

AMENDED IN ASSEMBLY AUGUST 24, 2012

AMENDED IN ASSEMBLY AUGUST 20, 2012

SENATE BILL

No. 1238

Introduced by Senator Price

February 23, 2012

An act to amend Sections 4600, 4601, 4602, 4602.5, 4603, 4603.7, 4612, and 4613 of, and to add Section 4603.8 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1238, as amended, Price. Massage therapy.

Existing law, until January 1, 2015, provides for the voluntary certification of massage practitioners and massage therapists by the California Massage Therapy Council. Existing law specifies the requirements for the council to issue to an applicant a certificate as a massage therapist, including, but not limited to, (1) successfully completing curricula in massage and related subjects totaling a minimum of 500 hours, a minimum of 250 hours of which shall be from a school approved by the council and the other 250 hours may be secured as specified, or (2) passing a massage and bodywork competency assessment examination, as specified.

This bill would require an applicant for a massage therapist certificate to meet the other requirements for certification and to also successfully complete either (1) the 500 hours or the credit unit equivalent, as specified above, or (2) the competency assessment examination, as specified above, and curricula in massage and related subjects totaling a minimum of 250 hours, at ~~a single~~ *an* approved school.

Existing law requires the council to immediately suspend, on an interim basis, the certificate of a certificate holder, if the council receives

notice that a certificate holder has been arrested for and charged with, among other crimes, soliciting or engaging in an act of prostitution or an act punishable as a sexually related crime, and to provide notices of the suspension to the certificate holder and any business that employs the certificate holder, in each case, as specified.

This bill would additionally ~~require~~ *authorize* the council to immediately suspend the certificate of a certificate holder upon receipt of clear and convincing evidence that the holder has committed an act punishable as a sexually related crime or *a felony that is substantially related to the qualifications, functions, or duties of a certificate holder*. The bill would also require the council to consider any available credible mitigating evidence before making a decision to so suspend a certificate. The bill would grant the holder of a certificate so suspended the right to a hearing to be held within 30 days and require the council to send notice of suspension to the certificate holder and to other specified businesses.

Existing law requires the council, upon request of a law enforcement agency or local government agency with responsibility for regulating massage or massage business, to provide information concerning a certificate holder, as specified.

This bill would authorize those local agencies, upon request of the council, to provide information to the council concerning an applicant or certificate holder, including, but not limited to, information related to criminal activity or unprofessional conduct allegedly engaged in by that person.

Under existing law, conviction of a felony that is substantially related to the qualifications or duties of a certificate holder is a violation and basis for the council to deny an application or discipline a certificate holder.

This bill would also impose those consequences for a conviction of a felony, misdemeanor, infraction, or municipal code violation, or liability in an administrative or civil action, that is substantially related to the qualifications, functions, or duties of a certificate holder. The bill would also require a certificate holder to provide identifying information, upon request, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4600 of the Business and Professions
2 Code is amended to read:

3 4600. As used in this chapter, the following terms shall have
4 the following meanings:

5 (a) “Approved school” or “approved massage school” means a
6 school approved by the council that meets minimum standards for
7 training and curriculum in massage and related subjects and that
8 meets any of the following requirements:

9 (1) Is approved by the Bureau for Private Postsecondary
10 Education.

11 (2) Is approved by the Department of Consumer Affairs.

12 (3) Is an institution accredited by the Accrediting Commission
13 for Senior Colleges and Universities or the Accrediting
14 Commission for Community and Junior Colleges of the Western
15 Association of Schools and Colleges and that is one of the
16 following:

17 (A) A public institution.

18 (B) An institution incorporated and lawfully operating as a
19 nonprofit public benefit corporation pursuant to Part 2
20 (commencing with Section 5110) of Division 2 of Title 1 of the
21 Corporations Code, and that is not managed by any entity for profit.

22 (C) A for-profit institution.

23 (D) An institution that does not meet all of the criteria in
24 subparagraph (B) that is incorporated and lawfully operating as a
25 nonprofit public benefit corporation pursuant to Part 2
26 (commencing with Section 5110) of Division 2 of Title 1 of the
27 Corporations Code, that has been in continuous operation since
28 April 15, 1997, and that is not managed by any entity for profit.

29 (4) Is a college or university of the state higher education system,
30 as defined in Section 100850 of the Education Code.

31 (5) Is a school of equal or greater training that is recognized by
32 the corresponding agency in another state or accredited by an
33 agency recognized by the United States Department of Education.

34 (b) “Compensation” means the payment, loan, advance,
35 donation, contribution, deposit, or gift of money or anything of
36 value.

37 (c) “Massage therapist,” “bodyworker,” “bodywork therapist,”
38 or “massage and bodywork therapist” means a person who is

1 certified by the California Massage Therapy Council under
2 subdivision (c) of Section 4601 and who administers massage for
3 compensation.

4 (d) “Massage practitioner,” “bodywork practitioner,” or
5 “massage and bodywork practitioner” means a person who is
6 certified by the California Massage Therapy Council under
7 subdivision (b) of Section 4601 and who administers massage for
8 compensation.

9 (e) “Council” means the California Massage Therapy Council
10 created pursuant to this chapter, which shall be a nonprofit
11 organization exempt from taxation under Section 501(c)(3) of Title
12 26 of the United States Code. The council may commence activities
13 as authorized by this section once it has submitted a request to the
14 Internal Revenue Service seeking this exemption. Whenever the
15 term “organization” is used in this chapter, it shall mean the
16 council, except where the context indicates otherwise.

17 (f) “Registered school” means a school approved by the council
18 that meets minimum standards for training and curriculum in
19 massage and related subjects and that either is approved by the
20 Bureau for Private Postsecondary Education or the Department of
21 Consumer Affairs, or is an institution accredited by the senior
22 commission or the junior commission of the Western Association
23 of Schools and Colleges as defined in paragraph (3) of subdivision
24 (a), is a college or university of the state higher education system
25 as defined in Section 100850 of the Education Code, or is a school
26 of equal or greater training that is approved by the corresponding
27 agency in another state.

28 (g) For purposes of this chapter, the terms “massage” and
29 “bodywork” shall have the same meaning.

30 (h) “Operator of a massage business” means a person, whether
31 owner or nonowner, who manages or operates a massage business.

32 SEC. 2. Section 4601 of the Business and Professions Code is
33 amended to read:

34 4601. (a) The council shall issue a certificate under this chapter
35 to an applicant who satisfies the requirements of this chapter.

36 (b) (1) In order to obtain certification as a massage practitioner,
37 an applicant shall submit a written application and provide the
38 council with satisfactory evidence that he or she meets all of the
39 following requirements:

40 (A) The applicant is 18 years of age or older.

1 (B) The applicant has successfully completed, at ~~a single~~ *an*
2 approved school, curricula in massage and related subjects, totaling
3 a minimum of 250 hours or the credit unit equivalent, that
4 incorporates appropriate school assessment of student knowledge
5 and skills. Included in the hours shall be instruction addressing
6 anatomy and physiology, contraindications, health and hygiene,
7 and business and ethics, with at least 100 hours of the required
8 minimum 250 hours devoted to these curriculum areas.

9 (C) All fees required by the council have been paid.

10 (2) New certificates shall not be issued pursuant to this
11 subdivision after December 31, 2015. Certificates issued pursuant
12 to this section or subdivision (a) or (c) of Section 4604 on or before
13 December 31, 2015, shall, after December 31, 2015, be renewed
14 without any additional educational requirements, provided that the
15 certificate holder continues to be qualified pursuant to this chapter.

16 (c) In order to obtain certification as a massage therapist, an
17 applicant shall submit a written application and provide the council
18 with satisfactory evidence that he or she meets all of the following
19 requirements:

20 (1) The applicant is 18 years of age or older.

21 (2) The applicant satisfies at least one of the following
22 requirements:

23 (A) He or she has successfully completed the curricula in
24 massage and related subjects totaling a minimum of 500 hours or
25 the credit unit equivalent. Of this 500 hours, a minimum of 250
26 hours shall be from approved schools. The remaining 250 hours
27 required may be secured either from approved or registered schools,
28 or from continuing education providers approved by, or registered
29 with, the council or the Department of Consumer Affairs. After
30 December 31, 2015, applicants may only satisfy the curricula in
31 massage and related subjects from approved schools.

32 (B) The applicant has done both of the following:

33 (i) Successfully completed, at ~~a single~~ *an* approved school,
34 curricula in massage and related subjects totaling a minimum of
35 250 hours that incorporates appropriate school assessment of
36 student knowledge and skills. Included in the hours shall be
37 instruction addressing anatomy and physiology, contraindications,
38 health and hygiene, and business and ethics, with at least 100 hours
39 of the required minimum 250 hours devoted to these curriculum
40 areas.

1 (ii) Passed a massage and bodywork competency assessment
2 examination that meets generally recognized psychometric
3 principles and standards, and that is approved by the board. The
4 successful completion of this examination may have been
5 accomplished before the date the council is authorized by this
6 chapter to begin issuing certificates.

7 (3) All fees required by the council have been paid.

8 (d) The council shall issue a certificate to an applicant who
9 meets the other qualifications of this chapter and holds a current
10 and valid registration, certification, or license from any other state
11 whose licensure requirements meet or exceed those defined within
12 this chapter. The council shall have discretion to give credit for
13 comparable academic work completed by an applicant in a program
14 outside of California.

15 (e) An applicant applying for a massage therapist certificate
16 shall file with the council a written application provided by the
17 council, showing to the satisfaction of the council that he or she
18 meets all of the requirements of this chapter.

19 (f) Any certification issued under this chapter shall be subject
20 to renewal every two years in a manner prescribed by the council,
21 and shall expire unless renewed in that manner. The council may
22 provide for the late renewal of a license.

23 (g) (1) The council shall have the responsibility to determine
24 that the school or schools from which an applicant has obtained
25 the education required by this chapter meet the requirements of
26 this chapter. If the council has any reason to question whether or
27 not the applicant received the education that is required by this
28 chapter from the school or schools that the applicant is claiming,
29 the council shall investigate the facts to determine that the applicant
30 received the required education prior to issuing a certificate.

31 (2) For purposes of paragraph (1) and any other provision of
32 this chapter for which the council is authorized to receive factual
33 information as a condition of taking any action, the council shall
34 have the authority to conduct oral interviews of the applicant and
35 others or to make any investigation deemed necessary to establish
36 that the information received is accurate and satisfies any criteria
37 established by this chapter.

38 (h) The certificate issued pursuant to this chapter, as well as
39 any identification card issued by the council, shall be surrendered

1 to the council by any certificate holder whose certificate has been
2 suspended or revoked.

3 SEC. 3. Section 4602 of the Business and Professions Code is
4 amended to read:

5 4602. (a) The council may discipline a certificate holder by
6 any, or a combination, of the following methods:

7 (1) Placing the certificate holder on probation.

8 (2) Suspending the certificate and the rights conferred by this
9 chapter on a certificate holder for a period not to exceed one year.

10 (3) Revoking the certificate.

11 (4) Suspending or staying the disciplinary order, or portions of
12 it, with or without conditions.

13 (5) Taking other action as the council, as authorized by this
14 chapter or its bylaws, deems proper.

15 (b) The council may issue an initial certificate on probation,
16 with specific terms and conditions, to any applicant.

17 (c) (1) Notwithstanding any other provision of law, if the
18 council receives notice that a certificate holder has been arrested
19 and charges have been filed by the appropriate prosecuting agency
20 against the certificate holder alleging a violation of subdivision
21 (b) of Section 647 of the Penal Code or any other offense described
22 in subdivision (h) of Section 4603, the council shall take all of the
23 following actions:

24 (A) Immediately suspend, on an interim basis, the certificate of
25 that certificate holder.

26 (B) Notify the certificate holder within 10 *business* days at the
27 address last filed with the council that the certificate has been
28 suspended, and the reason for the suspension.

29 (C) Notify any business within 10 *business* days that the council
30 has in its records as employing the certificate holder that the
31 certificate has been suspended.

32 (2) Upon notice to the council that the charges described in
33 paragraph (1) have resulted in a conviction, the suspended
34 certificate shall become subject to permanent revocation. The
35 council shall provide notice to the certificate holder within 10
36 *business* days that it has evidence of a valid record of conviction
37 and that the certificate will be revoked unless the certificate holder
38 provides evidence within 15 days that the conviction is either
39 invalid or that the information is otherwise erroneous.

1 (3) Upon notice that the charges have resulted in an acquittal,
2 or have otherwise been dismissed prior to conviction, the certificate
3 shall be immediately reinstated and the certificate holder and any
4 business that received notice pursuant to subparagraph (C) of
5 paragraph (1) shall be notified of the reinstatement within 10
6 *business days*.

7 (d) Notwithstanding any other provision of law, if the council
8 receives clear and convincing evidence that a certificate holder
9 has committed an act punishable as a sexually related crime or a
10 felony *that is substantially related to the qualifications, functions,*
11 *or duties of a certificate holder*, the council may immediately
12 suspend the certificate of that certificate holder. A decision to
13 immediately suspend a certificate pursuant to this subdivision shall
14 be based on clear and convincing evidence and the council shall
15 also consider any available credible mitigating evidence before
16 making a decision to suspend a certificate. Written statements by
17 any person shall not be considered by the council when determining
18 whether to immediately suspend a certificate unless made under
19 penalty of perjury. If the council suspends the certificate of a
20 certificate holder in accordance with this subdivision, the council
21 shall take all of the following additional actions:

22 (1) Notify the certificate holder, at the address last filed with
23 the council, within 10 business days by a method providing
24 delivery confirmation, that the certificate has been suspended, the
25 reason for the suspension, and that the certificate holder has the
26 right to request a hearing pursuant to paragraph (3).

27 (2) Notify by electronic mail or any other means consistent with
28 the notice requirements of this chapter, within 10 business days,
29 any business that the council has in its records as employing or
30 contracting with the certificate holder for massage services, and
31 the California city or county permitting authority that has
32 jurisdiction over any business that the council has in its records as
33 employing or contracting with the certificate holder, that the
34 certificate has been suspended.

35 (3) A certificate holder whose certificate is suspended pursuant
36 to this subdivision shall have the right to request, in writing, a
37 hearing to challenge the factual basis for the suspension. If the
38 holder of the suspended certificate requests a hearing on the
39 suspension, the hearing shall be held within 30 days after receipt
40 of the request. A holder whose certificate is suspended based on

1 paragraph (1) shall be subject to revocation or other discipline in
2 accordance with subdivision (a).

3 SEC. 4. Section 4602.5 of the Business and Professions Code
4 is amended to read:

5 4602.5. (a) Upon the request of any law enforcement agency
6 or any other representative of a local government agency with
7 responsibility for regulating, or administering a local ordinance
8 relating to, massage or massage businesses, the council shall
9 provide information concerning a certificate holder, including, but
10 not limited to, the current status of the certificate, any history of
11 disciplinary actions taken against the certificate holder, the home
12 and work addresses of the certificate holder, and any other
13 information in the council's possession that is necessary to verify
14 facts relevant to administering the local ordinance.

15 (b) Upon the request of the council to any law enforcement
16 agency or any other representative of a local government agency
17 with responsibility for regulating or administering a local ordinance
18 relating to massage or massage businesses, the law enforcement
19 agency or local government agency is authorized to provide
20 information to the council concerning a certificate applicant or
21 certificate holder, including, but not limited to, the current status
22 of any application or local permit; any history of disciplinary action
23 taken against the certificate applicant or certificate holder; any
24 information related to criminal activity or unprofessional conduct
25 allegedly engaged in by a certificate applicant or certificate holder,
26 including, but not limited to, police reports and declarations of
27 conduct; the home and work addresses of the certificate applicant
28 or certificate holder; and any other information in the law
29 enforcement agency's or other local government agency's
30 possession that is necessary to verify facts or implement the
31 provisions of this chapter.

32 (c) The council shall accept information provided by any law
33 enforcement agency or any other representative of a local
34 government agency with responsibility for regulating, or
35 administering a local ordinance relating to, massage or massage
36 businesses. The council shall have the responsibility to review any
37 information received and to take any actions authorized by this
38 chapter that are warranted by that information.

39 SEC. 5. Section 4603 of the Business and Professions Code is
40 amended to read:

1 4603. It is a violation of this chapter for a certificate holder to
2 commit, and the council may deny an application for a certificate
3 or discipline a certificate holder for, any of the following:

4 (a) Unprofessional conduct, including, but not limited to, denial
5 of licensure, revocation, suspension, restriction, or any other
6 disciplinary action against a certificate holder by another state or
7 territory of the United States, by any other government agency, or
8 by another California health care professional licensing board. A
9 certified copy of the decision, order, or judgment shall be
10 conclusive evidence of these actions.

11 (b) Procuring a certificate by fraud, misrepresentation, or
12 mistake.

13 (c) Violating or attempting to violate, directly or indirectly, or
14 assisting in or abetting the violation of, or conspiring to violate,
15 any provision or term of this chapter or any rule or bylaw adopted
16 by the council.

17 (d) Conviction of any felony, misdemeanor, infraction, or
18 municipal code violation, or liability in an administrative or civil
19 action, that is substantially related to the qualifications, functions,
20 or duties of a certificate holder, in which event the record of the
21 conviction or other judgment shall be conclusive evidence of the
22 crime or liability.

23 (e) Impersonating an applicant or acting as a proxy for an
24 applicant in any examination referred to under this chapter for the
25 issuance of a certificate.

26 (f) Impersonating a certified practitioner or therapist, or
27 permitting or allowing an uncertified person to use a certificate.

28 (g) Committing any fraudulent, dishonest, or corrupt act that is
29 substantially related to the qualifications or duties of a certificate
30 holder.

31 (h) Committing any act punishable as a sexually related crime.

32 SEC. 6. Section 4603.7 of the Business and Professions Code
33 is amended to read:

34 4603.7. A certificate holder shall include the name under which
35 he or she is certified and his or her certificate number in any and
36 all advertising and shall display his or her original certificate at
37 his or her place of business. A certificate holder shall have his or
38 her identification card in his or her possession while providing
39 massage services.

1 SEC. 7. Section 4603.8 is added to the Business and Professions
2 Code, to read:

3 4603.8. A certificate holder shall, upon request at the location
4 where he or she is providing massage services, provide his or her
5 full name and certificate number to a member of the public, the
6 council, or a member of law enforcement or a local government
7 agency charged with regulating massage.

8 SEC. 8. Section 4612 of the Business and Professions Code is
9 amended to read:

10 4612. (a) (1) The holder of a certificate issued pursuant to
11 this chapter shall have the right to practice massage, consistent
12 with this chapter and the qualifications established by his or her
13 certification, in any city, county, or city and county in this state
14 and shall not be required to obtain any other license, permit, or
15 other authorization, except as provided in this section, to engage
16 in that practice.

17 (2) Notwithstanding any other provision of law, a city, county,
18 or city and county shall not enact an ordinance that requires a
19 license, permit, or other authorization to provide massage for
20 compensation by an individual who is certified pursuant to this
21 chapter and who is practicing consistent with the qualifications
22 established by his or her certification, or by a massage business
23 or massage establishment that employs or uses only persons who
24 are certified pursuant to this chapter to provide massage for
25 compensation. No provision of any ordinance enacted by a city,
26 county, or city and county that is in effect before the effective date
27 of this chapter, and that requires a license, permit, or other
28 authorization to provide massage for compensation, may be
29 enforced against an individual who is certified pursuant to this
30 chapter or against a massage business or massage establishment
31 that employs or uses only persons who are certified pursuant to
32 this chapter to provide massage for compensation.

33 (3) Except as provided in subdivision (b), nothing in this section
34 shall be interpreted to prevent a city, county, or city and county
35 from adopting or enforcing any local ordinance that provides for
36 reasonable health and safety requirements for massage
37 establishments or businesses. Subdivision (b) shall not apply to
38 any massage establishment or business that employs or uses
39 persons to provide massage services who are not certified pursuant
40 to this chapter.

1 (b) (1) This subdivision shall apply only to massage
2 establishments or businesses that are sole proprietorships, where
3 the sole proprietor is certified pursuant to this chapter, and to
4 massage establishments or businesses that employ or use only
5 persons certified pursuant to this chapter to provide massage
6 services. For purposes of this subdivision, a sole proprietorship is
7 a business where the owner is the only person employed by that
8 business to provide massage services.

9 (2) (A) Any massage establishment or business described in
10 paragraph (1) shall maintain on its premises evidence for review
11 by local authorities that demonstrates that all persons providing
12 massage services are certified.

13 (B) Nothing in this section shall preclude a city, county, or city
14 and county from including in a local ordinance a provision that
15 requires a business described in paragraph (1) to file copies or
16 provide other evidence of the certificates held by the persons who
17 are providing massage services at the business.

18 (3) A city, county, or city and county may charge a massage
19 business or establishment a business licensing fee, provided that
20 the fee shall be no higher than the lowest fee that is applied to
21 other individuals and businesses providing professional services,
22 as defined in subdivision (a) of Section 13401 of the Corporations
23 Code.

24 (4) Nothing in this section shall prohibit a city, county, or city
25 and county from enacting ordinances, regulations, rules,
26 requirements, restrictions, land use regulations, moratoria,
27 conditional use permits, or zoning requirements applicable to an
28 individual certified pursuant to this chapter or to a massage
29 establishment or business that uses only individuals who are
30 certified pursuant to this chapter to provide massage for
31 compensation, provided that, unless otherwise exempted by this
32 chapter, these ordinances, regulations, rules, requirements,
33 restrictions, land use regulations, moratoria, conditional use
34 permits, and zoning requirements shall be no different than the
35 requirements that are uniformly applied to all other individuals
36 and businesses providing professional services, as defined in
37 subdivision (a) of Section 13401 of the Corporations Code. No
38 provision of any ordinance, regulation, rule, requirement,
39 restriction, land use regulation, moratoria, conditional use permit,
40 or zoning requirement enacted by a city, county, or city and county

1 that is in effect before the effective date of this chapter, and that
2 is inconsistent with this paragraph, may be enforced against an
3 individual who is certified pursuant to this chapter or against a
4 massage business or massage establishment that uses only
5 individuals who are certified pursuant to this chapter to provide
6 massage for compensation.

7 (5) Local building code or physical facility requirements
8 applicable to massage establishments or businesses shall not require
9 additional restroom, shower, or other facilities that are not
10 uniformly applicable to other professional or personal service
11 businesses, nor shall building or facility requirements be adopted
12 that (A) require unlocked doors when there is no staff available to
13 ensure security for clients and massage staff who are behind closed
14 doors, or (B) require windows that provide a view into massage
15 rooms that interfere with the privacy of clients of the massage
16 business.

17 (6) A city, county, or city and county may adopt reasonable
18 health and safety requirements with respect to massage
19 establishments or businesses, including, but not limited to,
20 requirements for cleanliness of massage rooms, towels and linens,
21 and reasonable attire and personal hygiene requirements for persons
22 providing massage services, provided that nothing in this paragraph
23 shall be interpreted to authorize adoption of local ordinances that
24 impose additional qualifications, such as medical examinations,
25 background checks, or other criteria, upon any person certified
26 pursuant to this chapter.

27 (7) Nothing in this section shall preclude a city, county, or city
28 and county from doing any of the following:

29 (A) Requiring an applicant for a business license to operate a
30 massage business or establishment to fill out an application that
31 requests the applicant to provide relevant information, as long as
32 the information requested is the same as that required of other
33 individuals and professionals providing professional services as
34 defined in subdivision (a) of Section 13401 of the Corporations
35 Code.

36 (B) Making reasonable investigations into the information so
37 provided.

38 (C) Denying or restricting a business license if the applicant
39 has provided materially false information.

1 (c) An owner or operator of a massage business or establishment
2 who is certified pursuant to this chapter shall be responsible for
3 the conduct of all employees or independent contractors working
4 on the premises of the business. Failure to comply with this chapter
5 may result in revocation of the owner's or operator's certificate in
6 accordance with Section 4603. Nothing in this section shall
7 preclude a local ordinance from authorizing suspension, revocation,
8 or other restriction of a license or permit issued to a massage
9 establishment or business if violations of this chapter, or of the
10 local ordinance, occur on the business premises.

11 (d) Nothing in this section shall preclude a city, county, or city
12 and county from adopting a local ordinance that is applicable to
13 massage businesses or establishments described in paragraph (1)
14 of subdivision (b) and that does either of the following:

15 (1) Provides that duly authorized officials of the city, county,
16 or city and county have the right to conduct reasonable inspections,
17 during regular business hours, to ensure compliance with this
18 chapter, the local ordinance, or other applicable fire and health
19 and safety requirements.

20 (2) Requires an owner or operator to notify the city, county, or
21 city and county of any intention to rename, change management,
22 or convey the business to another person.

23 (e) Nothing in this chapter shall be construed to preclude a city,
24 county, or city and county from requiring a background check of
25 an owner or operator of a massage establishment who owns 5
26 percent or more of a massage business or massage establishment
27 and who is not certified pursuant to this chapter. The background
28 check may include, but is not limited to, a criminal background
29 check, including requiring submission of fingerprints for a state
30 and federal criminal background check, submission of an
31 application that requires the applicant to state information,
32 including, but not limited to, the applicant's business, occupation,
33 and employment history for the 10 years preceding the date of
34 application, the inclusive dates of same, and the name and address
35 of any massage business or other like establishment owned or
36 operated by any person who is subject to the background check
37 requirement of this subdivision. If a noncertified owner's or
38 operator's background check results in a finding that the city,
39 county, or city and county determines is relevant to owning or
40 operating a massage establishment, then the provisions of

1 subdivisions (a) and (b) shall not apply to that establishment and
2 the city, county, or city and county may regulate that establishment
3 in any manner it deems proper that is in accordance with the law.

4 SEC. 9. Section 4613 of the Business and Professions Code is
5 amended to read:

6 4613. (a) Nothing in this chapter shall restrict or limit in any
7 way the authority of a city, county, or city and county to adopt a
8 local ordinance governing any person who is not certified pursuant
9 to this chapter.

10 (b) Nothing in this chapter is intended to affect the practice
11 rights of any person licensed by the state to practice or perform
12 any functions or services pursuant to that license.

13 (c) Nothing in this chapter shall be construed to restrict or limit
14 in any way the authority of a city, county, or city and county to
15 adopt a local ordinance restricting the opening of a new massage
16 establishment in a location in which a massage establishment has
17 been closed due to criminal activity.