

AN ACT

relating to the licensing and regulation of massage therapists.

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

SECTION 1. Section 455.104(a), Occupations Code, is amended to read as follows:

(a) The department, ~~or~~ its authorized representative, or a peace officer may enter the premises of an applicant for a license or a license holder at:

(1) reasonable times to conduct an inspection incidental to the issuance of a license; and

(2) other times that the department or peace officer considers necessary to ensure compliance with this chapter and the rules adopted under this chapter.

SECTION 2. Section 455.151, Occupations Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) Unless the person is exempt from the licensing requirement, a person may not represent that the person is a massage therapist, massage school, massage therapy instructor, or massage establishment unless the person holds an appropriate ~~a~~ license under this chapter.

(c) A person may not for compensation perform or offer to perform any service with a purported health benefit that involves physical contact with a client unless the person:

1 (1) holds an appropriate license issued under this
2 chapter; or

3 (2) is licensed or authorized under other law to
4 perform the service.

5 (d) The department may issue one or more types of licenses
6 not otherwise provided for by this chapter that authorize the
7 license holder to perform a service described by Subsection (c).
8 The department may adopt rules governing a license issued under
9 this subsection.

10 SECTION 3. Section 455.155(c), Occupations Code, is amended
11 to read as follows:

12 (c) A place of business is not required to hold a license
13 under this chapter if:

14 (1) the place of business is owned by the federal
15 government, the state, or a political subdivision of the state;

16 (2) at the place of business, a licensed massage
17 therapist practices as a solo practitioner and:

18 (A) does not use a business name or assumed name;

19 or

20 (B) uses a business name or an assumed name and
21 provides the massage therapist's full legal name or license number
22 in each advertisement and each time the business name or assumed
23 name appears in writing;

24 (3) at the place of business, an acupuncturist,
25 athletic trainer, chiropractor, cosmetologist, midwife, nurse,
26 occupational therapist, perfusionist, physical therapist,
27 physician, physician assistant, podiatrist, respiratory care

1 practitioner, or surgical assistant licensed or certified in this
2 state employs or contracts with a licensed massage therapist to
3 provide massage therapy as part of the person's practice; or

4 (4) at the place of business, a person offers to
5 perform or performs massage therapy:

6 (A) for not more than 72 hours in any six-month
7 period; and

8 (B) as part of a public or charity event, the
9 primary purpose of which is not to provide massage therapy. [The
10 executive commissioner by rule shall provide for a fair and
11 reasonable procedure to grant exemptions from the licensing
12 requirements of this chapter. The rules must provide that a person
13 is exempt if the person shows that the advertising or provision of
14 massage therapy services is incidental to the person's primary
15 enterprise.]

16 SECTION 4. Section 455.156(b), Occupations Code, is amended
17 to read as follows:

18 (b) An applicant for a license under this section must be an
19 individual and:

20 (1) present evidence satisfactory to the department
21 that the person[+]

22 [~~(A)~~] has satisfactorily completed massage
23 therapy studies in a 500-hour minimum [~~300-hour~~], supervised course
24 of instruction provided by a massage therapy instructor at a
25 massage school, a licensed massage school, a state-approved
26 educational institution, or any combination of instructors or
27 schools, in which at least:

1 (A) 200 [(i) 125] hours are taught by a licensed
2 massage therapy instructor and dedicated to the study of massage
3 therapy techniques and theory and the practice of manipulation of
4 soft tissue, with at least 125 hours dedicated to the study of
5 Swedish massage therapy techniques [~~and taught by a massage therapy~~
6 ~~instructor~~];

7 (B) [(ii)] 50 hours are dedicated to the study of
8 anatomy;

9 (C) [(iii)] 25 hours are dedicated to the study
10 of physiology;

11 (D) 50 hours are dedicated to the study of
12 kinesiology;

13 (E) 40 hours are dedicated to the study of
14 pathology;

15 (F) 20 [(iv) 15] hours are dedicated to the
16 study of hydrotherapy;

17 (G) 45 [(v) 15] hours are dedicated to the study
18 of massage therapy laws and rules, business practices, and
19 professional ethics standards;

20 (H) [(vi)] 20 hours are dedicated to the study of
21 health, [~~and~~] hygiene, first aid, universal precautions, and
22 cardiopulmonary resuscitation (CPR); and

23 (I) [(vii)] 50 hours are spent in an internship
24 program; [~~or~~

25 ~~[(B) has practiced massage therapy as a~~
26 ~~profession for not less than five years in another state or country~~
27 ~~that the department determines does not maintain standards and~~

1 ~~requirements of practice and licensing or registration that~~
2 ~~substantially conform to the standards and requirements of this~~
3 ~~state,]~~

4 (2) pass the [~~practical and~~] written [~~portions of the~~]
5 state examination; and

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

7 SECTION 5. Section 455.351, Occupations Code, is amended by
8 amending Subsections (a) and (e) and adding Subsections (g), (h),
9 and (i) to read as follows:

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

13 (1) appears to be in violation of or threatening to
14 violate this chapter or a rule adopted under this chapter; or

15 (2) is the owner or operator of [~~operating~~] an
16 establishment that offers massage therapy or other massage services
17 regulated by this chapter and is not licensed under this chapter.

18 (e) The attorney general, district and county attorney,
19 municipal attorney, and the department may recover reasonable
20 expenses incurred in obtaining injunctive relief or a civil penalty
21 under this section, including court costs, reasonable attorney's
22 fees, investigative costs, witness fees, and deposition expenses.

23 (g) In an injunction issued under this section, a court may
24 include reasonable requirements to prevent further violations of
25 this chapter.

26 (h) Notwithstanding Section 22.004, Government Code:

27 (1) a person may not continue the enjoined activity

1 pending appeal or trial on the merits of an injunctive order entered
2 in a suit brought under this subchapter;

3 (2) not later than the 90th day after the date of the
4 injunctive order, the appropriate court of appeals shall hear and
5 decide an appeal taken by a party enjoined under this subchapter;
6 and

7 (3) if an appeal is not taken by a party temporarily
8 enjoined under this article, the parties are entitled to a full
9 trial on the merits not later than the 90th day after the date of the
10 temporary injunctive order.

11 (i) In this section:

12 (1) "Operator" means a person who is supervising a
13 massage establishment or massage school at the time a violation
14 occurs or the establishment or school is inspected. If no person is
15 supervising, then any employee, contractor, or agent of the owner
16 who is present at the establishment or school is the operator.

17 (2) "Owner" includes a person:

18 (A) in whose name a certificate of occupancy has
19 been issued for a massage establishment or massage school and any
20 person having control over that person; or

21 (B) who operates a massage establishment or
22 massage school under a lease, operating agreement, or other
23 arrangement.

24 SECTION 6. Section 125.0015(a), Civil Practice and Remedies
25 Code, is amended to read as follows:

26 (a) A person who maintains a place to which persons
27 habitually go for the following purposes and who knowingly

1 tolerates the activity and furthermore fails to make reasonable
2 attempts to abate the activity maintains a common nuisance:

3 (1) discharge of a firearm in a public place as
4 prohibited by the Penal Code;

5 (2) reckless discharge of a firearm as prohibited by
6 the Penal Code;

7 (3) engaging in organized criminal activity as a
8 member of a combination as prohibited by the Penal Code;

9 (4) delivery, possession, manufacture, or use of a
10 controlled substance in violation of Chapter 481, Health and Safety
11 Code;

12 (5) gambling, gambling promotion, or communicating
13 gambling information as prohibited by the Penal Code;

14 (6) prostitution, promotion of prostitution, or
15 aggravated promotion of prostitution as prohibited by the Penal
16 Code;

17 (7) compelling prostitution as prohibited by the Penal
18 Code;

19 (8) commercial manufacture, commercial distribution,
20 or commercial exhibition of obscene material as prohibited by the
21 Penal Code;

22 (9) aggravated assault as described by Section 22.02,
23 Penal Code;

24 (10) sexual assault as described by Section 22.011,
25 Penal Code;

26 (11) aggravated sexual assault as described by Section
27 22.021, Penal Code;

1 (12) robbery as described by Section 29.02, Penal
2 Code;

3 (13) aggravated robbery as described by Section 29.03,
4 Penal Code;

5 (14) unlawfully carrying a weapon as described by
6 Section 46.02, Penal Code;

7 (15) murder as described by Section 19.02, Penal Code;
8 [~~or~~]

9 (16) capital murder as described by Section 19.03,
10 Penal Code; or

11 (17) massage therapy or other massage services in
12 violation of Chapter 455, Occupations Code.

13 SECTION 7. Except as provided by Section 8 of this Act, the
14 changes in law made by this Act to Section 455.156, Occupations
15 Code, apply only to a license applicant who enrolls in a massage
16 therapist training program for the first time on or after the
17 effective date of this Act. An applicant who enrolled in a massage
18 therapist training program for the first time before that date is
19 governed by the law in effect immediately before the effective date
20 of this Act, and the former law is continued in effect for that
21 purpose.

22 SECTION 8. The change in law made by this Act by the
23 deletion of former Section 455.156(b)(1)(B), Occupations Code,
24 applies only to an application for a license filed on or after the
25 effective date of this Act. A license application filed before that
26 date is governed by the law in effect at the time the application is
27 filed, and the former law is continued in effect for that purpose.

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

9 SECTION 10. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 2644 was passed by the House on May 11, 2007, by the following vote: Yeas 135, Nays 3, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2644 on May 25, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2644 on May 27, 2007, by the following vote: Yeas 143, Nays 1, 3 present, not voting.

Chief Clerk of the House

H.B. No. 2644

I certify that H.B. No. 2644 was passed by the Senate, with amendments, on May 22, 2007, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2644 on May 27, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor