

House Bill 2644
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

SECTION ___. 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.

CONFERENCE

No equivalent provision.

SECTION ___. 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) holds an appropriate license issued under this chapter; or
- (2) is licensed or authorized under other law to perform the service.

(d) The department may issue one or more types of licenses not otherwise provided for by this chapter that

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authorize the license holder to perform a service described by Subsection (c). The department may adopt rules governing a license issued under this subsection.

No equivalent provision.

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

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

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

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

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

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

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

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

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

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and

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

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 ~~[(+)-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) [(+)] 50 hours are dedicated to the study of anatomy;

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

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

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

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

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

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

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

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

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

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

No equivalent provision.

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

(a) The attorney general, a district or county attorney, a municipal attorney, or the department may institute an

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action for injunctive relief to restrain a violation by a person who:

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

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

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

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

(h) Notwithstanding Section 22.004, Government Code:

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

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

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

(i) In this section:

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

(2) "Owner" includes a person:

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

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

SECTION 2. Except as provided by Section 3 of this Act, the changes in law made by this Act to Section 455.156, Occupations Code, 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 this Act. An applicant who enrolled in a massage therapist training program for the first time before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

Same as House version.

SECTION 3. The change in law made by this Act by the deletion of former Section 455.156(b)(1)(B), Occupations Code, applies only to an application for a

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license filed on or after the effective date of this Act. A license application filed before that date is governed by the law in effect at the time the application is filed, and the former law is continued in effect for that purpose.

No equivalent provision.

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

(a) A person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance:

- (1) discharge of a firearm in a public place as prohibited by the Penal Code;
- (2) reckless discharge of a firearm as prohibited by the Penal Code;
- (3) engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;
- (4) delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481, Health and Safety Code;
- (5) gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;
- (6) prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;
- (7) compelling prostitution as prohibited by the Penal Code;
- (8) commercial manufacture, commercial distribution,

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or commercial exhibition of obscene material as prohibited by the Penal Code;
(9) aggravated assault as described by Section 22.02, Penal Code;
(10) sexual assault as described by Section 22.011, Penal Code;
(11) aggravated sexual assault as described by Section 22.021, Penal Code;
(12) robbery as described by Section 29.02, Penal Code;
(13) aggravated robbery as described by Section 29.03, Penal Code;
(14) unlawfully carrying a weapon as described by Section 46.02, Penal Code;
(15) murder as described by Section 19.02, Penal Code;
~~[ø]~~
(16) capital murder as described by Section 19.03, Penal Code; or
(17) massage therapy or other massage services in violation of Chapter 455, Occupations Code.

No equivalent provision.

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

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

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