

By: Gallegos

S.B. No. 1725

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the licensing and regulation of massage therapists;  
3 providing a penalty.

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

5 SECTION 1. Sections 455.001(1), (2), (3), and (6),  
6 Occupations Code, are amended to read as follows:

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

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

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

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

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

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

20 (B) has at least two instructors.

21 SECTION 2. Section 455.003, Occupations Code, is amended to  
22 read as follows:

23 Sec. 455.003. PRACTICES INCLUDED IN MASSAGE THERAPY.  
24 Massage therapy includes the application ~~[use]~~ of hydrotherapy or

1 temperature for mechanical, thermal, or chemical effect and may  
2 include oil, salt glows, heat lamps, hot and cold packs, and tub,  
3 shower, or cabinet baths.

4 SECTION 3. Section 455.004, Occupations Code, is amended to  
5 read as follows:

6 Sec. 455.004. APPLICABILITY OF CHAPTER. This chapter does  
7 not apply to:

8 (1) a person licensed in this state as a physician,  
9 chiropractor, physical therapist, nurse, cosmetologist, or  
10 athletic trainer or as a member of a similar profession subject to  
11 state licensing while the person is practicing within the scope of  
12 the license;

13 (2) a school approved by the Texas Education Agency or  
14 otherwise approved by the state; or

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

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

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

23 SECTION 5. Section 455.051, Occupations Code, is amended to  
24 read as follows:

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 the department's [~~its~~] duties

1 under this chapter.

2 SECTION 6. Sections 455.053-455.057, Occupations Code, are  
3 amended to read as follows:

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

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

10 (2) the qualifications of professional personnel;

11 (3) the supervision of professional personnel;

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

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

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

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

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

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

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

- 1           (11) the massage school's curriculum and educational  
2 material;
- 3           (12) massage school inspections; and
- 4           (13) any other aspect of the operation of a massage  
5 school that the department [~~board~~] considers necessary to protect  
6 students, massage school personnel, or the public.

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

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

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

- 26           (1) the issuance, denial, renewal, suspension,  
27 revocation, or probation of a license or certificate of

1 registration under this chapter;

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

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

6 (4) the maximum number of hours a student may  
7 accumulate in an internship program under the supervision of a  
8 massage therapy instructor before the student is required to obtain  
9 a license or certificate of registration [~~register~~] under this  
10 chapter;

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

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

15 (7) the provision of massage therapy by a student or a  
16 massage therapy instructor;

17 (8) the educational and clinical records kept by a  
18 massage therapy instructor;

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

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

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

27 Sec. 455.056. RULES REGARDING ADVERTISING OR COMPETITIVE

1 BIDDING BY LICENSE OR CERTIFICATE HOLDER [~~REGISTRANT~~]. (a) The  
2 executive commissioner [~~board~~] may not adopt rules restricting  
3 advertising or competitive bidding by a person licensed or  
4 registered under this chapter except to prohibit false, misleading,  
5 or deceptive practices.

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

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

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

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

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

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

22 SECTION 7. Section 455.104, Occupations Code, is amended to  
23 read as follows:

24 Sec. 455.104. INSPECTIONS; INVESTIGATIONS. The  
25 department or its authorized representative may enter the premises  
26 of an applicant for a license or certificate of registration or a  
27 license or certificate holder at:

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

4           (2) other times that the department considers  
5 necessary to ensure compliance with this chapter and the rules  
6 adopted under this chapter.

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

9                   SUBCHAPTER D. LICENSING AND REGISTRATION

10           SECTION 9. Sections 455.151-455.154, Occupations Code, are  
11 amended to read as follows:

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

18           (b) Unless the person is exempt from the licensing or  
19 registration requirement, a person may not represent that the  
20 person is:

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

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

25           Sec. 455.152. INELIGIBILITY FOR LICENSE OR REGISTRATION.

26           (a) A person is not eligible for licensing or 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 licensing or registration as a massage  
7 establishment, massage school, massage therapist, or massage  
8 therapy instructor until the fifth anniversary of the date of the  
9 conviction.

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

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

14 (2) include with the application the application fee  
15 set by the department; and

16 (3) for a massage therapist applicant, submit proof  
17 the applicant has successfully completed the requirements of  
18 Section 455.1555 or 455.156.

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

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

25 SECTION 10. Sections 455.155(b) and (c), Occupations Code,  
26 are amended to read as follows:

27 (b) A licensed or registered massage therapist who



1 practices as a solo practitioner is not required to register as a  
2 massage establishment.

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

9 SECTION 11. Subchapter D, Chapter 455, Occupations Code, is  
10 amended by adding Section 455.1555 to read as follows:

11 Sec. 455.1555. REQUIREMENTS FOR LICENSED MASSAGE  
12 THERAPIST. (a) The department shall issue a massage therapist  
13 license to each qualified applicant.

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

16 (1) present evidence satisfactory to the department  
17 that the person:

18 (A) has satisfactorily completed massage therapy  
19 studies in a supervised course of instruction of at least 500 hours  
20 provided by a massage therapy instructor, a registered massage  
21 school, a state-approved educational institution, or any  
22 combination of instructors or schools, in which:

23 (i) at least 200 hours are taught by a  
24 massage therapy instructor and are dedicated to the study of  
25 massage therapy techniques, theory, and practice and manipulation  
26 of soft tissue by hand or through the use of a mechanical or  
27 electrical apparatus, with at least 75 hours dedicated to Swedish

1 massage techniques, and may include the study of Eastern techniques  
2 and theory;

3 (ii) at least 165 hours are dedicated to  
4 the study of anatomy, kinesiology, physiology, and pathology and  
5 may include Eastern physiology;

6 (iii) at least 25 hours are dedicated to  
7 the study of hydrotherapy;

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

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

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

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

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

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

24 (2) pass the state-approved examination.

25 SECTION 12. Section 455.156, Occupations Code, is amended  
26 to read as follows:

27 Sec. 455.156. [~~REGISTRATION~~] REQUIREMENTS FOR REGISTERED

1 MESSAGE THERAPIST. (a) The department shall issue a certificate of  
2 registration to each qualified applicant for registration as a  
3 registered massage [~~message~~] therapist.

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

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

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

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

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

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

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

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

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

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

1 (B) has practiced massage therapy as a profession  
2 for not less than five years in another state or country that the  
3 department determines does not maintain standards and requirements  
4 of practice and licensing or registration that substantially  
5 conform to the standards and requirements of this state; and

6 (2) pass the practical and written portions of the  
7 state examination.

8 SECTION 13. 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 or 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 or 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 14. Sections 455.1571, 455.1572, and 455.158,  
19 Occupations Code, are amended to read as follows:

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

1 substantially equivalent to those of this state.

2 (b) The department [~~board~~] may waive any prerequisite to  
3 obtaining a license or certificate of registration for an applicant  
4 for licensing or registration as a massage therapist or massage  
5 therapy instructor who holds a license or certificate of  
6 registration issued by another jurisdiction with which this state  
7 has a reciprocity agreement. The department [~~board~~] may make an  
8 agreement, subject to the approval of the governor, with another  
9 state to allow for licensing or registration by reciprocity.

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

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

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

25 (3) is sponsored by a person licensed or registered by  
26 the department [~~board~~] under this chapter with whom the provisional  
27 license or certificate holder [~~registrant~~] will practice during the

1 time the person holds a provisional license or certificate of  
2 registration.

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

7 (c) A provisional license or certificate of registration is  
8 valid until the date the department [~~board~~] approves or denies the  
9 license or certificate holder's application for licensing or  
10 registration. The department [~~board~~] shall issue a license or  
11 certificate of registration under this chapter to the provisionally  
12 licensed or registered person if the person:

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

15 (2) passes the part of the examination under Section  
16 455.101 that relates to the applicant's knowledge and understanding  
17 of the laws and rules relating to the practice of massage therapy in  
18 this state and:

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

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

24 (d) The department [~~board~~] must approve or deny a  
25 provisionally licensed or registered person's application for a  
26 license or certificate of registration not later than the 180th day  
27 after the date the provisional license or certificate of

1 registration is issued. The department [~~board~~] may extend the  
2 180-day period if the results of an examination have not been  
3 received by the department [~~board~~] before the end of that period.

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

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

14 SECTION 15. Sections 455.159(a) and (b), Occupations Code,  
15 are amended to read as follows:

16 (a) An internship program must:

17 (1) meet the qualifications established by the  
18 department [~~board~~];

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

21 (3) be conducted on the school grounds or in a clinic  
22 or classroom setting provided by the massage school or massage  
23 therapy instructor.

24 (b) A student must complete at least [~~the first~~] 250 hours  
25 of required training at a massage school or with a massage therapy  
26 instructor that provides to the student a written acknowledgment of  
27 the student's successful completion of the required hours before

1 the student is eligible to enter an internship program.

2 SECTION 16. Sections 455.160 and 455.161, Occupations Code,  
3 are amended to read as follows:

4 Sec. 455.160. LICENSE OR REGISTRATION RENEWAL. (a) A  
5 person licensed or registered under this chapter must periodically  
6 renew the person's license or certificate of registration. The  
7 license or certificate expires unless the license or certificate  
8 holder submits an application for renewal accompanied by the  
9 renewal fee prescribed by the department or by the late fee  
10 prescribed by this section.

11 (b) The department shall adopt a system under which licenses  
12 or certificates of registration expire on various dates during the  
13 year. Fees must be prorated so that a licensed or registered person  
14 pays only for that part of the renewal period for which the license  
15 or registration is issued until the expiration date of the license  
16 or registration.

17 (c) A person who is otherwise eligible to renew a license or  
18 certificate of registration may renew an unexpired license or  
19 registration by paying the required renewal fee to the department  
20 before the expiration date of the license or registration. A person  
21 whose license or registration has expired may not engage in  
22 activities that require a license or registration until the license  
23 or registration has been renewed.

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



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

5 (f) A person whose license or registration has been expired  
6 for one year or more may not renew the license or certificate of  
7 registration. The person may obtain a license or certificate of  
8 registration [~~register~~] by complying with the requirements and  
9 procedures, including the examination requirements, for originally  
10 licensing or registering.

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

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

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

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

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

4           Sec. 455.202. PRACTICE BY MASSAGE ESTABLISHMENT. A massage  
5 establishment may employ only licensed or registered massage  
6 therapists to perform massage therapy.

7           SECTION 18. Section 455.203(c), Occupations Code, is  
8 amended to read as follows:

9           (c) A massage school or massage therapy instructor licensed  
10 or registered under this chapter shall give each prospective  
11 student a notice that clearly states the number of course hours that  
12 the student must successfully complete before the student is  
13 eligible to obtain a license or certificate of registration  
14 [~~register~~] as a massage therapist under this chapter.

15           SECTION 19. Section 455.204, Occupations Code, is amended  
16 to read as follows:

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

21           (b) Each massage establishment must post in plain sight the  
22 license or certificate of registration for each massage therapist  
23 who practices in the massage establishment.

24           (c) Each massage school, massage establishment, massage  
25 therapy instructor, or massage therapist shall present the person's  
26 license or certificate of registration on the request of the  
27 department, an authorized representative of the department, or a

1 peace officer.

2 SECTION 20. Sections 455.205(b), (c), and (d), Occupations  
3 Code, are amended to read as follows:

4 (b) A massage school or a massage therapy instructor may not  
5 award a diploma or a certificate of completion to a student that has  
6 not successfully completed at least [~~require the successful~~  
7 ~~completion of more course hours than~~] the number of course hours  
8 required for licensing or registration as a massage therapist under  
9 this chapter.

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

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

17 SECTION 21. The heading to Section 455.251, Occupations  
18 Code, is amended to read as follows:

19 Sec. 455.251. GROUNDS FOR LICENSE OR REGISTRATION DENIAL OR  
20 DISCIPLINARY ACTION.

21 SECTION 22. Sections 455.251(a) and (b), Occupations Code,  
22 are amended to read as follows:

23 (a) The department [~~board~~] may refuse to issue a license or  
24 certificate of registration to a person and shall suspend, revoke,  
25 or refuse to renew the license or certificate of registration of a  
26 person or shall reprimand a person licensed or registered under  
27 this chapter if the person:

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

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

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

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

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

12 (6) violates this chapter.

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

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

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

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

24 (a) A person whose application for a license or certificate  
25 of registration is denied, whose license or certificate of  
26 registration is suspended or revoked, or who has been reprimanded  
27 is entitled to a hearing before the department if the person submits

1 a written request to the department.

2 SECTION 24. Section 455.253, Occupations Code, is amended  
3 to read as follows:

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

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

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

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

17 SECTION 25. Sections 455.254(a) and (b), Occupations Code,  
18 are amended to read as follows:

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

25 (b) A license or certificate of registration may be  
26 suspended under this section without notice or hearing on the  
27 complaint if:

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

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

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

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

12 SECTION 27. Section 455.305(b), Occupations Code, is  
13 amended to read as follows:

14 (b) The hearings examiner shall:

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

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

21 SECTION 28. Section 455.306(a), Occupations Code, is  
22 amended to read as follows:

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

27 (1) a violation occurred and may impose an

1 administrative penalty; or

2 (2) a violation did not occur.

3 SECTION 29. Section 455.310(b), Occupations Code, is  
4 amended to read as follows:

5 (b) The department may assess reasonable expenses and costs  
6 against a person in an administrative hearing if, as a result of the  
7 hearing, an administrative penalty is assessed against the person.  
8 The person shall pay expenses and costs assessed under this  
9 subsection not later than the 30th day after the date the order of  
10 the executive commissioner [~~of public health~~] or the executive  
11 commissioner's designee requiring the payment of expenses and costs  
12 is final. The department may refer the matter to the attorney  
13 general for collection of expenses and costs.

14 SECTION 30. Sections 455.351(a) and (b), Occupations Code,  
15 are amended to read as follows:

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

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

27 SECTION 31. Section 455.352, Occupations Code, is amended

1 to read as follows:

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

5                   (1) knowingly violates Section 455.151, 455.159,  
6 455.202, 455.203(a) or (c), 455.204(b) or (c), or 455.205(a), (b),  
7 or (c); or

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

11           (b) An owner or operator of a massage establishment commits  
12 an offense if the person knowingly violates Section 455.151(a),  
13 455.155(d), 455.202, 455.204(b) or (c), or 455.205(c) [~~or (d)~~].

14           (c) An owner or operator of a massage school commits an  
15 offense if the person knowingly violates Section 455.151(a),  
16 455.159, 455.203(a) or (c), 455.204(b) or (c), or 455.205(b) or [~~7~~]  
17 (c) [~~7, or (d)~~].

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

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

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

27           SECTION 32. Sections 455.102 and 455.157, Occupations Code,



1 are repealed.

2 SECTION 33. (a) Not later than January 1, 2006, the  
3 executive commissioner of the Health and Human Services Commission  
4 shall adopt the rules necessary to establish the licensing program  
5 for licensed massage therapists.

6 (b) Not later than January 1, 2006, the Department of State  
7 Health Services shall adopt the procedures necessary to establish  
8 the licensing program for licensed massage therapists.

9 SECTION 34. The change in law made by this Act applies only  
10 to an offense committed on or after the effective date of this Act.  
11 An offense committed before the effective date of this Act is  
12 covered by the law in effect when the offense was committed, and the  
13 former law is continued in effect for that purpose. For purposes of  
14 this section, an offense was committed before the effective date of  
15 this Act if any element of the offense was committed before that  
16 date.

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