

By: Anchia, Hartnett, Jackson, Vo, et al.

H.B. No. 2696

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the licensing and regulation of massage therapy and
3 massage establishments and certain services related to massage;
4 providing penalties.

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

6 SECTION 1. Section 455.001, Occupations Code, is amended by
7 amending Subdivisions (1), (2), (3), (5), (6), (7), and (9) and
8 adding Subdivision (11) to read as follows:

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

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

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

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

17 (5) "Massage establishment" means a place of business
18 that advertises or offers massage therapy or other ~~[offers]~~ massage
19 services. The term includes a place of business that advertises or
20 offers any service described by a derivation of the terms "massage
21 therapy" or "other massage services." ~~[therapy as a service.]~~

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

23 (A) teaches at a minimum the course of
24 instruction required for ~~[registration as]~~ a massage therapist

1 license; and

2 (B) has at least two instructors.

3 (7) "Massage therapist" means a person who practices
4 or administers massage therapy or other massage services to a
5 client for compensation. The term includes a licensed [~~registered~~]
6 massage therapist, therapeutic massage practitioner, massage
7 technician, masseur, masseuse, myotherapist, body massager, body
8 rubber, or any derivation of those titles.

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

12 (11) "Other massage services" include any services
13 offered or performed for compensation at a massage establishment
14 that involve physical contact with a client, and may include the use
15 of oil, lubricant, salt glow, a heat lamp, a hot and cold pack, or a
16 tub, shower, jacuzzi, sauna, steam, or cabinet bath.

17 SECTION 2. Section 455.004, Occupations Code, is amended to
18 read as follows:

19 Sec. 455.004. APPLICABILITY OF CHAPTER. This chapter does
20 not apply to:

21 (1) a person licensed in this state as a physician,
22 chiropractor, occupational therapist, physical therapist, nurse,
23 cosmetologist, or athletic trainer or as a member of a similar
24 profession subject to state licensing while the person is
25 practicing within the scope of the license;

26 (2) a school approved by the Texas Education Agency or
27 otherwise approved by the state; or

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

5 SECTION 3. Section 455.005, Occupations Code, is amended by
6 amending Subsection (b) and adding Subsection (d) to read as
7 follows:

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

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

11 (2) authorizes or requires an investigation into the
12 background of an owner or operator of, or an investor in, a massage
13 establishment; or

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

18 (A) performs under the applicable licensing law;
19 and

20 (B) works with a licensed [~~registered~~] massage
21 therapist.

22 (d) This chapter may not be construed to limit a
23 municipality's authority to regulate establishments that offer
24 bathing or showering services.

25 SECTION 4. Subchapter B, Chapter 455, Occupations Code, is
26 amended to read as follows:

1 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER

2 [~~BOARD~~]

3 Sec. 455.051. GENERAL RULEMAKING AUTHORITY. The executive
4 commissioner [~~board~~] shall adopt rules consistent with this chapter
5 as necessary for the performance of [~~its~~] duties under this
6 chapter.

7 Sec. 455.052. RULES REGARDING MESSAGE ESTABLISHMENTS.
8 Rules adopted under this chapter relating to a message
9 establishment must contain minimum standards for:

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

13 (2) the qualifications of professional personnel;

14 (3) the supervision of professional personnel;

15 (4) the equipment essential to the health and safety
16 of message establishment personnel and the public;

17 (5) the sanitary and hygienic conditions of a message
18 establishment;

19 (6) the provision of message therapy or other message
20 services by a message establishment;

21 (7) the records kept by a message establishment;

22 (8) the organizational structure of a message
23 establishment, including the lines of authority and the delegation
24 of responsibility;

25 (9) fire prevention and safety in a message
26 establishment;

27 (10) the inspection of a message establishment; and

1 (11) any other aspect of the operation of a massage
2 establishment necessary to protect massage establishment personnel
3 or the public.

4 Sec. 455.053. RULES REGARDING MASSAGE SCHOOLS. Rules
5 adopted under this chapter relating to a massage school must
6 contain minimum standards for:

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

10 (2) the qualifications of professional personnel;

11 (3) the supervision of professional personnel;

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

14 (5) the sanitary and hygienic conditions of a massage
15 school;

16 (6) the provision of massage therapy or other massage
17 services by a massage school or student;

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

21 (8) the educational and clinical records kept by a
22 massage school;

23 (9) the organizational structure of a massage school,
24 including the lines of authority and the delegation of
25 responsibility;

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

27 (11) the massage school's curriculum and educational

1 material;

2 (12) massage school inspections; and

3 (13) any other aspect of the operation of a massage
4 school that the executive commissioner [~~board~~] considers necessary
5 to protect students, massage school personnel, or the public.

6 Sec. 455.054. RULES REGARDING MASSAGE THERAPISTS. Rules
7 adopted under this chapter relating to a massage therapist must
8 contain minimum standards for:

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

12 (2) the qualifications of a massage therapist;

13 (3) the sanitary and hygienic conditions of the
14 physical environment in which a massage therapist practices massage
15 therapy;

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

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

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

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

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

1 (2) the qualifications of a massage therapy
2 instructor;

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

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

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

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

13 (7) the provision of massage therapy or other massage
14 services by a student or a massage therapy instructor;

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

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

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

21 (11) any other aspect of a massage therapy
22 instructor's instruction or operation of any portion of the course
23 of instruction required for [~~registration as~~] a massage therapist
24 license.

25 Sec. 455.056. RULES REGARDING ADVERTISING OR COMPETITIVE
26 BIDDING [~~BY REGISTRANT~~]. (a) The executive commissioner [~~board~~]
27 may not adopt rules restricting advertising or competitive bidding

1 by a person licensed [~~registered~~] under this chapter except to
2 prohibit false, misleading, or deceptive practices.

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

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

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

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

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

13 Sec. 455.057. CONTINUING EDUCATION. The executive
14 commissioner [~~board~~] shall recognize, prepare, or administer
15 continuing education programs for persons licensed [~~registered~~]
16 under this chapter. A licensed [~~registered~~] person must
17 participate in the programs to the extent required by the executive
18 commissioner [~~board~~] to keep the person's license [~~certificate of~~
19 ~~registration~~].

20 SECTION 5. Section 455.103(b), Occupations Code, is amended
21 to read as follows:

22 (b) A memorandum must:

23 (1) be adopted by rule; and

24 (2) limit the total amount of the fees charged by the
25 department and the Texas Education Agency for licensing
26 [~~registering~~] a massage school to an amount equal to the amount of
27 the fees the department would charge for licensing [~~registering~~]

1 the massage school in the absence of the memorandum.

2 SECTION 6. Section 455.104, Occupations Code, is amended to
3 read as follows:

4 Sec. 455.104. INSPECTIONS; INVESTIGATIONS. (a) The
5 department or its authorized representative may enter the premises
6 of an applicant for a license [~~certificate of registration~~] or a
7 license [~~certificate~~] holder at:

8 (1) reasonable times to conduct an inspection
9 incidental to the issuance of a license [~~certificate of~~
10 ~~registration~~]; and

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

14 (b) A peace officer appointed or employed by a law
15 enforcement agency of a political subdivision of this state may
16 enter the premises of a massage establishment to ensure compliance
17 with this chapter and rules adopted under this chapter.

18 SECTION 7. Subchapter C, Chapter 455, Occupations Code, is
19 amended by adding Section 455.105 to read as follows:

20 Sec. 455.105. REGISTRY. (a) The department shall annually
21 prepare a registry of licensed massage therapists.

22 (b) The department shall make the registry available to the
23 public, license holders, other state agencies, and peace officers.

24 SECTION 8. The heading to Subchapter D, Chapter 455,
25 Occupations Code, is amended to read as follows:

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

27 SECTION 9. Sections 455.151 and 455.152, Occupations Code,

1 are amended to read as follows:

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

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

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

13 (a) A person is not eligible for a license [~~registration~~] as a
14 massage establishment, massage school, massage therapist, or
15 massage therapy instructor if the person is an individual and has
16 been convicted of, entered a plea of nolo contendere or guilty to,
17 or received deferred adjudication for an offense involving
18 prostitution or another sexual offense.

19 (b) A person convicted of a violation of this chapter is
20 ineligible for a license [~~registration~~] as a massage establishment,
21 massage school, massage therapist, or massage therapy instructor
22 until the fifth anniversary of the date of the conviction.

23 SECTION 10. Subchapter D, Chapter 455, Occupations Code, is
24 amended by adding Section 455.1525 to read as follows:

25 Sec. 455.1525. CRIMINAL BACKGROUND CHECKS. (a) On receipt
26 of an application for a license under this chapter, the department
27 shall conduct a criminal background check on the applicant.

1 (b) An applicant is not eligible for a license under this
2 chapter if the applicant, in the five years preceding the date of
3 the application, has been finally convicted of a misdemeanor
4 involving moral turpitude or a felony.

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

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

9 (1) submit an application form provided by the
10 department; and

11 (2) include with the application the application fee
12 set by the department.

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

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

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

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

24 (2) offers or performs massage therapy under the scope
25 of that credential.

26 (b) A licensed [~~registered~~] massage therapist who practices
27 as a solo practitioner is not required to hold a license [~~register~~]

1 as a massage establishment.

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

8 (d) A sexually oriented business may not:

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

10 (2) operate as a massage establishment under this
11 chapter.

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

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

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

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

26 (i) 125 hours are dedicated to the study of
27 Swedish massage therapy techniques and taught by a massage therapy

1 instructor;

2 (ii) 50 hours are dedicated to the study of
3 anatomy;

4 (iii) 25 hours are dedicated to the study of
5 physiology;

6 (iv) 15 hours are dedicated to the study of
7 hydrotherapy;

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

10 (vi) 20 hours are dedicated to the study of
11 health and hygiene; and

12 (vii) 50 hours are spent in an internship
13 program; or

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

19 (2) pass the practical and written portions of the
20 state examination; and

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

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

24 (a) Not later than the 30th day after the date a person takes
25 a licensing ~~[registration]~~ examination under this chapter, the
26 department shall notify the person of the results of the
27 examination.

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

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

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

16 (b) The department [~~board~~] may waive any prerequisite to
17 obtaining a license [~~certificate of registration~~] for an applicant
18 for licensing [~~registration~~] as a massage therapist or massage
19 therapy instructor who holds a license or certificate of
20 registration issued by another jurisdiction with which this state
21 has a reciprocity agreement. The department [~~board~~] may make an
22 agreement, subject to the approval of the governor, with another
23 state to allow for licensing [~~registration~~] by reciprocity.

24 Sec. 455.1572. PROVISIONAL LICENSE [~~REGISTRATION~~]. (a)
25 The department [~~board~~] may issue a provisional license [~~certificate~~
26 ~~of registration~~] to an applicant for licensing [~~registration~~] as a
27 massage therapist or massage therapy instructor currently licensed

1 or registered in another jurisdiction who seeks a license
2 [~~certificate of registration~~] in this state and who:

3 (1) has been licensed or registered in good standing
4 as a massage therapist or massage therapy instructor, as
5 applicable, for at least two years in another jurisdiction,
6 including a foreign country, that has licensing or registration
7 requirements substantially equivalent to the requirements of this
8 chapter;

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

12 (3) is sponsored by a person licensed [~~registered~~] by
13 the department [~~board~~] under this chapter with whom the provisional
14 license holder [~~registrant~~] will practice during the time the
15 person holds a provisional license [~~certificate of registration~~].

16 (b) The department [~~board~~] may waive the requirement of
17 Subsection (a)(3) for an applicant if the department [~~board~~]
18 determines that compliance with that subsection would be a hardship
19 to the applicant.

20 (c) A provisional license [~~certificate of registration~~] is
21 valid until the date the department [~~board~~] approves or denies the
22 provisional license [~~certificate~~] holder's application for
23 licensing [~~registration~~]. The department [~~board~~] shall issue a
24 license [~~certificate of registration~~] under this chapter to the
25 provisionally licensed [~~registered~~] person if the person:

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

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

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

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

10 (d) The department [~~board~~] must approve or deny a
11 provisionally licensed [~~registered~~] person's application for a
12 license [~~certificate of registration~~] not later than the 180th day
13 after the date the provisional license [~~certificate of~~
14 ~~registration~~] is issued. The department [~~board~~] may extend the
15 180-day period if the results of an examination have not been
16 received by the department [~~board~~] before the end of that period.

17 (e) The department [~~board~~] may establish a fee for a
18 provisional license [~~certificate of registration~~] in an amount
19 reasonable and necessary to cover the cost of issuing the license
20 [~~certificate of registration~~].

21 Sec. 455.158. STUDENT EXEMPTION FROM LICENSING
22 [~~REGISTRATION~~] REQUIREMENTS. A student who provides massage
23 therapy as part of an internship program or without compensation is
24 exempt from licensing [~~registration~~] under this chapter if the
25 student is enrolled in a state-approved course of instruction that
26 consists of at least 300 hours.

27 SECTION 14. Section 455.159(a), Occupations Code, is

1 amended to read as follows:

2 (a) An internship program must:

3 (1) meet the qualifications established by the
4 department [~~board~~];

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

7 (3) be conducted on the school grounds or in a clinic
8 or classroom setting provided by the massage school or massage
9 therapy instructor.

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

12 Sec. 455.160. LICENSE [~~REGISTRATION~~] RENEWAL. (a) A
13 person licensed [~~registered~~] under this chapter must periodically
14 renew the person's license [~~certificate of registration~~]. The
15 license [~~certificate~~] expires unless the license [~~certificate~~]
16 holder submits an application for renewal accompanied by the
17 renewal fee prescribed by the department or by the late fee
18 prescribed by this section.

19 (b) The department shall adopt a system under which licenses
20 [~~certificates of registration~~] expire on various dates during the
21 year. Fees must be prorated so that a licensed [~~registered~~] person
22 pays only for that part of the renewal period for which the license
23 [~~registration~~] is issued until the expiration date of the license
24 [~~registration~~].

25 (c) A person who is otherwise eligible to renew a license
26 [~~certificate of registration~~] may renew an unexpired license
27 [~~registration~~] by paying the required renewal fee to the department

1 before the expiration date of the license [~~registration~~]. A person
2 whose license [~~registration~~] has expired may not engage in
3 activities that require a license [~~registration~~] until the license
4 [~~registration~~] has been renewed.

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

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

13 (f) A person whose license [~~registration~~] has been expired
14 for one year or more may not renew the license [~~registration~~]. The
15 person may obtain a license [~~register~~] by complying with the
16 requirements and procedures, including the examination
17 requirements, for obtaining a new license [~~originally~~
18 ~~registering~~].

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

24 (h) On receipt of a request for a renewal of a license issued
25 under this chapter, the department may conduct a criminal
26 background check under Section 455.1525.

27 Sec. 455.161. RENEWAL OF EXPIRED LICENSE [~~REGISTRATION~~] OF

1 OUT-OF-STATE PRACTITIONER. (a) A person who was registered or
2 licensed in this state, moved to another state, and is currently
3 registered or licensed and has been in practice in the other state
4 for the two years preceding the date of application may obtain a
5 license [~~register~~] without reexamination.

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

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

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

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

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

17 Sec. 455.202. PRACTICE BY MASSAGE ESTABLISHMENT. (a) A
18 massage establishment may employ only licensed [~~registered~~]
19 massage therapists to perform massage therapy or other massage
20 services.

21 (b) A massage establishment may not:

22 (1) employ an individual who is not a United States
23 citizen or a legal permanent resident with a valid work permit;

24 (2) employ a minor unless the minor's parent or legal
25 guardian authorizes in writing the minor's employment by the
26 establishment;

27 (3) allow a nude or partially nude employee to provide

1 massage therapy or other massage services to a customer;

2 (4) allow any individual, including a client, student,
3 license holder, or employee, to engage in sexual contact in the
4 massage establishment; or

5 (5) allow any individual, including a student, license
6 holder, or employee, to practice massage therapy in the nude or in
7 clothing designed to arouse or gratify the sexual desire of any
8 individual.

9 (c) A massage establishment shall:

10 (1) properly maintain and secure for each client the
11 initial consultation documents, all session notes, and related
12 billing records; and

13 (2) make available to the department on request the
14 information kept as provided by Subdivision (1).

15 (d) For purposes of this section:

16 (1) "Nude" means a person who is:

17 (A) entirely unclothed; or

18 (B) clothed in a manner that leaves uncovered or
19 visible through less than fully opaque clothing any portion of the
20 breasts below the top of the areola of the breasts or any portion of
21 the genitals or buttocks.

22 (2) "Sexual contact" includes:

23 (A) any touching of any part of the genitalia or
24 anus;

25 (B) any touching of the breasts of a female
26 without the written consent of the female;

27 (C) any offer or agreement to engage in any

1 activity described in Paragraph (A) or (B);

2 (D) kissing without the consent of both persons;

3 (E) deviate sexual intercourse, sexual contact,
4 sexual intercourse, indecent exposure, sexual assault,
5 prostitution, and promotions of prostitution as described in
6 Chapters 21, 22, and 43, Penal Code, or any offer or agreement to
7 engage in such activities;

8 (F) any behavior, gesture, or expression that may
9 reasonably be interpreted as inappropriately seductive or sexual;
10 or

11 (G) inappropriate sexual comments about or to a
12 client, including sexual comments about a person's body.

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

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

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

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

25 SECTION 19. Section 455.204, Occupations Code, is amended
26 to read as follows:

27 Sec. 455.204. DISPLAY OF LICENSE [~~CERTIFICATE~~]. (a) A

1 person who holds a license [~~certificate of registration~~] shall
2 publicly display the license [~~certificate~~] as specified by the
3 department [~~board~~].

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

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

12 SECTION 20. Section 455.205, Occupations Code, is amended
13 by amending Subsections (b), (c), and (d) and adding Subsection (e)
14 to read as follows:

15 (b) A massage school or a massage therapy instructor may not
16 require the successful completion of more course hours than the
17 number of hours required for licensing [~~registration~~] as a massage
18 therapist under this chapter.

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

23 (d) A sexually oriented business may not use the word
24 "massage" or "bath" on a sign or any form of advertising.

25 (e) A person advertising massage therapy or other massage
26 services is presumed to be engaging in conduct regulated by this
27 chapter.

1 SECTION 21. Subchapter E, Chapter 455, Occupations Code, is
2 amended by adding Section 455.206 to read as follows:

3 Sec. 455.206. ESTABLISHMENT CHANGE OF LOCATION PROHIBITED.
4 A massage establishment may not change the location of the
5 establishment without obtaining a new massage establishment
6 license under this chapter.

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

9 SUBCHAPTER F. LICENSE [~~REGISTRATION~~] DENIAL OR
10 DISCIPLINARY PROCEDURES

11 SECTION 23. Section 455.251, Occupations Code, is amended
12 to read as follows:

13 Sec. 455.251. GROUNDS FOR LICENSE [~~REGISTRATION~~] DENIAL OR
14 DISCIPLINARY ACTION. (a) The department [~~board~~] may refuse to
15 issue a license [~~certificate of registration~~] to a person and shall
16 suspend, revoke, or refuse to renew the license [~~certificate of~~
17 ~~registration~~] of a person or shall reprimand a person licensed
18 [~~registered~~] under this chapter if the person:

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

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

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

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

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

3 (6) violates this chapter.

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

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

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

13 (c) The department shall revoke the license [~~certificate of~~
14 ~~registration~~] of a person licensed [~~registered~~] as a massage school
15 or massage establishment if the department determines that:

16 (1) the school or establishment is a sexually oriented
17 business; or

18 (2) an offense involving prostitution or another
19 sexual offense that resulted in a conviction for the offense, a plea
20 of nolo contendere or guilty to the offense, or a grant of deferred
21 adjudication for the offense occurred on the premises of the school
22 or establishment.

23 SECTION 24. Section 455.252(a), Occupations Code, is
24 amended to read as follows:

25 (a) A person whose application for a license [~~certificate of~~
26 ~~registration~~] is denied, whose license [~~certificate of~~
27 ~~registration~~] is suspended or revoked, or who has been reprimanded

1 is entitled to a hearing before the department if the person submits
2 a written request to the department.

3 SECTION 25. Section 455.253, Occupations Code, is amended
4 to read as follows:

5 Sec. 455.253. PROBATION. The department [~~board~~] may place
6 on probation a person, including a massage school, massage therapy
7 instructor, or massage establishment, whose license [~~certificate~~
8 ~~of registration~~] is suspended. If a license [~~registration~~]
9 suspension is probated, the department [~~board~~] may require the
10 person to:

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

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

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

18 SECTION 26. Sections 455.254(a) and (b), Occupations Code,
19 are amended to read as follows:

20 (a) The department shall temporarily suspend the license
21 [~~certificate of registration~~] of a license [~~certificate~~] holder if
22 the department determines from the evidence or information
23 presented to it that continued practice by the license
24 [~~certificate~~] holder would constitute a continuing and imminent
25 threat to the public welfare.

26 (b) A license [~~certificate of registration~~] may be
27 suspended under this section without notice or hearing on the

1 complaint if:

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

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

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

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

13 SECTION 28. Section 455.305(b), Occupations Code, is
14 amended to read as follows:

15 (b) The hearings examiner shall:

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

17 (2) promptly issue to the executive commissioner [~~of~~
18 ~~public health~~] or the commissioner's designee a proposal for
19 decision as to the occurrence of the violation, and, if the examiner
20 determines a penalty is warranted, the amount of the proposed
21 administrative penalty.

22 SECTION 29. Section 455.306, Occupations Code, is amended
23 to read as follows:

24 Sec. 455.306. DECISION BY EXECUTIVE COMMISSIONER. (a)
25 Based on the findings of fact, conclusions of law, and
26 recommendations of the hearings examiner, the executive
27 commissioner [~~of public health~~] or the commissioner's designee by

1 order may determine that:

2 (1) a violation occurred and may impose an
3 administrative penalty; or

4 (2) a violation did not occur.

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

7 (1) separate statements of the findings of fact and
8 conclusions of law;

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

10 (3) a statement of the right of the person to judicial
11 review of the order.

12 SECTION 30. Section 455.310(b), Occupations Code, is
13 amended to read as follows:

14 (b) The department may assess reasonable expenses and costs
15 against a person in an administrative hearing if, as a result of the
16 hearing, an administrative penalty is assessed against the person.
17 The person shall pay expenses and costs assessed under this
18 subsection not later than the 30th day after the date the order of
19 the executive commissioner [~~of public health~~] or the commissioner's
20 designee requiring the payment of expenses and costs is final. The
21 department may refer the matter to the attorney general for
22 collection of expenses and costs.

23 SECTION 31. Sections 455.351(a) and (b), Occupations Code,
24 are amended to read as follows:

25 (a) The attorney general, a district or county attorney, a
26 municipal attorney, or the department may institute an action for
27 injunctive relief to restrain a violation by a person who:

1 (1) appears to be in violation of or threatening to
2 violate this chapter or a rule adopted [~~by the board~~] under this
3 chapter; or

4 (2) is operating an establishment that offers massage
5 therapy or other massage services regulated by this chapter and is
6 not licensed under this chapter.

7 (b) The attorney general, a district or county attorney, a
8 municipal attorney, or the department may institute an action to
9 collect a civil penalty from a person who appears to be in violation
10 of this chapter or a rule adopted [~~by the board~~] under this chapter.
11 The amount of a civil penalty shall be not less than \$1,000 [~~\$100~~]
12 or more than \$10,000 [~~\$1,000~~] for each violation.

13 SECTION 32. Section 455.352, Occupations Code, is amended
14 by amending Subsections (a), (b), and (d) and adding Subsection
15 (a-1) to read as follows:

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

18 (1) knowingly violates Section 455.151, 455.159,
19 455.202(b) [~~455.202~~], 455.203(a) or (c), 455.204(b) or (c), or
20 455.205(b), (c), or (d) [~~455.205~~]; or

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

24 (a-1) A person commits an offense if the person is required
25 to be licensed under this chapter and the person knowingly
26 violates Section 455.205(a). An offense under this subsection is a
27 Class B misdemeanor, unless the actor has previously been convicted

1 one or two times of an offense under this subsection, in which event
2 it is a Class A misdemeanor. If the actor has previously been
3 convicted three or more times of an offense under this subsection,
4 the offense is a state jail felony.

5 (b) An owner or operator of a massage establishment commits
6 an offense if the person knowingly violates Section 455.151(a),
7 455.155(d), 455.202(a) [455.202], 455.204(b) or (c), or 455.205(d)
8 [455.205 (c) or (d)]. An offense under this subsection is a Class B
9 misdemeanor, unless the actor has previously been convicted one or
10 two times of an offense under this subsection, in which event it is
11 a Class A misdemeanor. If the actor has previously been convicted
12 three or more times of an offense under this subsection, the offense
13 is a state jail felony.

14 (d) Except as provided by Subsections (a-1), (b), and
15 [Subsection] (e), an offense under this section is a Class C
16 misdemeanor.

17 SECTION 33. Section 411.110, Government Code, is amended to
18 read as follows:

19 Sec. 411.110. ACCESS TO CRIMINAL HISTORY RECORD
20 INFORMATION: [~~TEXAS~~] DEPARTMENT OF STATE HEALTH SERVICES. (a) The
21 [~~Texas~~] Department of State Health Services is entitled to obtain
22 from the department criminal history record information maintained
23 by the department that relates to:

24 (1) a person who is:

25 (A) [~~(1)~~] an applicant for a license or
26 certificate under the Emergency Medical Services Act (Chapter 773,
27 Health and Safety Code);

1 (B) [~~(2)~~] an owner or manager of an applicant for
2 an emergency medical services provider license under that Act; or

3 (C) [~~(3)~~] the holder of a license or certificate
4 under that Act; or

5 (2) an applicant for a license, the owner or manager of
6 an applicant for a massage establishment license, or a license
7 holder under Chapter 455, Occupations Code.

8 (b) Criminal history record information obtained by the
9 [~~Texas~~] Department of State Health Services under Subsection (a)
10 may not be released or disclosed to any person except on court
11 order, with the written consent of the person or entity that is the
12 subject of the criminal history record information, or as provided
13 by Subsection (e).

14 (c) After an entity is licensed or certified, the [~~Texas~~]
15 Department of State Health Services shall destroy the criminal
16 history record information that relates to that entity.

17 (d) The Department of State Health Services [~~Texas Board of~~
18 ~~Health~~] shall destroy criminal history record information that
19 relates to an applicant that is not certified.

20 (e) The Department of State Health Services [~~Texas Board of~~
21 ~~Health~~] is not prohibited from disclosing criminal history record
22 information obtained under Subsection (a) in a criminal proceeding
23 or in a hearing conducted by the [~~Texas~~] Department of State Health
24 Services.

25 SECTION 34. Sections 455.102 and 455.157, Occupations Code,
26 are repealed.

27 SECTION 35. (a) Not later than December 31, 2005, the

1 Department of State Health Services shall prescribe the forms and
2 procedures and the executive commissioner of the Health and Human
3 Services Commission shall adopt the rules that are necessary to
4 implement Chapter 455, Occupations Code, as amended by this Act.

5 (b) The changes in law made by this Act with regard to the
6 requirements for issuing a license under Chapter 455, Occupations
7 Code, apply only to an application filed with the Department of
8 State Health Services on or after January 1, 2006. An application
9 filed before that date is governed by the law in effect on the date
10 the application was filed, and the former law is continued in effect
11 for that purpose.

12 (c) The Department of State Health Services shall treat a
13 person who holds a certificate of registration under Chapter 455,
14 Occupations Code, immediately before the effective date of this
15 Act, as if the person holds a license under Chapter 455, Occupations
16 Code, as amended by this Act. A person who holds a certificate of
17 registration under Chapter 455, Occupations Code, on the effective
18 date of this Act is entitled to issuance of a license on expiration
19 of the certificate of registration if the person otherwise meets
20 the requirements for renewal of a license.

21 (d) A person who holds a certificate of registration under
22 Chapter 455, Occupations Code, immediately before the effective
23 date of this Act, or is issued a certificate of registration under
24 Subsection (b) of this section, and otherwise complies with Chapter
25 455 is not subject to disciplinary action or penalties, including a
26 criminal penalty under Section 455.352, Occupations Code, as
27 amended by this Act, for failure to hold a license under Chapter 455

1 until the certificate of registration's expiration date.

2 SECTION 36. The change in law made by this Act to Section
3 455.351, Occupations Code, regarding a violation of Chapter 455,
4 Occupations Code, or the rules adopted under that chapter, applies
5 only to a violation that occurs on or after the effective date of
6 this Act. A violation of Chapter 455, Occupations Code, that occurs
7 before the effective date of this Act is governed by the law in
8 effect on the date the violation occurred, and the former law is
9 continued in effect for that purpose.

10 SECTION 37. (a) The change in law made by this Act to
11 Section 455.352, Occupations Code, applies only to an offense
12 committed on or after the effective date of this Act. For purposes
13 of this section, an offense is committed before the effective date
14 of this Act if any element of the offense occurs before the
15 effective date.

16 (b) An offense committed before the effective date of this
17 Act is governed by the law in effect when the offense was committed,
18 and the former law is continued in effect for that purpose.

19 SECTION 38. This Act takes effect September 1, 2005.