

By: Harless

H.B. No. 722

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of massage therapists, massage establishments, massage schools, and sexually oriented businesses; 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 (7) and (8) and adding Subdivisions (9-a) through (9-e) to read as follows:

(7) "Massage therapist" means a person who practices, ~~or~~ administers, or offers to practice or administer massage therapy or other massage services to a client for compensation. The term includes a licensed massage therapist, therapeutic massage practitioner, massage technician, masseur, masseuse, myotherapist, body massager, body rubber, or any derivation of those titles.

(8) "Massage therapy" means the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage and includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, reflexology, and Swedish gymnastics. The terms "massage," "therapeutic massage," "massage technology," "myotherapy," "body massage," "body rub," or any derivation of those terms are synonyms for "massage therapy."

(9-a) "Nude" means a person who is:

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 (9-b) "Operator" means a person who is supervising a
7 massage establishment or massage school at the time a violation
8 occurs or the establishment or school is inspected. If no person
9 is supervising, any employee, contractor, or agent of the owner who
10 is present at the establishment or school at the time of the
11 violation or inspection is the operator.

12 (9-c) "Owner" includes a person:

13 (A) in whose name a certificate of occupancy or
14 other certificate reflecting compliance with a regulation of a
15 political subdivision has been issued for a massage establishment
16 or massage school and any person having control over that person; or

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

20 (9-d) "Reflexology" means a treatment method involving
21 the manipulation of reflex areas in the hands and feet with the
22 practitioner's hand, fingers, and thumb.

23 (9-e) "Sexual contact" includes:

24 (A) any touching of any part of the genitalia or
25 anus;

26 (B) any touching of the breasts of a female
27 without the written consent of the female;

1 (C) any offer or agreement to engage in any
2 activity described in Paragraph (A) or (B);

3 (D) kissing without the consent of both persons;

4 (E) deviate sexual intercourse, sexual contact,
5 sexual intercourse, indecent exposure, sexual assault,
6 prostitution, and promotion of prostitution as described in
7 Chapters 21, 22, and 43, Penal Code, or any offer or agreement to
8 engage in such activities;

9 (F) any behavior, gesture, or expression that may
10 reasonably be interpreted as inappropriately seductive or sexual;
11 or

12 (G) inappropriate sexual comments about or to a
13 client, including sexual comments about a person's body.

14 SECTION 2. Section 455.104, Occupations Code, is amended by
15 adding Subsection (a-1) to read as follows:

16 (a-1) The department, its authorized representative, or a
17 peace officer may enter the premises of a place of business that
18 represents itself as a massage establishment, regardless of whether
19 the business holds an appropriate license issued under this chapter
20 at any time that the department or peace officer considers
21 necessary to ensure compliance with this chapter and the rules
22 adopted under this chapter.

23 SECTION 3. Section 455.202(a), Occupations Code, is amended
24 to read as follows:

25 (a) A massage establishment may employ only licensed
26 massage therapists to perform or offer to perform massage therapy
27 or other massage services.

SECTION 4. Section 455.204, Occupations Code, is amended to read as follows:

Sec. 455.204. DISPLAY OF LICENSE. (a) A person who holds a license shall publicly display the original license as specified by the department.

(b) Each massage establishment must post in plain sight the original license for each massage therapist who practices in the massage establishment.

(c) Each massage school, massage establishment, massage therapy instructor, or massage therapist shall present the person's original license on the request of the department, an authorized representative of the department, or a peace officer.

(d) On the request of a peace officer, a massage therapist shall present:

(1) if the person is a United States citizen, the person's valid driver's license or identification card issued by a state in the United States; or

(2) if the person is not a United States citizen, the person's:

(A) passport or other identification card issued by a governmental agency; and

(B) valid work permit.

(e) In this section, a person is considered to publicly display a license or to post the license in plain sight if the license is visible from an area readily accessible by the public.

SECTION 5. Section 455.205, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (f) to read

1 as follows:

2 (a) A massage therapist may not:

3 (1) perform or offer to perform massage therapy or
4 other massage services for compensation or without compensation at
5 or for:

6 (A) a sexually oriented business; or

7 (B) a place of business that represents itself as
8 a massage establishment, unless the establishment holds an
9 appropriate license issued under this chapter;

10 (2) perform or offer to perform massage therapy or
11 other massage services for compensation or without compensation
12 unless the massage therapist is a United States citizen or a legal
13 permanent resident with a valid work permit; or

14 (3) while nude or in clothing designed to arouse or
15 gratify the sexual desire of an individual, provide massage therapy
16 or other massage services to a customer.

17 (d) A sexually oriented business may not use the word
18 "massage," ~~[or]~~ "bath," or "spa" on a sign or any form of
19 advertising.

20 (f) While in a massage establishment, a person may not:

21 (1) engage in sexual conduct;

22 (2) possess a device or item intended to provide
23 sexual stimulation or sexual gratification to any person; or

24 (3) possess clothing designed to arouse or gratify the
25 sexual desire of any person.

26 SECTION 6. Section 455.352, Occupations Code, is amended by
27 amending Subsections (a) and (e) and adding Subsection (c-1) to

1 read as follows:

2 (a) A person commits an offense if the person is required to
3 be licensed under this chapter and the person:

4 (1) knowingly violates Section 455.151, 455.159,
5 455.202(b), 455.203(a) or (c), 455.204(b) or (c), or 455.205(b),
6 (c), ~~[or]~~ (d), or (f); or

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

10 (c-1) A person commits an offense if the person violates a
11 rule adopted under this chapter.

12 (e) If it is shown at the trial of an offense under this
13 section that the defendant has been previously convicted:

14 (1) of an offense under this section, the offense is a
15 Class A misdemeanor; or

16 (2) two or more times of an offense under this section,
17 the offense is a state jail felony.

18 SECTION 7. Sections 451.202(d) and 451.351(i), Occupations
19 Code, are repealed.

20 SECTION 8. The change in law made by this Act applies only
21 to an offense committed on or after the effective date of this Act.
22 An offense committed before the effective date of this Act is
23 governed by the law in effect on the date the offense was committed,
24 and the former law is continued in effect for that purpose. For
25 purposes of this section, an offense was committed before the
26 effective date of this Act if any element of the offense occurred
27 before that date.

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1 SECTION 9. This Act takes effect September 1, 2011.