

HB 449 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

A bill to be entitled An Act relating to the regulation of laser hair removal facilities; providing penalties

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.

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

Sec. 401.503. APPLICATION PROCESS. (a) An application for a certificate or license under this subchapter must be made on a form prescribed 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.

Sec. 401.504. CERTIFICATE FOR INDIVIDUALS 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) A certificate issued under this subchapter only authorizes a person to perform nonablative cosmetic laser hair removal. The certificate does not authorize the person to diagnose, treat, or offer to treat any client for any illness, disease, injury, defect, or deformity of the human body. The certificate holder shall specifically disclose this limitation in writing to all clients and prospective clients.

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

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

Sec. 401.505. CERTIFIED LASER HAIR REMOVAL PROFESSIONAL.

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

- (1) be certified by a recognized certifying agency, including the Society for Clinical and Medical Hair Removal or another certification entity approved by the department;
- (2) meet the requirements for a senior laser hair removal technician certificate under Section 401.506; and
- (3) pass an examination administered by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) This section does not apply to:

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

(2) a licensed hospital; or

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

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

Sec. 401.512. RENEWAL OF CERTIFICATE OR LICENSE.

(a) A certificate or license expires on the second anniversary of the date of issuance.

(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 department, accompanied by a renewal fee in an amount equal to the original certificate or license fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The consulting physician must be available for emergency consultation with the facility as appropriate to the circumstances, including, if the physician considers it necessary, an emergency appointment with the client. If the consulting physician is unavailable for an

emergency consultation, another designated physician must be available for the consultation with the facility relating to care for the client.

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

Sec. 401.520. DISCLOSURE OF RECORD PROHIBITED; EXCEPTION.

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

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

- (1) the customer or a person authorized to act on behalf of the customer requests the record;
- (2) the department, the Texas Medical Board, a health authority, or an authorized agent requests the record;
- (3) the customer consents in writing to disclosure of the record to another person;
- (4) the customer is a victim, witness, or defendant in a criminal proceeding and the record is relevant to that proceeding;
- (5) the record is requested in a criminal or civil proceeding by court order or subpoena; or
- (6) disclosure is otherwise required by law.

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

- (1) a physician;
- (2) acting under a physician's order; or
- (3) authorized under other law to treat the illness, disease, injury, or physical defect or deformity in that manner.

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

Sec. 401.522. ENFORCEMENT; PENALTIES.

(a) The department may impose an administrative penalty on a person who violates this subchapter or a rule adopted under this subchapter. The amount of the penalty may not exceed \$5,000 for each violation.

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

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

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

(c) Subsection

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

- (1) a pharmacy licensed by the board;
- (2) a practitioner;
- (3) a person who obtains a dangerous drug for lawful research, teaching, or testing, but not for resale;
- (4) a hospital that obtains a dangerous drug for lawful administration by a practitioner;
- (5) an officer or employee of the federal, state, or local government;
- (6) a manufacturer or wholesaler licensed by the Department of State Health Services under Chapter 431 (Texas Food, Drug, and Cosmetic Act);
- (7) a carrier or warehouseman; (8) a home and community support services agency licensed under and acting in accordance with Chapter 142;
- (9) a licensed midwife who obtains oxygen for administration to a mother or newborn or who obtains a dangerous drug for the administration of prophylaxis to a newborn for the prevention of ophthalmia neonatorum in accordance with Section 203.353, Occupations Code; [or]
- (10) a salvage broker or salvage operator licensed under Chapter 432; or

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

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

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

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

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