

SENATE AMENDMENTS

2nd Printing

By: Rose

H.B. No. 2644

A BILL TO BE ENTITLED

AN ACT

relating to the requirements for a massage therapist license.

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

SECTION 1. Section 455.156(b), Occupations Code, is amended to read as follows:

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

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

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

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

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

(C) [(iii)] 25 hours are dedicated to the study

1 of physiology;

2 (D) 50 hours are dedicated to the study of
3 kinesiology;

4 (E) 40 hours are dedicated to the study of
5 pathology;

6 (F) 20 [~~(iv)~~—15] hours are dedicated to the
7 study of hydrotherapy;

8 (G) 45 [~~(v)~~—15] hours are dedicated to the study
9 of massage therapy laws and rules, business practices, and
10 professional ethics standards;

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

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

16 [~~(B) has practiced massage therapy as a~~
17 ~~profession for not less than five years in another state or country~~
18 ~~that the department determines does not maintain standards and~~
19 ~~requirements of practice and licensing or registration that~~
20 ~~substantially conform to the standards and requirements of this~~
21 ~~state,~~]

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

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

25 SECTION 2. Except as provided by Section 3 of this Act, the
26 changes in law made by this Act to Section 455.156, Occupations
27 Code, apply only to a license applicant who enrolls in a massage

1 therapist training program for the first time on or after the
2 effective date of this Act. An applicant who enrolled in a massage
3 therapist training program for the first time before that date is
4 governed by the law in effect immediately before the effective date
5 of this Act, and the former law is continued in effect for that
6 purpose.

7 SECTION 3. The change in law made by this Act by the
8 deletion of former Section 455.156(b)(1)(B), Occupations Code,
9 applies only to an application for a license filed on or after the
10 effective date of this Act. A license application filed before that
11 date is governed by the law in effect at the time the application is
12 filed, and the former law is continued in effect for that purpose.

13 SECTION 4. This Act takes effect January 1, 2008.

ADOPTED

MAY 22 2007

Leta Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Chroma*

1 Amend H.B. No. 2644 by adding the following appropriately
2 numbered SECTIONS to the bill and renumbering existing SECTIONS
3 appropriately:

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

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

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

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

17 (2) is licensed or authorized under other law to
18 perform the service.

19 (d) The department may issue one or more types of licenses
20 not otherwise provided for by this chapter that authorize the
21 license holder to perform a service described by Subsection (c).
22 The department may adopt rules governing a license issued under
23 this subsection.

24 SECTION ____ . Section 455.155(c), Occupations Code, is
25 amended to read as follows:

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

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

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

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

5 (B) uses a business name or an assumed name and
6 provides the massage therapist's full legal name or license number
7 in each advertisement and each time the business name or assumed
8 name appears in writing;

9 (3) at the place of business, an acupuncturist,
10 athletic trainer, chiropractor, cosmetologist, midwife, nurse,
11 occupational therapist, perfusionist, physical therapist,
12 physician, physician assistant, podiatrist, respiratory care
13 practitioner, or surgical assistant licensed or certified in this
14 state employs or contracts with a licensed massage therapist to
15 provide massage therapy as part of the person's practice; or

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

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

20 (B) as part of a public or charity event, the
21 primary purpose of which is not to provide massage therapy. [The
22 executive commissioner by rule shall provide for a fair and
23 reasonable procedure to grant exemptions from the licensing
24 requirements of this chapter. The rules must provide that a person
25 is exempt if the person shows that the advertising or provision of
26 massage therapy services is incidental to the person's primary
27 enterprise.]

ADOPTED

MAY 22 2007

Letay Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: *Chen*

1 Amend H.B. No. 2644 by adding the following appropriately
2 numbered SECTIONS to the bill and renumbering existing SECTIONS
3 appropriately:

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

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

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

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

14 SECTION _____. Section 455.351, Occupations Code, is amended
15 by amending Subsections (a) and (e) and adding Subsections (g),
16 (h), and (i) to read as follows:

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

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

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

25 (e) The attorney general, district and county attorney,
26 municipal attorney, and the department may recover reasonable
27 expenses incurred in obtaining injunctive relief or a civil penalty
28 under this section, including court costs, reasonable attorney's
29 fees, investigative costs, witness fees, and deposition expenses.

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

4 (h) Notwithstanding Section 22.004, Government Code:

5 (1) a person may not continue the enjoined activity
6 pending appeal or trial on the merits of an injunctive order entered
7 in a suit brought under this subchapter;

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

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

16 (i) In this section:

17 (1) "Operator" means a person who is supervising a
18 massage establishment or massage school at the time a violation
19 occurs or the establishment or school is inspected. If no person is
20 supervising, then any employee, contractor, or agent of the owner
21 who is present at the establishment or school is the operator.

22 (2) "Owner" includes a person:

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

26 (B) who operates a massage establishment or
27 massage school under a lease, operating agreement, or other
28 arrangement.

29 SECTION ____ . Section 125.0015(a), Civil Practice and
30 Remedies Code, is amended to read as follows:

31 (a) A person who maintains a place to which persons

1 habitually go for the following purposes and who knowingly
2 tolerates the activity and furthermore fails to make reasonable
3 attempts to abate the activity maintains a common nuisance:

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

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

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

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

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

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

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

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

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

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

27 (11) aggravated sexual assault as described by Section
28 22.021, Penal Code;

29 (12) robbery as described by Section 29.02, Penal
30 Code;

31 (13) aggravated robbery as described by Section 29.03,

1 Penal Code;

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

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

6 (16) capital murder as described by Section 19.03,
7 Penal Code; or

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

10 SECTION _____. The change in law made by this Act to Section
11 455.351, Occupations Code, regarding a violation of Chapter 455,
12 Occupations Code, or a rule adopted under that chapter, applies
13 only to a violation that occurs on or after the effective date of
14 this Act. A violation that occurs before the effective date of this
15 Act is governed by the law in effect on the date the violation
16 occurred, and the former law is continued in effect for that
17 purpose.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 16, 2007

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2644 by Rose (Relating to the requirements for a massage therapist license.), As
Engrossed

No significant fiscal implication to the State is anticipated.

The bill would amend the Occupations Code as it relates to the requirements for a massage therapist license.

The Department of State Health Services estimates that any costs associated with implementing the provisions of the bill would be absorbed within existing resources.

The bill would apply only to a license applicant who enrolls in a massage therapist training program for the first time on or after the effective date of the bill.

The bill would take effect January 1, 2008.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 537 State Health Services, Department of
LBB Staff: JOB, CL, PP, SJ

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 9, 2007

TO: Honorable Dianne White Delisi, Chair, House Committee on Public Health

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2644 by Rose (Relating to the requirements for a massage therapist license.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Occupations Code as it relates to the requirements for a massage therapist license.

The Department of State Health Services estimates that any costs associated with implementing the provisions of the bill would be absorbed within existing resources.

The bill would apply only to a license applicant who enrolls in a massage therapist training program for the first time on or after the effective date of the bill.

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LBB Staff: JOB, CL, PP, SJ

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