

BILL ANALYSIS

C.S.H.B. 3616
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the Texas Commission of Licensing and Regulation (TCLR) must deny or revoke a massage therapy license if an individual enters a guilty plea or plea of no contest or is convicted of prostitution or another sexual offense. However, there are cases in which license applicants have redeemed themselves and are looking for employment in a professional setting, yet they are not able to obtain a license despite committing the crime many years prior.

It has been suggested that, in recent years, the revocation and denial of licenses has not closely aligned with the legislature's intent to provide licensing agencies more authority in determining which past criminal offenses disqualify an applicant.

C.S.H.B. 3616 seeks to give TCLR better tools for its oversight of massage therapy regulation by providing TCLR with the discretion to make certain decisions whether to issue, deny, or revoke a license on a case-by-case basis and by authorizing TCLR to impose an administrative penalty when appropriate.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 3616 amends the Occupations Code to remove the provision making a person who has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for an offense of prostitution or another sexual offense ineligible for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor. The bill instead makes ineligible for the license a person who has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for any of the following offenses:

- promotion of prostitution;
- online promotion of prostitution;
- aggravated promotion of prostitution;
- aggravated online promotion of prostitution;
- compelling prostitution; or
- an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of such an offense.

C.S.H.B. 3616 revises the grounds for the denial, disciplinary action, or an administrative penalty of the license as follows:

- replaces the requirement for the Texas Commission of Licensing and Regulation (TCLR) or the executive director of the Texas Department of Licensing and Regulation to suspend, revoke, or refuse to renew the license based on the grounds for license denial, disciplinary action, or an administrative penalty with an authorization for TCLR or the executive director to do so;
- replaces the requirement for TCLR or the executive director to reprimand a person based on the grounds for license denial, disciplinary action, or an administrative penalty with an authorization for TCLR or the executive director to impose a certain administrative penalty based on those grounds;
- includes an attempt to obtain a license by fraud, misrepresentation, or concealment of material facts among the grounds for license denial, disciplinary action, or an administrative penalty; and
- replaces the requirement that TCLR or the executive director revoke the license of a person licensed as a massage school or massage establishment if TCLR or the executive director determines that an offense involving prostitution or another sexual offense occurred on the premises of the school or establishment with an authorization for TCLR or the executive director to do so if TCLR or the executive director determines any of the following offenses occurred on those premises:
 - an offense of trafficking of persons or prostitution;
 - an offense under federal law containing elements that are substantially similar to the elements of either of those offenses; or
 - another sexual offense under state law.

C.S.H.B. 3616 requires TCLR to adopt rules necessary to implement the bill's provisions.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3616 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following provisions:

- a provision making ineligible for a massage establishment, massage school, massage therapist, or massage therapy instructor license a person who has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for a federal offense or the laws of another state containing elements that are substantially similar to the elements of any of the offenses involving promoting or compelling prostitution; and
- a provision authorizing TCLR or the executive director to revoke a massage school or massage establishment license if either determines a federal offense containing elements that are substantially similar to the elements of a trafficking of persons or prostitution offense or another sexual offense under state law occurred on the premises of the school or establishment.