

By: Truitt

H.B. No. 3178

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of laser hair removal facilities;  
providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 9, Occupations Code, is amended by adding  
Chapter 1604 to read as follows:

CHAPTER 1604. LASER HAIR REMOVAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1604.001. DEFINITIONS. In this chapter:

(1) "Certified laser hair removal professional" means  
a person authorized under this chapter to perform laser hair  
removal.

(2) "Department" means the Department of State Health  
Services.

(3) "Executive commissioner" means the executive  
commissioner of the Health and Human Services Commission.

(4) "Laser hair removal" means the use of a laser or  
pulsed light device for nonablative procedures for the removal of  
hair.

(5) "Laser hair removal facility" means a business  
location that provides laser hair removal.

(6) "Laser or pulsed light device" means a device  
approved by the department and the United States Food and Drug  
Administration and registered with the department for laser hair

1 removal.

2 (7) "Laser safety officer" means an individual working  
3 at a laser hair removal facility who is responsible for regularly  
4 inspecting the laser equipment, safety eyewear, logs,  
5 recordkeeping, and annual inspection of the laser hair removal  
6 facility.

7 (8) "Operator" means the owner of a laser hair removal  
8 facility, an agent of an owner, or an independent contractor of a  
9 laser hair removal facility.

10 Sec. 1604.002. PRACTICE OF MEDICINE. (a) Laser hair  
11 removal procedures under this chapter are neither the practice of  
12 medicine nor a medical procedure.

13 (b) This chapter does not authorize a person to engage in  
14 the practice of medicine in violation of Subtitle B, Title 3.

15 [Sections 1604.003-1604.050 reserved for expansion]

16 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND  
17 DEPARTMENT

18 Sec. 1604.051. RULES. The executive commissioner shall  
19 adopt rules as necessary to implement this chapter.

20 Sec. 1604.052. INSPECTION. (a) The department or an  
21 authorized agent may enter and inspect a laser hair removal  
22 facility at a reasonable time to determine compliance with this  
23 chapter.

24 (b) A person who is required to maintain records under this  
25 chapter or a person in charge of the custody of those records shall,  
26 at the request of the department or an authorized agent or health  
27 authority, permit access to copy or verify the records at a

1 reasonable time.

2 Sec. 1604.053. AUTHORITY TO SET FEES. The executive  
3 commissioner by rule shall set fees required by this chapter in  
4 amounts necessary to cover the costs of administering the programs  
5 to which the fees relate.

6 Sec. 1604.054. RECORDS. The executive commissioner shall  
7 adopt rules describing the records that a laser hair removal  
8 facility must keep, including a record of:

9 (1) the name of the person on whom a procedure is  
10 performed;

11 (2) the date and time of the procedure;

12 (3) the signature of the laser hair removal technician  
13 who performed the procedure; and

14 (4) a summary of the procedure, including the affected  
15 part of the body, the outcome of the procedure, and any follow-up  
16 required.

17 Sec. 1604.055. EXAMINATION. The executive commissioner may  
18 adopt rules to govern the development and administration of an  
19 examination for an applicant under this chapter.

20 Sec. 1604.056. APPLICATION PROCESS. (a) An application  
21 for a certificate or license under this chapter must be made on a  
22 form prescribed by the executive commissioner and provided by the  
23 department.

24 (b) The application must require an applicant to provide  
25 sworn statements relating to the applicant's education and to  
26 provide other information required by the department.

27 [Sections 1604.057-1604.100 reserved for expansion]

1           SUBCHAPTER C. CERTIFICATE FOR INDIVIDUALS

2           Sec. 1604.101. CERTIFICATE REQUIRED. (a) A person may not  
3 perform or attempt to perform laser hair removal unless the person  
4 holds the appropriate certificate under this subchapter.

5           (b) This chapter does not require a health professional  
6 licensed under another law to hold a certificate under this chapter  
7 to perform laser hair removal if the performance of laser hair  
8 removal is within the scope of that professional's practice as  
9 determined by the professional's licensing board.

10          Sec. 1604.102. ELIGIBILITY FOR LASER HAIR REMOVAL  
11 PROFESSIONAL CERTIFICATE. An applicant for a laser hair removal  
12 professional certificate must:

13           (1) be certified by a recognized certifying agency,  
14 including the Society for Clinical and Medical Hair Removal or  
15 another certification entity approved by the department; and

16           (2) meet the requirements for a senior laser hair  
17 removal technician certificate in Section 164.103.

18          Sec. 1604.103. ELIGIBILITY FOR SENIOR LASER HAIR REMOVAL  
19 TECHNICIAN CERTIFICATE. (a) Except as provided by Subsection (b),  
20 an applicant for a senior laser hair removal technician certificate  
21 must:

22           (1) have at least 24 hours of training in safety, laser  
23 physics, skin typing, skin reactions, treatment protocols, and  
24 posttreatment protocols; and

25           (2) have performed at least 100 laser hair removal  
26 procedures and performed or supervised at least 300 procedures.

27          (b) The qualifications for eligibility for an applicant for

1 a senior laser hair removal certificate who is a licensed health  
2 professional shall be established by the entity that issues  
3 licenses for that profession.

4 Sec. 1604.104. ELIGIBILITY FOR LASER HAIR REMOVAL  
5 TECHNICIAN CERTIFICATE. (a) An applicant for a laser hair removal  
6 technician certificate must:

7 (1) have at least 24 hours of training in safety, laser  
8 physics, skin typing, skin reactions, treatment protocols, and  
9 posttreatment protocols; and

10 (2) have performed at least 100 supervised or  
11 preceptored laser hair removal procedures.

12 (b) A laser hair removal technician must work directly under  
13 the supervision of a senior laser hair removal technician.

14 Sec. 1604.105. ELIGIBILITY FOR LASER HAIR REMOVAL  
15 APPRENTICE-IN-TRAINING CERTIFICATE. (a) An applicant for a laser  
16 hair removal apprentice-in-training certificate must have at least  
17 24 hours of training in safety, laser physics, skin typing, skin  
18 reactions, treatment protocols, and posttreatment protocols.

19 (b) A laser hair removal apprentice-in-training must work  
20 directly under the supervision of a senior laser hair removal  
21 technician.

22 Sec. 1604.106. CONTINUING EDUCATION. The department shall  
23 recognize, prepare, or administer continuing education programs  
24 for certificate holders. A certificate holder must participate in  
25 the programs to the extent required by department rule to renew the  
26 person's certificate.

27 [Sections 1604.107-1604.150 reserved for expansion]

1                   SUBCHAPTER D. LICENSING OF FACILITIES

2           Sec. 1604.151. LICENSE REQUIRED. (a) A person may not  
3 operate a laser hair removal facility unless the person holds a  
4 license issued under this subchapter to operate the facility.

5           (b) A separate license is required for each laser hair  
6 removal facility.

7           Sec. 1604.152. TEMPORARY LICENSE. (a) If a laser hair  
8 removal facility's certified laser hair removal professional  
9 leaves the facility, the department shall issue to the facility a  
10 temporary license to continue operating while the facility's senior  
11 laser hair removal technician immediately pursues certification as  
12 a certified laser hair removal professional.

13           (b) The facility license holder must submit an application  
14 for a temporary license to the department not later than the 10th  
15 day after the date the certified laser hair removal professional  
16 leaves the facility.

17           (c) Except as provided by Subsection (d), a temporary  
18 license issued under this section expires on the 90th day after the  
19 date the department issues the temporary license.

20           (d) The department may renew a temporary license for an  
21 additional 90 days if circumstances beyond the facility license  
22 holder's control prevent compliance with the certification  
23 requirements for the facility's senior laser hair removal  
24 technician under Section 1604.103, as determined by the department.

25           [Sections 1604.153-1604.200 reserved for expansion]

26                   SUBCHAPTER E. LICENSE AND CERTIFICATE RENEWAL

27           Sec. 1604.201. EXPIRATION OF CERTIFICATE OR LICENSE. The

1 executive commissioner by rule may adopt a system under which  
2 certificates and licenses expire on various dates during the year.

3 Sec. 1604.202. RENEWAL OF CERTIFICATE OR LICENSE. (a) A  
4 certificate or license expires on the second anniversary of the  
5 date of issuance.

6 (b) A person must renew the person's certificate or license  
7 on or before the expiration date.

8 (c) The department shall issue a renewal certificate or  
9 license on receipt of a renewal application in the form prescribed  
10 by the executive commissioner, accompanied by a renewal fee in an  
11 amount equal to the original certificate or license fee.

12 [Sections 1604.203-1604.250 reserved for expansion]

13 SUBCHAPTER F. PRACTICE BY LICENSE OR CERTIFICATE HOLDER

14 Sec. 1604.251. DISPLAY OF LICENSE OR CERTIFICATE. A person  
15 holding a license or certificate under this chapter shall display  
16 the person's license or certificate in an open public area of the  
17 laser hair removal facility.

18 Sec. 1604.252. GROUNDS FOR REFUSING, REVOKING, OR  
19 SUSPENDING LICENSE OR CERTIFICATE. A license or certificate may be  
20 denied or, after a hearing, revoked or suspended if the applicant or  
21 license or certificate holder:

22 (1) fails to pay a license or certificate fee or an  
23 annual renewal fee for a license or certificate;

24 (2) secures or attempts to secure a license or  
25 certificate by fraud or deceit; or

26 (3) violates this chapter or a rule adopted or order  
27 issued under this chapter.

1       Sec. 1604.253. RETURN OF LICENSE TO DEPARTMENT. A license  
2 issued under this chapter must be returned to the department if the  
3 laser hair removal facility:

- 4           (1) ceases to operate as a business permanently;  
5           (2) changes ownership;  
6           (3) changes location; or  
7           (4) changes the name of the business under which the  
8 facility operates.

9       [Sections 1604.254-1604.300 reserved for expansion]

10       SUBCHAPTER G. OPERATION OF LASER HAIR REMOVAL FACILITY

11       Sec. 1604.301. LASER OR PULSED LIGHT DEVICE. (a) A laser  
12 or pulsed light device used for laser hair removal in a laser hair  
13 removal facility must comply with all applicable federal and state  
14 laws and regulations.

15           (b) The department may enforce Chapter 431, Health and  
16 Safety Code, against a person who adulterates or misbrands a laser  
17 or pulsed light device. The department may investigate a person  
18 accused of adulterating or misbranding a laser or pulsed light  
19 device.

20       Sec. 1604.302. CUSTOMER NOTICE; LIABILITY. (a) A laser  
21 hair removal facility shall give each customer a written statement  
22 outlining the relevant risks associated with laser hair removal,  
23 including a warning that failure to use the eye protection provided  
24 to the customer by the laser hair removal facility may result in  
25 damage to the eyes.

26           (b) The executive commissioner shall adopt rules relating  
27 to the customer notice.



1       (c) Compliance with the notice requirement does not affect  
2 the liability of the laser hair removal facility operator or a  
3 manufacturer of a laser or pulsed light device.

4       Sec. 1604.303. WARNING SIGNS. (a) A laser hair removal  
5 facility shall post a warning sign as prescribed by the executive  
6 commissioner in a conspicuous location readily visible to a person  
7 entering the facility. The sign must inform the customer that the  
8 customer may call the department at the department's toll-free  
9 telephone number.

10       (b) The executive commissioner shall adopt rules specifying  
11 the size, design, and graphic design of the sign, with wording  
12 listing the potential dangers involved.

13       (c) The department shall include with a license application  
14 and an application for renewal of a license a description of the  
15 design standards required for a sign under this section.

16       Sec. 1604.304. OPERATIONAL REQUIREMENTS. A laser hair  
17 removal facility shall have a certified laser hair removal  
18 professional present to supervise the laser hair removal procedures  
19 performed at the facility during the facility's operating hours.

20       Sec. 1604.305. SAFETY. (a) A laser hair removal facility  
21 operator must keep records required by Section 1604.054 and is  
22 responsible for maintaining the laser hair removal facility's  
23 compliance with the regulations under this chapter and department  
24 rules relating to laser and pulsed light devices.

25       (b) A laser hair removal facility operator may not claim,  
26 advertise, or distribute promotional materials that claim that  
27 laser hair removal is free from risk.

1       Sec. 1604.306. CONSULTING PHYSICIAN. (a) A laser hair  
2 removal facility must employ or contract with a consulting  
3 physician to:

4           (1) establish proper protocols for the services  
5 provided at the facility; and

6           (2) assist the laser hair removal facility in the  
7 preparation and periodic review of the facility's protocols.

8       (b) A facility must document with the department the  
9 facility's relationship with a consulting physician.

10       (c) A consulting physician must be available for emergency  
11 consultation with the facility.

12       (d) This chapter does not relieve a consulting physician or  
13 another health care professional from complying with regulations  
14 prescribed by an applicable state or federal agency.

15       Sec. 1604.307. DISCLOSURE OF RECORD PROHIBITED; EXCEPTION.

16       (a) Except as provided by Subsection (b), an operator or other  
17 person may not disclose a customer record required to be kept by  
18 Section 1604.054.

19       (b) An operator or other person may disclose a customer  
20 record if:

21           (1) the customer or a person authorized to act on  
22 behalf of the customer requests the record;

23           (2) the department or an authorized agent or health  
24 authority requests the record under Section 1604.052;

25           (3) the customer consents in writing to disclosure of  
26 the record to another person;

27           (4) the customer is a victim, witness, or defendant in

1 a criminal proceeding and the record is relevant to that  
2 proceeding;

3 (5) the record is requested in a criminal or civil  
4 proceeding by court order or subpoena; or

5 (6) disclosure is otherwise required by law.

6 [Sections 1604.308-1604.350 reserved for expansion]

7 SUBCHAPTER H. PENALTIES AND ENFORCEMENT PROVISIONS

8 Sec. 1604.351. CIVIL PENALTY; INJUNCTION. (a) If, after  
9 actual notice has been given to an individual and the individual has  
10 been given a reasonable time to correct the violation, it appears  
11 that a person has continued to violate or is violating this chapter  
12 or an order issued or a rule adopted under this chapter, the  
13 department may ask the attorney general, the district or county  
14 attorney, or the municipal attorney of a municipality in the  
15 jurisdiction where the violation is alleged to have occurred or may  
16 occur, to institute an action for:

17 (1) a permanent or temporary injunction, temporary  
18 restraining order, or other appropriate remedy if the department  
19 shows that the person has engaged in or is engaging in a violation;

20 (2) the assessment and recovery of a civil penalty; or

21 (3) both injunctive relief and a civil penalty.

22 (b) A civil penalty may be not more than \$5,000 a day for  
23 each violation. Each day the violation occurs constitutes a  
24 separate violation for the purposes of the assessment of a civil  
25 penalty.

26 (c) Venue for a suit brought under this section is the  
27 municipality or county in which the violation occurred or in Travis

1 County.

2 (d) A civil penalty recovered in an action instituted by a  
3 local government under this section shall be paid to the local  
4 government.

5 (e) The executive commissioner or the attorney general may  
6 each recover reasonable expenses incurred in obtaining injunctive  
7 relief or a civil penalty under this section, including  
8 investigation and court costs, reasonable attorney's fees, witness  
9 fees, and other expenses. The expenses recovered by the executive  
10 commissioner under this section shall be used for the  
11 administration and enforcement of this chapter. The expenses  
12 recovered by the attorney general shall be used by the attorney  
13 general.

14 Sec. 1604.352. EMERGENCY ORDER. (a) The executive  
15 commissioner or the executive commissioner's designee may issue an  
16 emergency order relating to the operation of a laser hair removal  
17 facility in the department's jurisdiction if the executive  
18 commissioner or the executive commissioner's designee determines  
19 that:

20 (1) operation of the laser hair removal facility  
21 creates or poses an immediate and serious threat to human life or  
22 health; and

23 (2) other procedures available to the department to  
24 remedy or prevent the threat will result in unreasonable delay.

25 (b) The executive commissioner or the executive  
26 commissioner's designee may issue an emergency order without notice  
27 or a hearing if the executive commissioner or the designee

1 determines notice or a hearing is not practical under the  
2 circumstances.

3 (c) If an emergency order is issued without a hearing, the  
4 department shall determine a time and place for a hearing at which  
5 the emergency order is affirmed, modified, or set aside. The  
6 hearing shall be held under rules of the department.

7 [Sections 1604.353-1604.400 reserved for expansion]

8 SUBCHAPTER I. ADMINISTRATIVE PENALTY

9 Sec. 1604.401. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
10 department may impose an administrative penalty on a person  
11 licensed under this chapter who violates this chapter or a rule or  
12 order adopted under this chapter.

13 Sec. 1604.402. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The  
14 amount of the administrative penalty may be not more than \$5,000 for  
15 each violation. Each day a violation continues or occurs is a  
16 separate violation for the purpose of imposing a penalty.

17 (b) The amount shall be based on:

18 (1) the seriousness of the violation, including the  
19 nature, circumstances, extent, and gravity of the violation;

20 (2) the economic harm caused by the violation;

21 (3) the history of previous violations;

22 (4) the amount necessary to deter a future violation;

23 (5) efforts to correct the violation; and

24 (6) any other matter that justice may require.

25 Sec. 1604.403. REPORT AND NOTICE OF VIOLATION AND PENALTY.

26 (a) If the executive commissioner or the executive commissioner's  
27 designee determines that a violation occurred, the executive

1 commissioner or the designee may issue to the department a report  
2 stating:

- 3 (1) the facts on which the determination is based; and  
4 (2) the executive commissioner's or the designee's  
5 recommendation on the imposition of an administrative penalty,  
6 including a recommendation on the amount of the penalty.

7 (b) Within 14 days after the date the report is issued, the  
8 executive commissioner or the executive commissioner's designee  
9 shall give written notice of the report to the person. The notice  
10 must:

- 11 (1) include a brief summary of the alleged violation;  
12 (2) state the amount of the recommended administrative  
13 penalty; and  
14 (3) inform the person of the person's right to a  
15 hearing on the occurrence of the violation, the amount of the  
16 penalty, or both.

17 Sec. 1604.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a)  
18 Within 10 days after the date the person receives the notice, the  
19 person in writing may:

- 20 (1) accept the determination and recommended  
21 administrative penalty of the executive commissioner or the  
22 executive commissioner's designee; or  
23 (2) make a request for a hearing on the occurrence of  
24 the violation, the amount of the penalty, or both.

25 (b) If the person accepts the determination and recommended  
26 penalty of the executive commissioner or the executive  
27 commissioner's designee, the department by order shall approve the

1 determination and impose the recommended penalty.

2 Sec. 1604.405. HEARING. (a) If the person requests a  
3 hearing or fails to respond in a timely manner to the notice, the  
4 executive commissioner or the executive commissioner's designee  
5 shall set a hearing and give written notice of the hearing to the  
6 person.

7 (b) An administrative law judge of the State Office of  
8 Administrative Hearings shall hold the hearing.

9 (c) The administrative law judge shall make findings of fact  
10 and conclusions of law and promptly issue to the department a  
11 proposal for a decision about the occurrence of the violation and  
12 the amount of a proposed administrative penalty.

13 Sec. 1604.406. DECISION BY DEPARTMENT. (a) Based on the  
14 findings of fact, conclusions of law, and proposal for decision,  
15 the department by order may determine that:

16 (1) a violation occurred and impose an administrative  
17 penalty; or

18 (2) a violation did not occur.

19 (b) The notice of the department's order given to the person  
20 must include a statement of the right of the person to judicial  
21 review of the order.

22 Sec. 1604.407. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

23 (a) Within 30 days after the date the department's order becomes  
24 final, the person shall:

25 (1) pay the administrative penalty; or

26 (2) file a petition for judicial review contesting the  
27 occurrence of the violation, the amount of the penalty, or both.

1           (b) Within the 30-day period prescribed by Subsection (a), a  
2 person who files a petition for judicial review may:

3                   (1) stay enforcement of the penalty by:

4                           (A) paying the penalty to the court for placement  
5 in an escrow account; or

6                           (B) giving the court a supersedeas bond approved  
7 by the court that:

8                                   (i) is for the amount of the penalty; and

9                                   (ii) is effective until all judicial review  
10 of the department's order is final; or

11                   (2) request the court to stay enforcement of the  
12 penalty by:

13                           (A) filing with the court a sworn affidavit of  
14 the person stating that the person is financially unable to pay the  
15 penalty and is financially unable to give the supersedeas bond; and

16                           (B) giving a copy of the affidavit to the  
17 executive commissioner or the executive commissioner's designee by  
18 certified mail.

19           (c) If the executive commissioner or the executive  
20 commissioner's designee receives a copy of an affidavit under  
21 Subsection (b)(2), the executive commissioner or the designee may  
22 file with the court, within five days after the date the copy is  
23 received, a contest to the affidavit.

24           (d) The court shall hold a hearing on the facts alleged in  
25 the affidavit as soon as practicable and shall stay the enforcement  
26 of the penalty on finding that the alleged facts are true. The  
27 person who files an affidavit has the burden of proving that the



1 person is financially unable to pay the penalty and to give a  
2 supersedeas bond.

3 Sec. 1604.408. COLLECTION OF PENALTY. (a) If the person  
4 does not pay the administrative penalty and the enforcement of the  
5 penalty is not stayed, the penalty may be collected.

6 (b) The attorney general may sue to collect the penalty.

7 Sec. 1604.409. DETERMINATION BY COURT. (a) If the court  
8 sustains the determination that a violation occurred, the court may  
9 uphold or reduce the amount of the administrative penalty and order  
10 the person to pay the full or reduced amount of the penalty.

11 (b) If the court does not sustain the finding that a  
12 violation occurred, the court shall order that a penalty is not  
13 owed.

14 Sec. 1604.410. REMITTANCE OF PENALTY AND INTEREST. (a) If  
15 the person paid the administrative penalty and if the amount of the  
16 penalty is reduced or the penalty is not upheld by the court, the  
17 court shall order, when the court's judgment becomes final, that  
18 the appropriate amount plus accrued interest be remitted to the  
19 person.

20 (b) The interest accrues at the rate charged on loans to  
21 depository institutions by the New York Federal Reserve Bank.

22 (c) The interest shall be paid for the period beginning on  
23 the date the penalty is paid and ending on the date the penalty is  
24 remitted.

25 (d) If the person gave a supersedeas bond and the penalty is  
26 not upheld by the court, the court shall order, when the court's  
27 judgment becomes final, the release of the bond.

1       (e) If the person gave a supersedeas bond and the amount of  
2 the penalty is reduced, the court shall order the release of the  
3 bond after the person pays the reduced amount.

4       Sec. 1604.411. ADMINISTRATIVE PROCEDURE. A proceeding  
5 under this subchapter is a contested case under Chapter 2001,  
6 Government Code.

7       SECTION 2. (a) Not later than September 1, 2006, a laser  
8 hair removal facility in operation on the effective date of this Act  
9 must obtain licenses and certificates required by Chapter 1604,  
10 Occupations Code, as added by this Act.

11       (b) Not later than March 1, 2006, the executive commissioner  
12 of the Health and Human Services Commission shall adopt rules as  
13 required by Chapter 1604, Occupations Code, as added by this Act.

14       SECTION 3. This Act takes effect September 1, 2005, except  
15 that Sections 1604.101, 1604.151, and 1604.304, Occupations Code,  
16 and Subchapters H and I, Chapter 1604, Occupations Code, as added by  
17 this Act, take effect March 1, 2006.