

By: Jackson

H.B. No. 2957

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of massage therapy;
providing penalties.

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

SECTION 1. Section 455.001, Occupations Code, is amended by
amending Subdivisions (1), (4), (5), (6), (7), and (8) and adding
Subdivisions (1-a), (1-b), and (8-a) to read as follows:

(1) "Client" means a person who seeks or receives
massage therapy.

(1-a) "Continuing education provider" means a person
licensed by the department to offer continuing education for
massage therapists.

(1-b) "Department" means the Department of State
Health Services.

(4) "Internship program" means a program supervised by
a licensed massage therapy instructor in which a student provides
massage therapy to the public.

(5) "Massage establishment" means a place of business
that employs or contracts with a licensed massage therapist and
advertises or offers massage therapy [~~or other massage services~~].
The term includes a place of business that advertises or offers any
service described by a derivation of the term [~~terms~~] "massage
therapy[~~"or other massage services~~]."

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

1 (A) teaches at a minimum the course of
2 instruction required for a massage therapist license; ~~and~~

3 (B) has at least two instructors; and

4 (C) holds a massage school license.

5 (7) "Massage therapist" means a person who holds a
6 massage therapist license and advertises, practices, or
7 administers massage therapy ~~[or other massage services]~~ to a client
8 for compensation. The term includes a licensed massage therapist,
9 therapeutic massage practitioner, massage technician, masseur,
10 masseuse, myotherapist, body massager, body rubber, or any
11 derivation of those titles.

12 (8) "Massage therapy" means the manipulation of the
13 soft tissue of the human body by a person who holds a massage
14 therapist license. Massage therapy may be provided by hand or
15 through a mechanical or electrical apparatus ~~[for the purpose of~~
16 ~~body massage]~~ and includes effleurage (stroking), petrissage
17 (kneading), tapotement (percussion), compression, vibration,
18 friction, nerve strokes, and Swedish gymnastics. Massage therapy
19 may include the use of oil, lotion, lubricant, salt glow, heat
20 lamps, hot and cold packs, whirlpool tubs, shower, jacuzzi, sauna,
21 steam, or cabinet bath. Massage therapy does not include the
22 practice of chiropractic, energetic manipulation, or Asian
23 bodywork. The terms "massage," "therapeutic massage," "massage
24 technology," "myotherapy," "body massage," and "body rub," or any
25 derivation of those terms, are synonyms for "massage therapy."

26 (8-a) "Massage therapy educational program" means a
27 program of instruction that provides at a minimum the course of

1 instruction required for a massage therapist license.

2 SECTION 2. Section 455.004, Occupations Code, is amended to
3 read as follows:

4 Sec. 455.004. APPLICABILITY OF CHAPTER. This chapter does
5 not apply to:

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

11 (2) ~~[a school approved by the Texas Education Agency~~
12 ~~or otherwise approved by the state; or~~

13 ~~[(3)]~~ an instructor otherwise approved by the state to
14 teach in an area of study included in the required course of
15 instruction for issuance of a massage therapist license.

16 SECTION 3. Section 455.052, Occupations Code, is amended to
17 read as follows:

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

21 (1) the issuance, denial, renewal, suspension,
22 revocation, or probation of a license under this chapter;

23 (2) the qualifications of professional personnel;

24 (3) the supervision of professional personnel;

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

27 (5) the sanitary and hygienic conditions of a massage

1 establishment;

2 (6) the provision of massage therapy [~~or other massage~~
3 ~~services~~] by a massage establishment;

4 (7) the records kept by a massage establishment;

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

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

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

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

14 SECTION 4. Section 455.053, Occupations Code, is amended to
15 read as follows:

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

19 (1) the issuance, denial, renewal, suspension,
20 revocation, or probation of a license under this chapter;

21 (2) the qualifications of professional personnel;

22 (3) the supervision of professional personnel;

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

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

27 (6) the provision of massage therapy [~~or other massage~~

1 ~~services]~~ by a massage school or student;

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

5 ~~[(8)]~~ the educational and clinical records kept by a
6 massage school;

7 (8) ~~[(9)]~~ the organizational structure of a massage
8 school, including the lines of authority and the delegation of
9 responsibility;

10 (9) ~~[(10)]~~ fire prevention and safety in a massage
11 school;

12 (10) ~~[(11)]~~ the massage school's curriculum and
13 educational material;

14 (11) ~~[(12)]~~ massage school inspections; and

15 (12) ~~[(13)]~~ any other aspect of the operation of a
16 massage school that the executive commissioner considers necessary
17 to protect students, massage school personnel, or the public.

18 SECTION 5. Section 455.055, Occupations Code, is amended to
19 read as follows:

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

23 (1) the issuance, denial, renewal, suspension,
24 revocation, or probation of a license under this chapter;

25 (2) the qualifications of a massage therapy
26 instructor;

27 (3) the supervision of a student by a massage therapy

1 instructor;

2 (4) ~~[the maximum number of hours a student may~~
3 ~~accumulate in an internship program under the supervision of a~~
4 ~~massage therapy instructor before the student is required to be~~
5 ~~licensed under this chapter;~~

6 ~~[(5)]~~ the equipment essential to the education,
7 health, and safety of students and the public;

8 (5) ~~[(6)]~~ the sanitary and hygienic conditions of the
9 physical environment in which a massage therapy instructor teaches;

10 (6) ~~[(7)]~~ the provision of massage therapy ~~[or other~~
11 ~~massage services]~~ by a student or a massage therapy instructor;

12 (7) ~~[(8)]~~ the educational and clinical records kept by
13 a massage therapy instructor;

14 (8) ~~[(9)]~~ the curriculum taught and educational
15 material used by a massage therapy instructor;

16 (9) ~~[(10)]~~ the inspection of the records, equipment,
17 and physical environment of a massage therapy instructor; and

18 (10) ~~[(11)]~~ any other aspect of a massage therapy
19 instructor's instruction or operation of any portion of the course
20 of instruction required for a massage therapist license.

21 SECTION 6. Section 455.057, Occupations Code, is amended to
22 read as follows:

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

1 license.

2 SECTION 7. Section 455.104, Occupations Code, is amended to
3 read as follows:

4 Sec. 455.104. INSPECTIONS; INVESTIGATIONS. (a) The
5 department or its authorized representative may enter the premises
6 of an applicant for a license, ~~or~~ a license holder, or a place of
7 business that advertises or offers massage therapy at:

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

10 (2) other times that the department considers
11 necessary to ensure compliance with this chapter and the rules
12 adopted under this chapter.

13 (b) A peace officer appointed or employed by a law
14 enforcement agency of a political subdivision of this state may
15 enter the premises of a place of business that advertises or offers
16 massage therapy ~~[massage establishment]~~ to ensure compliance with
17 this chapter ~~[and rules adopted under this chapter]~~.

18 SECTION 8. Section 455.105(a), Occupations Code, is amended
19 to read as follows:

20 (a) The department shall annually prepare a registry of
21 licensed massage therapists, licensed massage therapy instructors,
22 licensed massage schools, licensed continuing education providers,
23 and licensed massage establishments.

24 SECTION 9. Section 455.151, Occupations Code, is amended to
25 read as follows:

26 Sec. 455.151. LICENSE REQUIRED. (a) Unless the person is
27 exempt from the licensing requirement, a person may not act as a

1 message therapist, massage school, massage therapy instructor,
2 continuing education provider, or massage establishment unless the
3 person holds an appropriate license issued under this chapter.

4 (b) Unless the person is exempt from the licensing
5 requirement, a person may not represent that the person is a massage
6 therapist, massage school, massage therapy instructor, continuing
7 education provider, or massage establishment unless the person
8 holds an appropriate [a] license under this chapter.

9 SECTION 10. Section 455.152, Occupations Code, is amended
10 to read as follows:

11 Sec. 455.152. INELIGIBILITY FOR LICENSE. (a) A person is
12 not eligible for a license as a massage establishment, massage
13 school, massage therapist, continuing education provider, or
14 massage therapy instructor if the person is an individual and has
15 been convicted of, entered a plea of nolo contendere or guilty to,
16 or received deferred adjudication for an offense involving
17 prostitution or another sexual offense.

18 (b) A person convicted of a violation of this chapter is
19 ineligible for a license as a massage establishment, massage
20 school, massage therapist, continuing education provider, or
21 massage therapy instructor [~~until the fifth anniversary of the date~~
22 ~~of the conviction~~].

23 SECTION 11. Section 455.156(b), Occupations Code, is
24 amended to read as follows:

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

27 (1) present evidence satisfactory to the department

1 that the person[÷

2 [~~(A)~~] has satisfactorily completed massage
3 therapy studies in a 500-hour minimum [~~300-hour~~], supervised course
4 of instruction provided by a massage therapy instructor, a licensed
5 massage school, a state-approved educational institution, or any
6 combination of instructors or schools, in which at least:

7 (A) 200 [~~(i) 125~~] hours are taught by a licensed
8 massage therapy instructor and dedicated to the study of massage
9 therapy techniques, theory, and practice and the manipulation of
10 soft tissue, with at least 125 of those hours dedicated to the study
11 of Swedish massage therapy techniques [~~and taught by a massage~~
12 ~~therapy instructor~~];

13 (B) [~~(ii)~~] 50 hours are dedicated to the study of
14 anatomy;

15 (C) [~~(iii)~~] 25 hours are dedicated to the study
16 of physiology;

17 (D) 50 hours are dedicated to the study of
18 kinesiology;

19 (E) 40 hours are dedicated to the study of
20 pathology;

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

23 (G) 45 [~~(v) 15~~] hours are dedicated to the study
24 of business practices, massage therapy law, and professional ethics
25 standards;

26 (H) [~~(vi)~~] 20 hours are dedicated to the study of
27 health and hygiene, universal precautions, first aid, and

1 cardiopulmonary resuscitation; and

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

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

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

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

13 SECTION 12. Section 455.158, Occupations Code, is amended
14 to read as follows:

15 Sec. 455.158. STUDENT EXEMPTION FROM LICENSING
16 REQUIREMENTS. A student who provides massage therapy as part of an
17 internship program or without compensation is exempt from licensing
18 under this chapter if the student is enrolled in a massage therapy
19 educational program ~~[state-approved course of instruction]~~ that
20 consists of at least 500 ~~[300]~~ hours.

21 SECTION 13. Section 455.159, Occupations Code, is amended
22 by amending Subsections (a) and (b) and adding Subsection (e) to
23 read as follows:

24 (a) An internship program must:

25 (1) meet the qualifications established by the
26 department;

27 (2) provide a student with a minimum of 50 ~~[40]~~ hours

1 of hands-on massage therapy experience; and

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

5 (b) A student must complete 200 ~~[the first 250]~~ hours of
6 required classroom training, including 100 hours of massage therapy
7 technique course work, at a massage school or with a massage therapy
8 instructor before the student is eligible to enter an internship
9 program.

10 (e) A massage therapy educational program may not require a
11 student to complete a number of internship hours that is greater
12 than a number equal to 80 percent of the classroom hours in the
13 massage therapy educational program.

14 SECTION 14. Sections 455.202(a) and (b), Occupations Code,
15 are amended to read as follows:

16 (a) A massage establishment may employ only licensed
17 massage therapists to perform massage therapy ~~[or other massage~~
18 ~~services]~~.

19 (b) A massage establishment may not:

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

22 (2) ~~[employ a minor unless the minor's parent or legal~~
23 ~~guardian authorizes in writing the minor's employment by the~~
24 ~~establishment,~~

25 ~~[(3) allow a nude or partially nude employee to~~
26 ~~provide massage therapy or other massage services to a customer,~~

27 ~~[(4)]~~ allow any individual, including a client,

1 student, license holder, or employee, to engage in sexual
2 misconduct, as defined by Section 455.207, [contact] in the massage
3 establishment~~[, or~~

4 ~~[(5) allow any individual, including a student,~~
5 ~~license holder, or employee, to practice massage therapy in the~~
6 ~~nude or in clothing designed to arouse or gratify the sexual desire~~
7 ~~of any individual].~~

8 SECTION 15. Sections 455.205(c), (d), and (e), Occupations
9 Code, are amended to read as follows:

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

15 (d) A sexually oriented business may not advertise or offer
16 "massage therapy" or any synonym for massage therapy or use the word
17 "spa" ~~["massage"]~~ or "bath" on a sign or any form of advertising.

18 (e) A person advertising massage therapy or any synonym for
19 massage therapy ~~[other massage services]~~ is presumed to be engaging
20 in conduct regulated by this chapter.

21 SECTION 16. Subchapter E, Chapter 455, Occupations Code, is
22 amended by adding Section 455.207 to read as follows:

23 Sec. 455.207. SEXUAL MISCONDUCT. (a) A person licensed
24 under this chapter may not engage in sexual misconduct with a
25 client.

26 (b) In this section, "sexual misconduct" means:

27 (1) providing massage therapy while:

1 (A) entirely unclothed; or

2 (B) clothed in a manner that leaves uncovered or
3 visible through less than fully opaque clothing any portion of the
4 breasts below the top of the areola of the breasts or any portion of
5 the genitals or buttocks;

6 (2) any touching of any part of the genitalia or anus;

7 (3) any touching of the breasts of a female without the
8 written consent of the female;

9 (4) any offer or agreement to engage in any activity
10 described by Subdivision (1), (2), or (3);

11 (5) kissing without the consent of both persons;

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

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

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

22 SECTION 17. Section 455.351(a), Occupations Code, is
23 amended to read as follows:

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

27 (1) appears to be in violation of or threatening to

violate this chapter or a rule adopted under this chapter; or

(2) is operating an establishment that offers massage therapy ~~[or other massage services]~~ regulated by this chapter and is not licensed under this chapter.

SECTION 18. Section 455.352, Occupations Code, is amended by adding Subsections (a-2) and (f) and amending Subsections (b) and (c) to read as follows:

(a-2) A person commits an offense if the person knowingly violates Section 455.205(d). An offense under this subsection is a Class B misdemeanor, unless the actor has previously been convicted one time of an offense under this subsection, in which event it is a Class A misdemeanor. If the actor has previously been convicted two or more times of an offense under this subsection, the offense is a state jail felony.

(b) An owner or operator of a massage establishment commits an offense if the person knowingly violates Section 455.151(a), 455.155(d), 455.202 ~~[455.202(a)]~~, 455.204(b) or (c), ~~[or]~~ 455.205(d), or 455.207. An offense under this subsection is a Class A ~~[B]~~ misdemeanor, unless the actor has previously been convicted one or more ~~[two]~~ times of an offense under this subsection, in which event it is a ~~[Class A misdemeanor. If the actor has previously been convicted three or more times of an offense under this subsection, the offense is a]~~ state jail felony.

(c) An owner or operator of a massage school commits an offense if the person knowingly violates Section 455.151(a), 455.204(c) ~~[455.159, 455.203(a) or (c), 455.204(b) or (c)]~~, ~~[or]~~ 455.205(b), (c), or (d), or 455.207.

1 (f) A licensed massage therapist commits an offense if the
2 person knowingly violates Section 455.202, 455.204, 455.205(a), or
3 455.207. An offense under this subsection is a Class A misdemeanor,
4 unless the actor has previously been convicted one or more times of
5 an offense under this subsection, in which event it is a state jail
6 felony.

7 SECTION 19. Sections 455.001(11), 455.202(d), and
8 455.205(b), Occupations Code, are repealed.

9 SECTION 20. As soon as practicable after the effective date
10 of this Act, the Department of State Health Services shall
11 prescribe the forms and procedures and the executive commissioner
12 of the Health and Human Services Commission shall adopt rules
13 necessary to implement the changes in law made by this Act.

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

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

1 former law is continued in effect for that purpose.

2 SECTION 22. (a) The changes in law made by this Act to
3 Section 455.352, Occupations Code, apply only to an offense
4 committed on or after the effective date of this Act. For purposes
5 of this section, an offense is committed before the effective date
6 of this Act if any element of the offense occurs before the
7 effective date.

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

11 SECTION 23. This Act takes effect September 1, 2007.