

BILL ANALYSIS

H.B. 1433
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Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, the Texas Commission of Licensing and Regulation (TCLR) must deny or revoke certain massage therapy licenses if an applicant or license holder enters a guilty plea or a plea of no contest or is convicted of prostitution or another sexual offense. S.B. 202, 84th Legislature, transferred the massage therapy licensing program from the Department of State Health Services (DSHS) to the Texas Department of Licensing and Regulation (TDLR). Upon gaining this function, TDLR and TCLR have revoked more than 80 licenses held by individuals who do not meet the license eligibility criteria based on such criminal history. However, the required revocation and denial of licenses does not align with the legislature's recent shift in providing licensing agencies with more discretion in determining which past criminal offenses disqualify an applicant for a license. H.B. 1433 seeks to provide TCLR and TDLR with the authority to consider each person's criminal history and their rehabilitative efforts when determining whether a massage-related license should be granted or renewed and authorizes those agencies to impose an administrative penalty on a license holder 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 5 of this bill.

ANALYSIS

H.B. 1433 amends the Occupations Code to revise the provision making a person who has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for a trafficking of persons offense, any prostitution offense, or another sexual offense ineligible for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor. The bill makes ineligible for such a license a person who instead has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for one of the following offenses:

- trafficking of persons;
- 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.

With regard to the grounds for denial of any such massage-related license or disciplinary action against the license holder, the bill does the following:

- 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 a license or reprimand the license holder based on certain conduct or violations related to the license with an authorization for TCLR or the executive director to do so;
- includes among such conduct that is grounds for denial or disciplinary action an attempt to obtain a license by fraud, misrepresentation, or concealment of material facts; and
- authorizes TCLR or the executive director to impose an administrative penalty on a license holder for any such conduct.

H.B. 1433 replaces the requirement that TCLR or the executive director revoke the license of a person licensed as a massage therapist or massage therapy instructor who is convicted of, enters a plea of nolo contendere or guilty to, or receives deferred adjudication for an offense involving prostitution or another sexual offense with a requirement for TCLR or the executive director to do so if the person is convicted of, enters a plea of nolo contendere or guilty to, or receives deferred adjudication for one of the following offenses:

- trafficking of persons;
- 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.

The bill adds a temporary provision set to expire September 1, 2025, exempting a person whose license was revoked because of such an offense from the provision making a person whose license has been revoked by order of TCLR or the executive director ineligible for a new license until the first anniversary of the revocation date. The temporary provision applies only with respect to a license revoked under state law as it existed immediately before the bill's effective date.

H.B. 1433 requires TCLR to adopt rules necessary to implement the bill's provisions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.