

By: Anchia

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:

19 (A) advertises massage therapy or offers massage
20 therapy as a service; or

21 (B) advertises or offers other massage services.

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 at a massage establishment for compensation
14 that involves physical contact with a client, including bathing,
15 showering, shampooing, body rubbing, and body shampooing.

16 SECTION 2. Section 455.005, Occupations Code, is amended by
17 adding Subsection (d) to read as follows:

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

21 SECTION 3. Subchapter B, Chapter 455, Occupations Code, is
22 amended to read as follows:

23 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER

24 [~~BOARD~~]

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

1 chapter.

2 Sec. 455.052. RULES REGARDING MESSAGE ESTABLISHMENTS.

3 Rules adopted under this chapter relating to a message
4 establishment must contain minimum standards for:

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

8 (2) the qualifications of professional personnel;

9 (3) the supervision of professional personnel;

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

12 (5) the sanitary and hygienic conditions of a message
13 establishment;

14 (6) the provision of message therapy or other message
15 services by a message establishment;

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

17 (8) the organizational structure of a message
18 establishment, including the lines of authority and the delegation
19 of responsibility;

20 (9) fire prevention and safety in a message
21 establishment;

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

23 (11) any other aspect of the operation of a message
24 establishment necessary to protect message establishment personnel
25 or the public.

26 Sec. 455.053. RULES REGARDING MESSAGE SCHOOLS. Rules
27 adopted under this chapter relating to a message school must

1 contain minimum standards for:

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

5 (2) the qualifications of professional personnel;

6 (3) the supervision of professional personnel;

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

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

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

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

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

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

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

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

24 (12) massage school inspections; and

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

1 Sec. 455.054. RULES REGARDING MASSAGE THERAPISTS. Rules
2 adopted under this chapter relating to a massage therapist must
3 contain minimum standards for:

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

7 (2) the qualifications of a massage therapist;

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

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

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

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

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

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

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

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

27 (4) the maximum number of hours a student may

1 accumulate in an internship program under the supervision of a
2 massage therapy instructor before the student is required to be
3 licensed [~~register~~] under this chapter;

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

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

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

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

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

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

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

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

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

- 1 (1) restricts the use of any medium for advertising;
- 2 (2) restricts the use of a licensed [~~registered~~]
3 person's personal appearance or voice in an advertisement;
- 4 (3) relates to the size or duration of an
5 advertisement by the licensed [~~registered~~] person; or
- 6 (4) restricts the licensed [~~registered~~] person's
7 advertisement under a trade name.

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

15 SECTION 4. Section 455.104, Occupations Code, is amended to
16 read as follows:

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

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

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

27 (b) A peace officer appointed or employed by a law

1 enforcement agency of a political subdivision of this state may
2 enter the premises of a license holder to ensure compliance with
3 this chapter and rules adopted under this chapter.

4 SECTION 5. Subchapter C, Chapter 455, Occupations Code, is
5 amended by adding Section 455.105 to read as follows:

6 Sec. 455.105. REGISTRY. (a) The board shall annually
7 prepare a registry of licensed massage therapists.

8 (b) The board shall make the registry available to the
9 public, license holders, other state agencies, and peace officers.

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

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

13 SECTION 7. Sections 455.151 and 455.152, Occupations Code,
14 are amended to read as follows:

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

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

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

26 (a) A person is not eligible for a license [~~registration~~] as a
27 massage establishment, massage school, massage therapist, or

1 message therapy instructor if the person is an individual and has
2 been convicted of, entered a plea of nolo contendere or guilty to,
3 or received deferred adjudication for an offense involving
4 prostitution or another sexual offense.

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

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

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

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

18 SECTION 9. Sections 455.153-455.156, Occupations Code, are
19 amended to read as follows:

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

22 (1) submit an application form provided by the
23 department; and

24 (2) include with the application the application fee
25 set by the department.

26 Sec. 455.154. GENERAL PROVISIONS RELATING TO LICENSES
27 [~~REGISTRATION~~]. (a) The holder of a license [~~certificate of~~

1 ~~registration~~] may exercise all professional rights, honors, and
2 privileges relating to the practice of massage therapy.

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

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

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

10 (2) offers or performs massage therapy under the scope
11 of that credential.

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

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

21 (d) A sexually oriented business may not:

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

23 (2) operate as a massage establishment under this
24 chapter.

25 Sec. 455.156. LICENSE [~~REGISTRATION~~] REQUIREMENTS FOR
26 MASSAGE THERAPIST. (a) The department shall issue a license
27 [~~certificate of registration~~] to each qualified applicant who

1 applies for [~~registration as~~] a massage [~~message~~] therapist
2 license.

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

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

7 (A) has satisfactorily completed massage therapy
8 studies in a 300-hour, supervised course of instruction provided by
9 a massage therapy instructor, a licensed [~~registered~~] massage
10 school, a state-approved educational institution, or any
11 combination of instructors or schools, in which:

12 (i) 125 hours are dedicated to the study of
13 Swedish massage therapy techniques and taught by a massage therapy
14 instructor;

15 (ii) 50 hours are dedicated to the study of
16 anatomy;

17 (iii) 25 hours are dedicated to the study of
18 physiology;

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

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

23 (vi) 20 hours are dedicated to the study of
24 health and hygiene; and

25 (vii) 50 hours are spent in an internship
26 program; or

27 (B) has practiced massage therapy as a profession

1 for not less than five years in another state or country that the
2 department determines does not maintain standards and requirements
3 of practice and licensing or registration that substantially
4 conform to the standards and requirements of this state; ~~and~~

5 (2) pass the practical and written portions of the
6 state examination; and

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

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

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

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

18 SECTION 11. Sections 455.157-455.158, Occupations Code,
19 are amended to read as follows:

20 Sec. 455.157. TEMPORARY LICENSE ~~[REGISTRATION]~~. (a) The
21 department shall issue a temporary license ~~[certificate of~~
22 ~~registration]~~ to an applicant who has complied with the education
23 and experience requirements for licensing ~~[registration]~~.

24 (b) A temporary license ~~[certificate of registration]~~
25 expires on the date the applicant is:

26 (1) issued a massage therapist license ~~[certificate of~~
27 ~~registration]~~ after successful completion of the first examination

1 for which the applicant is eligible; or

2 (2) notified by the department that the applicant has
3 failed the first examination for which the applicant was eligible.

4 (c) Notwithstanding Subsection (b), a temporary license
5 [~~certificate of registration~~] is valid for six months from the date
6 the license [~~certificate~~] is issued.

7 (d) The department may set a reasonable fee for a temporary
8 license [~~certificate of registration~~].

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

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

26 Sec. 455.1572. PROVISIONAL LICENSE [~~REGISTRATION~~]. (a)
27 The department [~~board~~] may issue a provisional license [~~certificate~~

1 ~~of registration]~~ to an applicant for licensing [~~registration~~] as a
2 massage therapist or massage therapy instructor currently licensed
3 or registered in another jurisdiction who seeks a license
4 [~~certificate of registration~~] in this state and who:

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

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

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

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

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

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

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

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

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

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

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

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

1 consists of at least 300 hours.

2 SECTION 12. Section 455.159(a), Occupations Code, is
3 amended to read as follows:

4 (a) An internship program must:

5 (1) meet the qualifications established by the
6 department [~~board~~];

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

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

12 SECTION 13. Sections 455.160 and 455.161, Occupations Code,
13 are amended to read as follows:

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

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

27 (c) A person who is otherwise eligible to renew a license

1 ~~[certificate of registration]~~ may renew an unexpired license
2 ~~[registration]~~ by paying the required renewal fee to the department
3 before the expiration date of the license ~~[registration]~~. A person
4 whose license ~~[registration]~~ has expired may not engage in
5 activities that require a license ~~[registration]~~ until the license
6 ~~[registration]~~ has been renewed.

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

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

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

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

26 (h) On receipt of a request for a renewal of a license issued
27 under this chapter, the department may conduct a criminal

1 background check under Section 455.1525.

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

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

11 SECTION 14. The heading to Subchapter E, Chapter 455,
12 Occupations Code, is amended to read as follows:

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

14 SECTION 15. Sections 455.201 and 455.202, Occupations Code,
15 are amended to read as follows:

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

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

23 (b) A massage establishment may not:

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

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

1 establishment;

2 (3) allow any individual who is younger than 18 years
3 of age to enter the premises at which massage therapy or other
4 massage services are performed, unless the individual's parent or
5 legal guardian accompanies the individual or authorizes in writing
6 that the individual is allowed to enter or receive services at the
7 establishment; or

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

10 (c) For purposes of this section, "nude" means a person who
11 is:

12 (1) entirely unclothed; or

13 (2) clothed in a manner that leaves uncovered or
14 visible through less than fully opaque clothing any portion of the
15 breasts below the top of the areola of the breasts or any portion of
16 the genitals or buttocks.

17 SECTION 16. Sections 455.203(a), (b), and (c), Occupations
18 Code, are amended to read as follows:

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

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

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

1 chapter.

2 SECTION 17. Section 455.204, Occupations Code, is amended
3 to read as follows:

4 Sec. 455.204. DISPLAY OF LICENSE [~~CERTIFICATE~~]. (a) A
5 person who holds a license [~~certificate of registration~~] shall
6 publicly display the license [~~certificate~~] as specified by the
7 department [~~board~~].

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

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

16 SECTION 18. Section 455.205, Occupations Code, is amended
17 by amending Subsections (b), (c), and (d) and adding Subsection (e)
18 to read as follows:

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

23 (c) A person who is not licensed [~~registered~~] under this
24 chapter may not use the word "massage" or "bath" on any form of
25 advertising unless the person is expressly exempt from the
26 licensing [~~registration~~] requirements of this chapter.

27 (d) A sexually oriented business may not use the word

1 "massage" or "bath" on a sign or any form of advertising.

2 (e) A person advertising massage services is presumed to be
3 engaging in conduct regulated by this chapter.

4 SECTION 19. Subchapter E, Chapter 455, Occupations Code, is
5 amended by adding Section 455.206 to read as follows:

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

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

12 SUBCHAPTER F. LICENSE [~~REGISTRATION~~] DENIAL OR
13 DISCIPLINARY PROCEDURES

14 SECTION 21. Section 455.251, Occupations Code, is amended
15 to read as follows:

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

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

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

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

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

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

6 (6) violates this chapter.

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

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

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

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

19 (1) the school or establishment is a sexually oriented
20 business; or

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

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

1 (a) A person whose application for a license [~~certificate of~~
2 ~~registration~~] is denied, whose license [~~certificate of~~
3 ~~registration~~] is suspended or revoked, or who has been reprimanded
4 is entitled to a hearing before the department if the person submits
5 a written request to the department.

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

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

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

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

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

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

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

1 threat to the public welfare.

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

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

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

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

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

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

18 (b) The hearings examiner shall:

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

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

25 SECTION 27. Section 455.306, Occupations Code, is amended
26 to read as follows:

27 Sec. 455.306. DECISION BY EXECUTIVE COMMISSIONER. (a)

1 Based on the findings of fact, conclusions of law, and
2 recommendations of the hearings examiner, the executive
3 commissioner [~~of public health~~] or the commissioner's designee by
4 order may determine that:

5 (1) a violation occurred and may impose an
6 administrative penalty; or

7 (2) a violation did not occur.

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

10 (1) separate statements of the findings of fact and
11 conclusions of law;

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

13 (3) a statement of the right of the person to judicial
14 review of the order.

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

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

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

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

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

7 (2) is operating an establishment that offers massage
8 therapy or other massage services regulated by this chapter and is
9 not licensed under this chapter.

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

16 SECTION 30. Section 455.352, Occupations Code, is amended
17 by amending Subsections (a), (b), and (d) and adding Subsection
18 (a-1) to read as follows:

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

21 (1) knowingly violates Section 455.151, 455.159,
22 455.202(b) [~~455.202~~], 455.203(a) or (c), 455.204(b) or (c), or
23 455.205(b), (c), or (d) [~~455.205~~]; or

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

27 (a-1) A person commits an offense if the person is required

1 to be licensed under this chapter and the person knowingly
2 violates Section 455.205(a). An offense under this subsection is a
3 Class B misdemeanor, unless the actor has previously been convicted
4 one or two times of an offense under this subsection, in which event
5 it is a Class A misdemeanor. If the actor has previously been
6 convicted three or more times of an offense under this subsection,
7 the offense is a state jail felony.

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

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

20 SECTION 31. Section 411.110, Government Code, is amended to
21 read as follows:

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

27 (1) a person who is:

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

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

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

8 (2) an applicant for a license, the owner or manager of
9 an applicant for a massage establishment license, or a license
10 holder under Chapter 455, Occupations Code.

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

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

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

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

1 SECTION 32. (a) Not later than December 31, 2005, the
2 Department of State Health Services shall prescribe the forms and
3 procedures and the executive commissioner of the Health and Human
4 Services Commission shall adopt the rules that are necessary to
5 implement Chapter 455, Occupations Code, as amended by this Act.

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

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

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

1 amended by this Act, for failure to hold a license under Chapter 455
2 until the certificate of registration's expiration date.

3 SECTION 33. The change in law made by this Act to Section
4 455.351, Occupations Code, regarding a violation of Chapter 455,
5 Occupations Code, or the rules adopted under that chapter, applies
6 only to a violation that occurs on or after the effective date of
7 this Act. A violation of Chapter 455, Occupations Code, that occurs
8 before the effective date of this Act is governed by the law in
9 effect on the date the violation occurred, and the former law is
10 continued in effect for that purpose.

11 SECTION 34. (a) The change in law made by this Act to
12 Section 455.352, Occupations Code, applies only to an offense
13 committed on or after the effective date of this Act. For purposes
14 of this section, an offense is committed before the effective date
15 of this Act if any element of the offense occurs before the
16 effective date.

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

20 SECTION 35. This Act takes effect September 1, 2005.