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H.B. No. 449

Substitute the following for H.B. No. 449:

By: Truitt

C.S.H.B. No. 449

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. Chapter 401, Health and Safety Code, is amended
by adding Subchapter M to read as follows:

SUBCHAPTER M. LASER HAIR REMOVAL

Sec. 401.501. DEFINITIONS. In this subchapter:

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

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

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

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

(5) "Laser or pulsed light device" means a device
approved by the department and the United States Food and Drug
Administration for laser hair removal.

(6) "Nonablative hair removal procedure" means a hair
removal procedure using a laser or pulsed light device that does not
remove the epidermis.

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

1 laser hair removal facility.

2 Sec. 401.502. EXAMINATION. The executive commissioner may
3 adopt rules to govern the development and administration of an
4 examination for an applicant under this subchapter.

5 Sec. 401.503. APPLICATION PROCESS. (a) An application for
6 a certificate or license under this subchapter must be made on a
7 form prescribed and provided by the department.

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

11 Sec. 401.504. CERTIFICATE FOR INDIVIDUALS REQUIRED. (a) A
12 person may not perform or attempt to perform laser hair removal
13 unless the person holds the appropriate certificate under this
14 subchapter.

15 (b) A certificate issued under this subchapter only
16 authorizes a person to perform nonablative cosmetic laser hair
17 removal. The certificate does not authorize the person to
18 diagnose, treat, or offer to treat any client for any illness,
19 disease, injury, defect, or deformity of the human body. The
20 certificate holder shall specifically disclose this limitation in
21 writing to all clients and prospective clients.

22 (c) This subchapter does not require a health professional
23 licensed under another law to hold a certificate under this
24 subchapter to perform laser hair removal if the performance of
25 laser hair removal is within the scope of that professional's
26 practice as determined by the professional's licensing board.

27 (d) This subchapter does not apply to a physician or to a

1 physician's employee or delegate acting under Chapter 157,
2 Occupations Code.

3 Sec. 401.505. CERTIFIED LASER HAIR REMOVAL PROFESSIONAL.

4 (a) An applicant for a laser hair removal professional certificate
5 must:

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

9 (2) meet the requirements for a senior laser hair
10 removal technician certificate under Section 401.506; and

11 (3) pass an examination administered by the
12 department.

13 (b) A certified laser hair removal professional acting
14 under the protocol established with a consulting physician may
15 perform laser hair removal without supervision.

16 Sec. 401.506. SENIOR LASER HAIR REMOVAL TECHNICIAN. (a)

17 Except as provided by Subsection (b), an applicant for a senior
18 laser hair removal technician certificate must:

19 (1) meet the requirements for a laser hair removal
20 technician certificate under Section 401.507; and

21 (2) have supervised at least 100 laser hair removal
22 procedures, as audited by a certified laser hair removal
23 professional.

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

1 Sec. 401.507. LASER HAIR REMOVAL TECHNICIAN. An applicant
2 for a laser hair removal technician certificate must:

3 (1) meet the requirements for a laser hair removal
4 apprentice-in-training certificate under Section 401.508; and

5 (2) have performed at least 100 laser hair removal
6 procedures under the direct supervision of a senior laser hair
7 removal technician or a certified laser hair removal professional.

8 Sec. 401.508. LASER HAIR REMOVAL APPRENTICE-IN-TRAINING.

9 (a) An applicant for a laser hair removal apprentice-in-training
10 certificate must have at least 24 hours of training in safety, laser
11 physics, skin typing, skin reactions, treatment protocols, burns,
12 eye protection, emergencies, 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 or a certified laser hair removal professional.

16 (c) A person must be at least 18 years of age to qualify to
17 be a laser hair removal apprentice-in-training.

18 Sec. 401.509. CONTINUING EDUCATION. The department shall
19 recognize, prepare, or administer continuing education programs
20 for certificate holders. A certificate holder must participate in
21 the programs to the extent required by department rule to renew the
22 person's certificate.

23 Sec. 401.510. FACILITY LICENSE REQUIRED. (a) A person may
24 not 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 (c) This section does not apply to a facility owned or
2 operated by a physician for the practice of medicine.

3 Sec. 401.511. EXPIRATION OF CERTIFICATE OR LICENSE. The
4 executive commissioner by rule may adopt a system under which
5 certificates and licenses expire on various dates during the year.

6 Sec. 401.512. RENEWAL OF CERTIFICATE OR LICENSE. (a) A
7 certificate or license expires on the second anniversary of the
8 date of issuance.

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

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

15 Sec. 401.513. DISPLAY OF LICENSE OR CERTIFICATE. A person
16 holding a license or certificate under this subchapter shall
17 display the person's license or certificate in an open public area
18 of the laser hair removal facility.

19 Sec. 401.514. LASER OR PULSED LIGHT DEVICE. (a) A laser or
20 pulsed light device used for laser hair removal in a laser hair
21 removal facility must comply with all applicable federal and state
22 laws and regulations.

23 (b) A person who adulterates or misbrands a laser or pulsed
24 light device violates Chapter 431. The department may investigate
25 a person accused of adulterating or misbranding a laser or pulsed
26 light device.

27 (c) A person may only use a laser or pulsed light device

1 approved for laser hair removal by the federal Food and Drug
2 Administration for that purpose and may only use the device at the
3 settings expected to safely remove hair.

4 Sec. 401.515. CUSTOMER NOTICE; LIABILITY. (a) A laser hair
5 removal facility shall give each customer a written statement
6 outlining the relevant risks associated with laser hair removal,
7 including a warning that failure to use the eye protection provided
8 to the customer by the laser hair removal facility may result in
9 damage to the eyes.

10 (b) The executive commissioner shall adopt rules relating
11 to the customer notice.

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

15 Sec. 401.516. WARNING SIGNS. (a) A laser hair removal
16 facility shall post a warning sign as prescribed by the department
17 in a conspicuous location readily visible to a person entering the
18 facility. The sign must provide a toll-free telephone number for
19 the department and inform the customer that the customer may call
20 the department.

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

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

27 Sec. 401.517. OPERATIONAL REQUIREMENTS. (a) Except as

1 provided by Subsection (b), a laser hair removal facility shall
2 have a certified laser hair removal professional or a licensed
3 health professional described by Section 401.504(c) present to
4 supervise the laser hair removal procedures performed at the
5 facility during the facility's operating hours.

6 (b) A laser hair removal facility may continue to perform
7 laser hair removal procedures after the facility's certified laser
8 hair removal professional leaves the facility if a senior laser
9 hair removal technician is present to perform or supervise each
10 procedure. Not later than the 45th day after the date the
11 facility's certified laser hair removal professional leaves the
12 facility:

13 (1) the facility's senior laser hair removal
14 technician must become certified as a laser hair removal
15 professional under Section 401.505; or

16 (2) the facility must hire a new certified laser hair
17 removal professional.

18 Sec. 401.518. SAFETY. (a) A laser hair removal facility
19 operator is responsible for maintaining the laser hair removal
20 facility's compliance with the requirements of this subchapter and
21 department rules relating to laser and pulsed light devices.

22 (b) A laser hair removal facility operator may not claim,
23 advertise, or distribute promotional materials that claim that
24 laser hair removal is free from risk or provides any medical
25 benefit.

26 (c) A laser hair removal facility operator may not produce
27 false or misleading advertising regarding the services offered at

1 the facility.

2 Sec. 401.519. CONSULTING PHYSICIAN. (a) A laser hair
3 removal facility must have a written contract with a consulting
4 physician to:

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

7 (2) audit the laser hair removal facility's protocols
8 and operations.

9 (b) Under the rules of the department, a laser hair removal
10 facility must document with the department the facility's
11 contractual relationship with the consulting physician.

12 (c) The consulting physician must be available for
13 emergency consultation with the facility as appropriate to the
14 circumstances, including, if the physician considers it necessary,
15 an emergency appointment with the client. If the consulting
16 physician is unavailable for an emergency consultation, another
17 designated physician must be available for the consultation with
18 the facility relating to care for the client.

19 (d) This subchapter does not relieve a consulting physician
20 or another health care professional from complying with applicable
21 regulations prescribed by a state or federal agency.

22 Sec. 401.520. DISCLOSURE OF RECORD PROHIBITED; EXCEPTION.

23 (a) Except as provided by Subsection (b), an operator or other
24 person may not disclose a customer record required to be kept by the
25 department.

26 (b) An operator or other person may disclose a customer
27 record if:

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

3 (2) the department, the Texas Medical Board, a health
4 authority, or an authorized agent requests the record;

5 (3) the customer consents in writing to disclosure of
6 the record to another person;

7 (4) the customer is a victim, witness, or defendant in
8 a criminal proceeding and the record is relevant to that
9 proceeding;

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

12 (6) disclosure is otherwise required by law.

13 Sec. 401.521. PROHIBITED PRACTICE. (a) A person may not
14 operate a laser or pulsed light device with the intent to treat an
15 illness, disease, injury, or physical defect or deformity, unless
16 the person is a physician or is acting under a physician's order.

17 (b) A person who violates Subsection (a) is practicing
18 medicine in violation of Subtitle B, Title 3, Occupations Code, and
19 is subject to the penalties under that subtitle and under Section
20 401.522.

21 Sec. 401.522. ENFORCEMENT; PENALTIES. (a) The department
22 may impose an administrative penalty on a person who violates this
23 subchapter or a rule adopted under this subchapter. The amount of
24 the penalty may not exceed \$5,000 for each violation.

25 (b) The department may suspend or revoke a license or
26 certificate issued under this subchapter in addition to or instead
27 of imposing a penalty under Subsection (a).

1 (c) The executive commissioner shall adopt rules as
2 necessary to implement this section.

3 SECTION 2. Section 483.041(c), Health and Safety Code, is
4 amended to read as follows:

5 (c) Subsection (a) does not apply to the possession of a
6 dangerous drug in the usual course of business or practice or in the
7 performance of official duties by the following persons or an agent
8 or employee of the person:

9 (1) a pharmacy licensed by the board;

10 (2) a practitioner;

11 (3) a person who obtains a dangerous drug for lawful
12 research, teaching, or testing, but not for resale;

13 (4) a hospital that obtains a dangerous drug for
14 lawful administration by a practitioner;

15 (5) an officer or employee of the federal, state, or
16 local government;

17 (6) a manufacturer or wholesaler licensed by the
18 Department of State Health Services under Chapter 431 (Texas Food,
19 Drug, and Cosmetic Act);

20 (7) a carrier or warehouseman;

21 (8) a home and community support services agency
22 licensed under and acting in accordance with Chapter 142;

23 (9) a licensed midwife who obtains oxygen for
24 administration to a mother or newborn or who obtains a dangerous
25 drug for the administration of prophylaxis to a newborn for the
26 prevention of ophthalmia neonatorum in accordance with Section
27 203.353, Occupations Code; [~~or~~]

1 (10) a salvage broker or salvage operator licensed
2 under Chapter 432; or

3 (11) a certified laser hair removal professional under
4 Subchapter M, Chapter 401, who possesses and uses a laser or pulsed
5 light device approved by and registered with the department and in
6 compliance with department rules for the sole purpose of cosmetic
7 nonablative hair removal.

8 SECTION 3. (a) Not later than September 1, 2010, a laser
9 hair removal facility in operation on the effective date of this Act
10 must obtain licenses and certificates required by Subchapter M,
11 Chapter 401, Health and Safety Code, as added by this Act.

12 (b) Not later than March 1, 2010, the executive commissioner
13 of the Health and Human Services Commission shall adopt rules as
14 required by Subchapter M, Chapter 401, Health and Safety Code, as
15 added by this Act.

16 SECTION 4. (a) Except as provided by Subsection (b) of this
17 section, this Act takes effect September 1, 2009.

18 (b) Sections 401.504, 401.510, 401.517, 401.521, and
19 401.522, Health and Safety Code, as added by this Act, and Section
20 483.041(c), Health and Safety Code, as amended by this Act, take
21 effect September 1, 2010.