

AMENDED IN ASSEMBLY MAY 13, 2013

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. therapist. Among these requirements, existing law requires an applicant to either (1) successfully complete a minimum of 500 hours, or the credit unit equivalent, of curricula in massage and related subjects, with at least 250 hours being from approved schools, or (2) successfully complete a minimum of 250 hours of curricula in massage and related subjects at an approved school, with at least 100 hours of instruction in certain subjects, and to pass a massage and bodywork competency assessment examination, as specified, that is approved by the council.~~

This bill would instead require an applicant for a certificate as a massage therapist to successfully complete *a minimum of 250 hours of curricula in massage and related subjects totaling a minimum of 500 hours or the credit unit equivalent, as specified, and subjects at an approved school, with at least 100 hours of instruction in certain subjects, 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 business will only employ or use certified persons to provide massage services and that failure to comply with this provision may result in 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, 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.

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

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

6 (2) The applicant has successfully completed the curricula in
7 massage and related subjects totaling a minimum of 500 hours or
8 the credit unit equivalent. Of this 500 hours, a minimum of 250
9 hours shall be from approved schools. *Included in the 250 hours*
10 *from approved schools shall be instruction addressing anatomy*
11 *and physiology, contraindications, health and hygiene, and*
12 *business and ethics, with at least 100 hours of the required 250*
13 *hours from approved schools devoted to these curriculum areas.*
14 The remaining 250 hours required may be secured either from
15 approved or registered schools, or from continuing education
16 providers approved by, or registered with, the council or the
17 Department of Consumer Affairs. After December 31, 2015,
18 applicants may only satisfy the curricula in massage and related
19 subjects from approved schools.

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

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

27 (d) The council shall issue a certificate to an applicant who
28 meets the other qualifications of this chapter and holds a current
29 and valid registration, certification, or license from any other state
30 whose licensure requirements meet or exceed those defined within
31 this chapter. The council shall have discretion to give credit for
32 comparable academic work completed by an applicant in a program
33 outside of California.

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

38 (f) Any certification issued under this chapter shall be subject
39 to renewal every two years in a manner prescribed by the council,

1 and shall expire unless renewed in that manner. The council may
2 provide for the late renewal of a certificate.

3 (g) (1) The council shall have the responsibility to determine
4 that the school or schools from which an applicant has obtained
5 the education required by this chapter meet the requirements of
6 this chapter. If the council has any reason to question whether or
7 not the applicant received the education that is required by this
8 chapter from the school or schools that the applicant is claiming,
9 the council shall investigate the facts to determine that the applicant
10 received the required education prior to issuing a certificate.

11 (2) For purposes of paragraph (1) and any other provision of
12 this chapter for which the council is authorized to receive factual
13 information as a condition of taking any action, the council shall
14 have the authority to conduct oral interviews of the applicant and
15 others or to make any investigation deemed necessary to establish
16 that the information received is accurate and satisfies any criteria
17 established by this chapter.

18 (h) The certificate issued pursuant to this chapter, as well as
19 any identification card issued by the council, shall be surrendered
20 to the council by any certificate holder whose certificate has been
21 suspended or revoked.

22 SEC. 2. Section 4612 of the Business and Professions Code is
23 amended to read:

24 4612. (a) (1) The holder of a certificate issued pursuant to
25 this chapter shall have the right to practice massage, consistent
26 with this chapter and the qualifications established by his or her
27 certification, in any city, county, or city and county in this state
28 and shall not be required to obtain any other license, permit, or
29 other authorization, except as provided in this section, to engage
30 in that practice.

31 (2) Notwithstanding any other provision of law, a city, county,
32 or city and county shall not enact an ordinance that requires a
33 license, permit, or other authorization to provide massage for
34 compensation by an individual who is certified pursuant to this
35 chapter and who is practicing consistent with the qualifications
36 established by his or her certification, or by a massage business
37 or massage establishment that employs or uses only persons who
38 are certified pursuant to this chapter to provide massage for
39 compensation. No provision of any ordinance enacted by a city,
40 county, or city and county that is in effect before the effective date

1 of this chapter, and that requires a license, permit, or other
 2 authorization to provide massage for compensation, may be
 3 enforced against an individual who is certified pursuant to this
 4 chapter or against a massage business or massage establishment
 5 that employs or uses only persons who are certified pursuant to
 6 this chapter to provide massage for compensation.

7 (3) Except as provided in subdivision (b), nothing in this section
 8 shall be interpreted to prevent a city, county, or city and county
 9 from adopting or enforcing any local ordinance that provides for
 10 reasonable health and safety requirements for massage
 11 establishments or businesses. Subdivision (b) shall not apply to
 12 any massage establishment or business that employs or uses
 13 persons to provide massage services who are not certified pursuant
 14 to this chapter.

15 (b) (1) This subdivision shall apply only to massage
 16 establishments or businesses that are sole proprietorships, where
 17 the sole proprietor is certified pursuant to this chapter, and to
 18 massage establishments or businesses that employ or use only
 19 persons certified pursuant to this chapter to provide massage
 20 services. For purposes of this subdivision, a sole proprietorship is
 21 a business where the owner is the only person employed by that
 22 business to provide massage services.

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

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

32 (3) A city, county, or city and county may charge a massage
 33 business or establishment a business licensing fee, provided that
 34 the fee shall be no higher than the lowest fee that is applied to
 35 other individuals and businesses providing professional services,
 36 as defined in subdivision (a) of Section 13401 of the Corporations
 37 Code.

38 (4) Nothing in this section shall prohibit a city, county, or city
 39 and county from enacting ordinances, regulations, rules,
 40 requirements, restrictions, land use regulations, moratoria,

1 conditional use permits, or zoning requirements applicable to an
2 individual certified pursuant to this chapter or to a massage
3 establishment or business that uses only individuals who are
4 certified pursuant to this chapter to provide massage for
5 compensation, provided that, unless otherwise exempted by this
6 chapter, these ordinances, regulations, rules, requirements,
7 restrictions, land use regulations, moratoria, conditional use
8 permits, and zoning requirements shall be no different than the
9 requirements that are uniformly applied to all other individuals
10 and businesses providing professional services, as defined in
11 subdivision (a) of Section 13401 of the Corporations Code. No
12 provision of any ordinance, regulation, rule, requirement,
13 restriction, land use regulation, moratoria, conditional use permit,
14 or zoning requirement enacted by a city, county, or city and county
15 that is in effect before the effective date of this chapter, and that
16 is inconsistent with this paragraph, may be enforced against an
17 individual who is certified pursuant to this chapter or against a
18 massage business or massage establishment that uses only
19 individuals who are certified pursuant to this chapter to provide
20 massage for compensation.

21 (5) Local building code or physical facility requirements
22 applicable to massage establishments or businesses shall not require
23 additional restroom, shower, or other facilities that are not
24 uniformly applicable to other professional or personal service
25 businesses, nor shall building or facility requirements be adopted
26 that (A) require unlocked doors when there is no staff available to
27 ensure security for clients and massage staff who are behind closed
28 doors, or (B) require windows that provide a view into massage
29 rooms that interfere with the privacy of clients of the massage
30 business.

31 (6) A city, county, or city and county may adopt reasonable
32 health and safety requirements with respect to massage
33 establishments or businesses, including, but not limited to,
34 requirements for cleanliness of massage rooms, towels and linens,
35 and reasonable attire and personal hygiene requirements for persons
36 providing massage services, provided that nothing in this paragraph
37 shall be interpreted to authorize adoption of local ordinances that
38 impose additional qualifications, such as medical examinations,
39 background checks, or other criteria, upon any person certified
40 pursuant to this chapter.

- 1 (7) Nothing in this section shall preclude a city, county, or city
2 and county from doing any of the following:
- 3 (A) Requiring an applicant for a business license to operate a
4 massage business or establishment to fill out an application that
5 requests the applicant to provide relevant information, as long as
6 the information requested is the same as that required of other
7 individuals and professionals providing professional services as
8 defined in subdivision (a) of Section 13401 of the Corporations
9 Code.
- 10 (B) Making reasonable investigations into the information so
11 provided.
- 12 (C) Denying or restricting a business license if the applicant
13 has provided materially false information.
- 14 (c) An owner or operator of a massage business or establishment
15 who is certified pursuant to this chapter shall be responsible for
16 the conduct of all employees or independent contractors working
17 on the premises of the business. Failure to comply with this chapter
18 may result in revocation of the owner’s or operator’s certificate in
19 accordance with Section 4603. Nothing in this section shall
20 preclude a local ordinance from authorizing suspension, revocation,
21 or other restriction of a license or permit issued to a massage
22 establishment or business if violations of this chapter, or of the
23 local ordinance, occur on the business premises.
- 24 (d) Nothing in this section shall preclude a city, county, or city
25 and county from adopting a local ordinance that is applicable to
26 massage businesses or establishments described in paragraph (1)
27 of subdivision (b) and that does either of the following:
- 28 (1) Provides that duly authorized officials of the city, county,
29 or city and county have the right to conduct reasonable inspections,
30 during regular business hours, to ensure compliance with this
31 chapter, the local ordinance, or other applicable fire and health
32 and safety requirements.
- 33 (2) Requires an owner or operator to notify the city, county, or
34 city and county of any intention to rename, change management,
35 or convey the business to another person.
- 36 (e) Nothing in this chapter shall be construed to preclude a city,
37 county, or city and county from requiring a background check of
38 an owner or operator of a massage establishment who owns 5
39 percent or more of a massage business or massage establishment
40 and who is not certified pursuant to this chapter. The background

1 check may include, but is not limited to, a criminal background
2 check, including requiring submission of fingerprints for a state
3 and federal criminal background check, submission of an
4 application that requires the applicant to state information,
5 including, but not limited to, the applicant's business, occupation,
6 and employment history for the 10 years preceding the date of
7 application, the inclusive dates of same, and the name and address
8 of any massage business or other like establishment owned or
9 operated by any person who is subject to the background check
10 requirement of this subdivision. If a noncertified owner's or
11 operator's background check results in a finding that the city,
12 county, or city and county determines is relevant to owning or
13 operating a massage establishment, then the provisions of
14 subdivisions (a) and (b) shall not apply to that establishment and
15 the city, county, or city and county may regulate that establishment
16 in any manner it deems proper that is in accordance with the law.

17 (f) (1) Nothing in this chapter shall preclude a city, county, or
18 city and county from including a provision in a local ordinance
19 requiring the owner or owners of a massage establishment or
20 business described in paragraph (1) of subdivision (b) to apply for
21 and receive a revocable certificate of registration.

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

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

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

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

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

34 (E) A copy of a photographic government-issued identification
35 card of the owner or owners of the massage establishment or
36 business.

37 (F) A statement that the business will only employ or use
38 persons certified pursuant to this chapter to provide massage
39 services and that failure to comply with this provision may result

1 in suspension or revocation of, imposition of conditions upon, or
2 action against the certificate of registration.

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

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

8 (I) The payment of a fee to conduct a background check pursuant
9 to subdivision (e) if the owner or owners of the massage
10 establishment or business applying for the certificate of registration
11 are not certified pursuant to this chapter and own 5 percent or more
12 of the massage establishment or business.

13 (3) A city, county, or city and county may require a massage
14 establishment or business to comply with any applicable local
15 ordinance, regulation, rule, requirement, or restriction that complies
16 with subdivision (b) or (d) as a condition of granting or maintaining
17 a revocable certificate of registration, including, but not limited
18 to, those provisions pertaining to health and safety.

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

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

24 (6) A city, county, or city and county may, at its sole discretion,
25 suspend, revoke, impose conditions upon, or otherwise act against
26 a certificate of registration for cause.