

By: Truitt

H.B. No. 174

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 to remove 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
removal.

adopt rules describing the records that a laser hair removal facility must keep, including a record of:

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

(2) the date and time of the procedure;

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

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

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

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

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

[Sections 1604.057-1604.100 reserved for expansion]

SUBCHAPTER C. CERTIFICATE FOR INDIVIDUALS

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

(b) This chapter does not require a health professional licensed under another law to hold a certificate under this chapter

1 to perform laser hair removal if the performance of laser hair
2 removal is within the scope of that professional's practice as
3 determined by the professional's licensing board.

4 Sec. 1604.102. ELIGIBILITY FOR LASER HAIR REMOVAL
5 PROFESSIONAL CERTIFICATE. An applicant for a laser hair removal
6 professional certificate must:

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

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

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

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

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

21 (b) The qualifications for eligibility for an applicant for
22 a senior laser hair removal certificate who is a licensed health
23 professional shall be established by the entity that issues
24 licenses for that profession.

25 Sec. 1604.104. ELIGIBILITY FOR LASER HAIR REMOVAL
26 TECHNICIAN CERTIFICATE. (a) An applicant for a laser hair removal
27 technician certificate must:

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

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

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

8 Sec. 1604.105. ELIGIBILITY FOR LASER HAIR REMOVAL
9 APPRENTICE-IN-TRAINING CERTIFICATE. (a) An applicant for a laser
10 hair removal apprentice-in-training certificate must have at least
11 24 hours of training in safety, laser physics, skin typing, skin
12 reactions, treatment protocols, and posttreatment protocols.

13 (b) A laser hair removal apprentice-in-training must work
14 directly under the supervision of a senior laser hair removal
15 technician.

16 Sec. 1604.106. CONTINUING EDUCATION. The department shall
17 recognize, prepare, or administer continuing education programs
18 for certificate holders. A certificate holder must participate in
19 the programs to the extent required by department rule to renew the
20 person's certificate.

21 [Sections 1604.107-1604.150 reserved for expansion]

22 SUBCHAPTER D. LICENSING OF FACILITIES

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

26 (b) A separate license is required for each laser hair
27 removal facility.

1 Sec. 1604.152. TEMPORARY LICENSE. (a) If a laser hair
2 removal facility's certified laser hair removal professional
3 leaves the facility, the department shall issue to the facility a
4 temporary license to continue operating while the facility's senior
5 laser hair removal technician immediately pursues certification as
6 a certified laser hair removal professional.

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

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

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

19 [Sections 1604.153-1604.200 reserved for expansion]

20 SUBCHAPTER E. LICENSE AND CERTIFICATE RENEWAL

21 Sec. 1604.201. EXPIRATION OF CERTIFICATE OR LICENSE. The
22 executive commissioner by rule may adopt a system under which
23 certificates and licenses expire on various dates during the year.

24 Sec. 1604.202. RENEWAL OF CERTIFICATE OR LICENSE. (a) A
25 certificate or license expires on the second anniversary of the
26 date of issuance.

27 (b) A person must renew the person's certificate or license

on or before the expiration date.

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

[Sections 1604.203-1604.250 reserved for expansion]

SUBCHAPTER F. PRACTICE BY LICENSE OR CERTIFICATE HOLDER

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

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

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

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

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

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

(1) ceases to operate as a business permanently;

(2) changes ownership;

(3) changes location; or

1 (4) changes the name of the business under which the
2 facility operates.

3 [Sections 1604.254-1604.300 reserved for expansion]

4 SUBCHAPTER G. OPERATION OF LASER HAIR REMOVAL FACILITY

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

9 (b) The department may enforce Chapter 431, Health and
10 Safety Code, against a person who adulterates or misbrands a laser
11 or pulsed light device. The department may investigate a person
12 accused of adulterating or misbranding a laser or pulsed light
13 device.

14 Sec. 1604.302. CUSTOMER NOTICE; LIABILITY. (a) A laser
15 hair removal facility shall give each customer a written statement
16 outlining the relevant risks associated with laser hair removal,
17 including a warning that failure to use the eye protection provided
18 to the customer by the laser hair removal facility may result in
19 damage to the eyes.

20 (b) The executive commissioner shall adopt rules relating
21 to the customer notice.

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

25 Sec. 1604.303. WARNING SIGNS. (a) A laser hair removal
26 facility shall post a warning sign as prescribed by the executive
27 commissioner in a conspicuous location readily visible to a person

1 entering the facility. The sign must inform the customer that the
2 customer may call the department at the department's toll-free
3 telephone number.

4 (b) The executive commissioner shall adopt rules specifying
5 the size, content, and design of the sign, with wording listing the
6 potential dangers involved.

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

10 Sec. 1604.304. OPERATIONAL REQUIREMENTS. A laser hair
11 removal facility shall have a certified laser hair removal
12 professional present to supervise the laser hair removal procedures
13 performed at the facility during the facility's operating hours.

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

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

22 Sec. 1604.306. CONSULTING PHYSICIAN. (a) A laser hair
23 removal facility must employ or contract with a consulting
24 physician to:

25 (1) establish proper protocols for the services
26 provided at the facility; and

27 (2) assist the laser hair removal facility in the

1 preparation and periodic review of the facility's protocols.

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

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

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

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

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

13 (b) An operator or other person may disclose a customer
14 record if:

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

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

19 (3) the customer consents in writing to disclosure of
20 the record to another person;

21 (4) the customer is a victim, witness, or defendant in
22 a criminal proceeding and the record is relevant to that
23 proceeding;

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

26 (6) disclosure is otherwise required by law.

27 [Sections 1604.308-1604.350 reserved for expansion]

SUBCHAPTER H. PENALTIES AND ENFORCEMENT PROVISIONS

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

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

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

(3) both injunctive relief and a civil penalty.

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

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

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

(e) The executive commissioner or the attorney general may each recover reasonable expenses incurred in obtaining injunctive

relief or a civil penalty under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the executive commissioner under this section shall be used for the administration and enforcement of this chapter. The expenses recovered by the attorney general shall be used by the attorney general.

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

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

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

(b) The executive commissioner or the executive commissioner's designee may issue an emergency order without notice or a hearing if the executive commissioner or the designee determines notice or a hearing is not practical under the circumstances.

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

[Sections 1604.353-1604.400 reserved for expansion]

SUBCHAPTER I. ADMINISTRATIVE PENALTY

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

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

(b) The amount shall be based on:

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

(2) the economic harm caused by the violation;

(3) the history of previous violations;

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

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

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

(a) If the executive commissioner or the executive commissioner's designee determines that a violation occurred, the executive commissioner or the designee may issue to the department a report stating:

(1) the facts on which the determination is based; and

(2) the executive commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

1 (b) Not later than the 14th day after the date the report is
2 issued, the executive commissioner or the executive commissioner's
3 designee shall give written notice of the report to the person. The
4 notice must:

- 5 (1) include a brief summary of the alleged violation;
6 (2) state the amount of the recommended administrative
7 penalty; and
8 (3) inform the person of the person's right to a
9 hearing on the occurrence of the violation, the amount of the
10 penalty, or both.

11 Sec. 1604.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
12 Not later than the 10th day after the date the person receives the
13 notice, the person in writing may:

- 14 (1) accept the determination and recommended
15 administrative penalty of the executive commissioner or the
16 executive commissioner's designee; or
17 (2) make a request for a hearing on the occurrence of
18 the violation, the amount of the penalty, or both.

19 (b) If the person accepts the determination and recommended
20 penalty of the executive commissioner or the executive
21 commissioner's designee, the department by order shall approve the
22 determination and impose the recommended penalty.

23 Sec. 1604.405. HEARING. (a) If the person requests a
24 hearing or fails to respond in a timely manner to the notice, the
25 executive commissioner or the executive commissioner's designee
26 shall set a hearing and give written notice of the hearing to the
27 person.

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

3 (c) The administrative law judge shall make findings of fact
4 and conclusions of law and promptly issue to the department a
5 proposal for a decision about the occurrence of the violation and
6 the amount of a proposed administrative penalty.

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

10 (1) a violation occurred and impose an administrative
11 penalty; or

12 (2) a violation did not occur.

13 (b) The notice of the department's order given to the person
14 must include a statement of the right of the person to judicial
15 review of the order.

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

17 (a) Not later than the 30th day after the date the department's
18 order becomes final, the person shall:

19 (1) pay the administrative penalty; or

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

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

24 (1) stay enforcement of the penalty by:

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

27 (B) giving the court a supersedeas bond approved

1 by the court that:

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

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

5 (2) request the court to stay enforcement of the
6 penalty by:

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

10 (B) giving a copy of the affidavit to the
11 executive commissioner or the executive commissioner's designee by
12 certified mail.

13 (c) If the executive commissioner or the executive
14 commissioner's designee receives a copy of an affidavit under
15 Subsection (b)(2), the executive commissioner or the designee may
16 file with the court, not later than the fifth day after the date the
17 copy is received, a contest to the affidavit.

18 (d) The court shall hold a hearing on the facts alleged in
19 the affidavit as soon as practicable and shall stay the enforcement
20 of the penalty on finding that the alleged facts are true. The
21 person who files an affidavit has the burden of proving that the
22 person is financially unable to pay the penalty and to give a
23 supersedeas bond.

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

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

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

5 (b) If the court does not sustain the finding that a
6 violation occurred, the court shall order that a penalty is not
7 owed.

8 Sec. 1604.410. REMITTANCE OF PENALTY AND INTEREST. (a) If
9 the person paid the administrative penalty and if the amount of the
10 penalty is reduced or the penalty is not upheld by the court, the
11 court shall order, when the court's judgment becomes final, that
12 the appropriate amount plus accrued interest be remitted to the
13 person.

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

16 (c) The interest shall be paid for the period beginning on
17 the date the penalty is paid and ending on the date the penalty is
18 remitted.

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

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

25 Sec. 1604.411. ADMINISTRATIVE PROCEDURE. A proceeding
26 under this subchapter is a contested case under Chapter 2001,
27 Government Code.

1 SECTION 2. (a) Not later than September 1, 2008, a laser
2 hair removal facility in operation on the effective date of this Act
3 must obtain licenses and certificates required by Chapter 1604,
4 Occupations Code, as added by this Act.

5 (b) Not later than March 1, 2008, the executive commissioner
6 of the Health and Human Services Commission shall adopt rules as
7 required by Chapter 1604, Occupations Code, as added by this Act.

8 SECTION 3. This Act takes effect September 1, 2007, except
9 that Sections 1604.101, 1604.151, and 1604.304, Occupations Code,
10 and Subchapters H and I, Chapter 1604, Occupations Code, as added by
11 this Act, take effect March 1, 2008.