

AMENDED IN ASSEMBLY MAY 1, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1147

Introduced by Assembly Member Gomez

February 22, 2013

An act to amend Sections 4601 and 4612 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as amended, Gomez. 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 practitioner, including, but not limited to, successfully completing curricula in massage and related subjects totaling a minimum of 250 hours or the credit unit equivalent, as specified.

This bill would additionally require an applicant for a certificate as a massage practitioner to pass a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards, and that is approved by the 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 or the credit unit equivalent, as specified, or (2) successfully completing curricula in massage and

related subjects totaling a minimum of 250 hours, as specified, and passing a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards, and that is approved by the council.

This bill would instead require an applicant for a certificate as a massage therapist to successfully complete curricula in massage and related subjects totaling a minimum of 500 hours or the credit unit equivalent, as specified, and to pass the massage and bodywork competency assessment examination as described above.

Existing law authorizes a city, county, or city and county to impose certain requirements on massage establishments or businesses that are the sole proprietorship of an individual certified pursuant to existing state law or that employ or use only persons who are so certified. Existing law authorizes a city, county, or city and county to, among other things, adopt reasonable health and safety requirements, as specified, pertaining to those massage establishments or businesses, and to require an applicant for a business license to operate a massage business or establishment to fill out an application that requests relevant information, as specified.

This bill would authorize a city, county, or city and county to require a massage establishment or business described above to apply for and receive a revocable certificate of registration. The bill would authorize a city, county, or city and county to require from an applicant, among other things, copies of specified identification and a statement that the ~~applicant~~ *business* will only employ or use certified persons to provide massage services and that failure to comply with this provision may result in ~~revocation of~~ *suspension or revocation of, imposition of conditions upon, or action against* the certificate of registration. The bill would authorize a city, county, or city and county to require a massage establishment or business to comply with specified local ordinances, regulations, rules, requirements, or restrictions as a condition *of granting or maintaining* a revocable certificate of registration and would authorize a city, county, or city and county ~~to revoke to, at its sole discretion, suspend, revoke, or impose conditions upon~~ a certificate of registration for cause.

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 4601 of the Business and Professions
2 Code is amended to read:

3 4601. (a) The council shall issue a certificate under this chapter
4 to an applicant who satisfies the requirements of this chapter.

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

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

10 (B) The applicant has successfully completed, at an approved
11 school, curricula in massage and related subjects, totaling a
12 minimum of 250 hours or the credit unit equivalent, that
13 incorporates appropriate school assessment of student knowledge
14 and skills. Included in the hours shall be instruction addressing
15 anatomy and physiology, contraindications, health and hygiene,
16 and business and ethics, with at least 100 hours of the required
17 minimum 250 hours devoted to these curriculum areas.

18 (C) The applicant has passed a massage and bodywork
19 competency assessment examination that meets generally
20 recognized psychometric principles and standards, and that is
21 approved by the council. The successful completion of this
22 examination may have been accomplished before the date the
23 council is authorized by this chapter to begin issuing certificates.

24 (D) All fees required by the council have been paid.

25 (2) New certificates shall not be issued pursuant to this
26 subdivision after December 31, 2015. Certificates issued pursuant
27 to this section or subdivision (a) or (c) of Section 4604 on or before
28 December 31, 2015, shall, after December 31, 2015, be renewed
29 without any additional educational requirements, provided that the
30 certificate holder continues to be qualified pursuant to this chapter.

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

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

36 (2) The applicant has successfully completed the curricula in
37 massage and related subjects totaling a minimum of 500 hours or
38 the credit unit equivalent. Of this 500 hours, a minimum of 250

1 hours shall be from approved schools. The remaining 250 hours
2 required may be secured either from approved or registered schools,
3 or from continuing education providers approved by, or registered
4 with, the council or the Department of Consumer Affairs. After
5 December 31, 2015, applicants may only satisfy the curricula in
6 massage and related subjects from approved schools.

7 (3) The applicant has passed a massage and bodywork
8 competency assessment examination that meets generally
9 recognized psychometric principles and standards, and that is
10 approved by the council. The successful completion of this
11 examination may have been accomplished before the date the
12 council is authorized by this chapter to begin issuing certificates.

13 (4) All fees required by the council have been paid.

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

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

25 (f) Any certification issued under this chapter shall be subject
26 to renewal every two years in a manner prescribed by the council,
27 and shall expire unless renewed in that manner. The council may
28 provide for the late renewal of a certificate.

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

37 (2) For purposes of paragraph (1) and any other provision of
38 this chapter for which the council is authorized to receive factual
39 information as a condition of taking any action, the council shall
40 have the authority to conduct oral interviews of the applicant and

1 others or to make any investigation deemed necessary to establish
2 that the information received is accurate and satisfies any criteria
3 established by this chapter.

4 (h) The certificate issued pursuant to this chapter, as well as
5 any identification card issued by the council, shall be surrendered
6 to the council by any certificate holder whose certificate has been
7 suspended or revoked.

8 SEC. 2. 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 (f) (1) Nothing in this chapter shall preclude a city, county, or
5 city and county from including a provision in a local ordinance
6 ~~that requires~~ *requiring* the owner or owners of a massage
7 establishment or business described in paragraph (1) of subdivision
8 (b) to apply for and receive a revocable certificate of registration.

9 (2) As part of the application for a certificate of registration, a
10 city, county, or city and county may require the following from
11 an applicant:

12 (A) The full true name under which the massage establishment
13 or business will be conducted.

14 (B) The present or proposed address where the massage
15 establishment or business will be conducted.

16 (C) The full true legal name and mailing address of the owner
17 or owners of the massage establishment or business.

18 (D) A copy of a certificate, or any other evidence of certification,
19 issued to each person pursuant to this chapter who will be providing
20 massage services at the massage establishment or business.

21 (E) A copy of a photographic government-issued identification
22 card of the owner or owners of the massage establishment or
23 business.

24 (F) A statement that the ~~applicant~~ *business* will only employ or
25 use persons certified pursuant to this chapter to provide massage
26 services and that failure to comply with this provision may result
27 ~~in revocation of suspension or revocation of, imposition of~~
28 *conditions upon, or action against* the certificate of registration.

29 (G) A statement that the applicant will provide written
30 notification of any changes to the original application within 10
31 days of that change occurring.

32 (H) Authorization for the city, county, or city and county to
33 investigate the truth of the information contained in the application.

34 (I) The payment of a fee to conduct a background check pursuant
35 to subdivision (e) if the owner or owners of the massage
36 establishment or business applying for the certificate of registration
37 are not certified pursuant to this chapter and own 5 percent or more
38 of the massage establishment or business.

39 (3) A city, county, or city and county may require a massage
40 establishment or business to comply with any applicable local

1 ordinance, regulation, rule, requirement, or restriction—passed
2 pursuant to subdivision (b) *that complies with subdivision (b) or*
3 *(d) as a condition of granting or maintaining a revocable certificate*
4 *of registration, including, but not limited to, those provisions*
5 *pertaining to health and safety or zoning.*

6 (4) A city, county, or city and county may exempt certain classes
7 of persons or businesses from compliance with the requirements
8 for a certificate of registration.

9 (5) A city, county, or city and county may make the certificate
10 of registration nontransferable.

11 (6) A city, county, or city and county ~~may revoke~~ *may, at its*
12 *sole discretion, suspend, revoke, impose conditions upon, or*
13 *otherwise act against* a certificate of registration for cause.