effective only until the results of the examination taken by the temporary permit holder are announced. Under the bill, no more than three temporary permits could be issued to the same person, except as authorized by the Board.

Seminar Permits

The Board would be allowed to issue seminar permits to barbers and teachers holding valid licenses from Kansas or any other state or country, to teach and demonstrate the art of advanced barbering. The bill would restrict a seminar permit to prescribed dates and places, but the seminar permit would not be valid for more than five days. Under the bill, a seminar permit would not be required of any barber or teacher demonstrating the art of advanced barbering at no cost to the viewers.

Charitable Benefit Permits

The bill would require any person or entity wishing to perform barbering for charitable benefit to notify the Board at least 21 days before such event and to have all equipment, tools, and supplies that will be utilized at the event available for the Board to inspect. Under the bill, a permit allowing such practice could be issued for the event, but would only be valid for no more than 48 consecutive hours. The bill would require a separate inspection and permit for each separate event.

Examination for Licensure

The bill would remove the requirement the Board conduct examinations at such times and places as the Board would determine. The bill would require the examination to be approved by the Board and include a written test of the applicant's knowledge of state laws and rules and regulations pertaining to the practice of barbering to the list of required tests. The bill would require an applicant pass all three parts of the examination with a minimum grade of 80 percent to be issued a license. The bill would remove the requirement each application to practice contain the name, address, Social Security number, height, weight, and age of the applicant of the applicant to whom issued. The bill would permit an applicant to take the written test concerning hygiene and the fundamentals of the vocation and the written test concerning state laws and rules and regulations pertaining to the practice of barbering after the applicant has completed 1,000 course hours of instruction. The bill would also allow the Board to adopt rules and regulations concerning the administration of examinations.

Renewal and Restoration of Licenses

Under the bill, an operator of a suite and a chair lessee would be added to the list of licensees who would be required to annually renew such license. The bill would require every licensed barber, instructor, operator of a barber shop or suite,

chair lessee, and operator of a school to renew such license by submitting all necessary forms approved by the Board and paying the required fee.

The bill would decrease the expiration period from three years to two years for when the license of a barber, instructor, or operator of a barber shop would be allowed to have the license restored.

Under the bill, a barber, instructor, or operator of a barber shop would be allowed to restore a license, so long as the license has not been expired for more than two years. [Note: Current law requires the license to not have been expired for more than three years.] The bill would also add the license of an operator of a suite to the list of licenses that may be restored, so long as the license has not been expired for more than two years.

The bill would prohibit a barber or barber instructor whose license has expired from engaging in the practice of barbering until such license is restored. The bill would also prohibit a barber shop, suite, or school from employing anyone to engage in the practice of barbering unless such person holds a valid license. Under the bill, a barber shop or suite would be prohibited from operating unless a valid license has been issued for such shop or suite.

The bill would allow a licensee whose license has been refused, suspended, or revoked to apply for a reconsideration. Under the bill, the Board would be allowed but not required to grant a reinstatement or reconsideration of a license that was refused, suspended, or revoked if the licensee shows the reason for such refusal, suspension, or revocation no longer exists.

The bill would allow a licensee whose license has been suspended or revoked to file an application with the Board to reinstate the license within two years after suspension or revocation. Under the bill, the applicant would have the burden of proof to establish rehabilitation and that such

applicant is otherwise qualified for licensure under the Act. The bill would allow the Board to consider any relevant evidence in determining whether the applicant met such burden, including:

- The demonstrated consciousness of the wrongful conduct and disrepute the conduct has brought upon the profession;
- The extent of the applicant's rehabilitation;
- The nature and seriousness of the original misconduct;
- The applicant's conduct subsequent to discipline;
- The time elapsed since the original discipline; and
- The applicant's character, maturity, and experience at the time of the original discipline.

Other Licensure Provisions

The bill would also require every licensed barber, instructor, operator of a barber shop or suite, or chair lessee to notify the Board in writing of any change in residential or business address within 14 days of the change.

Under the bill, persons licensed in Kansas to practice medicine and surgery or chiropractic; commissioned medical or surgical officers of the U.S. Army, Navy, or Marine hospital service; registered nurses; undertakers and morticians; and licensed cosmetologists and apprentices would no longer be exempt from the provisions of the Act.

The bill would require every person engaged in the practice of barbering to display a current valid license or permit in a conspicuous place next to such person's work chair.

Fees

The bill would make several changes to the maximum fees collected by the Board. The bill would increase the maximum fee the Board could charge as follows:

- Examination to practice barbering would be increased to not more than \$200, from not more than \$100;
- Issuance and renewal of a license would be increased to \$150, from not more than \$80;
- Restoration of expired license, if the expiration period is under two years, in addition to the current payment of the lapsed fees, the fee would be increased to not more than \$150, from not more than \$100 [*Note:* Current law requires such expiration period to be under three years.];
- Reexamination of applicant after two years would be increased to not more than \$200, from not more than \$100;
- Licensing or annual renewal for an instructor would be increased to not more than \$100, from not more than \$90;
- Restoration of an expired instructor license, if the expiration period is under two years, in addition to the payment of the lapsed fees, would increase to not more than \$150, from not more than \$90 [*Note:* Current law requires such expiration period to be under three years.];
- Reexamination of an instructor after two years would increase to not more than \$200, from not more than \$170 [*Note:* Current law requires such time period to be under three years.];

- Licensing to operate a school would increase to not more than \$750, from not more than \$500;
- Shop or suite inspection would increase to not more than \$100, from not more than \$40 [*Note:* Current law only includes a shop.];
- Restoration of expired shop or suite license, if expiration period is under one year, would increase to not more than \$300, from not more than \$80 [*Note:* Current law requires such expiration period to be under three years.];
- New shop or suite, relocation or change of ownership would increase to not more than \$150, from not more than \$80 [*Note:* Current law only includes a shop.]; and
- Issuance of a student learning permit would increase to not more than \$100, from not more than \$55.

The bill would establish new fees as follows:

- Examination of an applicant to instruct barbering would be not more than \$200;
- Restoration of an expired school license, if the expiration period is under 90 days, in addition to the currently required payment of lapsed fees, would be not more than \$150;
- Issuance of a chair lease license would be not more than \$50;
- Issuance of a temporary permit would be not more than \$25;
- Issuance of a senior status license would be not more than \$50; and

- Letter of certification for the purpose of proof of licensure would be not more than \$25.

The bill would also include a charitable event permit fee with the seminar permit, and both fees would be not more than \$80. Under the bill, a duplicate license would be issued upon request and would no longer require the filing of a statement covering the loss of same. The bill would also establish that all fees would be nonrefundable.

Civil Fines

The bill would specify the Board could assess a civil fine for a violation of the Act of no more than \$1,000 per violation, in lieu of or in addition to any other penalty. Under the bill, the Board could consider the following factors when determining any penalty to be assessed:

- Willfulness of the violation;
- Repetitions of the violation; and
- Risk of harm to the public caused by the violation.

Applicants with a Felony or Class A Misdemeanor

The bill would require an applicant who files an application for a license and has been convicted of a felony or a class A misdemeanor against persons or involving illegal drugs to establish sufficient rehabilitation to warrant the public trust and such applicant is otherwise qualified for licensure under the Act.

Under the bill, to determine whether the applicant has met the burden of establishing sufficient rehabilitation, the Board would be allowed to consider any relevant evidence, which could include:

- The seriousness and the nature of the offense;

- The age, character, maturity, and experience of the person at the time of the offense;
- The amount of time elapsed since the offense;
- The conduct and work activity of the person before and subsequent to the offense;
- Whether the offense was an isolated or recurring incident;
- The conditions of and discharge from probation, parole, or post-release supervision;
- The evidence of rehabilitation or rehabilitative effort;
- The demonstrated consciousness of the wrongful conduct and the disrepute the conduct has brought the profession; and
- Any other evidence of the person's present fitness for licensure.

Misdemeanors

The bill would remove the minimum fine of \$10 and would increase the maximum fine from \$100 to \$1,000. The bill would also amend what constitutes a misdemeanor under the Act by including:

- The violation of any sanitation standards adopted by the Secretary of Health and Environment for the regulation of barber shops and schools;
- The term "permit" in the violation of obtaining or attempting to obtain a license for any other than the required fee, or for any other thing of value;

- The term “deceit” in the violation of obtaining or attempting to obtain a license for any other than the required fee, or for any other thing of value or by deceit or fraudulent misrepresentations;
- Advertising by display of a barber pole or its facsimile at a location with no licensed barber and at any time when a licensed barber is not practicing on the premises;
- Advertising as a licensed barber or licensed barber shop or suite by using the title or designation of barber or barber shop;
- Engaging in any other act or practice that would create the impression to members of the public that the person is a barber or is operating a barber shop unless the person holds the appropriate license;
- Practicing barbering without a valid, current license or permit; and
- Employing an individual who is practicing barbering without a valid, current license or permit.

Under the bill, each violation of any provision of the Act, any rules or regulations adopted by the Board, or any sanitation standards adopted by the Secretary of Health and Environment would be a separate violation each day such violation continues to occur. The bill would specify the definition of “advertising,” as used to determine if a violation is a misdemeanor, would mean the use of any media, including listings, signs, cards, and the Internet, to indicate barbering services are being performed.

Powers of the Board

The bill would include restoration of a license to the list of actions the Board would be allow to censure, limit,

condition, suspend, revoke, or refuse. The bill would also amend the conditions under which the Board would be allowed to censure, limit, condition, suspend, revoke, or refuse to issue, reinstate, restore, or renew a license of any applicant by:

- Including “contagious” to the description of diseases;
- Removing “knowingly” from the description of false or deceptive statements;
- Clarifying language concerning the practice of barbering while under the influence of drugs or alcohol;
- Removing “by fraudulent misrepresentations” from the ways in which an applicant or licensee has obtained or attempted to obtain a license for money other than the required fee, or for any other thing of value;
- Removing “willfully” from the description of the way in which an applicant or licensee failed to display a license;
- Specifying an applicant has violated any provisions of the Act and removing language referring to the operation or management of a barber shop or school;
- Specifying a misdemeanor as a class A misdemeanor and including any offense under the laws of another jurisdiction that is substantially the same to a felony or class A misdemeanor as determined by rules and regulations;
- Including obtaining or attempting to obtain a license by fraud or deceit;

- Including the practice of barbering without a valid and current license or permit; and
- Including employment of an individual who has practiced barbering without a valid and current license or permit.

The bill would allow the Board to institute such actions in the courts of competent jurisdiction as may be necessary to enforce compliance with any provisions of this Act. The bill would also permit the Board to enforce rules and regulations, or any subpoena, or other order of the Board, in accordance with the Kansas Judicial Review Act, and to enforce any sanitation standards adopted by the Secretary of Health and Environment for the regulation of barber shops and schools, as if such standards were rules and regulations adopted by the Board.

The bill would amend the powers of the Board by removing language specifying the Board could only subpoena barber shop owners, operators, managers, or employees, and their books and accounts, and would allow the Board to subpoena any person from whom information may be desired to carry out the purpose and intent of the Act. The bill would allow any person subpoenaed to produce any documents, reports, records, or other physical evidence to petition the Board, within five days after the subpoena has been served, to revoke, limit, or modify the subpoena. The bill would require the Board to revoke, limit, or modify such subpoena if, in the Board's opinion, the required documents, reports, records, or other physical evidence do not relate to the administration of the Act, is not relevant to the allegation that is the subject matter of an investigation, or does not describe with sufficient particularity the documents, reports, records, or other physical evidence required to be produced.

Under the bill, upon application by the Board or by the person subpoenaed, a court of competent jurisdiction would have jurisdiction to issue an order to require such person to appear before the Board, or the Board's duly authorized

agent, to produce documents, reports, records, or other physical evidence, or to revoke, limit, or modify the subpoena if, in the court's opinion, the evidence demanded does not relate to the administration of the Act, is not relevant to an allegation that is the subject matter of an investigation, or does not describe with sufficient particularity the documents, reports, records, or other physical evidence required to be produced.

The bill would remove the Board's power to act as mediator and arbitrator in any controversy or issue among or between barbers as individuals or between barbers as groups, and related provisions.

The bill would add a permit holder to the list of individuals the Board could issue a cease and desist order against if the Board determines that such individual has practiced without a valid license or engaged or attempted to engage in any act or practice in violation of the Act, or associated rules and regulations.

The bill would allow the Board to close any barber shop or school, if the Board determines that such barber shop or school has operated without a valid license or permit or engaged or attempted to engage in any act or practice in violation of the Act or rules and regulations, or violated any of the sanitation standards adopted by the Secretary of Health and Environment, for the regulation of barber shops and schools.

The bill would also specify the Board, the administrative officer, or the Board's inspectors has the authority to enter and inspect any place where barbering is being performed and include any sanitation standards adopted by the Secretary of Health and Environment to the list of laws and rules and regulations the Board could enforce.

Technical Changes

The bill would also make technical changes.

Background

The bill was introduced in the House Committee on General Government Budget at the request of Representative Arnberger on behalf of the Board.

In the House Committee hearing, no testimony was provided.

The House Committee amended the bill by including the requirement, to receive a license without an examination, an applicant must submit to the Board a Social Security card or a permanent resident card, an employment authorization document, or an employment-related visa; amending the definition of “infectious or contagious disease”; and removing the requirement a violation of any rules or regulations constitutes a misdemeanor.

According to the fiscal note prepared by the Division of the Budget, the bill, as introduced, would create fees for instructor examinations and chair lease licenses, as well as increase a number of existing fees and would likely result in increases to the Board revenue. However, the Board has not provided estimates of how many instructor examinations might be taken or chair lease licenses issued, and has not indicated which fees would be increased or what effect those increases might have. The Board states enactment of the bill would result in increased revenue to the agency fee fund in FY 2020 of \$28,957 and to the State General Fund of \$3,218 due to changes in fee amounts. Any fiscal effect associated with the bill is not reflected in *The FY 2020 Governor’s Budget Report*.