

1-1 By: Anchia, et al. (Senate Sponsor - West) H.B. No. 2696
1-2 (In the Senate - Received from the House May 11, 2005;
1-3 May 13, 2005, read first time and referred to Committee on Health
1-4 and Human Services; May 20, 2005, reported favorably by the
1-5 following vote: Yeas 7, Nays 0; May 20, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the licensing and regulation of massage therapy and
1-9 massage establishments and certain services related to massage;
1-10 providing penalties.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 455.001, Occupations Code, is amended by
1-13 amending Subdivisions (1), (2), (3), (5), (6), (7), and (9) and
1-14 adding Subdivision (11) to read as follows:

1-15 (1) ~~["Board" means the Texas Board of Health.~~

1-16 ~~[(2)]~~ "Department" means the ~~[Texas]~~ Department of
1-17 State Health Services.

1-18 (2) "Executive commissioner" means the executive
1-19 commissioner of the Health and Human Services Commission.

1-20 (3) "Instructor" means a person who instructs a
1-21 student in any section of the course of instruction required for
1-22 ~~[registration as]~~ a massage therapist license.

1-23 (5) "Massage establishment" means a place of business
1-24 that advertises or offers massage therapy or other ~~[offers]~~ massage
1-25 services. The term includes a place of business that advertises or
1-26 offers any service described by a derivation of the terms "massage
1-27 therapy" or "other massage services." ~~[therapy as a service.]~~

1-28 (6) "Massage school" means an entity that:

1-29 (A) teaches at a minimum the course of
1-30 instruction required for ~~[registration as]~~ a massage therapist
1-31 license; and

1-32 (B) has at least two instructors.

1-33 (7) "Massage therapist" means a person who practices
1-34 or administers massage therapy or other massage services to a
1-35 client for compensation. The term includes a licensed ~~[registered]~~
1-36 massage therapist, therapeutic massage practitioner, massage
1-37 technician, masseur, masseuse, myotherapist, body massager, body
1-38 rubber, or any derivation of those titles.

1-39 (9) "Massage therapy instructor" means a licensed
1-40 ~~[registered]~~ massage therapist who provides to one or more students
1-41 instruction approved by the department in massage therapy.

1-42 (11) "Other massage services" include any services
1-43 offered or performed for compensation at a massage establishment
1-44 that involve physical contact with a client, and may include the use
1-45 of oil, lubricant, salt glow, a heat lamp, a hot and cold pack, or a
1-46 tub, shower, jacuzzi, sauna, steam, or cabinet bath.

1-47 SECTION 2. Section 455.004, Occupations Code, is amended to
1-48 read as follows:

1-49 Sec. 455.004. APPLICABILITY OF CHAPTER. This chapter does
1-50 not apply to:

1-51 (1) a person licensed in this state as a physician,
1-52 chiropractor, occupational therapist, physical therapist, nurse,
1-53 cosmetologist, or athletic trainer or as a member of a similar
1-54 profession subject to state licensing while the person is
1-55 practicing within the scope of the license;

1-56 (2) a school approved by the Texas Education Agency or
1-57 otherwise approved by the state; or

1-58 (3) an instructor otherwise approved by the state to
1-59 teach in an area of study included in the required course of
1-60 instruction for issuance of ~~[registration as]~~ a massage therapist
1-61 license.

1-62 SECTION 3. Section 455.005, Occupations Code, is amended by
1-63 amending Subsection (b) and adding Subsection (d) to read as
1-64 follows:

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

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

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

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

(A) performs under the applicable licensing law; and

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

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

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

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

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

Sec. 455.052. RULES REGARDING MASSAGE ESTABLISHMENTS. Rules adopted under this chapter relating to a massage establishment must contain minimum standards for:

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

(2) the qualifications of professional personnel;

(3) the supervision of professional personnel;

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

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

(6) the provision of massage therapy or other massage services by a massage establishment;

(7) the records kept by a massage establishment;

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

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

(10) the inspection of a massage establishment; and

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

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

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

(2) the qualifications of professional personnel;

(3) the supervision of professional personnel;

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

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

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

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

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

(9) the organizational structure of a massage school,

3-1 including the lines of authority and the delegation of
 3-2 responsibility;
 3-3 (10) fire prevention and safety in a massage school;
 3-4 (11) the massage school's curriculum and educational
 3-5 material;
 3-6 (12) massage school inspections; and
 3-7 (13) any other aspect of the operation of a massage
 3-8 school that the executive commissioner [~~board~~] considers necessary
 3-9 to protect students, massage school personnel, or the public.

3-10 Sec. 455.054. RULES REGARDING MASSAGE THERAPISTS. Rules
 3-11 adopted under this chapter relating to a massage therapist must
 3-12 contain minimum standards for:

- 3-13 (1) the issuance, denial, renewal, suspension,
 3-14 revocation, or probation of a license [~~certificate of registration~~]
 3-15 under this chapter;
- 3-16 (2) the qualifications of a massage therapist;
- 3-17 (3) the sanitary and hygienic conditions of the
 3-18 physical environment in which a massage therapist practices massage
 3-19 therapy;
- 3-20 (4) the records kept by a massage therapist;
- 3-21 (5) the inspection of the records, equipment, and
 3-22 sanitary and hygienic conditions of the physical environment used
 3-23 by a massage therapist in practicing massage therapy; and
- 3-24 (6) any other aspect of the practice of a massage
 3-25 therapist necessary to protect the public.

3-26 Sec. 455.055. RULES REGARDING MASSAGE THERAPY
 3-27 INSTRUCTORS. Rules adopted under this chapter relating to a
 3-28 massage therapy instructor must contain minimum standards for:

- 3-29 (1) the issuance, denial, renewal, suspension,
 3-30 revocation, or probation of a license [~~certificate of registration~~]
 3-31 under this chapter;
- 3-32 (2) the qualifications of a massage therapy
 3-33 instructor;
- 3-34 (3) the supervision of a student by a massage therapy
 3-35 instructor;
- 3-36 (4) the maximum number of hours a student may
 3-37 accumulate in an internship program under the supervision of a
 3-38 massage therapy instructor before the student is required to be
 3-39 licensed [~~register~~] under this chapter;
- 3-40 (5) the equipment essential to the education, health,
 3-41 and safety of students and the public;
- 3-42 (6) the sanitary and hygienic conditions of the
 3-43 physical environment in which a massage therapy instructor teaches;
- 3-44 (7) the provision of massage therapy or other massage
 3-45 services by a student or a massage therapy instructor;
- 3-46 (8) the educational and clinical records kept by a
 3-47 massage therapy instructor;
- 3-48 (9) the curriculum taught and educational material
 3-49 used by a massage therapy instructor;
- 3-50 (10) the inspection of the records, equipment, and
 3-51 physical environment of a massage therapy instructor; and
- 3-52 (11) any other aspect of a massage therapy
 3-53 instructor's instruction or operation of any portion of the course
 3-54 of instruction required for [~~registration as~~] a massage therapist
 3-55 license.

3-56 Sec. 455.056. RULES REGARDING ADVERTISING OR COMPETITIVE
 3-57 BIDDING [~~BY REGISTRANT~~]. (a) The executive commissioner [~~board~~]
 3-58 may not adopt rules restricting advertising or competitive bidding
 3-59 by a person licensed [~~registered~~] under this chapter except to
 3-60 prohibit false, misleading, or deceptive practices.

3-61 (b) In [~~its~~] rules to prohibit false, misleading, or
 3-62 deceptive practices, the executive commissioner [~~board~~] may not
 3-63 include a rule that:

- 3-64 (1) restricts the use of any medium for advertising;
- 3-65 (2) restricts the use of a licensed [~~registered~~]
 3-66 person's personal appearance or voice in an advertisement;
- 3-67 (3) relates to the size or duration of an
 3-68 advertisement by the licensed [~~registered~~] person; or
- 3-69 (4) restricts the licensed [~~registered~~] person's

4-1 advertisement under a trade name.

4-2 Sec. 455.057. CONTINUING EDUCATION. The executive
 4-3 commissioner [~~board~~] shall recognize, prepare, or administer
 4-4 continuing education programs for persons licensed [~~registered~~]
 4-5 under this chapter. A licensed [~~registered~~] person must
 4-6 participate in the programs to the extent required by the executive
 4-7 commissioner [~~board~~] to keep the person's license [~~certificate of~~
 4-8 ~~registration~~].

4-9 SECTION 5. Section 455.103(b), Occupations Code, is amended
 4-10 to read as follows:

4-11 (b) A memorandum must:

4-12 (1) be adopted by rule; and

4-13 (2) limit the total amount of the fees charged by the
 4-14 department and the Texas Education Agency for licensing
 4-15 [~~registering~~] a massage school to an amount equal to the amount of
 4-16 the fees the department would charge for licensing [~~registering~~]
 4-17 the massage school in the absence of the memorandum.

4-18 SECTION 6. Section 455.104, Occupations Code, is amended to
 4-19 read as follows:

4-20 Sec. 455.104. INSPECTIONS; INVESTIGATIONS. (a) The
 4-21 department or its authorized representative may enter the premises
 4-22 of an applicant for a license [~~certificate of registration~~] or a
 4-23 license [~~certificate~~] holder at:

4-24 (1) reasonable times to conduct an inspection
 4-25 incidental to the issuance of a license [~~certificate of~~
 4-26 ~~registration~~]; and

4-27 (2) other times that the department considers
 4-28 necessary to ensure compliance with this chapter and the rules
 4-29 adopted under this chapter.

4-30 (b) A peace officer appointed or employed by a law
 4-31 enforcement agency of a political subdivision of this state may
 4-32 enter the premises of a massage establishment to ensure compliance
 4-33 with this chapter and rules adopted under this chapter.

4-34 SECTION 7. Subchapter C, Chapter 455, Occupations Code, is
 4-35 amended by adding Section 455.105 to read as follows:

4-36 Sec. 455.105. REGISTRY. (a) The department shall annually
 4-37 prepare a registry of licensed massage therapists.

4-38 (b) The department shall make the registry available to the
 4-39 public, license holders, other state agencies, and peace officers.

4-40 SECTION 8. The heading to Subchapter D, Chapter 455,
 4-41 Occupations Code, is amended to read as follows:

4-42 SUBCHAPTER D. LICENSING [~~REGISTRATION~~]

4-43 SECTION 9. Sections 455.151 and 455.152, Occupations Code,
 4-44 are amended to read as follows:

4-45 Sec. 455.151. LICENSE [~~REGISTRATION~~] REQUIRED. (a) Unless
 4-46 the person is exempt from the licensing [~~registration~~] requirement,
 4-47 a person may not act as a massage therapist, massage school, massage
 4-48 therapy instructor, or massage establishment unless the person
 4-49 holds an appropriate license [~~certificate of registration~~] issued
 4-50 under this chapter.

4-51 (b) Unless the person is exempt from the licensing
 4-52 [~~registration~~] requirement, a person may not represent that the
 4-53 person is a massage therapist unless the person holds a license
 4-54 [~~certificate of registration~~] under this chapter.

4-55 Sec. 455.152. INELIGIBILITY FOR LICENSE [~~REGISTRATION~~].

4-56 (a) A person is not eligible for a license [~~registration~~] as a
 4-57 massage establishment, massage school, massage therapist, or
 4-58 massage therapy instructor if the person is an individual and has
 4-59 been convicted of, entered a plea of nolo contendere or guilty to,
 4-60 or received deferred adjudication for an offense involving
 4-61 prostitution or another sexual offense.

4-62 (b) A person convicted of a violation of this chapter is
 4-63 ineligible for a license [~~registration~~] as a massage establishment,
 4-64 massage school, massage therapist, or massage therapy instructor
 4-65 until the fifth anniversary of the date of the conviction.

4-66 SECTION 10. Subchapter D, Chapter 455, Occupations Code, is
 4-67 amended by adding Section 455.1525 to read as follows:

4-68 Sec. 455.1525. CRIMINAL BACKGROUND CHECKS. (a) On receipt
 4-69 of an application for a license under this chapter, the department

5-1 shall conduct a criminal background check on the applicant.

5-2 (b) An applicant is not eligible for a license under this
 5-3 chapter if the applicant, in the five years preceding the date of
 5-4 the application, has been finally convicted of a misdemeanor
 5-5 involving moral turpitude or a felony.

5-6 SECTION 11. Sections 455.153-455.156, Occupations Code,
 5-7 are amended to read as follows:

5-8 Sec. 455.153. APPLICATION FOR LICENSE [REGISTRATION]. An
 5-9 applicant for a license [~~registration~~] under this chapter must:

5-10 (1) submit an application form provided by the
 5-11 department; and

5-12 (2) include with the application the application fee
 5-13 set by the department.

5-14 Sec. 455.154. GENERAL PROVISIONS RELATING TO LICENSES
 5-15 [REGISTRATION]. (a) The holder of a license [~~certificate of~~
 5-16 ~~registration~~] may exercise all professional rights, honors, and
 5-17 privileges relating to the practice of massage therapy.

5-18 (b) A license [~~certificate of registration~~] is the property
 5-19 of the department and must be surrendered on demand.

5-20 Sec. 455.155. LICENSE [REGISTRATION] EXEMPTION [FOR
 5-21 ~~MASSAGE ESTABLISHMENT~~]. (a) Section 455.151 does not apply to an
 5-22 establishment or person that:

5-23 (1) holds a license, permit, certificate, or other
 5-24 credential issued by this state under another law; and

5-25 (2) offers or performs massage therapy under the scope
 5-26 of that credential.

5-27 (b) A licensed [~~registered~~] massage therapist who practices
 5-28 as a solo practitioner is not required to hold a license [~~register~~]
 5-29 as a massage establishment.

5-30 (c) The executive commissioner [~~board~~] by rule shall
 5-31 provide for a fair and reasonable procedure to grant exemptions
 5-32 from the licensing [~~registration~~] requirements of this chapter
 5-33 [~~section~~]. The rules must provide that a person is exempt if the
 5-34 person shows that the advertising or provision of massage therapy
 5-35 services is incidental to the person's primary enterprise.

5-36 (d) A sexually oriented business may not:

5-37 (1) hold a license [~~register~~] under this chapter; or
 5-38 (2) operate as a massage establishment under this
 5-39 chapter.

5-40 Sec. 455.156. LICENSE [REGISTRATION] REQUIREMENTS FOR
 5-41 MASSAGE THERAPIST. (a) The department shall issue a license
 5-42 [~~certificate of registration~~] to each qualified applicant who
 5-43 applies for [~~registration as~~] a massage [~~message~~]
 5-44 license.

5-45 (b) An applicant for a license [~~registration~~] under this
 5-46 section must be an individual and:

5-47 (1) present evidence satisfactory to the department
 5-48 [~~board~~] that the person:

5-49 (A) has satisfactorily completed massage therapy
 5-50 studies in a 300-hour, supervised course of instruction provided by
 5-51 a massage therapy instructor, a licensed [~~registered~~] massage
 5-52 school, a state-approved educational institution, or any
 5-53 combination of instructors or schools, in which:

5-54 (i) 125 hours are dedicated to the study of
 5-55 Swedish massage therapy techniques and taught by a massage therapy
 5-56 instructor;

5-57 (ii) 50 hours are dedicated to the study of
 5-58 anatomy;

5-59 (iii) 25 hours are dedicated to the study of
 5-60 physiology;

5-61 (iv) 15 hours are dedicated to the study of
 5-62 hydrotherapy;

5-63 (v) 15 hours are dedicated to the study of
 5-64 business practices and professional ethics standards;

5-65 (vi) 20 hours are dedicated to the study of
 5-66 health and hygiene; and

5-67 (vii) 50 hours are spent in an internship
 5-68 program; or

5-69 (B) has practiced massage therapy as a profession

6-1 for not less than five years in another state or country that the
 6-2 department determines does not maintain standards and requirements
 6-3 of practice and licensing or registration that substantially
 6-4 conform to the standards and requirements of this state; ~~and~~

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

6-7 (3) be at least 18 years of age.

6-8 SECTION 12. Sections 455.1565(a) and (d), Occupations Code,
 6-9 are amended to read as follows:

6-10 (a) Not later than the 30th day after the date a person takes
 6-11 a licensing ~~[registration]~~ examination under this chapter, the
 6-12 department shall notify the person of the results of the
 6-13 examination.

6-14 (d) If requested in writing by a person who fails a
 6-15 licensing ~~[registration]~~ examination administered under this
 6-16 chapter, the department shall furnish the person with an analysis
 6-17 of the person's performance on the examination.

6-18 SECTION 13. Sections 455.1571-455.158, Occupations Code,
 6-19 are amended to read as follows:

6-20 Sec. 455.1571. APPLICANT LICENSED ~~[REGISTERED]~~ IN ANOTHER
 6-21 JURISDICTION. (a) The department ~~[board]~~ may waive any
 6-22 prerequisite to obtaining a license ~~[certificate of registration]~~
 6-23 for an applicant for licensing ~~[registration]~~ as a massage
 6-24 therapist or massage therapy instructor after reviewing the
 6-25 applicant's credentials and determining that the applicant holds a
 6-26 license or certificate of registration issued by another
 6-27 jurisdiction that has licensing or registration requirements
 6-28 substantially equivalent to those of this state.

6-29 (b) The department ~~[board]~~ may waive any prerequisite to
 6-30 obtaining a license ~~[certificate of registration]~~ for an applicant
 6-31 for licensing ~~[registration]~~ as a massage therapist or massage
 6-32 therapy instructor who holds a license or certificate of
 6-33 registration issued by another jurisdiction with which this state
 6-34 has a reciprocity agreement. The department ~~[board]~~ may make an
 6-35 agreement, subject to the approval of the governor, with another
 6-36 state to allow for licensing ~~[registration]~~ by reciprocity.

6-37 Sec. 455.1572. PROVISIONAL LICENSE ~~[REGISTRATION]~~. (a)
 6-38 The department ~~[board]~~ may issue a provisional license ~~[certificate~~
 6-39 ~~of registration]~~ to an applicant for licensing ~~[registration]~~ as a
 6-40 massage therapist or massage therapy instructor currently licensed
 6-41 or registered in another jurisdiction who seeks a license
 6-42 ~~[certificate of registration]~~ in this state and who:

6-43 (1) has been licensed or registered in good standing
 6-44 as a massage therapist or massage therapy instructor, as
 6-45 applicable, for at least two years in another jurisdiction,
 6-46 including a foreign country, that has licensing or registration
 6-47 requirements substantially equivalent to the requirements of this
 6-48 chapter;

6-49 (2) has passed a national or other examination
 6-50 recognized by the department ~~[board]~~ relating to the practice of
 6-51 massage therapy; and

6-52 (3) is sponsored by a person licensed ~~[registered]~~ by
 6-53 the department ~~[board]~~ under this chapter with whom the provisional
 6-54 license holder ~~[registrant]~~ will practice during the time the
 6-55 person holds a provisional license ~~[certificate of registration]~~.

6-56 (b) The department ~~[board]~~ may waive the requirement of
 6-57 Subsection (a)(3) for an applicant if the department ~~[board]~~
 6-58 determines that compliance with that subsection would be a hardship
 6-59 to the applicant.

6-60 (c) A provisional license ~~[certificate of registration]~~ is
 6-61 valid until the date the department ~~[board]~~ approves or denies the
 6-62 provisional license ~~[certificate]~~ holder's application for
 6-63 licensing ~~[registration]~~. The department ~~[board]~~ shall issue a
 6-64 license ~~[certificate of registration]~~ under this chapter to the
 6-65 provisionally licensed ~~[registered]~~ person if the person:

6-66 (1) is eligible for a license ~~[certificate of~~
 6-67 ~~registration]~~ under Section 455.1571; or

6-68 (2) passes the part of the examination under Section
 6-69 455.101 that relates to the applicant's knowledge and understanding

7-1 of the laws and rules relating to the practice of massage therapy in
7-2 this state and:

7-3 (A) the department [~~board~~] verifies that the
7-4 person meets the academic and experience requirements for licensing
7-5 [~~registration~~] under this chapter; and

7-6 (B) the person satisfies any other licensing
7-7 [~~registration~~] requirements under this chapter.

7-8 (d) The department [~~board~~] must approve or deny a
7-9 provisionally licensed [~~registered~~] person's application for a
7-10 license [~~certificate of registration~~] not later than the 180th day
7-11 after the date the provisional license [~~certificate of~~
7-12 ~~registration~~] is issued. The department [~~board~~] may extend the
7-13 180-day period if the results of an examination have not been
7-14 received by the department [~~board~~] before the end of that period.

7-15 (e) The department [~~board~~] may establish a fee for a
7-16 provisional license [~~certificate of registration~~] in an amount
7-17 reasonable and necessary to cover the cost of issuing the license
7-18 [~~certificate of registration~~].

7-19 Sec. 455.158. STUDENT EXEMPTION FROM LICENSING
7-20 [~~REGISTRATION~~] REQUIREMENTS. A student who provides massage
7-21 therapy as part of an internship program or without compensation is
7-22 exempt from licensing [~~registration~~] under this chapter if the
7-23 student is enrolled in a state-approved course of instruction that
7-24 consists of at least 300 hours.

7-25 SECTION 14. Section 455.159(a), Occupations Code, is
7-26 amended to read as follows:

7-27 (a) An internship program must:

7-28 (1) meet the qualifications established by the
7-29 department [~~board~~];

7-30 (2) provide a student with a minimum of 40 hours of
7-31 hands-on massage therapy experience; and

7-32 (3) be conducted on the school grounds or in a clinic
7-33 or classroom setting provided by the massage school or massage
7-34 therapy instructor.

7-35 SECTION 15. Sections 455.160 and 455.161, Occupations Code,
7-36 are amended to read as follows:

7-37 Sec. 455.160. LICENSE [~~REGISTRATION~~] RENEWAL. (a) A
7-38 person licensed [~~registered~~] under this chapter must periodically
7-39 renew the person's license [~~certificate of registration~~]. The
7-40 license [~~certificate~~] expires unless the license [~~certificate~~]
7-41 holder submits an application for renewal accompanied by the
7-42 renewal fee prescribed by the department or by the late fee
7-43 prescribed by this section.

7-44 (b) The department shall adopt a system under which licenses
7-45 [~~certificates of registration~~] expire on various dates during the
7-46 year. Fees must be prorated so that a licensed [~~registered~~] person
7-47 pays only for that part of the renewal period for which the license
7-48 [~~registration~~] is issued until the expiration date of the license
7-49 [~~registration~~].

7-50 (c) A person who is otherwise eligible to renew a license
7-51 [~~certificate of registration~~] may renew an unexpired license
7-52 [~~registration~~] by paying the required renewal fee to the department
7-53 before the expiration date of the license [~~registration~~]. A person
7-54 whose license [~~registration~~] has expired may not engage in
7-55 activities that require a license [~~registration~~] until the license
7-56 [~~registration~~] has been renewed.

7-57 (d) A person whose license [~~registration~~] has been expired
7-58 for 90 days or less may renew the license [~~registration~~] by paying
7-59 to the department a renewal fee that is equal to 1-1/2 times the
7-60 normally required renewal fee.

7-61 (e) A person whose license [~~registration~~] has been expired
7-62 for more than 90 days but less than one year may renew the license
7-63 [~~registration~~] by paying to the department a renewal fee that is
7-64 equal to two times the normally required renewal fee.

7-65 (f) A person whose license [~~registration~~] has been expired
7-66 for one year or more may not renew the license [~~registration~~]. The
7-67 person may obtain a license [~~register~~] by complying with the
7-68 requirements and procedures, including the examination
7-69 requirements, for obtaining a new license [~~originally~~]

8-1 ~~registering~~].

8-2 (g) Not later than the 30th day before the date a person's
8-3 license [~~registration~~] is scheduled to expire, the department shall
8-4 send written notice of the impending expiration to the person at the
8-5 person's last known address according to the records of the
8-6 department.

8-7 (h) On receipt of a request for a renewal of a license issued
8-8 under this chapter, the department may conduct a criminal
8-9 background check under Section 455.1525.

8-10 Sec. 455.161. RENEWAL OF EXPIRED LICENSE [~~REGISTRATION~~] OF
8-11 OUT-OF-STATE PRACTITIONER. (a) A person who was registered or
8-12 licensed in this state, moved to another state, and is currently
8-13 registered or licensed and has been in practice in the other state
8-14 for the two years preceding the date of application may obtain a
8-15 license [~~register~~] without reexamination.

8-16 (b) The person must pay to the department a fee that is equal
8-17 to two times the normally required license renewal fee [~~for~~
8-18 ~~registration~~].

8-19 SECTION 16. The heading to Subchapter E, Chapter 455,
8-20 Occupations Code, is amended to read as follows:

8-21 SUBCHAPTER E. PRACTICE BY LICENSE [~~CERTIFICATE~~] HOLDERS

8-22 SECTION 17. Sections 455.201 and 455.202, Occupations Code,
8-23 are amended to read as follows:

8-24 Sec. 455.201. REFERRAL FROM PHYSICIAN. A person issued a
8-25 license [~~certificate of registration~~] may receive referrals from a
8-26 physician to administer massage therapy.

8-27 Sec. 455.202. PRACTICE BY MASSAGE ESTABLISHMENT. (a) A
8-28 massage establishment may employ only licensed [~~registered~~]
8-29 massage therapists to perform massage therapy or other massage
8-30 services.

8-31 (b) A massage establishment may not:

8-32 (1) employ an individual who is not a United States
8-33 citizen or a legal permanent resident with a valid work permit;

8-34 (2) employ a minor unless the minor's parent or legal
8-35 guardian authorizes in writing the minor's employment by the
8-36 establishment;

8-37 (3) allow a nude or partially nude employee to provide
8-38 massage therapy or other massage services to a customer;

8-39 (4) allow any individual, including a client, student,
8-40 license holder, or employee, to engage in sexual contact in the
8-41 massage establishment; or

8-42 (5) allow any individual, including a student, license
8-43 holder, or employee, to practice massage therapy in the nude or in
8-44 clothing designed to arouse or gratify the sexual desire of any
8-45 individual.

8-46 (c) A massage establishment shall:

8-47 (1) properly maintain and secure for each client the
8-48 initial consultation documents, all session notes, and related
8-49 billing records; and

8-50 (2) make available to the department on request the
8-51 information kept as provided by Subdivision (1).

8-52 (d) For purposes of this section:

8-53 (1) "Nude" means a person who is:

8-54 (A) entirely unclothed; or

8-55 (B) clothed in a manner that leaves uncovered or
8-56 visible through less than fully opaque clothing any portion of the
8-57 breasts below the top of the areola of the breasts or any portion of
8-58 the genitals or buttocks.

8-59 (2) "Sexual contact" includes:

8-60 (A) any touching of any part of the genitalia or
8-61 anus;

8-62 (B) any touching of the breasts of a female
8-63 without the written consent of the female;

8-64 (C) any offer or agreement to engage in any
8-65 activity described in Paragraph (A) or (B);

8-66 (D) kissing without the consent of both persons;

8-67 (E) deviate sexual intercourse, sexual contact,
8-68 sexual intercourse, indecent exposure, sexual assault,
8-69 prostitution, and promotions of prostitution as described in

9-1 Chapters 21, 22, and 43, Penal Code, or any offer or agreement to
 9-2 engage in such activities;

9-3 (F) any behavior, gesture, or expression that may
 9-4 reasonably be interpreted as inappropriately seductive or sexual;
 9-5 or

9-6 (G) inappropriate sexual comments about or to a
 9-7 client, including sexual comments about a person's body.

9-8 SECTION 18. Sections 455.203(a), (b), and (c), Occupations
 9-9 Code, are amended to read as follows:

9-10 (a) A message school must meet the minimum standards of
 9-11 operation established by executive commissioner [~~board~~] rule.

9-12 (b) An instructor must meet the minimum requirements
 9-13 established by executive commissioner [~~board~~] rule.

9-14 (c) A message school or message therapy instructor licensed
 9-15 [~~registered~~] under this chapter shall give each prospective student
 9-16 a notice that clearly states the number of course hours that the
 9-17 student must successfully complete before the student is eligible
 9-18 to hold [~~register as~~] a message therapist license under this
 9-19 chapter.

9-20 SECTION 19. Section 455.204, Occupations Code, is amended
 9-21 to read as follows:

9-22 Sec. 455.204. DISPLAY OF LICENSE [~~CERTIFICATE~~]. (a) A
 9-23 person who holds a license [~~certificate of registration~~] shall
 9-24 publicly display the license [~~certificate~~] as specified by the
 9-25 department [~~board~~].

9-26 (b) Each message establishment must post in plain sight the
 9-27 license [~~certificate of registration~~] for each message therapist
 9-28 who practices in the message establishment.

9-29 (c) Each message school, message establishment, message
 9-30 therapy instructor, or message therapist shall present the person's
 9-31 license [~~certificate of registration~~] on the request of the
 9-32 department, an authorized representative of the department, or a
 9-33 peace officer.

9-34 SECTION 20. Section 455.205, Occupations Code, is amended
 9-35 by amending Subsections (b), (c), and (d) and adding Subsection (e)
 9-36 to read as follows:

9-37 (b) A message school or a message therapy instructor may not
 9-38 require the successful completion of more course hours than the
 9-39 number of hours required for licensing [~~registration~~] as a message
 9-40 therapist under this chapter.

9-41 (c) A person who is not licensed [~~registered~~] under this
 9-42 chapter may not use the word "message" on any form of advertising
 9-43 unless the person is expressly exempt from the licensing
 9-44 [~~registration~~] requirements of this chapter.

9-45 (d) A sexually oriented business may not use the word
 9-46 "message" or "bath" on a sign or any form of advertising.

9-47 (e) A person advertising message therapy or other message
 9-48 services is presumed to be engaging in conduct regulated by this
 9-49 chapter.

9-50 SECTION 21. Subchapter E, Chapter 455, Occupations Code, is
 9-51 amended by adding Section 455.206 to read as follows:

9-52 Sec. 455.206. ESTABLISHMENT CHANGE OF LOCATION PROHIBITED.
 9-53 A message establishment may not change the location of the
 9-54 establishment without obtaining a new message establishment
 9-55 license under this chapter.

9-56 SECTION 22. The heading to Subchapter F, Occupations Code,
 9-57 is amended to read as follows:

9-58 SUBCHAPTER F. LICENSE [~~REGISTRATION~~] DENIAL OR
 9-59 DISCIPLINARY PROCEDURES

9-60 SECTION 23. Section 455.251, Occupations Code, is amended
 9-61 to read as follows:

9-62 Sec. 455.251. GROUND FOR LICENSE [~~REGISTRATION~~] DENIAL OR
 9-63 DISCIPLINARY ACTION. (a) The department [~~board~~] may refuse to
 9-64 issue a license [~~certificate of registration~~] to a person and shall
 9-65 suspend, revoke, or refuse to renew the license [~~certificate of~~
 9-66 ~~registration~~] of a person or shall reprimand a person licensed
 9-67 [~~registered~~] under this chapter if the person:

9-68 (1) obtains a license [~~certificate of registration~~] by
 9-69 fraud, misrepresentation, or concealment of material facts;

10-1 (2) sells, barter, or offers to sell or barter a
10-2 license [~~certificate of registration~~];

10-3 (3) violates a rule adopted by the executive
10-4 commissioner [~~board~~];

10-5 (4) engages in unprofessional conduct as defined by
10-6 executive commissioner [~~board~~] rule that endangers or is likely to
10-7 endanger the health, welfare, or safety of the public;

10-8 (5) violates an order or ordinance adopted by a
10-9 political subdivision under Chapter 243, Local Government Code; or

10-10 (6) violates this chapter.

10-11 (b) The department shall revoke the license [~~certificate of~~
10-12 ~~registration~~] of a person licensed [~~registered~~] as a massage
10-13 therapist or massage therapy instructor if:

10-14 (1) the person is convicted of, enters a plea of nolo
10-15 contendere or guilty to, or receives deferred adjudication for an
10-16 offense involving prostitution or another sexual offense; or

10-17 (2) the department determines the person has practiced
10-18 or administered massage therapy at or for a sexually oriented
10-19 business.

10-20 (c) The department shall revoke the license [~~certificate of~~
10-21 ~~registration~~] of a person licensed [~~registered~~] as a massage school
10-22 or massage establishment if the department determines that:

10-23 (1) the school or establishment is a sexually oriented
10-24 business; or

10-25 (2) an offense involving prostitution or another
10-26 sexual offense that resulted in a conviction for the offense, a plea
10-27 of nolo contendere or guilty to the offense, or a grant of deferred
10-28 adjudication for the offense occurred on the premises of the school
10-29 or establishment.

10-30 SECTION 24. Section 455.252(a), Occupations Code, is
10-31 amended to read as follows:

10-32 (a) A person whose application for a license [~~certificate of~~
10-33 ~~registration~~] is denied, whose license [~~certificate of~~
10-34 ~~registration~~] is suspended or revoked, or who has been reprimanded
10-35 is entitled to a hearing before the department if the person submits
10-36 a written request to the department.

10-37 SECTION 25. Section 455.253, Occupations Code, is amended
10-38 to read as follows:

10-39 Sec. 455.253. PROBATION. The department [~~board~~] may place
10-40 on probation a person, including a massage school, massage therapy
10-41 instructor, or massage establishment, whose license [~~certificate~~
10-42 ~~of registration~~] is suspended. If a license [~~registration~~]
10-43 suspension is probated, the department [~~board~~] may require the
10-44 person to:

10-45 (1) report regularly to the department on matters that
10-46 are the basis of the probation;

10-47 (2) limit practice to the areas prescribed by the
10-48 department [~~board~~]; or

10-49 (3) continue or review professional education until
10-50 the person attains a degree of skill satisfactory to the department
10-51 [~~board~~] in those areas that are the basis of the probation.

10-52 SECTION 26. Sections 455.254(a) and (b), Occupations Code,
10-53 are amended to read as follows:

10-54 (a) The department shall temporarily suspend the license
10-55 [~~certificate of registration~~] of a license [~~certificate~~] holder if
10-56 the department determines from the evidence or information
10-57 presented to it that continued practice by the license
10-58 [~~certificate~~] holder would constitute a continuing and imminent
10-59 threat to the public welfare.

10-60 (b) A license [~~certificate of registration~~] may be
10-61 suspended under this section without notice or hearing on the
10-62 complaint if:

10-63 (1) action is taken to initiate proceedings for a
10-64 hearing before the State Office of Administrative Hearings
10-65 simultaneously with the temporary suspension; and

10-66 (2) a hearing is held as soon as practicable under this
10-67 chapter and Chapter 2001, Government Code.

10-68 SECTION 27. Section 455.304(b), Occupations Code, is
10-69 amended to read as follows:

11-1 (b) If the person accepts the department's determination,
 11-2 the executive commissioner [~~of public health~~] or the commissioner's
 11-3 designee by order shall approve the determination and require the
 11-4 person to pay the recommended penalty.

11-5 SECTION 28. Section 455.305(b), Occupations Code, is
 11-6 amended to read as follows:

11-7 (b) The hearings examiner shall:

11-8 (1) make findings of fact and conclusions of law; and

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

11-14 SECTION 29. Section 455.306, Occupations Code, is amended
 11-15 to read as follows:

11-16 Sec. 455.306. DECISION BY EXECUTIVE COMMISSIONER. (a)
 11-17 Based on the findings of fact, conclusions of law, and
 11-18 recommendations of the hearings examiner, the executive
 11-19 commissioner [~~of public health~~] or the commissioner's designee by
 11-20 order may determine that:

11-21 (1) a violation occurred and may impose an
 11-22 administrative penalty; or

11-23 (2) a violation did not occur.

11-24 (b) The department shall give notice of the order to the
 11-25 person. The notice must include:

11-26 (1) separate statements of the findings of fact and
 11-27 conclusions of law;

11-28 (2) the amount of any penalty imposed; and

11-29 (3) a statement of the right of the person to judicial
 11-30 review of the order.

11-31 SECTION 30. Section 455.310(b), Occupations Code, is
 11-32 amended to read as follows:

11-33 (b) The department may assess reasonable expenses and costs
 11-34 against a person in an administrative hearing if, as a result of the
 11-35 hearing, an administrative penalty is assessed against the person.
 11-36 The person shall pay expenses and costs assessed under this
 11-37 subsection not later than the 30th day after the date the order of
 11-38 the executive commissioner [~~of public health~~] or the commissioner's
 11-39 designee requiring the payment of expenses and costs is final. The
 11-40 department may refer the matter to the attorney general for
 11-41 collection of expenses and costs.

11-42 SECTION 31. Sections 455.351(a) and (b), Occupations Code,
 11-43 are amended to read as follows:

11-44 (a) The attorney general, a district or county attorney, a
 11-45 municipal attorney, or the department may institute an action for
 11-46 injunctive relief to restrain a violation by a person who:

11-47 (1) appears to be in violation of or threatening to
 11-48 violate this chapter or a rule adopted [~~by the board~~] under this
 11-49 chapter; or

11-50 (2) is operating an establishment that offers massage
 11-51 therapy or other massage services regulated by this chapter and is
 11-52 not licensed under this chapter.

11-53 (b) The attorney general, a district or county attorney, a
 11-54 municipal attorney, or the department may institute an action to
 11-55 collect a civil penalty from a person who appears to be in violation
 11-56 of this chapter or a rule adopted [~~by the board~~] under this chapter.
 11-57 The amount of a civil penalty shall be not less than \$1,000 [~~\$100~~]
 11-58 or more than \$10,000 [~~\$1,000~~] for each violation.

11-59 SECTION 32. Section 455.352, Occupations Code, is amended
 11-60 by amending Subsections (a), (b), and (d) and adding Subsection
 11-61 (a-1) to read as follows:

11-62 (a) A person commits an offense if the person is required to
 11-63 be licensed [~~registered~~] under this chapter and the person:

11-64 (1) knowingly violates Section 455.151, 455.159,
 11-65 455.202(b) [~~455.202~~], 455.203(a) or (c), 455.204(b) or (c), or
 11-66 455.205(b), (c), or (d) [~~455.205~~]; or

11-67 (2) collects a fee or any other form of compensation
 11-68 for massage therapy without being licensed [~~registered~~] under this
 11-69 chapter.

12-1 (a-1) A person commits an offense if the person is required
 12-2 to be licensed under this chapter and the person knowingly
 12-3 violates Section 455.205(a). An offense under this subsection is a
 12-4 Class B misdemeanor, unless the actor has previously been convicted
 12-5 one or two times of an offense under this subsection, in which event
 12-6 it is a Class A misdemeanor. If the actor has previously been
 12-7 convicted three or more times of an offense under this subsection,
 12-8 the offense is a state jail felony.

12-9 (b) An owner or operator of a massage establishment commits
 12-10 an offense if the person knowingly violates Section 455.151(a),
 12-11 455.155(d), 455.202(a) [~~455.202~~], 455.204(b) or (c), or 455.205(d)
 12-12 [~~455.205 (c) or (d)~~]. An offense under this subsection is a Class B
 12-13 misdemeanor, unless the actor has previously been convicted one or
 12-14 two times of an offense under this subsection, in which event it is
 12-15 a Class A misdemeanor. If the actor has previously been convicted
 12-16 three or more times of an offense under this subsection, the offense
 12-17 is a state jail felony.

12-18 (d) Except as provided by Subsections (a-1), (b), and
 12-19 [~~Subsection~~] (e), an offense under this section is a Class C
 12-20 misdemeanor.

12-21 SECTION 33. Section 411.110, Government Code, is amended to
 12-22 read as follows:

12-23 Sec. 411.110. ACCESS TO CRIMINAL HISTORY RECORD
 12-24 INFORMATION: [~~TEXAS~~] DEPARTMENT OF STATE HEALTH SERVICES. (a) The
 12-25 [~~Texas~~] Department of State Health Services is entitled to obtain
 12-26 from the department criminal history record information maintained
 12-27 by the department that relates to:

12-28 (1) a person who is:
 12-29 (A) [~~(1)~~] an applicant for a license or
 12-30 certificate under the Emergency Medical Services Act (Chapter 773,
 12-31 Health and Safety Code);
 12-32 (B) [~~(2)~~] an owner or manager of an applicant for
 12-33 an emergency medical services provider license under that Act; or
 12-34 (C) [~~(3)~~] the holder of a license or certificate
 12-35 under that Act; or

12-36 (2) an applicant for a license, the owner or manager of
 12-37 an applicant for a massage establishment license, or a license
 12-38 holder under Chapter 455, Occupations Code.

12-39 (b) Criminal history record information obtained by the
 12-40 [~~Texas~~] Department of State Health Services under Subsection (a)
 12-41 may not be released or disclosed to any person except on court
 12-42 order, with the written consent of the person or entity that is the
 12-43 subject of the criminal history record information, or as provided
 12-44 by Subsection (e).

12-45 (c) After an entity is licensed or certified, the [~~Texas~~]
 12-46 Department of State Health Services shall destroy the criminal
 12-47 history record information that relates to that entity.

12-48 (d) The Department of State Health Services [~~Texas Board of~~
 12-49 ~~Health~~] shall destroy criminal history record information that
 12-50 relates to an applicant that is not certified.

12-51 (e) The Department of State Health Services [~~Texas Board of~~
 12-52 ~~Health~~] is not prohibited from disclosing criminal history record
 12-53 information obtained under Subsection (a) in a criminal proceeding
 12-54 or in a hearing conducted by the [~~Texas~~] Department of State Health
 12-55 Services.

12-56 SECTION 34. Sections 455.102 and 455.157, Occupations Code,
 12-57 are repealed.

12-58 SECTION 35. (a) Not later than December 31, 2005, the
 12-59 Department of State Health Services shall prescribe the forms and
 12-60 procedures and the executive commissioner of the Health and Human
 12-61 Services Commission shall adopt the rules that are necessary to
 12-62 implement Chapter 455, Occupations Code, as amended by this Act.

12-63 (b) The changes in law made by this Act with regard to the
 12-64 requirements for issuing a license under Chapter 455, Occupations
 12-65 Code, apply only to an application filed with the Department of
 12-66 State Health Services on or after January 1, 2006. An application
 12-67 filed before that date is governed by the law in effect on the date
 12-68 the application was filed, and the former law is continued in effect
 12-69 for that purpose.

13-1 (c) The Department of State Health Services shall treat a
13-2 person who holds a certificate of registration under Chapter 455,
13-3 Occupations Code, immediately before the effective date of this
13-4 Act, as if the person holds a license under Chapter 455, Occupations
13-5 Code, as amended by this Act. A person who holds a certificate of
13-6 registration under Chapter 455, Occupations Code, on the effective
13-7 date of this Act is entitled to issuance of a license on expiration
13-8 of the certificate of registration if the person otherwise meets
13-9 the requirements for renewal of a license.

13-10 (d) A person who holds a certificate of registration under
13-11 Chapter 455, Occupations Code, immediately before the effective
13-12 date of this Act, or is issued a certificate of registration under
13-13 Subsection (b) of this section, and otherwise complies with Chapter
13-14 455 is not subject to disciplinary action or penalties, including a
13-15 criminal penalty under Section 455.352, Occupations Code, as
13-16 amended by this Act, for failure to hold a license under Chapter 455
13-17 until the certificate of registration's expiration date.

13-18 SECTION 36. The change in law made by this Act to Section
13-19 455.351, Occupations Code, regarding a violation of Chapter 455,
13-20 Occupations Code, or the rules adopted under that chapter, applies
13-21 only to a violation that occurs on or after the effective date of
13-22 this Act. A violation of Chapter 455, Occupations Code, that occurs
13-23 before the effective date of this Act is governed by the law in
13-24 effect on the date the violation occurred, and the former law is
13-25 continued in effect for that purpose.

13-26 SECTION 37. (a) The change in law made by this Act to
13-27 Section 455.352, Occupations Code, applies only to an offense
13-28 committed on or after the effective date of this Act. For purposes
13-29 of this section, an offense is committed before the effective date
13-30 of this Act if any element of the offense occurs before the
13-31 effective date.

13-32 (b) An offense committed before the effective date of this
13-33 Act is governed by the law in effect when the offense was committed,
13-34 and the former law is continued in effect for that purpose.

13-35 SECTION 38. This Act takes effect September 1, 2005.

13-36 * * * * *