

1-1 By: Jackson, et al. (Senate Sponsor - Deuell) H.B. No. 449
1-2 (In the Senate - Received from the House April 27, 2009;
1-3 May 1, 2009, read first time and referred to Committee on Health
1-4 and Human Services; May 11, 2009, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 8,
1-6 Nays 0; May 11, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 449 By: Deuell

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of laser hair removal facilities;
1-11 providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 401, Health and Safety Code, is amended
1-14 by adding Subchapter M to read as follows:

1-15 SUBCHAPTER M. LASER HAIR REMOVAL

1-16 Sec. 401.501. DEFINITIONS. In this subchapter:

1-17 (1) "Department" means the Department of State Health
1-18 Services.

1-19 (2) "Executive commissioner" means the executive
1-20 commissioner of the Health and Human Services Commission.

1-21 (3) "Laser hair removal" means the use of a laser or
1-22 pulsed light device for nonablative hair removal procedures.

1-23 (4) "Laser hair removal facility" means a business
1-24 location that provides laser hair removal.

1-25 (5) "Laser or pulsed light device" means a device
1-26 approved by the department and the United States Food and Drug
1-27 Administration for laser hair removal.

1-28 (6) "Nonablative hair removal procedure" means a hair
1-29 removal procedure using a laser or pulsed light device that does not
1-30 remove the epidermis.

1-31 (7) "Operator" means the owner of a laser hair removal
1-32 facility, an agent of an owner, or an independent contractor of a
1-33 laser hair removal facility.

1-34 Sec. 401.502. EXAMINATION. The executive commissioner may
1-35 adopt rules to govern the development and administration of an
1-36 examination for an applicant under this subchapter.

1-37 Sec. 401.503. APPLICATION PROCESS. (a) An application for
1-38 a certificate or license under this subchapter must be made on a
1-39 form prescribed and provided by the department.

1-40 (b) The application must require an applicant to provide
1-41 sworn statements relating to the applicant's education and to
1-42 provide other information required by the department.

1-43 Sec. 401.504. CERTIFICATE FOR INDIVIDUALS REQUIRED. (a) A
1-44 person may not perform or attempt to perform laser hair removal
1-45 unless the person holds the appropriate certificate under this
1-46 subchapter.

1-47 (b) A certificate issued under this subchapter only
1-48 authorizes a person to perform nonablative cosmetic laser hair
1-49 removal. The certificate does not authorize the person to
1-50 diagnose, treat, or offer to treat any client for any illness,
1-51 disease, injury, defect, or deformity of the human body. The
1-52 certificate holder shall specifically disclose this limitation in
1-53 writing to all clients and prospective clients.

1-54 (c) This subchapter does not require a health professional
1-55 licensed under another law to hold a certificate under this
1-56 subchapter to perform laser hair removal if the performance of
1-57 laser hair removal is within the scope of that professional's
1-58 practice as determined by the professional's licensing board.

1-59 (d) This subchapter does not apply to a physician or to a
1-60 physician's employee or delegate acting under Chapter 157,
1-61 Occupations Code.

1-62 Sec. 401.505. CERTIFIED LASER HAIR REMOVAL PROFESSIONAL.

1-63 (a) An applicant for a laser hair removal professional certificate

2-1 must:

2-2 (1) be certified by a recognized certifying agency,
 2-3 including the Society for Clinical and Medical Hair Removal or
 2-4 another certification entity approved by the department;

2-5 (2) meet the requirements for a senior laser hair
 2-6 removal technician certificate under Section 401.506; and

2-7 (3) pass an examination administered by the
 2-8 department.

2-9 (b) A certified laser hair removal professional acting
 2-10 under the protocol established with a consulting physician may
 2-11 perform laser hair removal without supervision.

2-12 Sec. 401.506. SENIOR LASER HAIR REMOVAL TECHNICIAN. (a)
 2-13 Except as provided by Subsection (b), an applicant for a senior
 2-14 laser hair removal technician certificate must:

2-15 (1) meet the requirements for a laser hair removal
 2-16 technician certificate under Section 401.507; and

2-17 (2) have supervised at least 100 laser hair removal
 2-18 procedures, as audited by a certified laser hair removal
 2-19 professional.

2-20 (b) The qualifications for eligibility for an applicant for
 2-21 a senior laser hair removal technician certificate who is a
 2-22 licensed health professional shall be established by the entity
 2-23 that issues licenses for that health profession.

2-24 Sec. 401.507. LASER HAIR REMOVAL TECHNICIAN. An applicant
 2-25 for a laser hair removal technician certificate must:

2-26 (1) meet the requirements for a laser hair removal
 2-27 apprentice-in-training certificate under Section 401.508; and

2-28 (2) have performed at least 100 laser hair removal
 2-29 procedures under the direct supervision of a senior laser hair
 2-30 removal technician or a certified laser hair removal professional.

2-31 Sec. 401.508. LASER HAIR REMOVAL APPRENTICE-IN-TRAINING.

2-32 (a) An applicant for a laser hair removal apprentice-in-training
 2-33 certificate must have at least 24 hours of training in safety, laser
 2-34 physics, skin typing, skin reactions, treatment protocols, burns,
 2-35 eye protection, emergencies, and posttreatment protocols.

2-36 (b) A laser hair removal apprentice-in-training must work
 2-37 directly under the supervision of a senior laser hair removal
 2-38 technician or a certified laser hair removal professional.

2-39 (c) A person must be at least 18 years of age to qualify to
 2-40 be a laser hair removal apprentice-in-training.

2-41 Sec. 401.509. CONTINUING EDUCATION. The department shall
 2-42 recognize, prepare, or administer continuing education programs
 2-43 for certificate holders. A certificate holder must participate in
 2-44 the programs to the extent required by department rule to renew the
 2-45 person's certificate.

2-46 Sec. 401.510. FACILITY LICENSE REQUIRED. (a) A person may
 2-47 not operate a laser hair removal facility unless the person holds a
 2-48 license issued under this subchapter to operate the facility.

2-49 (b) A separate license is required for each laser hair
 2-50 removal facility.

2-51 (c) This section does not apply to:

2-52 (1) a facility owned or operated by a physician for the
 2-53 practice of medicine;

2-54 (2) a licensed hospital; or

2-55 (3) a clinic owned or operated by a licensed hospital.

2-56 Sec. 401.511. EXPIRATION OF CERTIFICATE OR LICENSE. The
 2-57 executive commissioner by rule may adopt a system under which
 2-58 certificates and licenses expire on various dates during the year.

2-59 Sec. 401.512. RENEWAL OF CERTIFICATE OR LICENSE. (a) A
 2-60 certificate or license expires on the second anniversary of the
 2-61 date of issuance.

2-62 (b) A person must renew the person's certificate or license
 2-63 on or before the expiration date.

2-64 (c) The department shall issue a renewal certificate or
 2-65 license on receipt of a renewal application in the form prescribed
 2-66 by the department, accompanied by a renewal fee in an amount equal
 2-67 to the original certificate or license fee.

2-68 Sec. 401.513. DISPLAY OF LICENSE OR CERTIFICATE. A person
 2-69 holding a license or certificate under this subchapter shall

3-1 display the person's license or certificate in an open public area
3-2 of the laser hair removal facility.

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

3-7 (b) A person who adulterates or misbrands a laser or pulsed
3-8 light device violates Chapter 431. The department may investigate
3-9 a person accused of adulterating or misbranding a laser or pulsed
3-10 light device.

3-11 (c) A person may only use a laser or pulsed light device
3-12 approved for laser hair removal by the federal Food and Drug
3-13 Administration for that purpose and may only use the device at the
3-14 settings expected to safely remove hair.

3-15 Sec. 401.515. CUSTOMER NOTICE; LIABILITY. (a) A laser hair
3-16 removal facility shall give each customer a written statement
3-17 outlining the relevant risks associated with laser hair removal,
3-18 including a warning that failure to use the eye protection provided
3-19 to the customer by the laser hair removal facility may result in
3-20 damage to the eyes.

3-21 (b) The executive commissioner shall adopt rules relating
3-22 to the customer notice.

3-23 (c) Compliance with the notice requirement does not affect
3-24 the liability of the laser hair removal facility operator or a
3-25 manufacturer of a laser or pulsed light device.

3-26 Sec. 401.516. WARNING SIGNS. (a) A laser hair removal
3-27 facility shall post a warning sign as prescribed by the department
3-28 in a conspicuous location readily visible to a person entering the
3-29 facility. The sign must provide a toll-free telephone number for
3-30 the department and inform the customer that the customer may call
3-31 the department.

3-32 (b) The executive commissioner shall adopt rules specifying
3-33 the size, content, and design of the sign, with wording listing the
3-34 potential dangers involved.

3-35 (c) The department shall include with a license application
3-36 and an application for renewal of a license a description of the
3-37 design standards required for a sign under this section.

3-38 Sec. 401.517. OPERATIONAL REQUIREMENTS. (a) Except as
3-39 provided by Subsection (b), a laser hair removal facility shall
3-40 have a certified laser hair removal professional or a licensed
3-41 health professional described by Section 401.504(c) present to
3-42 supervise the laser hair removal procedures performed at the
3-43 facility during the facility's operating hours.

3-44 (b) A laser hair removal facility may continue to perform
3-45 laser hair removal procedures after the facility's certified laser
3-46 hair removal professional leaves the facility if a senior laser
3-47 hair removal technician is present to perform or supervise each
3-48 procedure. Not later than the 45th day after the date the
3-49 facility's certified laser hair removal professional leaves the
3-50 facility:

3-51 (1) the facility's senior laser hair removal
3-52 technician must become certified as a laser hair removal
3-53 professional under Section 401.505; or

3-54 (2) the facility must hire a new certified laser hair
3-55 removal professional.

3-56 Sec. 401.518. SAFETY. (a) A laser hair removal facility
3-57 operator is responsible for maintaining the laser hair removal
3-58 facility's compliance with the requirements of this subchapter and
3-59 department rules relating to laser and pulsed light devices.

3-60 (b) A laser hair removal facility operator may not claim,
3-61 advertise, or distribute promotional materials that claim that
3-62 laser hair removal is free from risk or provides any medical
3-63 benefit.

3-64 (c) A laser hair removal facility operator may not produce
3-65 false or misleading advertising regarding the services offered at
3-66 the facility.

3-67 Sec. 401.519. CONSULTING PHYSICIAN. (a) A laser hair
3-68 removal facility must have a written contract with a consulting
3-69 physician to:

4-1 (1) establish proper protocols for the services
 4-2 provided at the facility; and

4-3 (2) audit the laser hair removal facility's protocols
 4-4 and operations.

4-5 (b) Under the rules of the department, a laser hair removal
 4-6 facility must document with the department the facility's
 4-7 contractual relationship with the consulting physician.

4-8 (c) The consulting physician must be available for
 4-9 emergency consultation with the facility as appropriate to the
 4-10 circumstances, including, if the physician considers it necessary,
 4-11 an emergency appointment with the client. If the consulting
 4-12 physician is unavailable for an emergency consultation, another
 4-13 designated physician must be available for the consultation with
 4-14 the facility relating to care for the client.

4-15 (d) This subchapter does not relieve a consulting physician
 4-16 or another health care professional from complying with applicable
 4-17 regulations prescribed by a state or federal agency.

4-18 Sec. 401.520. DISCLOSURE OF RECORD PROHIBITED; EXCEPTION.

4-19 (a) Except as provided by Subsection (b), an operator or other
 4-20 person may not disclose a customer record required to be kept by the
 4-21 department.

4-22 (b) An operator or other person may disclose a customer
 4-23 record if:

4-24 (1) the customer or a person authorized to act on
 4-25 behalf of the customer requests the record;

4-26 (2) the department, the Texas Medical Board, a health
 4-27 authority, or an authorized agent requests the record;

4-28 (3) the customer consents in writing to disclosure of
 4-29 the record to another person;

4-30 (4) the customer is a victim, witness, or defendant in
 4-31 a criminal proceeding and the record is relevant to that
 4-32 proceeding;

4-33 (5) the record is requested in a criminal or civil
 4-34 proceeding by court order or subpoena; or

4-35 (6) disclosure is otherwise required by law.

4-36 Sec. 401.521. PROHIBITED PRACTICE. (a) A person may not
 4-37 operate a laser or pulsed light device with the intent to treat an
 4-38 illness, disease, injury, or physical defect or deformity unless
 4-39 the person is:

4-40 (1) a physician;

4-41 (2) acting under a physician's order; or

4-42 (3) authorized under other law to treat the illness,
 4-43 disease, injury, or physical defect or deformity in that manner.

4-44 (b) A person who violates Subsection (a) is practicing
 4-45 medicine in violation of Subtitle B, Title 3, Occupations Code, and
 4-46 is subject to the penalties under that subtitle and under Section
 4-47 401.522.

4-48 Sec. 401.522. ENFORCEMENT; PENALTIES. (a) The department
 4-49 may impose an administrative penalty on a person who violates this
 4-50 subchapter or a rule adopted under this subchapter. The amount of
 4-51 the penalty may not exceed \$5,000 for each violation.

4-52 (b) The department may suspend or revoke a license or
 4-53 certificate issued under this subchapter in addition to or instead
 4-54 of imposing a penalty under Subsection (a).

4-55 (c) The executive commissioner shall adopt rules as
 4-56 necessary to implement this section.

4-57 SECTION 2. Section 483.041(c), Health and Safety Code, is
 4-58 amended to read as follows:

4-59 (c) Subsection (a) does not apply to the possession of a
 4-60 dangerous drug in the usual course of business or practice or in the
 4-61 performance of official duties by the following persons or an agent
 4-62 or employee of the person:

4-63 (1) a pharmacy licensed by the board;

4-64 (2) a practitioner;

4-65 (3) a person who obtains a dangerous drug for lawful
 4-66 research, teaching, or testing, but not for resale;

4-67 (4) a hospital that obtains a dangerous drug for
 4-68 lawful administration by a practitioner;

4-69 (5) an officer or employee of the federal, state, or

5-1 local government;

5-2 (6) a manufacturer or wholesaler licensed by the

5-3 Department of State Health Services under Chapter 431 (Texas Food,

5-4 Drug, and Cosmetic Act);

5-5 (7) a carrier or warehouseman;

5-6 (8) a home and community support services agency

5-7 licensed under and acting in accordance with Chapter 142;

5-8 (9) a licensed midwife who obtains oxygen for

5-9 administration to a mother or newborn or who obtains a dangerous

5-10 drug for the administration of prophylaxis to a newborn for the

5-11 prevention of ophthalmia neonatorum in accordance with Section

5-12 203.353, Occupations Code; ~~[or]~~

5-13 (10) a salvage broker or salvage operator licensed

5-14 under Chapter 432; or

5-15 (11) a certified laser hair removal professional under

5-16 Subchapter M, Chapter 401, who possesses and uses a laser or pulsed

5-17 light device approved by and registered with the department and in

5-18 compliance with department rules for the sole purpose of cosmetic

5-19 nonablative hair removal.

5-20 SECTION 3. (a) Not later than September 1, 2010, a laser

5-21 hair removal facility in operation on the effective date of this Act

5-22 must obtain licenses and certificates required by Subchapter M,

5-23 Chapter 401, Health and Safety Code, as added by this Act.

5-24 (b) Not later than March 1, 2010, the executive commissioner

5-25 of the Health and Human Services Commission shall adopt rules as

5-26 required by Subchapter M, Chapter 401, Health and Safety Code, as

5-27 added by this Act.

5-28 SECTION 4. (a) Except as provided by Subsection (b) of this

5-29 section, this Act takes effect September 1, 2009.

5-30 (b) Sections 401.504, 401.510, 401.517, 401.521, and

5-31 401.522, Health and Safety Code, as added by this Act, and Section

5-32 483.041(c), Health and Safety Code, as amended by this Act, take

5-33 effect September 1, 2010.

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