

By: Jackson

H.B. No. 449

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of laser hair removal facilities.

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 laser hair removal facility.

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

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

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

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

14       (b) This subchapter does not require a health professional  
15 licensed under another law to hold a certificate under this  
16 subchapter to perform laser hair removal if the performance of  
17 laser hair removal is within the scope of that professional's  
18 practice as determined by the professional's licensing board.

19       Sec. 401.505. CERTIFIED LASER HAIR REMOVAL PROFESSIONAL.  
20 (a) An applicant for a laser hair removal professional certificate  
21 must:

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

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

27               (3) pass an examination administered by the

1 department.

2 (b) A certified laser hair removal professional may perform  
3 laser hair removal without supervision.

4 Sec. 401.506. SENIOR LASER HAIR REMOVAL TECHNICIAN. (a)  
5 Except as provided by Subsection (b), an applicant for a senior  
6 laser hair removal technician certificate must:

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

9 (2) have supervised at least 100 laser hair removal  
10 procedures, as audited by a certified laser hair removal  
11 professional.

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

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

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

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

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

24 (a) An applicant for a laser hair removal apprentice-in-training  
25 certificate must have at least 24 hours of training in safety, laser  
26 physics, skin typing, skin reactions, treatment protocols, and  
27 posttreatment protocols.

1       (b) A laser hair removal apprentice-in-training must work  
2 directly under the supervision of a senior laser hair removal  
3 technician or a certified laser hair removal professional.

4       Sec. 401.509. CONTINUING EDUCATION. The department shall  
5 recognize, prepare, or administer continuing education programs  
6 for certificate holders. A certificate holder must participate in  
7 the programs to the extent required by department rule to renew the  
8 person's certificate.

9       Sec. 401.510. FACILITY LICENSE REQUIRED. (a) A person may  
10 not operate a laser hair removal facility unless the person holds a  
11 license issued under this subchapter to operate the facility.

12       (b) A separate license is required for each laser hair  
13 removal facility.

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

17       Sec. 401.512. RENEWAL OF CERTIFICATE OR LICENSE. (a) A  
18 certificate or license expires on the second anniversary of the  
19 date of issuance.

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

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

26       Sec. 401.513. DISPLAY OF LICENSE OR CERTIFICATE. A person  
27 holding a license or certificate under this subchapter shall

1 display the person's license or certificate in an open public area  
2 of the laser hair removal facility.

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

7 (b) A person who adulterates or misbrands a laser or pulsed  
8 light device violates Chapter 431. The department may investigate  
9 a person accused of adulterating or misbranding a laser or pulsed  
10 light device.

11 Sec. 401.515. CUSTOMER NOTICE; LIABILITY. (a) A laser hair  
12 removal facility shall give each customer a written statement  
13 outlining the relevant risks associated with laser hair removal,  
14 including a warning that failure to use the eye protection provided  
15 to the customer by the laser hair removal facility may result in  
16 damage to the eyes.

17 (b) The executive commissioner shall adopt rules relating  
18 to the customer notice.

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

22 Sec. 401.516. WARNING SIGNS. (a) A laser hair removal  
23 facility shall post a warning sign as prescribed by the department  
24 in a conspicuous location readily visible to a person entering the  
25 facility. The sign must inform the customer that the customer may  
26 call the department.

27 (b) The executive commissioner shall adopt rules specifying

1 the size, content, and design of the sign, with wording listing the  
2 potential dangers involved.

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

6 Sec. 401.517. OPERATIONAL REQUIREMENTS. (a) Except as  
7 provided by Subsection (b), a laser hair removal facility shall  
8 have a certified laser hair removal professional or a licensed  
9 health professional described by Section 401.504(b) present to  
10 supervise the laser hair removal procedures performed at the  
11 facility during the facility's operating hours.

12 (b) A laser hair removal facility may continue to perform  
13 laser hair removal procedures after the facility's certified laser  
14 hair removal professional leaves the facility if a senior laser  
15 hair removal technician is present to perform or supervise each  
16 procedure. Not later than the 45th day after the date the  
17 facility's certified laser hair removal professional leaves the  
18 facility:

19 (1) the facility's senior laser hair removal  
20 technician must become certified as a laser hair removal  
21 professional under Section 401.505; or

22 (2) the facility must hire a new certified laser hair  
23 removal professional.

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

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

4       Sec. 401.519. CONSULTING PHYSICIAN. (a) A laser hair  
5 removal facility must employ or contract with a consulting  
6 physician to:

7           (1) establish proper protocols for the services  
8 provided at the facility; and

9           (2) audit the laser hair removal facility's protocols  
10 and operations.

11       (b) A consulting physician must document with the  
12 department the facility's relationship with the consulting  
13 physician.

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

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

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

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

23       (b) An operator or other person may disclose a customer  
24 record if:

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

27           (2) the department or an authorized agent or health

1 authority requests the record;

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

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

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

9 (6) disclosure is otherwise required by law.

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

12 (c) Subsection (a) does not apply to the possession of a  
13 dangerous drug in the usual course of business or practice or in the  
14 performance of official duties by the following persons or an agent  
15 or employee of the person:

16 (1) a pharmacy licensed by the board;

17 (2) a practitioner;

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

20 (4) a hospital that obtains a dangerous drug for  
21 lawful administration by a practitioner;

22 (5) an officer or employee of the federal, state, or  
23 local government;

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

27 (7) a carrier or warehouseman;



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

3 (9) a licensed midwife who obtains oxygen for  
4 administration to a mother or newborn or who obtains a dangerous  
5 drug for the administration of prophylaxis to a newborn for the  
6 prevention of ophthalmia neonatorum in accordance with Section  
7 203.353, Occupations Code; ~~[or]~~

8 (10) a salvage broker or salvage operator licensed  
9 under Chapter 432; or

10 (11) a certified laser hair removal professional under  
11 Subchapter M, Chapter 401, who possesses and uses a laser or pulsed  
12 light device approved by the department for the sole purpose of  
13 nonablative hair removal.

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

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

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

24 (b) Sections 401.504, 401.510, and 401.517, Health and  
25 Safety Code, as added by this Act, and Section 483.041(c), Health  
26 and Safety Code, as amended by this Act, take effect September 1,  
27 2010.