

By: Delisi

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), and (6),
6 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 or
15 certificate of registration.

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

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

20 (B) has at least two instructors.

21 SECTION 2. Section 455.004, Occupations Code, is amended to
22 read as follows:

23 Sec. 455.004. APPLICABILITY OF CHAPTER. This chapter does
24 not apply to:

1 (1) a person licensed in this state as a physician,
2 chiropractor, physical therapist, nurse, cosmetologist, or
3 athletic trainer or as a member of a similar profession subject to
4 state licensing while the person is practicing within the scope of
5 the license;

6 (2) a school approved by the Texas Education Agency or
7 otherwise approved by the state; or

8 (3) an instructor otherwise approved by the state to
9 teach in an area of study included in the required course of
10 instruction for issuance of [~~registration as~~] a massage therapist
11 license or certificate of registration.

12 SECTION 3. The heading to Subchapter B, Chapter 455,
13 Occupations Code, is amended to read as follows:

14 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND
15 DEPARTMENT [~~BOARD~~]

16 SECTION 4. Section 455.051, Occupations Code, is amended to
17 read as follows:

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

22 SECTION 5. Sections 455.053-455.057, Occupations Code, are
23 amended to read as follows:

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

27 (1) the issuance, denial, renewal, suspension,

1 revocation, or probation of a certificate of registration under
2 this chapter;

3 (2) the qualifications of professional personnel;

4 (3) the supervision of professional personnel;

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

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

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

11 (7) the maximum number of hours a student may
12 accumulate in a massage school's internship program before the
13 student is required to obtain a license or certificate of
14 registration [~~register~~] under this chapter;

15 (8) the educational and clinical records kept by a
16 massage school;

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

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

21 (11) the massage school's curriculum and educational
22 material;

23 (12) massage school inspections; and

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

27 Sec. 455.054. RULES REGARDING MASSAGE THERAPISTS. Rules

1 adopted under this chapter relating to a massage therapist must
2 contain minimum standards for:

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

6 (2) the qualifications of a massage therapist;

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

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

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

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

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

19 (1) the issuance, denial, renewal, suspension,
20 revocation, or probation of a license or certificate of
21 registration under this chapter;

22 (2) the qualifications of a massage therapy
23 instructor;

24 (3) the supervision of a student by a massage therapy
25 instructor;

26 (4) the maximum number of hours a student may
27 accumulate in an internship program under the supervision of a

1 massage therapy instructor before the student is required to obtain
2 a license or certificate of registration [~~register~~] under this
3 chapter;

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

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

8 (7) the provision of massage therapy by a student or a
9 massage therapy instructor;

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

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

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

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

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

26 (b) In the [~~its~~] rules to prohibit false, misleading, or
27 deceptive practices, the executive commissioner [~~board~~] may not

1 include a rule that:

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

3 (2) restricts the use of a licensed or registered
4 person's personal appearance or voice in an advertisement;

5 (3) relates to the size or duration of an
6 advertisement by the licensed or registered person; or

7 (4) restricts the licensed or registered person's
8 advertisement under a trade name.

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

15 SECTION 6. Section 455.104, Occupations Code, is amended to
16 read as follows:

17 Sec. 455.104. INSPECTIONS; INVESTIGATIONS. The
18 department or its authorized representative may enter the premises
19 of an applicant for a license or certificate of registration or a
20 license or certificate holder at:

21 (1) reasonable times to conduct an inspection
22 incidental to the issuance of a license or certificate of
23 registration; and

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

27 SECTION 7. The heading to Subchapter D, Chapter 455,

1 Occupations Code, is amended to read as follows:

2 SUBCHAPTER D. LICENSING AND REGISTRATION

3 SECTION 8. Sections 455.151-455.154, Occupations Code, are
4 amended to read as follows:

5 Sec. 455.151. LICENSE OR REGISTRATION REQUIRED. (a)
6 Unless the person is exempt from the licensing or registration
7 requirement, a person may not act as a massage therapist, massage
8 school, massage therapy instructor, or massage establishment
9 unless the person holds an appropriate license or certificate of
10 registration issued under this chapter.

11 (b) Unless the person is exempt from the licensing or
12 registration requirement, a person may not represent that the
13 person is:

14 (1) a licensed massage therapist unless the person
15 holds a license under this chapter; or

16 (2) a registered massage therapist unless the person
17 holds a certificate of registration under this chapter.

18 Sec. 455.152. INELIGIBILITY FOR LICENSE OR REGISTRATION.

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

25 (b) A person convicted of a violation of this chapter is
26 ineligible for licensing or registration as a massage
27 establishment, massage school, massage therapist, or massage

1 therapy instructor until the fifth anniversary of the date of the
2 conviction.

3 Sec. 455.153. APPLICATION [~~FOR REGISTRATION~~]. An applicant
4 for licensing or registration under this chapter must:

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

7 (2) include with the application the application fee
8 set by the department; and

9 (3) for a massage therapist applicant, submit proof
10 the applicant has successfully completed the requirements of
11 Section 455.1555 or 455.156.

12 Sec. 455.154. GENERAL PROVISIONS RELATING TO LICENSING AND
13 REGISTRATION. (a) The holder of a license or certificate of
14 registration may exercise all professional rights, honors, and
15 privileges relating to the practice of massage therapy.

16 (b) A license or certificate of registration is the property
17 of the department and must be surrendered on demand.

18 SECTION 9. Sections 455.155(b) and (c), Occupations Code,
19 are amended to read as follows:

20 (b) A licensed or registered massage therapist who
21 practices as a solo practitioner is not required to register as a
22 massage establishment.

23 (c) The executive commissioner [~~board~~] by rule shall
24 provide for a fair and reasonable procedure to grant exemptions
25 from the licensing or registration requirements of this section.
26 The rules must provide that a person is exempt if the person shows
27 that the advertising or provision of massage therapy services is

1 incidental to the person's primary enterprise.

2 SECTION 10. Subchapter D, Chapter 455, Occupations Code, is
3 amended by adding Section 455.1555 to read as follows:

4 Sec. 455.1555. REQUIREMENTS FOR LICENSED MASSAGE
5 THERAPIST. (a) The department shall issue a massage therapist
6 license to each qualified applicant.

7 (b) An applicant for licensing under this section must be an
8 individual and:

9 (1) present evidence satisfactory to the department
10 that the person:

11 (A) has satisfactorily completed massage therapy
12 studies in a supervised course of instruction of at least 500 hours
13 provided by a massage therapy instructor, a registered massage
14 school, a state-approved educational institution, or any
15 combination of instructors or schools, in which:

16 (i) at least 200 hours are taught by a
17 massage therapy instructor and are dedicated to the study of
18 massage therapy techniques, theory, and practice and manipulation
19 of soft tissue by hand or through the use of a mechanical or
20 electrical apparatus, with at least 75 hours dedicated to Swedish
21 massage techniques, and may include the study of Eastern techniques
22 and theory;

23 (ii) at least 165 hours are dedicated to
24 the study of anatomy, kinesiology, physiology, and pathology and
25 may include Eastern physiology;

26 (iii) at least 25 hours are dedicated to
27 the study of hydrotherapy;

1 (iv) at least 20 hours are dedicated to the
2 study of business practice standards;

3 (v) at least 10 hours are dedicated to the
4 study of professional ethics;

5 (vi) at least 20 hours are dedicated to the
6 study of health and hygiene;

7 (vii) at least 40 hours are spent in an
8 internship program, provided that the hours spent in an internship
9 program may not exceed 15 percent of the total program hours; and

10 (viii) at least 20 hours are dedicated to
11 topics related to the massage profession; or

12 (B) has practiced massage therapy as a profession
13 for at least five years in another state or country that the
14 department determines does not maintain standards and requirements
15 of practice and licensing or registration that substantially
16 conform to the standards and requirements of this state; and

17 (2) pass the state-approved examination.

18 SECTION 11. Section 455.156, Occupations Code, is amended
19 to read as follows:

20 Sec. 455.156. [~~REGISTRATION~~] REQUIREMENTS FOR REGISTERED
21 MASSAGE THERAPIST. (a) The department shall issue a certificate
22 of registration to each qualified applicant for registration as a
23 registered massage [~~message~~] therapist.

24 (b) An applicant for registration under this section must be
25 an individual and:

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

1 (A) has satisfactorily completed massage therapy
2 studies in a 300-hour, supervised course of instruction provided by
3 a massage therapy instructor, a registered massage school, a
4 state-approved educational institution, or any combination of
5 instructors or schools, in which:

6 (i) 125 hours are dedicated to the study of
7 Swedish massage therapy techniques and taught by a massage therapy
8 instructor;

9 (ii) 50 hours are dedicated to the study of
10 anatomy;

11 (iii) 25 hours are dedicated to the study of
12 physiology;

13 (iv) 15 hours are dedicated to the study of
14 hydrotherapy;

15 (v) 15 hours are dedicated to the study of
16 business practices and professional ethics standards;

17 (vi) 20 hours are dedicated to the study of
18 health and hygiene; and

19 (vii) 50 hours are spent in an internship
20 program; or

21 (B) has practiced massage therapy as a profession
22 for not less than five years in another state or country that the
23 department determines does not maintain standards and requirements
24 of practice and licensing or registration that substantially
25 conform to the standards and requirements of this state; and

26 (2) pass the practical and written portions of the
27 state examination.

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

3 (a) Not later than the 30th day after the date a person takes
4 a licensing or registration examination under this chapter, the
5 department shall notify the person of the results of the
6 examination.

7 (d) If requested in writing by a person who fails a
8 licensing or registration examination administered under this
9 chapter, the department shall furnish the person with an analysis
10 of the person's performance on the examination.

11 SECTION 13. Sections 455.1571, 455.1572, and 455.158,
12 Occupations Code, are amended to read as follows:

13 Sec. 455.1571. APPLICANT LICENSED OR REGISTERED IN ANOTHER
14 JURISDICTION. (a) The department [~~board~~] may waive any
15 prerequisite to obtaining a license or certificate of registration
16 for an applicant for licensing or registration as a massage
17 therapist or massage therapy instructor after reviewing the
18 applicant's credentials and determining that the applicant holds a
19 license or certificate of registration issued by another
20 jurisdiction that has licensing or registration requirements
21 substantially equivalent to those of this state.

22 (b) The department [~~board~~] may waive any prerequisite to
23 obtaining a license or certificate of registration for an applicant
24 for licensing or registration as a massage therapist or massage
25 therapy instructor who holds a license or certificate of
26 registration issued by another jurisdiction with which this state
27 has a reciprocity agreement. The department [~~board~~] may make an

1 agreement, subject to the approval of the governor, with another
2 state to allow for licensing or registration by reciprocity.

3 Sec. 455.1572. PROVISIONAL LICENSE OR REGISTRATION. (a)
4 The department [~~board~~] may issue a provisional license or
5 certificate of registration to an applicant for licensing or
6 registration as a massage therapist or massage therapy instructor
7 currently licensed or registered in another jurisdiction who seeks
8 a license or certificate of registration in this state and who:

9 (1) has been licensed or registered in good standing
10 as a massage therapist or massage therapy instructor, as
11 applicable, for at least two years in another jurisdiction,
12 including a foreign country, that has licensing or registration
13 requirements substantially equivalent to the requirements of this
14 chapter;

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

18 (3) is sponsored by a person licensed or registered by
19 the department [~~board~~] under this chapter with whom the provisional
20 license or certificate holder [~~registrant~~] will practice during the
21 time the person holds a provisional license or certificate of
22 registration.

23 (b) The department [~~board~~] may waive the requirement of
24 Subsection (a)(3) for an applicant if the department [~~board~~]
25 determines that compliance with that subsection would be a hardship
26 to the applicant.

27 (c) A provisional license or certificate of registration is

1 valid until the date the department [~~board~~] approves or denies the
2 license or certificate holder's application for licensing or
3 registration. The department [~~board~~] shall issue a license or
4 certificate of registration under this chapter to the provisionally
5 licensed or registered person if the person:

6 (1) is eligible for a license or certificate of
7 registration under Section 455.1571; or

8 (2) passes the part of the examination under Section
9 455.101 that relates to the applicant's knowledge and understanding
10 of the laws and rules relating to the practice of massage therapy in
11 this state and:

12 (A) the department [~~board~~] verifies that the
13 person meets the academic and experience requirements for licensing
14 or registration under this chapter; and

15 (B) the person satisfies any other licensing or
16 registration requirements under this chapter.

17 (d) The department [~~board~~] must approve or deny a
18 provisionally licensed or registered person's application for a
19 license or certificate of registration not later than the 180th day
20 after the date the provisional license or certificate of
21 registration is issued. The department [~~board~~] may extend the
22 180-day period if the results of an examination have not been
23 received by the department [~~board~~] before the end of that period.

24 (e) The department [~~board~~] may establish a fee for a
25 provisional license or certificate of registration in an amount
26 reasonable and necessary to cover the cost of issuing the license or
27 certificate of registration.

1 Sec. 455.158. STUDENT EXEMPTION FROM LICENSING OR
2 REGISTRATION REQUIREMENTS. A student who provides massage therapy
3 as part of an internship program or without compensation is exempt
4 from licensing or registration under this chapter if the student is
5 enrolled in a state-approved course of instruction that consists of
6 at least 300 hours.

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

9 (a) An internship program must:

10 (1) meet the qualifications established by the
11 department [~~board~~];

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

14 (3) be conducted on the school grounds or in a clinic
15 or classroom setting provided by the massage school or massage
16 therapy instructor.

17 (b) A student must complete at least [~~the first~~] 250 hours
18 of required training at a massage school or with a massage therapy
19 instructor that provides to the student a written acknowledgment of
20 the student's successful completion of the required hours before
21 the student is eligible to enter an internship program.

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

24 Sec. 455.160. LICENSE OR REGISTRATION RENEWAL. (a) A
25 person licensed or registered under this chapter must periodically
26 renew the person's license or certificate of registration. The
27 license or certificate expires unless the license or certificate

1 holder submits an application for renewal accompanied by the
2 renewal fee prescribed by the department or by the late fee
3 prescribed by this section.

4 (b) The department shall adopt a system under which licenses
5 or certificates of registration expire on various dates during the
6 year. Fees must be prorated so that a licensed or registered person
7 pays only for that part of the renewal period for which the license
8 or registration is issued until the expiration date of the license
9 or registration.

10 (c) A person who is otherwise eligible to renew a license or
11 certificate of registration may renew an unexpired license or
12 registration by paying the required renewal fee to the department
13 before the expiration date of the license or registration. A person
14 whose license or registration has expired may not engage in
15 activities that require a license or registration until the license
16 or registration has been renewed.

17 (d) A person whose license or registration has been expired
18 for 90 days or less may renew the license or registration by paying
19 to the department a renewal fee that is equal to 1-1/2 times the
20 normally required renewal fee.

21 (e) A person whose license or registration has been expired
22 for more than 90 days but less than one year may renew the license or
23 registration by paying to the department a renewal fee that is equal
24 to two times the normally required renewal fee.

25 (f) A person whose license or registration has been expired
26 for one year or more may not renew the license or certificate of
27 registration. The person may obtain a license or certificate of

1 registration [~~register~~] by complying with the requirements and
2 procedures, including the examination requirements, for originally
3 licensing or registering.

4 (g) Not later than the 30th day before the date a person's
5 license or certificate of registration is scheduled to expire, the
6 department shall send written notice of the impending expiration to
7 the person at the person's last known address according to the
8 records of the department.

9 Sec. 455.161. RENEWAL OF EXPIRED LICENSE OR REGISTRATION OF
10 OUT-OF-STATE PRACTITIONER. (a) A person who was registered or
11 licensed in this state, moved to another state, and is currently
12 registered or licensed and has been in practice in the other state
13 for the two years preceding the date of application may obtain a
14 certificate of registration or license [~~register~~] without
15 reexamination.

16 (b) The person must pay to the department a fee that is equal
17 to two times the normally required renewal fee for a license or
18 certificate of registration.

19 SECTION 16. Sections 455.201 and 455.202, Occupations Code,
20 are amended to read as follows:

21 Sec. 455.201. REFERRAL FROM PHYSICIAN. A person issued a
22 license or certificate of registration may receive referrals from a
23 physician to administer massage therapy.

24 Sec. 455.202. PRACTICE BY MASSAGE ESTABLISHMENT. A
25 massage establishment may employ only licensed or registered
26 massage therapists to perform massage therapy.

27 SECTION 17. Section 455.203(c), Occupations Code, is

1 amended to read as follows:

2 (c) A massage school or massage therapy instructor licensed
3 or registered under this chapter shall give each prospective
4 student a notice that clearly states the number of course hours that
5 the student must successfully complete before the student is
6 eligible to obtain a license or certificate of registration
7 [~~register~~] as a massage therapist under this chapter.

8 SECTION 18. Section 455.204, Occupations Code, is amended
9 to read as follows:

10 Sec. 455.204. DISPLAY OF LICENSE OR CERTIFICATE. (a) A
11 person who holds a license or certificate of registration shall
12 publicly display the license or certificate as specified by the
13 department [~~board~~].

14 (b) Each massage establishment must post in plain sight the
15 license or certificate of registration for each massage therapist
16 who practices in the massage establishment.

17 (c) Each massage school, massage establishment, massage
18 therapy instructor, or massage therapist shall present the person's
19 license or certificate of registration on the request of the
20 department, an authorized representative of the department, or a
21 peace officer.

22 SECTION 19. Sections 455.205(b), (c), and (d), Occupations
23 Code, are amended to read as follows:

24 (b) A massage school or a massage therapy instructor may not
25 award a diploma or a certificate of completion to a student that has
26 not successfully completed at least [~~require the successful~~
27 ~~completion of more course hours than~~] the number of course hours

1 required for licensing or registration as a massage therapist under
2 this chapter.

3 (c) A person who is not licensed or registered under this
4 chapter may not use the word "massage" on any form of advertising
5 unless the person is expressly exempt from the licensing or
6 registration requirements of this chapter.

7 (d) A sexually oriented business may not use the term [~~word~~]
8 "massage therapy" or "massage therapist" on a sign or any form of
9 advertising.

10 SECTION 20. The heading to Section 455.251, Occupations
11 Code, is amended to read as follows:

12 Sec. 455.251. GROUNDS FOR LICENSE OR REGISTRATION DENIAL OR
13 DISCIPLINARY ACTION.

14 SECTION 21. Sections 455.251(a) and (b), Occupations Code,
15 are amended to read as follows:

16 (a) The department [~~board~~] may refuse to issue a license or
17 certificate of registration to a person and shall suspend, revoke,
18 or refuse to renew the license or certificate of registration of a
19 person or shall reprimand a person licensed or registered under
20 this chapter if the person:

21 (1) obtains a license or certificate of registration
22 by fraud, misrepresentation, or concealment of material facts;

23 (2) sells, barter, or offers to sell or barter a
24 license or certificate of registration;

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

27 (4) engages in unprofessional conduct as defined by

1 executive commissioner [~~board~~] rule that endangers or is likely to
2 endanger the health, welfare, or safety of the public;

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

5 (6) violates this chapter.

6 (b) The department shall revoke the license or certificate
7 of registration of a person licensed or registered as a massage
8 therapist or massage therapy instructor if:

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

12 (2) the department determines the person has practiced
13 or administered massage therapy at or for a sexually oriented
14 business.

15 SECTION 22. Section 455.252(a), Occupations Code, is
16 amended to read as follows:

17 (a) A person whose application for a license or certificate
18 of registration is denied, whose license or certificate of
19 registration is suspended or revoked, or who has been reprimanded
20 is entitled to a hearing before the department if the person submits
21 a written request to the department.

22 SECTION 23. Section 455.253, Occupations Code, is amended
23 to read as follows:

24 Sec. 455.253. PROBATION. The department [~~board~~] may place
25 on probation a person, including a massage school, massage therapy
26 instructor, or massage establishment, whose license or certificate
27 of registration is suspended. If a license or certificate of

1 registration suspension is probated, the department [~~board~~] may
2 require the person to:

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

5 (2) limit practice to the areas prescribed by the
6 department [~~board~~]; or

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

10 SECTION 24. Sections 455.254(a) and (b), Occupations Code,
11 are amended to read as follows:

12 (a) The department shall temporarily suspend the license or
13 certificate of registration of a license or certificate holder if
14 the department determines from the evidence or information
15 presented to it that continued practice by the license or
16 certificate holder would constitute a continuing and imminent
17 threat to the public welfare.

18 (b) A license or certificate of registration may be
19 suspended under this section without notice or hearing on the
20 complaint if:

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

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

26 SECTION 25. Section 455.304(b), Occupations Code, is
27 amended to read as follows:

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

5 SECTION 26. Section 455.305(b), Occupations Code, is
6 amended to read as follows:

7 (b) The hearings examiner shall:

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

9 (2) promptly issue to the executive commissioner [~~of~~
10 ~~public health~~] or the executive commissioner's designee a proposal
11 for decision as to the occurrence of the violation, and, if the
12 examiner determines a penalty is warranted, the amount of the
13 proposed administrative penalty.

14 SECTION 27. Section 455.306(a), Occupations Code, is
15 amended to read as follows:

16 (a) Based on the findings of fact, conclusions of law, and
17 recommendations of the hearings examiner, the executive
18 commissioner [~~of public health~~] or the executive commissioner's
19 designee by order may determine that:

20 (1) a violation occurred and may impose an
21 administrative penalty; or

22 (2) a violation did not occur.

23 SECTION 28. Section 455.310(b), Occupations Code, is
24 amended to read as follows:

25 (b) The department may assess reasonable expenses and costs
26 against a person in an administrative hearing if, as a result of the
27 hearing, an administrative penalty is assessed against the person.

1 The person shall pay expenses and costs assessed under this
2 subsection not later than the 30th day after the date the order of
3 the executive commissioner [~~of public health~~] or the executive
4 commissioner's designee requiring the payment of expenses and costs
5 is final. The department may refer the matter to the attorney
6 general for collection of expenses and costs.

7 SECTION 29. Sections 455.351(a) and (b), Occupations Code,
8 are amended to read as follows:

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

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

20 SECTION 30. Section 455.352, Occupations Code, is amended
21 to read as follows:

22 Sec. 455.352. CRIMINAL PENALTIES [~~PENALTY~~]. (a) A person
23 commits an offense if the person is required to be licensed or
24 registered under this chapter and the person:

25 (1) knowingly violates Section 455.151, 455.159,
26 455.202, 455.203(a) or (c), 455.204(b) or (c), or 455.205(a), (b),
27 or (c); or

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

4 (b) An owner or operator of a massage establishment commits
5 an offense if the person knowingly violates Section 455.151(a),
6 455.155(d), 455.202, 455.204(b) or (c), or 455.205(c) [~~or (d)~~].

7 (c) An owner or operator of a massage school commits an
8 offense if the person knowingly violates Section 455.151(a),
9 455.159, 455.203(a) or (c), 455.204(b) or (c), or 455.205(b) or [~~7~~]
10 (c) [~~7, or (d)~~].

11 (d) Except as provided by Subsections [~~Subsection~~] (e) and
12 (f), an offense under this section is a Class C misdemeanor.

13 (e) Except as provided by Subsection (f), if [~~If~~] it is
14 shown at the trial of an offense under this section that the
15 defendant has been previously convicted of an offense under this
16 section, the offense is a Class A misdemeanor.

17 (f) A person commits an offense if the person violates
18 Section 455.205(d). An offense under this subsection is a state
19 jail felony.

20 SECTION 31. Sections 455.102 and 455.157, Occupations Code,
21 are repealed.

22 SECTION 32. (a) As soon as practical after the effective
23 date of this Act, the executive commissioner of the Health and Human
24 Services Commission shall adopt the rules necessary to establish
25 the licensing program for licensed massage therapists.

26 (b) As soon as practical after the effective date of this
27 Act, the Department of State Health Services shall adopt the

1 procedures necessary to establish the licensing program for
2 licensed massage therapists.

3 SECTION 33. The change in law made by this Act applies only
4 to an offense committed on or after the effective date of this Act.
5 An offense committed before the effective date of this Act is
6 covered by the law in effect when the offense was committed, and the
7 former law is continued in effect for that purpose. For purposes of
8 this section, an offense was committed before the effective date of
9 this Act if any element of the offense was committed before that
10 date.

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