

By: Anchia, Hartnett, Jackson

H.B. No. 2696

Substitute the following for H.B. No. 2696:

By: Veasey

C.S.H.B. No. 2696

A BILL TO BE ENTITLED

AN ACT

1
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, physical therapist, nurse, cosmetologist, or
23 athletic trainer or as a member of a similar profession subject to
24 state licensing while the person is practicing within the scope of
25 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 including standards to require an establishment to obtain for each
23 client an initial consultation document containing a copy of a
24 verifiable form of identification for the client and to develop a
25 privacy protection policy for all client records;

26 (8) the organizational structure of a message
27 establishment, including the lines of authority and the delegation

1 of responsibility;

2 (9) fire prevention and safety in a massage
3 establishment;

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

5 (11) any other aspect of the operation of a massage
6 establishment necessary to protect massage establishment personnel
7 or the public.

8 Sec. 455.053. RULES REGARDING MASSAGE SCHOOLS. Rules
9 adopted under this chapter relating to a massage school must
10 contain minimum standards for:

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

14 (2) the qualifications of professional personnel;

15 (3) the supervision of professional personnel;

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

18 (5) the sanitary and hygienic conditions of a massage
19 school;

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

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

25 (8) the educational and clinical records kept by a
26 massage school;

27 (9) the organizational structure of a massage school,

1 including the lines of authority and the delegation of
2 responsibility;

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

4 (11) the massage school's curriculum and educational
5 material;

6 (12) massage school inspections; and

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

10 Sec. 455.054. RULES REGARDING MASSAGE THERAPISTS. Rules
11 adopted under this chapter relating to a massage therapist must
12 contain minimum standards for:

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

16 (2) the qualifications of a massage therapist;

17 (3) the sanitary and hygienic conditions of the
18 physical environment in which a massage therapist practices massage
19 therapy;

20 (4) the records kept by a massage therapist, including
21 standards to require a therapist to obtain for each client an
22 initial consultation document containing a copy of a verifiable
23 form of identification for the client and to develop a privacy
24 protection policy for all client records;

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

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

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

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

9 (2) the qualifications of a massage therapy
10 instructor;

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

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

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

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

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

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

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

27 (10) the inspection of the records, equipment, and

1 physical environment of a massage therapy instructor; and

2 (11) any other aspect of a massage therapy
3 instructor's instruction or operation of any portion of the course
4 of instruction required for [~~registration as~~] a massage therapist
5 license.

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

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

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

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

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

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

21 Sec. 455.057. CONTINUING EDUCATION. The executive
22 commissioner [~~board~~] shall recognize, prepare, or administer
23 continuing education programs for persons licensed [~~registered~~]
24 under this chapter. A licensed [~~registered~~] person must
25 participate in the programs to the extent required by the executive
26 commissioner [~~board~~] to keep the person's license [~~certificate of~~
27 ~~registration~~].

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

3 (b) A memorandum must:

4 (1) be adopted by rule; and

5 (2) limit the total amount of the fees charged by the
6 department and the Texas Education Agency for licensing
7 [~~registering~~] a massage school to an amount equal to the amount of
8 the fees the department would charge for licensing [~~registering~~]
9 the massage school in the absence of the memorandum.

10 SECTION 6. Section 455.104, Occupations Code, is amended to
11 read as follows:

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

16 (1) reasonable times to conduct an inspection
17 incidental to the issuance of a license [~~certificate of~~
18 ~~registration~~]; and

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

22 (b) A peace officer appointed or employed by a law
23 enforcement agency of a political subdivision of this state may
24 enter the premises of a license holder to ensure compliance with
25 this chapter and rules adopted under this chapter.

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

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

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

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

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

8 SECTION 9. 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 10. Subchapter D, Chapter 455, Occupations Code, is
5 amended by adding Section 455.1525 to read as follows:

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

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

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

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

17 (1) submit an application form provided by the
18 department; and

19 (2) include with the application the application fee
20 set by the department.

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

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

27 Sec. 455.155. LICENSE [~~REGISTRATION~~] EXEMPTION [~~FOR~~

1 ~~MASSAGE ESTABLISHMENT~~]. (a) Section 455.151 does not apply to an
2 establishment or person that:

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

5 (2) offers or performs massage therapy under the scope
6 of that credential.

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

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

16 (d) A sexually oriented business may not:

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

18 (2) operate as a massage establishment under this
19 chapter.

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

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

27 (1) present evidence satisfactory to the department

1 ~~board~~] that the person:

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

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

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

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

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

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

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

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

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

27 (2) pass the practical and written portions of the

1 state examination; and

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

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

5 (a) Not later than the 30th day after the date a person takes
6 a licensing [~~registration~~] examination under this chapter, the
7 department shall notify the person of the results of the
8 examination.

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

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

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

24 (b) The department [~~board~~] may waive any prerequisite to
25 obtaining a license [~~certificate of registration~~] for an applicant
26 for licensing [~~registration~~] as a massage therapist or massage
27 therapy instructor who holds a license or certificate of

1 registration issued by another jurisdiction with which this state
2 has a reciprocity agreement. The department [~~board~~] may make an
3 agreement, subject to the approval of the governor, with another
4 state to allow for licensing [~~registration~~] by reciprocity.

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

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

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

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

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

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

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

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

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

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

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

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

1 [~~certificate of registration~~].

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

8 SECTION 14. Section 455.159(a), Occupations Code, is
9 amended to read as follows:

10 (a) An internship program must:

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

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

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

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

20 Sec. 455.160. LICENSE [~~REGISTRATION~~] RENEWAL. (a) A
21 person licensed [~~registered~~] under this chapter must periodically
22 renew the person's license [~~certificate of registration~~]. The
23 license [~~certificate~~] expires unless the license [~~certificate~~]
24 holder submits an application for renewal accompanied by the
25 renewal fee prescribed by the department or by the late fee
26 prescribed by this section.

27 (b) The department shall adopt a system under which licenses

1 ~~[certificates of registration]~~ expire on various dates during the
2 year. Fees must be prorated so that a licensed ~~[registered]~~ person
3 pays only for that part of the renewal period for which the license
4 ~~[registration]~~ is issued until the expiration date of the license
5 ~~[registration]~~.

6 (c) A person who is otherwise eligible to renew a license
7 ~~[certificate of registration]~~ may renew an unexpired license
8 ~~[registration]~~ by paying the required renewal fee to the department
9 before the expiration date of the license ~~[registration]~~. A person
10 whose license ~~[registration]~~ has expired may not engage in
11 activities that require a license ~~[registration]~~ until the license
12 ~~[registration]~~ has been renewed.

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

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

21 (f) A person whose license ~~[registration]~~ has been expired
22 for one year or more may not renew the license ~~[registration]~~. The
23 person may obtain a license ~~[register]~~ by complying with the
24 requirements and procedures, including the examination
25 requirements, for obtaining a new license ~~[originally~~
26 ~~registering]~~.

27 (g) Not later than the 30th day before the date a person's

1 license [~~registration~~] is scheduled to expire, the department shall
2 send written notice of the impending expiration to the person at the
3 person's last known address according to the records of the
4 department.

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

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

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

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

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

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

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

25 Sec. 455.202. PRACTICE BY MASSAGE ESTABLISHMENT. (a) A
26 massage establishment may employ only licensed [~~registered~~]
27 massage therapists to perform massage therapy or other massage

1 services.

2 (b) A massage establishment may not:

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

5 (2) employ a minor unless the minor's parent or legal
6 guardian authorizes in writing the minor's employment by the
7 establishment;

8 (3) allow a nude or partially nude employee to provide
9 massage therapy or other massage services to a customer;

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

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

17 (c) A massage establishment shall:

18 (1) properly maintain and secure for each client the
19 initial consultation documents, all session notes, and related
20 billing records; and

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

23 (d) For purposes of this section:

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

25 (A) entirely unclothed; or

26 (B) clothed in a manner that leaves uncovered or
27 visible through less than fully opaque clothing any portion of the

1 breasts below the top of the areola of the breasts or any portion of
2 the genitals or buttocks.

3 (2) "Sexual contact" includes:

4 (A) any touching of any part of the genitalia or
5 anus;

6 (B) any touching of the breasts of a female
7 without the written consent of the female;

8 (C) any offer or agreement to engage in any
9 activity described in Paragraph (A) or (B);

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

11 (E) deviate sexual intercourse, sexual contact,
12 sexual intercourse, indecent exposure, sexual assault,
13 prostitution, and promotions of prostitution as described in
14 Chapters 21, 22, and 43, Penal Code, or any offer or agreement to
15 engage in such activities;

16 (F) any behavior, gesture, or expression that may
17 reasonably be interpreted as inappropriately seductive or sexual;
18 or

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

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

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

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

27 (c) A massage school or massage therapy instructor licensed

1 ~~[registered]~~ under this chapter shall give each prospective student
2 a notice that clearly states the number of course hours that the
3 student must successfully complete before the student is eligible
4 to hold ~~[register as]~~ a massage therapist license under this
5 chapter.

6 SECTION 19. Section 455.204, Occupations Code, is amended
7 to read as follows:

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

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

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

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

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

27 (c) A person who is not licensed ~~[registered]~~ under this

1 chapter may not use the word "massage" or "bath" on any form of
2 advertising unless the person is expressly exempt from the
3 licensing [~~registration~~] requirements of this chapter.

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

6 (e) A person advertising massage therapy or other massage
7 services is presumed to be engaging in conduct regulated by this
8 chapter.

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

11 Sec. 455.206. ESTABLISHMENT CHANGE OF LOCATION PROHIBITED.
12 A massage establishment may not change the location of the
13 establishment without obtaining a new massage establishment
14 license under this chapter.

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

17 SUBCHAPTER F. LICENSE [~~REGISTRATION~~] DENIAL OR
18 DISCIPLINARY PROCEDURES

19 SECTION 23. Section 455.251, Occupations Code, is amended
20 to read as follows:

21 Sec. 455.251. GROUNDS FOR LICENSE [~~REGISTRATION~~] DENIAL OR
22 DISCIPLINARY ACTION. (a) The department [~~board~~] may refuse to
23 issue a license [~~certificate of registration~~] to a person and shall
24 suspend, revoke, or refuse to renew the license [~~certificate of~~
25 ~~registration~~] of a person or shall reprimand a person licensed
26 [~~registered~~] under this chapter if the person:

27 (1) obtains a license [~~certificate of registration~~] by

1 fraud, misrepresentation, or concealment of material facts;

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

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

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

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

11 (6) violates this chapter.

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

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

18 (2) the department determines the person has practiced
19 or administered massage therapy at or for a sexually oriented
20 business.

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

24 (1) the school or establishment is a sexually oriented
25 business; or

26 (2) an offense involving prostitution or another
27 sexual offense that resulted in a conviction for the offense, a plea

1 of nolo contendere or guilty to the offense, or a grant of deferred
2 adjudication for the offense occurred on the premises of the school
3 or establishment.

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

6 (a) A person whose application for a license [~~certificate of~~
7 ~~registration~~] is denied, whose license [~~certificate of~~
8 ~~registration~~] is suspended or revoked, or who has been reprimanded
9 is entitled to a hearing before the department if the person submits
10 a written request to the department.

11 SECTION 25. Section 455.253, Occupations Code, is amended
12 to read as follows:

13 Sec. 455.253. PROBATION. The department [~~board~~] may place
14 on probation a person, including a massage school, massage therapy
15 instructor, or massage establishment, whose license [~~certificate~~
16 ~~of registration~~] is suspended. If a license [~~registration~~]
17 suspension is probated, the department [~~board~~] may require the
18 person to:

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

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

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

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

1 (a) The department shall temporarily suspend the license
2 [~~certificate of registration~~] of a license [~~certificate~~] holder if
3 the department determines from the evidence or information
4 presented to it that continued practice by the license
5 [~~certificate~~] holder would constitute a continuing and imminent
6 threat to the public welfare.

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

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

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

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

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

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

23 (b) The hearings examiner shall:

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

25 (2) promptly issue to the executive commissioner [~~of~~
26 ~~public health~~] or the commissioner's designee a proposal for
27 decision as to the occurrence of the violation, and, if the examiner

1 determines a penalty is warranted, the amount of the proposed
2 administrative penalty.

3 SECTION 29. Section 455.306, Occupations Code, is amended
4 to read as follows:

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

10 (1) a violation occurred and may impose an
11 administrative penalty; or

12 (2) a violation did not occur.

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

15 (1) separate statements of the findings of fact and
16 conclusions of law;

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

18 (3) a statement of the right of the person to judicial
19 review of the order.

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

22 (b) The department may assess reasonable expenses and costs
23 against a person in an administrative hearing if, as a result of the
24 hearing, an administrative penalty is assessed against the person.
25 The person shall pay expenses and costs assessed under this
26 subsection not later than the 30th day after the date the order of
27 the executive commissioner [~~of public health~~] or the commissioner's

1 designee requiring the payment of expenses and costs is final. The
2 department may refer the matter to the attorney general for
3 collection of expenses and costs.

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

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

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

12 (2) is operating an establishment that offers massage
13 therapy or other massage services regulated by this chapter and is
14 not licensed under this chapter.

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

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

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

26 (1) knowingly violates Section 455.151, 455.159,
27 455.202(b) [~~455.202~~], 455.203(a) or (c), 455.204(b) or (c), or

1 455.205(b), (c), or (d) [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 (a-1) A person commits an offense if the person is required
6 to be licensed under this chapter and the person knowingly
7 violates Section 455.205(a). An offense under this subsection is a
8 Class B misdemeanor, unless the actor has previously been convicted
9 one or two times of an offense under this subsection, in which event
10 it is a Class A misdemeanor. If the actor has previously been
11 convicted three or more times of an offense under this subsection,
12 the offense is a state jail felony.

13 (b) An owner or operator of a massage establishment commits
14 an offense if the person knowingly violates Section 455.151(a),
15 455.155(d), 455.202(a) [455.202], 455.204(b) or (c), or 455.205(d)
16 [455.205 (c) or (d)]. An offense under this subsection is a Class B
17 misdemeanor, unless the actor has previously been convicted one or
18 two times of an offense under this subsection, in which event it is
19 a Class A misdemeanor. If the actor has previously been convicted
20 three or more times of an offense under this subsection, the offense
21 is a state jail felony.

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

25 SECTION 33. Section 411.110, Government Code, is amended to
26 read as follows:

27 Sec. 411.110. ACCESS TO CRIMINAL HISTORY RECORD

1 INFORMATION: [~~TEXAS~~] DEPARTMENT OF STATE HEALTH SERVICES. (a) The
2 [~~Texas~~] Department of State Health Services is entitled to obtain
3 from the department criminal history record information maintained
4 by the department that relates to:

5 (1) a person who is:

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

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

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

13 (2) an applicant for a license, the owner or manager of
14 an applicant for a massage establishment license, or a license
15 holder under Chapter 455, Occupations Code.

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

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

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

1 (e) The Department of State Health Services [~~Texas Board of~~
2 ~~Health~~] is not prohibited from disclosing criminal history record
3 information obtained under Subsection (a) in a criminal proceeding
4 or in a hearing conducted by the [~~Texas~~] Department of State Health
5 Services.

6 SECTION 34. Sections 455.102 and 455.157, Occupations Code,
7 are repealed.

8 SECTION 35. (a) Not later than December 31, 2005, the
9 Department of State Health Services shall prescribe the forms and
10 procedures and the executive commissioner of the Health and Human
11 Services Commission shall adopt the rules that are necessary to
12 implement Chapter 455, Occupations Code, as 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 January 1, 2006. An application
17 filed before that date is governed by the law in effect on the date
18 the application was filed, and the former law is continued in effect
19 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 36. The change in law made by this Act to Section
11 455.351, Occupations Code, regarding a violation of Chapter 455,
12 Occupations Code, or the rules adopted under that chapter, applies
13 only to a violation that occurs on or after the effective date of
14 this Act. A violation of Chapter 455, Occupations Code, that occurs
15 before the effective date of this Act is governed by the law in
16 effect on the date the violation occurred, and the former law is
17 continued in effect for that purpose.

18 SECTION 37. (a) The change in law made by this Act to
19 Section 455.352, Occupations Code, applies only to an offense
20 committed on or after the effective date of this Act. For purposes
21 of this section, an offense is committed before the effective date
22 of this Act if any element of the offense occurs before the
23 effective date.

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

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