

By: Delisi

H.B. No. 1842

Substitute the following for H.B. No. 1842:

By: Gonzales

C.S.H.B. No. 1842

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the licensing and regulation of massage therapists;  
3 providing a penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Sections 455.001(1), (2), (3), (6), (7), and  
6 (9), Occupations Code, are amended to read as follows:

7 (1) [~~"Board" means the Texas Board of Health.~~

8 [~~(2)~~] "Department" means the [~~Texas~~] Department of  
9 State Health Services.

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

12 (3) "Instructor" means a person who instructs a  
13 student in any section of the course of instruction required for  
14 issuance of [~~registration as~~] a massage therapist license.

15 (6) "Massage school" means an entity that:

16 (A) teaches at a minimum the course of  
17 instruction required for issuance of [~~registration as~~] a massage  
18 therapist license; and

19 (B) has at least two instructors.

20 (7) "Massage therapist" means a person who practices  
21 or administers massage therapy to a client for compensation. The  
22 term includes a licensed [~~registered~~] massage therapist,  
23 therapeutic massage practitioner, massage technician, masseur,  
24 masseuse, myotherapist, body massager, body rubber, or any

1 derivation of those titles.

2 (9) "Massage therapy instructor" means a licensed  
3 [~~registered~~] massage therapist who provides to one or more students  
4 instruction approved by the department in massage therapy.

5 SECTION 2. Sections 455.003 and 455.004, Occupations Code,  
6 are amended to read as follows:

7 Sec. 455.003. PRACTICES INCLUDED IN MASSAGE THERAPY.  
8 Massage therapy includes the application of hydrotherapy or  
9 temperature for mechanical, thermal, or chemical effect and may  
10 include the use of oil, salt glows, heat lamps, hot and cold packs,  
11 and tub, shower, or cabinet baths.

12 Sec. 455.004. APPLICABILITY OF CHAPTER. This chapter does  
13 not apply to:

14 (1) a person licensed in this state as a physician,  
15 chiropractor, physical therapist, nurse, cosmetologist, or  
16 athletic trainer or as a member of a similar profession subject to  
17 state licensing while the person is practicing within the scope of  
18 the license;

19 (2) a school approved by the Texas Education Agency or  
20 otherwise approved by the state; or

21 (3) an instructor otherwise approved by the state to  
22 teach in an area of study included in the required course of  
23 instruction for issuance of [~~registration as~~] a massage therapist  
24 license.

25 SECTION 3. Section 455.005(b), Occupations Code, is amended  
26 to read as follows:

27 (b) This chapter does not affect a local regulation that:

1 (1) relates to zoning requirements or other similar  
2 regulations for massage establishments;

3 (2) authorizes or requires an investigation into the  
4 background of an owner or operator of, or an investor in, a massage  
5 establishment; or

6 (3) does not relate directly to the practice of  
7 massage therapy as performed by a licensed [~~registered~~] massage  
8 therapist, including a regulation related to a license holder  
9 listed in Section 455.004, while the therapist:

10 (A) performs under the applicable licensing law;  
11 and

12 (B) works with a licensed [~~registered~~] massage  
13 therapist.

14 SECTION 4. The heading to Subchapter B, Chapter 455,  
15 Occupations Code, is amended to read as follows:

16 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND  
17 DEPARTMENT [~~BOARD~~]

18 SECTION 5. Section 455.051, Occupations Code, is amended to  
19 read as follows:

20 Sec. 455.051. GENERAL RULEMAKING AUTHORITY. The executive  
21 commissioner [~~board~~] shall adopt rules consistent with this chapter  
22 as necessary for the performance of the department's [~~its~~] duties  
23 under this chapter.

24 SECTION 6. Sections 455.052-455.057, Occupations Code, are  
25 amended to read as follows:

26 Sec. 455.052. RULES REGARDING MASSAGE ESTABLISHMENTS.  
27 Rules adopted under this chapter relating to a massage

1 establishment must contain minimum standards for:

2 (1) the issuance, denial, renewal, suspension,  
3 revocation, or probation of a license [~~certificate of registration~~]  
4 under this chapter;

5 (2) the qualifications of professional personnel;

6 (3) the supervision of professional personnel;

7 (4) the equipment essential to the health and safety  
8 of massage establishment personnel and the public;

9 (5) the sanitary and hygienic conditions of a massage  
10 establishment;

11 (6) the provision of massage therapy by a massage  
12 establishment;

13 (7) the records kept by a massage establishment;

14 (8) the organizational structure of a massage  
15 establishment, including the lines of authority and the delegation  
16 of responsibility;

17 (9) fire prevention and safety in a massage  
18 establishment;

19 (10) the inspection of a massage establishment; and

20 (11) any other aspect of the operation of a massage  
21 establishment necessary to protect massage establishment personnel  
22 or the public.

23 Sec. 455.053. RULES REGARDING MASSAGE SCHOOLS. Rules  
24 adopted under this chapter relating to a massage school must  
25 contain minimum standards for:

26 (1) the issuance, denial, renewal, suspension,  
27 revocation, or probation of a license [~~certificate of registration~~]

1 under this chapter;

2 (2) the qualifications of professional personnel;

3 (3) the supervision of professional personnel;

4 (4) the equipment essential to the education, health,  
5 and safety of students, massage school personnel, and the public;

6 (5) the sanitary and hygienic conditions of a massage  
7 school;

8 (6) the provision of massage therapy by a massage  
9 school or student;

10 (7) the maximum number of hours a student may  
11 accumulate in a massage school's internship program before the  
12 student is required to be licensed [~~register~~] under this chapter;

13 (8) the educational and clinical records kept by a  
14 massage school;

15 (9) the organizational structure of a massage school,  
16 including the lines of authority and the delegation of  
17 responsibility;

18 (10) fire prevention and safety in a massage school;

19 (11) the massage school's curriculum and educational  
20 material;

21 (12) massage school inspections; and

22 (13) any other aspect of the operation of a massage  
23 school that the department [~~board~~] considers necessary to protect  
24 students, massage school personnel, or the public.

25 Sec. 455.054. RULES REGARDING MASSAGE THERAPISTS. Rules  
26 adopted under this chapter relating to a massage therapist must  
27 contain minimum standards for:

1           (1) the issuance, denial, renewal, suspension,  
2 revocation, or probation of a license [~~certificate of registration~~]  
3 under this chapter;

4           (2) the qualifications of a massage therapist;

5           (3) the sanitary and hygienic conditions of the  
6 physical environment in which a massage therapist practices massage  
7 therapy;

8           (4) the records kept by a massage therapist;

9           (5) the inspection of the records, equipment, and  
10 sanitary and hygienic conditions of the physical environment used  
11 by a massage therapist in practicing massage therapy; and

12           (6) any other aspect of the practice of a massage  
13 therapist necessary to protect the public.

14           Sec. 455.055. RULES REGARDING MASSAGE THERAPY  
15 INSTRUCTORS. Rules adopted under this chapter relating to a  
16 massage therapy instructor must contain minimum standards for:

17           (1) the issuance, denial, renewal, suspension,  
18 revocation, or probation of a license [~~certificate of registration~~]  
19 under this chapter;

20           (2) the qualifications of a massage therapy  
21 instructor;

22           (3) the supervision of a student by a massage therapy  
23 instructor;

24           (4) the maximum number of hours a student may  
25 accumulate in an internship program under the supervision of a  
26 massage therapy instructor before the student is required to be  
27 licensed [~~register~~] under this chapter;

1 (5) the equipment essential to the education, health,  
2 and safety of students and the public;

3 (6) the sanitary and hygienic conditions of the  
4 physical environment in which a massage therapy instructor teaches;

5 (7) the provision of massage therapy by a student or a  
6 massage therapy instructor;

7 (8) the educational and clinical records kept by a  
8 massage therapy instructor;

9 (9) the curriculum taught and educational material  
10 used by a massage therapy instructor;

11 (10) the inspection of the records, equipment, and  
12 physical environment of a massage therapy instructor; and

13 (11) any other aspect of a massage therapy  
14 instructor's instruction or operation of any portion of the course  
15 of instruction required for [~~registration as~~ a massage therapist  
16 license].

17 Sec. 455.056. RULES REGARDING ADVERTISING OR COMPETITIVE  
18 BIDDING [~~BY REGISTRANT~~]. (a) The executive commissioner [~~board~~]  
19 may not adopt rules restricting advertising or competitive bidding  
20 by a person licensed [~~registered~~] under this chapter except to  
21 prohibit false, misleading, or deceptive practices.

22 (b) In [~~its~~] rules to prohibit false, misleading, or  
23 deceptive practices, the executive commissioner [~~board~~] may not  
24 include a rule that:

25 (1) restricts the use of any medium for advertising;

26 (2) restricts the use of a licensed [~~registered~~]  
27 person's personal appearance or voice in an advertisement;

1 (3) relates to the size or duration of an  
2 advertisement by the licensed [~~registered~~] person; or

3 (4) restricts the licensed [~~registered~~] person's  
4 advertisement under a trade name.

5 Sec. 455.057. CONTINUING EDUCATION. The department  
6 [~~board~~] shall recognize, prepare, or administer continuing  
7 education programs for persons licensed [~~registered~~] under this  
8 chapter. A licensed [~~registered~~] person must participate in the  
9 programs to the extent required by the department [~~board~~] to keep  
10 the person's license [~~certificate of registration~~].

11 SECTION 7. Section 455.103(b), Occupations Code, is amended  
12 to read as follows:

13 (b) A memorandum must:

14 (1) be adopted by rule; and

15 (2) limit the total amount of the fees charged by the  
16 department and the Texas Education Agency for registering a massage  
17 school to an amount equal to the amount of the fees the department  
18 would charge for licensing [~~registering~~] the massage school in the  
19 absence of the memorandum.

20 SECTION 8. Section 455.104, Occupations Code, is amended to  
21 read as follows:

22 Sec. 455.104. INSPECTIONS; INVESTIGATIONS. The department  
23 or its authorized representative may enter the premises of an  
24 applicant for a license [~~certificate of registration~~] or a license  
25 [~~certificate~~] holder at:

26 (1) reasonable times to conduct an inspection  
27 incidental to the issuance of a license [~~certificate of~~



1 ~~registration~~]; and

2 (2) other times that the department considers  
3 necessary to ensure compliance with this chapter and the rules  
4 adopted under this chapter.

5 SECTION 9. The heading to Subchapter D, Chapter 455,  
6 Occupations Code, is amended to read as follows:

7 SUBCHAPTER D. LICENSING [~~REGISTRATION~~]

8 SECTION 10. Sections 455.151 and 455.152, Occupations Code,  
9 are amended to read as follows:

10 Sec. 455.151. LICENSE [~~REGISTRATION~~] REQUIRED. (a) Unless  
11 the person is exempt from the licensing [~~registration~~] requirement,  
12 a person may not act as a massage therapist, massage school, massage  
13 therapy instructor, or massage establishment unless the person  
14 holds an appropriate license [~~certificate of registration~~] issued  
15 under this chapter.

16 (b) Unless the person is exempt from the licensing  
17 [~~registration~~] requirement, a person may not represent that the  
18 person is a massage therapist unless the person holds a license  
19 [~~certificate of registration~~] under this chapter.

20 Sec. 455.152. INELIGIBILITY FOR LICENSE [~~REGISTRATION~~].

21 (a) A person is not eligible for a license [~~registration~~] as a  
22 massage establishment, massage school, massage therapist, or  
23 massage therapy instructor if the person is an individual and has  
24 been convicted of, entered a plea of nolo contendere or guilty to,  
25 or received deferred adjudication for an offense involving  
26 prostitution or another sexual offense.

27 (b) A person convicted of a violation of this chapter is

1 ineligible for a license [~~registration~~] as a massage establishment,  
2 massage school, massage therapist, or massage therapy instructor  
3 until the fifth anniversary of the date of the conviction.

4 SECTION 11. Sections 455.153-455.156, Occupations Code,  
5 are amended to read as follows:

6 Sec. 455.153. APPLICATION FOR LICENSE [~~REGISTRATION~~]. An  
7 applicant for a license [~~registration~~] under this chapter must:

8 (1) submit an application form provided by the  
9 department; [~~and~~]

10 (2) include with the application the application fee  
11 set by the department; and

12 (3) for a massage therapist applicant, submit proof  
13 the applicant has successfully completed the requirements adopted  
14 under Section 455.156.

15 Sec. 455.154. GENERAL PROVISIONS RELATING TO LICENSES  
16 [~~REGISTRATION~~]. (a) The holder of a license [~~certificate of~~  
17 ~~registration~~] may exercise all professional rights, honors, and  
18 privileges relating to the practice of massage therapy.

19 (b) A license [~~certificate of registration~~] is the property  
20 of the department and must be surrendered on demand.

21 Sec. 455.155. LICENSE [~~REGISTRATION~~] EXEMPTION [~~FOR~~  
22 ~~MASSAGE ESTABLISHMENT~~]. (a) Section 455.151 does not apply to an  
23 establishment that:

24 (1) holds a license, permit, certificate, or other  
25 credential issued by this state under another law; and

26 (2) offers or performs massage therapy under the scope  
27 of that credential.

1 (b) A licensed [~~registered~~] massage therapist who practices  
2 as a solo practitioner is not required to hold a license [~~register~~]  
3 as a massage establishment.

4 (c) The executive commissioner [~~board~~] by rule shall  
5 provide for a fair and reasonable procedure to grant exemptions  
6 from the licensing [~~registration~~] requirements of this chapter  
7 [~~section~~]. The rules must provide that a person is exempt if the  
8 person shows that the advertising or provision of massage therapy  
9 services is incidental to the person's primary enterprise.

10 (d) A sexually oriented business may not:

11 (1) hold a license [~~register~~] under this chapter; or

12 (2) operate as a massage establishment under this  
13 chapter.

14 Sec. 455.156. LICENSE [~~REGISTRATION~~] REQUIREMENTS FOR  
15 MASSAGE THERAPIST. (a) The department shall issue a license  
16 [~~certificate of registration~~] to each qualified applicant who  
17 applies for [~~registration as~~] a massage [~~message~~] therapist  
18 license.

19 (b) An applicant for a license [~~registration~~] under this  
20 section must be an individual and:

21 (1) present evidence satisfactory to the department  
22 [~~board~~] that the person:

23 (A) has satisfactorily completed massage therapy  
24 studies in a [~~300-hour,~~] supervised course of instruction of at  
25 least 500 hours provided by a massage therapy instructor, a  
26 licensed [~~registered~~] massage school, a state-approved educational  
27 institution, or any combination of instructors or schools, in

1 which:

2 (i) at least 200 [125] hours are taught by a  
3 massage therapy instructor and are dedicated to the study of  
4 [Swedish] massage therapy techniques, theory, and practice and  
5 manipulation of soft tissue by hand or through the use of a  
6 mechanical or electrical apparatus, with at least 75 hours  
7 dedicated to Swedish massage techniques, and may include the study  
8 of Eastern techniques and theory [and taught by a massage therapy  
9 instructor];

10 (ii) at least 165 [50] hours are dedicated  
11 to the study of anatomy, physiology, and pathology and may include  
12 Eastern physiology;

13 (iii) at least [25 hours are dedicated to  
14 the study of physiology;

15 [~~(iv)~~] 15 hours are dedicated to the study  
16 of hydrotherapy;

17 (iv) at least 20 [(v) 15] hours are  
18 dedicated to the study of business practices;

19 (v) at least 10 hours are dedicated to [and]  
20 professional ethics [standards];

21 (vi) at least 20 hours are dedicated to the  
22 study of health and hygiene; [and]

23 (vii) at least 40 [50] hours are spent in  
24 hands-on experience in an internship program, provided that the  
25 hours spent in an internship program may not exceed 15 percent of  
26 the total program hours of instruction; and

27 (viii) at least 30 hours are dedicated to

1 topics related to the massage profession; or

2 (B) has practiced massage therapy as a profession  
3 for not less than five years in another state or country that the  
4 department determines does not maintain standards and requirements  
5 of practice and licensing or registration that substantially  
6 conform to the standards and requirements of this state; ~~and~~

7 (2) pass the state-approved ~~[practical and written~~  
8 ~~portions of the state]~~ examination; and

9 (3) be at least 18 years of age.

10 SECTION 12. Sections 455.1565(a) and (d), Occupations Code,  
11 are amended to read as follows:

12 (a) Not later than the 30th day after the date a person takes  
13 a licensing ~~[registration]~~ examination under this chapter, the  
14 department shall notify the person of the results of the  
15 examination.

16 (d) If requested in writing by a person who fails a  
17 licensing ~~[registration]~~ examination administered under this  
18 chapter, the department shall furnish the person with an analysis  
19 of the person's performance on the examination.

20 SECTION 13. Sections 455.1571-455.158, Occupations Code,  
21 are amended to read as follows:

22 Sec. 455.1571. APPLICANT LICENSED ~~[REGISTERED]~~ IN ANOTHER  
23 JURISDICTION. (a) The department ~~[board]~~ may waive any  
24 prerequisite to obtaining a license ~~[certificate of registration]~~  
25 for an applicant for licensing ~~[registration]~~ as a massage  
26 therapist or massage therapy instructor after reviewing the  
27 applicant's credentials and determining that the applicant holds a

1 license or certificate of registration issued by another  
2 jurisdiction that has licensing or registration requirements  
3 substantially equivalent to those of this state.

4 (b) The department [~~board~~] may waive any prerequisite to  
5 obtaining a license [~~certificate of registration~~] for an applicant  
6 for licensing [~~registration~~] as a massage therapist or massage  
7 therapy instructor who holds a license or certificate of  
8 registration issued by another jurisdiction with which this state  
9 has a reciprocity agreement. The department [~~board~~] may make an  
10 agreement, subject to the approval of the governor, with another  
11 state to allow for licensing [~~registration~~] by reciprocity.

12 Sec. 455.1572. PROVISIONAL LICENSE [~~REGISTRATION~~]. (a)  
13 The department [~~board~~] may issue a provisional license [~~certificate~~  
14 ~~of registration~~] to an applicant for licensing [~~registration~~] as a  
15 massage therapist or massage therapy instructor currently licensed  
16 or registered in another jurisdiction who seeks a license  
17 [~~certificate of registration~~] in this state and who:

18 (1) has been licensed or registered in good standing  
19 as a massage therapist or massage therapy instructor, as  
20 applicable, for at least two years in another jurisdiction,  
21 including a foreign country, that has licensing or registration  
22 requirements substantially equivalent to the requirements of this  
23 chapter;

24 (2) has passed a national or other examination  
25 recognized by the department [~~board~~] relating to the practice of  
26 massage therapy; and

27 (3) is sponsored by a person licensed [~~registered~~] by

1 the department [~~board~~] under this chapter with whom the provisional  
2 license holder [~~registrant~~] will practice during the time the  
3 person holds a provisional license [~~certificate of registration~~].

4 (b) The department [~~board~~] may waive the requirement of  
5 Subsection (a)(3) for an applicant if the department [~~board~~]  
6 determines that compliance with that subsection would be a hardship  
7 to the applicant.

8 (c) A provisional license [~~certificate of registration~~] is  
9 valid until the date the department [~~board~~] approves or denies the  
10 provisional license [~~certificate~~] holder's application for  
11 licensing [~~registration~~]. The department [~~board~~] shall issue a  
12 license [~~certificate of registration~~] under this chapter to the  
13 provisionally licensed [~~registered~~] person if the person:

14 (1) is eligible for a license [~~certificate of~~  
15 ~~registration~~] under Section 455.1571; or

16 (2) passes the part of the examination under Section  
17 455.101 that relates to the applicant's knowledge and understanding  
18 of the laws and rules relating to the practice of massage therapy in  
19 this state and:

20 (A) the department [~~board~~] verifies that the  
21 person meets the academic and experience requirements for licensing  
22 [~~registration~~] under this chapter; and

23 (B) the person satisfies any other licensing  
24 [~~registration~~] requirements under this chapter.

25 (d) The department [~~board~~] must approve or deny a  
26 provisionally licensed [~~registered~~] person's application for a  
27 license [~~certificate of registration~~] not later than the 180th day

1 after the date the provisional license [~~certificate of~~  
2 ~~registration~~] is issued. The department [~~board~~] may extend the  
3 180-day period if the results of an examination have not been  
4 received by the department [~~board~~] before the end of that period.

5 (e) The department [~~board~~] may establish a fee for a  
6 provisional license [~~certificate of registration~~] in an amount  
7 reasonable and necessary to cover the cost of issuing the license  
8 [~~certificate of registration~~].

9 Sec. 455.158. STUDENT EXEMPTION FROM LICENSING  
10 [~~REGISTRATION~~] REQUIREMENTS. A student who provides massage  
11 therapy as part of an internship program or without compensation is  
12 exempt from licensing [~~registration~~] under this chapter if the  
13 student is enrolled in a state-approved course of instruction that  
14 consists of at least 500 [~~300~~] hours.

15 SECTION 14. Sections 455.159(a) and (b), Occupations Code,  
16 are amended to read as follows:

17 (a) An internship program must:

18 (1) meet the qualifications established by the  
19 department [~~board~~];

20 (2) provide a student with a minimum of 40 hours of  
21 hands-on massage therapy experience; and

22 (3) be conducted on the school grounds or in a clinic  
23 or classroom setting provided by the massage school or massage  
24 therapy instructor.

25 (b) A student must complete at least [~~the first~~] 250 hours  
26 of required training at a massage school or with a massage therapy  
27 instructor before the student is eligible to enter an internship



1 program.

2 SECTION 15. Sections 455.160 and 455.161, Occupations Code,  
3 are amended to read as follows:

4 Sec. 455.160. LICENSE [~~REGISTRATION~~] RENEWAL. (a) A  
5 person licensed [~~registered~~] under this chapter must periodically  
6 renew the person's license [~~certificate of registration~~]. The  
7 license [~~certificate~~] expires unless the license [~~certificate~~]  
8 holder submits an application for renewal accompanied by the  
9 renewal fee prescribed by the department or by the late fee  
10 prescribed by this section.

11 (b) The department shall adopt a system under which licenses  
12 [~~certificates of registration~~] expire on various dates during the  
13 year. Fees must be prorated so that a licensed [~~registered~~] person  
14 pays only for that part of the renewal period for which the license  
15 [~~registration~~] is issued until the expiration date of the license  
16 [~~registration~~].

17 (c) A person who is otherwise eligible to renew a license  
18 [~~certificate of registration~~] may renew an unexpired license  
19 [~~registration~~] by paying the required renewal fee to the department  
20 before the expiration date of the license [~~registration~~]. A person  
21 whose license [~~registration~~] has expired may not engage in  
22 activities that require a license [~~registration~~] until the license  
23 [~~registration~~] has been renewed.

24 (d) A person whose license [~~registration~~] has been expired  
25 for 90 days or less may renew the license [~~registration~~] by paying  
26 to the department a renewal fee that is equal to 1-1/2 times the  
27 normally required renewal fee.

1 (e) A person whose license [~~registration~~] has been expired  
2 for more than 90 days but less than one year may renew the license  
3 [~~registration~~] by paying to the department a renewal fee that is  
4 equal to two times the normally required renewal fee.

5 (f) A person whose license [~~registration~~] has been expired  
6 for one year or more may not renew the license [~~registration~~]. The  
7 person may obtain a license [~~register~~] by complying with the  
8 requirements and procedures, including the examination  
9 requirements, for obtaining a new license [~~originally~~  
10 ~~registering~~].

11 (g) Not later than the 30th day before the date a person's  
12 license [~~registration~~] is scheduled to expire, the department shall  
13 send written notice of the impending expiration to the person at the  
14 person's last known address according to the records of the  
15 department.

16 Sec. 455.161. RENEWAL OF EXPIRED LICENSE [~~REGISTRATION~~] OF  
17 OUT-OF-STATE PRACTITIONER. (a) A person who was registered or  
18 licensed in this state, moved to another state, and is currently  
19 registered or licensed and has been in practice in the other state  
20 for the two years preceding the date of application may obtain a  
21 license [~~register~~] without reexamination.

22 (b) The person must pay to the department a fee that is equal  
23 to two times the normally required license renewal fee [~~for~~  
24 ~~registration~~].

25 SECTION 16. The heading to Subchapter E, Chapter 455,  
26 Occupations Code, is amended to read as follows:

1 SUBCHAPTER E. PRACTICE BY LICENSE [~~CERTIFICATE~~] HOLDERS

2 SECTION 17. Sections 455.201 and 455.202, Occupations Code,  
3 are amended to read as follows:

4 Sec. 455.201. REFERRAL FROM PHYSICIAN. A person issued a  
5 license [~~certificate of registration~~] may receive referrals from a  
6 physician to administer massage therapy.

7 Sec. 455.202. PRACTICE BY MASSAGE ESTABLISHMENT. A massage  
8 establishment may employ only licensed [~~registered~~] massage  
9 therapists to perform massage therapy.

10 SECTION 18. Sections 455.203(a), (b), and (c), Occupations  
11 Code, are amended to read as follows:

12 (a) A massage school must meet the minimum standards of  
13 operation established by executive commissioner [~~board~~] rule.

14 (b) An instructor must meet the minimum requirements  
15 established by executive commissioner [~~board~~] rule.

16 (c) A massage school or massage therapy instructor licensed  
17 [~~registered~~] under this chapter shall give each prospective student  
18 a notice that clearly states the number of course hours that the  
19 student must successfully complete before the student is eligible  
20 to hold [~~register as~~] a massage therapist license under this  
21 chapter.

22 SECTION 19. Section 455.204, Occupations Code, is amended  
23 to read as follows:

24 Sec. 455.204. DISPLAY OF LICENSE [~~CERTIFICATE~~]. (a) A  
25 person who holds a license [~~certificate of registration~~] shall  
26 publicly display the license [~~certificate~~] as specified by the  
27 department [~~board~~].

1 (b) Each massage establishment must post in plain sight the  
2 license [~~certificate of registration~~] for each massage therapist  
3 who practices in the massage establishment.

4 (c) Each massage school, massage establishment, massage  
5 therapy instructor, or massage therapist shall present the person's  
6 license [~~certificate of registration~~] on the request of the  
7 department, an authorized representative of the department, or a  
8 peace officer.

9 SECTION 20. Sections 455.205(b) and (c), Occupations Code,  
10 are amended to read as follows:

11 (b) A massage school or a massage therapy instructor may not  
12 award a diploma or a certificate of completion to a student that has  
13 not successfully completed at least [~~require the successful~~  
14 ~~completion of more course hours than~~] the number of course hours  
15 required for licensing [~~registration~~] as a massage therapist under  
16 this chapter.

17 (c) A person who is not licensed [~~registered~~] under this  
18 chapter may not use the word "massage" on any form of advertising  
19 unless the person is expressly exempt from the licensing  
20 [~~registration~~] requirements of this chapter.

21 SECTION 21. The heading to Subchapter F, Occupations Code,  
22 is amended to read as follows:

23 SUBCHAPTER F. LICENSE [~~REGISTRATION~~] DENIAL OR  
24 DISCIPLINARY PROCEDURES

25 SECTION 22. Section 455.251, Occupations Code, is amended  
26 to read as follows:

27 Sec. 455.251. GROUNDS FOR LICENSE [~~REGISTRATION~~] DENIAL OR

1 DISCIPLINARY ACTION. (a) The department [~~board~~] may refuse to  
2 issue a license [~~certificate of registration~~] to a person and shall  
3 suspend, revoke, or refuse to renew the license [~~certificate of~~  
4 ~~registration~~] of a person or shall reprimand a person licensed  
5 [~~registered~~] under this chapter if the person:

6 (1) obtains a license [~~certificate of registration~~] by  
7 fraud, misrepresentation, or concealment of material facts;

8 (2) sells, barter, or offers to sell or barter a  
9 license [~~certificate of registration~~];

10 (3) violates a rule adopted by the executive  
11 commissioner [~~board~~];

12 (4) engages in unprofessional conduct as defined by  
13 executive commissioner [~~board~~] rule that endangers or is likely to  
14 endanger the health, welfare, or safety of the public;

15 (5) violates an order or ordinance adopted by a  
16 political subdivision under Chapter 243, Local Government Code; or

17 (6) violates this chapter.

18 (b) The department shall revoke the license [~~certificate of~~  
19 ~~registration~~] of a person licensed [~~registered~~] as a massage  
20 therapist or massage therapy instructor if:

21 (1) the person is convicted of, enters a plea of nolo  
22 contendere or guilty to, or receives deferred adjudication for an  
23 offense involving prostitution or another sexual offense; or

24 (2) the department determines the person has practiced  
25 or administered massage therapy at or for a sexually oriented  
26 business.

27 (c) The department shall revoke the license [~~certificate of~~

1 ~~registration~~] of a person licensed [~~registered~~] as a massage school  
2 or massage establishment if the department determines that:

3 (1) the school or establishment is a sexually oriented  
4 business; or

5 (2) an offense involving prostitution or another  
6 sexual offense that resulted in a conviction for the offense, a plea  
7 of nolo contendere or guilty to the offense, or a grant of deferred  
8 adjudication for the offense occurred on the premises of the school  
9 or establishment.

10 SECTION 23. Section 455.252(a), Occupations Code, is  
11 amended to read as follows:

12 (a) A person whose application for a license [~~certificate of~~  
13 ~~registration~~] is denied, whose license [~~certificate of~~  
14 ~~registration~~] is suspended or revoked, or who has been reprimanded  
15 is entitled to a hearing before the department if the person submits  
16 a written request to the department.

17 SECTION 24. Section 455.253, Occupations Code, is amended  
18 to read as follows:

19 Sec. 455.253. PROBATION. The department [~~board~~] may place  
20 on probation a person, including a massage school, massage therapy  
21 instructor, or massage establishment, whose license [~~certificate~~  
22 ~~of registration~~] is suspended. If a license [~~registration~~]  
23 suspension is probated, the department [~~board~~] may require the  
24 person to:

25 (1) report regularly to the department on matters that  
26 are the basis of the probation;

27 (2) limit practice to the areas prescribed by the

1 department [~~board~~]; or

2 (3) continue or review professional education until  
3 the person attains a degree of skill satisfactory to the department  
4 [~~board~~] in those areas that are the basis of the probation.

5 SECTION 25. Sections 455.254(a) and (b), Occupations Code,  
6 are amended to read as follows:

7 (a) The department shall temporarily suspend the license  
8 [~~certificate of registration~~] of a license [~~certificate~~] holder if  
9 the department determines from the evidence or information  
10 presented to it that continued practice by the license  
11 [~~certificate~~] holder would constitute a continuing and imminent  
12 threat to the public welfare.

13 (b) A license [~~certificate of registration~~] may be  
14 suspended under this section without notice or hearing on the  
15 complaint if:

16 (1) action is taken to initiate proceedings for a  
17 hearing before the State Office of Administrative Hearings  
18 simultaneously with the temporary suspension; and

19 (2) a hearing is held as soon as practicable under this  
20 chapter and Chapter 2001, Government Code.

21 SECTION 26. Section 455.304(b), Occupations Code, is  
22 amended to read as follows:

23 (b) If the person accepts the department's determination,  
24 the executive commissioner [~~of public health~~] or the commissioner's  
25 designee by order shall approve the determination and require the  
26 person to pay the recommended penalty.

27 SECTION 27. Section 455.305(b), Occupations Code, is

1 amended to read as follows:

2 (b) The hearings examiner shall:

3 (1) make findings of fact and conclusions of law; and

4 (2) promptly issue to the executive commissioner [~~of~~  
5 ~~public health~~] or the commissioner's designee a proposal for  
6 decision as to the occurrence of the violation, and, if the examiner  
7 determines a penalty is warranted, the amount of the proposed  
8 administrative penalty.

9 SECTION 28. Section 455.306, Occupations Code, is amended  
10 to read as follows:

11 Sec. 455.306. DECISION BY EXECUTIVE COMMISSIONER. (a)  
12 Based on the findings of fact, conclusions of law, and  
13 recommendations of the hearings examiner, the executive  
14 commissioner [~~of public health~~] or the commissioner's designee by  
15 order may determine that:

16 (1) a violation occurred and may impose an  
17 administrative penalty; or

18 (2) a violation did not occur.

19 (b) The department shall give notice of the order to the  
20 person. The notice must include:

21 (1) separate statements of the findings of fact and  
22 conclusions of law;

23 (2) the amount of any penalty imposed; and

24 (3) a statement of the right of the person to judicial  
25 review of the order.

26 SECTION 29. Section 455.310(b), Occupations Code, is  
27 amended to read as follows:



1           (b) The department may assess reasonable expenses and costs  
2 against a person in an administrative hearing if, as a result of the  
3 hearing, an administrative penalty is assessed against the person.  
4 The person shall pay expenses and costs assessed under this  
5 subsection not later than the 30th day after the date the order of  
6 the executive commissioner [~~of public health~~] or the commissioner's  
7 designee requiring the payment of expenses and costs is final. The  
8 department may refer the matter to the attorney general for  
9 collection of expenses and costs.

10           SECTION 30. Sections 455.351(a) and (b), Occupations Code,  
11 are amended to read as follows:

12           (a) The attorney general, a district or county attorney, or  
13 the department may institute an action for injunctive relief to  
14 restrain a violation by a person who appears to be in violation of  
15 or threatening to violate this chapter or a rule adopted by the  
16 executive commissioner [~~board~~] under this chapter.

17           (b) The attorney general, a district or county attorney, or  
18 the department may institute an action to collect a civil penalty  
19 from a person who appears to be in violation of this chapter or a  
20 rule adopted by the executive commissioner [~~board~~] under this  
21 chapter. The amount of a civil penalty shall be not less than \$100  
22 or more than \$1,000 for each violation.

23           SECTION 31. Section 455.352(a), Occupations Code, is  
24 amended to read as follows:

25           (a) A person commits an offense if the person is required to  
26 be licensed [~~registered~~] under this chapter and the person:

27           (1) knowingly violates Section 455.151, 455.159,

1 455.202, 455.203(a) or (c), 455.204(b) or (c), or 455.205; or

2 (2) collects a fee or any other form of compensation  
3 for massage therapy without being licensed [~~registered~~] under this  
4 chapter.

5 SECTION 32. Sections 455.102 and 455.157, Occupations Code,  
6 are repealed.

7 SECTION 33. (a) As soon as practicable after the effective  
8 date of this Act, the Department of State Health Services shall  
9 prescribe the forms and procedures and the executive commissioner  
10 of the Health and Human Services Commission shall adopt the rules  
11 that are necessary to implement Chapter 455, Occupations Code, as  
12 amended by this Act.

13 (b) The changes in law made by this Act with regard to the  
14 requirements for issuing a license under Chapter 455, Occupations  
15 Code, apply only to an application filed with the Department of  
16 State Health Services on or after September 1, 2007. An application  
17 filed before that date is governed by the law in effect immediately  
18 before the effective date of this Act, and the former law is  
19 continued in effect for that purpose.

20 (c) The Department of State Health Services shall treat a  
21 person who holds a certificate of registration under Chapter 455,  
22 Occupations Code, immediately before the effective date of this  
23 Act, as if the person holds a license under Chapter 455, Occupations  
24 Code, as amended by this Act. A person who holds a certificate of  
25 registration under Chapter 455, Occupations Code, on the effective  
26 date of this Act is entitled to issuance of a license on expiration  
27 of the certificate of registration if the person otherwise meets

1 the requirements for renewal of a license.

2 (d) A person who holds a certificate of registration under  
3 Chapter 455, Occupations Code, immediately before the effective  
4 date of this Act, or is issued a certificate of registration under  
5 Subsection (b) of this section, and otherwise complies with Chapter  
6 455 is not subject to disciplinary action or penalties, including a  
7 criminal penalty under Section 455.352, Occupations Code, as  
8 amended by this Act, for failure to hold a license under Chapter 455  
9 until the certificate of registration's expiration date.

10 SECTION 34. This Act takes effect September 1, 2005.