

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Bumgarner

H.B. No. 3579

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the issuance of an emergency order by the Texas  
3 Department of Licensing and Regulation against a massage  
4 establishment.

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

6 SECTION 1. Subchapter F, Chapter 455, Occupations Code, is  
7 amended by adding Section 455.252 to read as follows:

8 Sec. 455.252. EMERGENCY ORDER. The executive director may  
9 issue an emergency order under Section 51.3511 halting the  
10 operation of a massage establishment if:

11 (1) a law enforcement agency gives notice to the  
12 department, or the department otherwise learns, that the law  
13 enforcement agency is investigating the massage establishment for  
14 an offense under Chapter 20A, Penal Code; or

15 (2) the department has reasonable cause to believe  
16 that an offense under Chapter 20A, Penal Code, is being committed at  
17 the massage establishment.

18 SECTION 2. This Act takes effect September 1, 2023.

ADOPTED

VV  
MAY 22 2023

*Lately Spaw*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Tom Parker*

1 Amend H.B. No. 3579 (senate committee report) by adding the  
2 following appropriately numbered SECTION to the bill and  
3 renumbering the SECTIONS of the bill accordingly:

4 SECTION \_\_\_\_\_. Section 455.005, Occupations Code, is amended  
5 by amending Subsections (b) and (c) and adding Subsections (b-1),  
6 (c-1), (c-2), and (e) to read as follows:

7 (b) Subject to Subsections (b-1), (c), (c-1), and (c-2),  
8 this [This] chapter does not affect a local regulation that:

9 (1) relates to:

10 (A) zoning requirements, including conditional  
11 use permits;

12 (B) hours of operation; or

13 (C) other [similar] regulations similar to those  
14 described by Paragraph (A) or (B) for massage establishments;

15 (2) authorizes or requires an investigation into the  
16 background of an owner or operator of, or an investor in, a massage  
17 establishment; or

18 (3) does not relate directly to the practice of  
19 massage therapy as performed by a licensed massage therapist,  
20 including a regulation related to a license holder listed in  
21 Section 455.004, while the therapist:

22 (A) performs under the applicable licensing law;  
23 and

24 (B) works with a licensed massage therapist.

25 (b-1) Except as provided by Chapter 243, Local Government  
26 Code, a political subdivision may not adopt a regulation of the type  
27 described by Subsection (b) that is more restrictive for massage  
28 therapists than for other health care professionals.

29 (c) A [Except as provided by Chapter 243, Local Government

1 ~~Code, a]~~ political subdivision may not adopt a regulation of the  
2 type described by Subsection (b) that is more restrictive for  
3 ~~[massage therapists or]~~ massage establishments than for other  
4 health care ~~[professionals or]~~ establishments, except that a more  
5 restrictive regulation of the type described by Subsection (b) may  
6 be adopted:

7 (1) as provided by Chapter 243, Local Government Code;

8 or

9 (2) if the regulation relates to the location,  
10 ownership, hours of operation, or operation of a massage  
11 establishment:

12 (A) where three or more arrests have occurred or  
13 citations in lieu of arrest have been issued for an offense under  
14 Section 43.02, 43.021, 43.03, 43.04, 43.05, or 71.02, Penal Code,  
15 that was committed at the massage establishment;

16 (B) where an offense under Chapter 20A, or  
17 Section 34.02, 43.02, 43.021, 43.03, 43.04, 43.05, or 71.02, Penal  
18 Code, was committed that resulted in a conviction;

19 (C) that is operating at a location where another  
20 massage establishment against which a sanction was imposed for a  
21 violation of this chapter previously operated; or

22 (D) that is operating at a location where another  
23 massage establishment owned or operated by an individual against  
24 whom a sanction was imposed for a violation of this chapter  
25 previously operated.

26 (c-1) The owner or operator of a massage establishment  
27 subject to a regulation adopted under Subsection (c)(2)(C) may  
28 submit a request to the applicable political subdivision for an  
29 exemption from the regulation. The request must include  
30 documentation sufficient to demonstrate the owner or operator has  
31 undertaken or implemented procedures and controls to prevent the

1 commission of any offense listed in Subsection (c)(2)(A) or (B).

2 (c-2) The governing body of a political subdivision that  
3 receives a request under Subsection (c-1) shall:

4 (1) consider, but is not required to approve, the  
5 requested exemption at the governing body's next regularly  
6 scheduled meeting to be held on a date after the date on which the  
7 request is received and that allows sufficient time to comply with  
8 Chapter 551, Government Code, if:

9 (A) the ownership of the massage establishment  
10 subject to a regulation adopted under Subsection (c)(2)(C) changed  
11 less than two years before the date of the request under Subsection  
12 (c-1); and

13 (B) the current owner of the massage  
14 establishment is not an individual against whom a sanction has been  
15 imposed for a violation of this chapter; or

16 (2) approve the requested exemption as soon as  
17 practicable after the date on which the request is received if:

18 (A) the ownership of the massage establishment  
19 subject to a regulation adopted under Subsection (c)(2)(C) changed  
20 at least two years before the date of the request under Subsection  
21 (c-1);

22 (B) in the two-year period preceding the date of  
23 the request under Subsection (c-1), an arrest has not occurred for,  
24 a citation in lieu of arrest has not been issued for, and a  
25 conviction has not resulted from an offense listed in Subsection  
26 (c)(2)(A) or (B) committed at the massage establishment; and

27 (C) the current owner of the massage  
28 establishment is not an individual against whom a sanction has been  
29 imposed for a violation of this chapter.

30 (e) In this section, "sanction" has the meaning assigned by  
31 Section 51.001.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 23, 2023**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3579** by Bumgarner (Relating to the issuance of an emergency order by the Texas Department of Licensing and Regulation against a massage establishment.), **As Passed 2nd House**

The fiscal implications of the bill cannot be determined due to the uncertain nature of the increase in cases as a result of the lower evidentiary standard required for the Texas Department of Licensing and Regulation to issue an emergency order to halt operation under the bill's provisions.

The bill would require the Texas Department of Licensing and Regulation (TDLR) to issue an emergency order to halt the operation of a massage establishment if TDLR learns that a law enforcement agency is investigating the establishment for a human trafficking offense or if TDLR has reasonable cause that a human trafficking offense is being committed at the establishment. These emergency suspension orders would require a hearing to be conducted by the State Office of Administrative Hearings (SOAH) within 10 days of the TDLR order. Additionally, the bill would amend the Occupations Code to establish that regulations adopted by a political subdivision relating to conditional use permits and hours of operation of massage therapists are not affected by statutory regulations of massage therapy.

This analysis assumes that, under the bill's provisions, there would be an increase in the number of emergency suspension cases that would trigger a SOAH hearing due to a lowered "reasonable cause" threshold; however, the number of additional emergency orders issued and associated SOAH hearings cannot be estimated.

According to SOAH and TDLR, if the number of emergency orders and associated SOAH cases is significant then both agencies would need additional full-time equivalent positions to support this increased caseload.

**Local Government Impact**

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

**Source Agencies:** 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

**LBB Staff:** JMc, SZ, GDZ, BFa, CMA

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 17, 2023**

**TO:** Honorable Charles Schwertner, Chair, Senate Committee on Business & Commerce

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3579** by Bumgarner (Relating to the issuance of an emergency order by the Texas Department of Licensing and Regulation against a massage establishment.), **As Engrossed**

The fiscal implications of the bill cannot be determined due to the uncertain nature of the increase in cases as a result of the lower evidentiary standard required for the Texas Department of Licensing and Regulation to issue an emergency order to halt operation under the bill's provisions.

The bill would require the Texas Department of Licensing and Regulation (TDLR) to issue an emergency order to halt the operation of a massage establishment if TDLR learns that a law enforcement agency is investigating the establishment for a human trafficking offense or if TDLR has reasonable cause that a human trafficking offense is being committed at the establishment. These emergency suspension orders would require a hearing to be conducted by the State Office of Administrative Hearings (SOAH) within 10 days of the TDLR order.

This analysis assumes that, under the bill's provisions, there would be an increase in the number of emergency suspension cases that would trigger a SOAH hearing due to a lowered "reasonable cause" threshold; however, the number of additional emergency orders issued and associated SOAH hearings cannot be estimated.

According to SOAH and TDLR, if the number of emergency orders and associated SOAH cases is significant then both agencies would need additional full-time equivalent positions to support this increased caseload.

**Local Government Impact**

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

**Source Agencies:** 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

**LBB Staff:** JMc, SZ, BFa, GDZ, CMA

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**April 11, 2023**

**TO:** Honorable Ken King, Chair, House Committee on Licensing & Administrative Procedures

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3579** by Bumgarner (relating to the issuance of an emergency order by the Texas Department of Licensing and Regulation against a massage establishment.), **Committee Report 1st House, Substituted**

The fiscal implications of the bill cannot be determined due to the uncertain nature of the increase in cases as a result of the lower evidentiary standard required for the Texas Department of Licensing and Regulation to issue an emergency order to halt operation under the bill's provisions.

The bill would require the Texas Department of Licensing and Regulation (TDLR) to issue an emergency order to halt the operation of a massage establishment if TDLR learns that a law enforcement agency is investigating the establishment for a human trafficking offense or if TDLR has reasonable cause that a human trafficking offense is being committed at the establishment. These emergency suspension orders would require a hearing to be conducted by the State Office of Administrative Hearings (SOAH) within 10 days of the TDLR order.

This analysis assumes that, under the bill's provisions, there would be an increase in the number of emergency suspension cases that would trigger a SOAH hearing due to a lowered "reasonable cause" threshold; however, the number of additional emergency orders issued and associated SOAH hearings cannot be estimated.

According to SOAH and TDLR, if the number of emergency orders and associated SOAH cases is significant then both agencies would need additional full-time equivalent positions to support this increased caseload.

**Local Government Impact**

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

**Source Agencies:** 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

**LBB Staff:** JMc, SZ, BFa, GDZ, CMA

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**March 28, 2023**

**TO:** Honorable Ken King, Chair, House Committee on Licensing & Administrative Procedures

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3579** by Bumgarner (Relating to the issuance of an emergency order by the Texas Department of Licensing and Regulation against a massage establishment.), **As Introduced**

The fiscal implications of the bill cannot be determined due to the uncertain nature of the increase in cases as a result of the lower evidentiary standard required for the Texas Department of Licensing and Regulation to issue an emergency order to halt operation under the bill's provisions.

The bill would require the Texas Department of Licensing and Regulation (TDLR) to issue an emergency order to halt the operation of a massage establishment if TDLR learns that a law enforcement agency is investigating the establishment for a human trafficking offense or if TDLR has reasonable cause that a human trafficking offense is being committed at the establishment. These emergency suspension orders would require a hearing to be conducted by the State Office of Administrative Hearings (SOAH) within 10 days of the TDLR order.

This analysis assumes that, under the bill's provisions, there would be an increase in the number of emergency suspension cases that would trigger a SOAH hearing due to a lowered "reasonable cause" threshold; however, the number of additional emergency orders issued and associated SOAH hearings cannot be estimated.

According to SOAH and TDLR, if the number of emergency orders and associated SOAH cases is significant then both agencies would need additional full-time equivalent positions to support this increased caseload.

**Local Government Impact**

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

**Source Agencies:** 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

**LBB Staff:** JMc, SZ, GDZ, BFa, CMA