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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1147

**Introduced by Assembly Members Bonilla, Gomez, and Holden
(Coauthor: Assembly Member Skinner)**

February 22, 2013

An act to amend Section 460 of, and to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of, the Business and Professions Code, and to amend Section 51034 of the Government Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as amended, Bonilla. 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 or massage therapist. 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 reenact, revise, and recast these provisions to, among other things, ~~to~~ establish an interim board of directors to govern the council until September 1, 2015, and ~~would~~ provide for the appointment of a new board of directors consisting of 13 members, as specified, whose 4-year terms would begin on that date. The bill would authorize the board to establish fees reasonably related to the costs of providing services and performing its duties, not to exceed \$300. The bill would require the board to provide at least 90 days' advance notice prior to holding a meeting to vote upon a proposal to change the certification requirements or increase the certification fees, as specified, except as provided. The bill would also require the board to notify certificate holders of a board action that changes those requirements or increases those fees.

This bill would delete provisions for the registration of massage establishments and, instead, provide for the certification of massage establishment operators and sole provider massage establishment operators, as specified. The bill would discontinue the issuance of new massage practitioner certificates after January 1, 2015, except as provided, but would authorize the renewal of massage practitioner certificates issued prior to January 1, 2015. The bill would require that all certificates issued pursuant to these provisions be subject to renewal every 2 years, except as provided. The bill would require the council to inspect and approve schools or continuing education providers.

The bill would authorize the council to deny an application for a certificate, or to discipline a certificate holder for a violation of these provisions, as specified. The bill would require the board to exercise its denial or discipline authority by means of fair and reasonable procedures that, among other things, provide the applicant or certificate holder with notice and an opportunity to be heard, as specified. The bill

would provide that unprofessional conduct in violation of these provisions includes, among other things, engaging in sexually suggestive advertising related to massage services and engaging in sexual activity while providing massage services for compensation.

The bill would, notwithstanding any other law, prohibit a city, county, or city and county from enacting an ordinance that conflicts with these provisions ~~and would prohibit any conflicting ordinance that is in effect before the effective date of these provisions from being enforced against a certificate holder or registered establishment or other corresponding specified provisions.~~ However, the bill would authorize a city, county, or city and county to enact ordinances that require a certificate holder or registered establishment to, among other things, obtain a license, permit, or other authorization, as specified, and abide by reasonable health and safety requirements, as specified.

The bill would authorize a court to issue an injunction or to provide any other relief it deems appropriate for violations of these provisions, as specified. The bill would provide that the powers and duties of the council are subject to review by the appropriate committees of the Legislature and would require the council to provide a specified report to these committees on or before June 1, 2016.

The bill would provide that these provisions are issues of statewide concern, and therefore applicable statewide. The bill would also provide that its provisions are severable.

The bill would repeal these provisions on January 1, 2017.

The bill would also make clarifying and conforming changes regarding local regulation of massage establishments or businesses.

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

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

- 1 SECTION 1. (a) It is the intent of Legislature that this act
- 2 enable consumers and local governments to more easily identify
- 3 trained massage professionals, provide for the consistent and
- 4 statewide certification and oversight of massage professionals,
- 5 ensure that schools teaching massage provide a high level of
- 6 training and protection for students, assist local governments and
- 7 law enforcement in maintaining the highest standards of
- 8 performance by certificated professionals, provide for a self-funded
- 9 nonprofit oversight body to certify massage professionals, and

1 ensure full compliance with, and execution of, the requirements
2 of this act.

3 (b) It is the intent of the Legislature that broad control over land
4 use in regulating massage establishments be returned to local
5 governments so that they may manage those establishments in the
6 best interest of the individual community, and that the requirements
7 and practice of the profession of massage therapy remain a matter
8 of statewide concern, regulation, and oversight.

9 (c) It is further the intent of the Legislature that local
10 governments, law enforcement, nonprofit stakeholders, the massage
11 industry, and massage professionals work together going forward
12 to improve communication and share information to further
13 increase the value of statewide certification, and also to develop
14 a model ordinance reflecting best practices in massage regulation
15 for cities and counties to adopt that will respect local control,
16 patient privacy, and the dignity of the profession of massage
17 therapy.

18 SEC. 2. Section 460 of the Business and Professions Code is
19 amended to read:

20 460. (a) ~~No city or city, county, or city and county shall~~
21 ~~prohibit a person or group of persons, authorized by one of the~~
22 ~~boards agencies in the Department of Consumer Affairs or a~~
23 ~~regulatory body established or an entity established pursuant to~~
24 ~~this code by a license, certificate, or other such means to engage~~
25 ~~in a particular business, from engaging in that business, occupation,~~
26 ~~or profession or any portion thereof of that business, occupation,~~
27 ~~or profession.~~

28 (b) (1) No city, county, or city and county shall prohibit a
29 healing arts professional licensed with the state under Division 2
30 (commencing with Section 500) *or licensed or certified by an*
31 *entity established pursuant to this code* from engaging in any act
32 or performing any procedure that falls within the professionally
33 recognized scope of practice of that licensee.

34 (1)

35 (2) This subdivision shall not be construed to prohibit the
36 enforcement of a local ordinance in effect prior to January 1, 2010,
37 related to any act or procedure that falls within the professionally
38 recognized scope of practice of a healing arts professional licensed
39 under Division 2 (commencing with Section 500).

40 (2)

1 (c) This ~~subdivision~~ *section* shall not be construed to prevent a
 2 city, county, or city and county from adopting or enforcing any
 3 local ordinance governing zoning, business licensing, or reasonable
 4 health and safety requirements for establishments or businesses
 5 of a healing arts professional licensed under Division 2
 6 (commencing with Section 500) *or licensed or certified by an*
 7 *entity established under this code or a person or group of persons*
 8 *described in subdivision (a).*

9 (e)

10 (d) Nothing in this section shall prohibit any city, county, or
 11 city and county from levying a business license tax solely for
 12 revenue purposes, nor any city or county from levying a license
 13 tax solely for the purpose of covering the cost of regulation.

14 SEC. 3. Chapter 10.5 (commencing with Section 4600) is added
 15 to Division 2 of the Business and Professions Code, to read:

16

17 CHAPTER 10.5. MESSAGE THERAPY ACT

18

19 4600. This chapter shall be known and may be cited as the
 20 Message Therapy Act. Whenever a reference is made to the
 21 Message Therapy Act by any statute, it shall be construed to refer
 22 to this chapter.

23 4601. As used in this chapter, the following terms shall have
 24 the following meanings:

25 (a) "Approved school" or "approved massage school" means a
 26 school approved by the council that meets minimum standards for
 27 training and curriculum in massage and related subjects, that meets
 28 any of the following requirements, and that has not been otherwise
 29 disapproved by the council:

30 (1) Is approved by the Bureau for Private Postsecondary
 31 Education.

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

33 (3) Is an institution accredited by the Accrediting Commission
 34 for Senior Colleges and Universities or the Accrediting
 35 Commission for Community and Junior Colleges of the Western
 36 Association of Schools and Colleges and that is one of the
 37 following:

38 (A) A public institution.

39 (B) An institution incorporated and lawfully operating as a
 40 nonprofit public benefit corporation pursuant to Part 2

1 (commencing with Section 5110) of Division 2 of Title 1 of the
2 Corporations Code, and that is not managed by any entity for profit.

3 (C) A for-profit institution.

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

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

12 (5) Is a school requiring equal or greater training than what is
13 required pursuant to this chapter and is recognized by the
14 corresponding agency in another state or accredited by an agency
15 recognized by the United States Department of Education.

16 (b) “Certificate” means a valid certificate issued by the council
17 pursuant to this chapter.

18 (c) “Compensation” means a payment, loan, advance, donation,
19 contribution, deposit, or gift of money, or anything of value.

20 (d) “Council” means the California Massage Therapy Council
21 created pursuant to this chapter, which shall be a nonprofit
22 organization exempt from taxation under Section 501(c)(3) of Title
23 26 of the United States Code.

24 (e) “Massage” means the scientific manipulation of the soft
25 tissues. For purposes of this chapter, the terms “massage” and
26 “bodywork” shall have the same meaning.

27 (f) “Massage establishment” or “establishment” means a location
28 where massage is performed for compensation, excluding those
29 locations where massage is only provided on an out-call basis.

30 (g) “Massage practitioner” means a person who is certified by
31 the council pursuant to Section 4604.2 and who administers
32 massage for compensation.

33 (h) “Massage therapist” means a person who is certified by the
34 council under Section 4604 and who administers massage for
35 compensation.

36 (i) “Operator” means a person, whether owner or nonowner,
37 who meets the requirements of Section 4604.1. An operator need
38 not be an owner of the establishment or a certified massage
39 therapist or practitioner.

1 (j) “Sole provider” means a massage business where the owner
2 owns 100 percent of the business, is the only person who provides
3 massage services for compensation for that business pursuant to
4 a valid and active certificate issued in accordance with this chapter,
5 and has no other employees *or independent contractors*.

6 4602. (a) The California Massage Therapy Council, as defined
7 in subdivision (d) of Section 4601, is hereby established and shall
8 carry out the responsibilities and duties set forth in this chapter.

9 (b) The council may take any reasonable actions necessary to
10 carry out the responsibilities and duties set forth in this chapter,
11 including, but not limited to, hiring staff, entering into contracts,
12 and developing policies and procedures to implement this chapter.

13 (c) The council may require background checks for all
14 employees, contractors, volunteers, and board members as a
15 condition of their employment, formation of a contractual
16 relationship, or participation in council activities.

17 (d) The council shall issue a certificate to an individual applicant
18 who satisfies the requirements of this chapter for that ~~certificate,~~
19 ~~and shall issue a registration to a massage establishment that~~
20 ~~satisfies the requirements of this chapter~~ *certificate*.

21 (e) The council is authorized to determine whether the
22 information provided to the council in relation to the certification
23 of an applicant ~~or registration of an establishment~~ is true and
24 correct and meets the requirements of this chapter. If the council
25 has any reason to question whether the information provided is
26 true or correct or meets the requirements of this chapter, the council
27 is authorized to make any investigation it deems necessary to
28 establish that the information received is accurate and satisfies any
29 criteria established by this chapter.

30 (f) Until September 1, 2015, the council shall be governed by
31 a board of directors comprised of two representatives selected by
32 each professional society, association, or other entity, which
33 membership is comprised of massage therapists and that chooses
34 to participate in the council. To qualify, a professional society,
35 association, or other entity shall have a dues-paying membership
36 in California of at least 1,000 individuals for the last three years
37 and shall have bylaws that require its members to comply with a
38 code of ethics. The board of directors shall also include each of
39 the following persons:

1 (1) One member selected by each statewide association of
2 private postsecondary schools incorporated on or before January
3 1, 2010, which member schools have together had at least 1,000
4 graduates in each of the previous three years from massage therapy
5 programs that meet the approval standards set forth in subdivision
6 (a) of Section 4601, unless a qualifying association chooses not
7 to exercise this right of selection.

8 (2) One member selected by the League of California Cities,
9 unless that entity chooses not to exercise this right of selection.

10 (3) One member selected by the California State Association
11 of Counties, unless that entity chooses not to exercise this right of
12 selection.

13 (4) One member selected by the Director of Consumer Affairs,
14 unless that entity chooses not to exercise this right of selection.

15 (5) One member appointed by the Office of the Chancellor of
16 the California Community Colleges, unless that entity chooses not
17 to exercise this right of selection. The person appointed, if any,
18 shall not be part of any massage therapy certificate or degree
19 program.

20 (6) The council's bylaws shall establish a process for appointing
21 other professional directors, as determined by the board.

22 (g) At 12 p.m. Pacific Standard Time on September 1, 2015,
23 the term of each member of the board of directors established
24 pursuant to subdivision (f) shall terminate, and the terms of 13
25 new members of the board of directors who shall be chosen in the
26 following manner, shall begin:

27 (1) One member shall be a representative of the League of
28 California Cities, unless that entity chooses not to exercise this
29 right to appoint.

30 (2) One member shall be a representative of the California Police
31 Chiefs Association, unless that entity chooses not to exercise this
32 right to appoint.

33 (3) One member shall be a representative of the California State
34 Association of Counties, unless that entity chooses not to exercise
35 this right to appoint.

36 (4) One member shall be a representative of an ~~anti~~human
37 trafficking *antihuman-trafficking* organization to be determined
38 by that entity unless that entity chooses not to exercise this right
39 to appointment.

1 (5) One member appointed by the Office of the Chancellor of
2 the California Community Colleges, unless that office chooses not
3 to exercise this right of appointment. The appointee shall not be
4 participating in any massage therapy certificate or degree program.

5 (6) Two members shall be appointed by the Director of
6 Consumer Affairs, one of whom shall be a public member and one
7 of whom shall be a California-certified massage therapist or
8 practitioner who has been practicing for at least three years, unless
9 the director chooses not to exercise this right of appointment.

10 (7) One member appointed by the California Association of
11 Private Postsecondary Schools.

12 (8) One representative shall be appointed by the American
13 Massage Therapy Association, California Chapter, who shall be
14 a California-certified massage therapist or massage practitioner
15 who is a California resident and who has been practicing massage
16 for at least three years.

17 (9) (A) One representative, who shall be a certified massage
18 therapist or a certified massage practitioner who is a California
19 resident who has practiced massage for at least three years prior
20 to the appointment, selected by a professional society, association,
21 or other entity which membership is comprised of massage
22 therapist professionals, and that chooses to participate in the
23 council. To qualify, a professional society, association, or other
24 entity shall have a dues-paying membership in California of at
25 least 1,000 individuals, have been established since 2000, and shall
26 have bylaws that require its members to comply with a code of
27 ethics.

28 (B) If there is more than one professional society, association,
29 or other entity that meets the requirements of subparagraph (A),
30 the appointment shall rotate based on a four-year term between
31 each of the qualifying entities. The qualifying entity shall maintain
32 its appointment authority during the entirety of the four-year term
33 during which it holds the appointment authority. The order in
34 which a qualifying professional society, association, or other entity
35 has the authority to appoint shall be determined by alphabetical
36 order based on the full legal name of the entity as of January 1,
37 2014.

38 (10) The members appointed to the board in accordance with
39 paragraphs (1) to (9), inclusive, shall appoint three additional
40 members, at a duly held board meeting in accordance with the

1 board's bylaws. One of those appointees shall be an attorney
2 licensed by the State Bar of California, who has been practicing
3 law for at least three years and who at the time of appointment
4 represents a city in the state. One of those appointees shall represent
5 a massage business entity that has been operating in the state for
6 at least three years.

7 (h) Board member terms shall be for four years.

8 (i) The board of directors shall establish fees reasonably related
9 to the cost of providing services and carrying out its ongoing
10 responsibilities and duties. Initial and renewal fees for certificates
11 shall be in an amount sufficient to support the functions of the
12 council in the administration of this chapter, but in no event shall
13 exceed three hundred dollars (\$300). The renewal fee shall be
14 reassessed biennially by the board.

15 (j) The meetings of the council shall be subject to the rules of
16 the Bagley-Keene Open Meeting Act (Article 9 (commencing with
17 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
18 the Government Code). The board may adopt additional policies
19 and procedures that provide greater transparency to certificate
20 holders and the public than required by the Bagley-Keene Open
21 Meeting Act.

22 (k) Prior to holding a meeting to vote upon a proposal to change
23 the certification requirements or increase the certification fees, the
24 board shall provide at least 90 days' notice of the meeting,
25 including posting a notice on the council's Internet Web site, and
26 sending a notice either by regular mail or email to certificate
27 holders and affected applicants, in advance of the vote, unless at
28 least two-thirds of the board members concur that there is an active
29 threat to public safety and that voting at a meeting without prior
30 notice is required.

31 (l) If the board approves a change to the certification
32 requirements or an increase in the certification fees, the council
33 shall update all relevant areas of its Internet Web site and notify
34 all certificate holders and affected applicants by a notice sent either
35 by regular mail or email within 14 days of the board's action.

36 4603. Protection of the public shall be the highest priority for
37 the council in exercising its certification, registration, disciplinary
38 authority, and other functions. Whenever the protection of the
39 public is inconsistent with other interests sought to be promoted,
40 the protection of the public shall be paramount.

1 4604. (a) In order to obtain certification as a massage therapist,
2 an applicant shall submit a written application and provide the
3 council with satisfactory evidence that he or she meets all of the
4 following 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, that incorporates appropriate school
9 assessment of student knowledge and skills.

10 (A) Of the 500 hours, a minimum of 100 hours of instruction
11 shall address anatomy and physiology, contraindications, health
12 and hygiene, and business and ethics.

13 (B) All of the 500 hours shall be from schools approved by the
14 council.

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

21 (4) The applicant has successfully passed a background
22 investigation pursuant to Section 4606, and has not violated any
23 of the provisions of this chapter.

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

25 (6) The council may issue a certificate to an applicant who meets
26 the qualifications of this chapter if he or she holds a current and
27 valid registration, certification, or license from any other state
28 whose licensure requirements meet or exceed those defined within
29 this chapter. If an applicant has received education at a school that
30 is not approved by the council, the council shall have the discretion
31 to give credit for comparable academic work completed by an
32 applicant in a program outside of California.

33 (b) A certificate issued pursuant to this chapter and any
34 identification card issued by the council shall be surrendered to
35 the council by any certificate holder whose certificate is suspended
36 or revoked.

37 4604.1. (a) In order to obtain certification as a massage
38 establishment operator, an applicant shall submit a written
39 application and provide the council with satisfactory evidence that
40 he or she meets all of the following requirements:

- 1 (1) The applicant is 18 years of age or older.
- 2 (2) The applicant has successfully completed an educational
- 3 program approved by the council that includes curricula determined
- 4 to be relevant by the council related to public protection not to
- 5 exceed 50 hours, or the credit unit equivalent, that incorporates
- 6 appropriate school assessment of student knowledge and skills.
- 7 The required hours shall be secured from one provider approved
- 8 by the council to teach the educational program required by this
- 9 paragraph. The council shall determine the relevant curricula and
- 10 the total number of education hours, or credit unit equivalent, that
- 11 shall be required for certification pursuant to this paragraph.
- 12 (3) The applicant has successfully passed a background
- 13 investigation pursuant to Section 4606 and has not violated any
- 14 provision of this chapter.
- 15 (4) All fees required by the council have been paid.
- 16 (b) A person certified pursuant to this chapter as a massage
- 17 therapist, massage practitioner, or conditionally certified as a
- 18 massage practitioner who holds a valid and active certification and
- 19 is also a sole provider shall be issued certification as a sole provider
- 20 massage establishment operator upon written request and payment
- 21 of all fees required by the council, without having to meet the other
- 22 requirements of paragraph (2) of subdivision (a). The sole provider
- 23 massage establishment operator certification shall be valid only
- 24 as long as the certificate holder meets the definition of a sole
- 25 provider set forth in subdivision (m) of Section 4601. The
- 26 certificate shall terminate immediately, by operation of law without
- 27 further action, when the certificate holder no longer meets the
- 28 definition of a sole provider.
- 29 (c) A certificate issued pursuant to this chapter and any
- 30 identification card issued by the council shall be surrendered to
- 31 the council by any certificate holder whose certificate is suspended
- 32 or revoked.
- 33 (d) A massage establishment operator may be held responsible
- 34 and disciplined by the council for conduct by any employee,
- 35 independent contractor, or volunteer working on the premises of
- 36 the operator's establishment that violates any law or the policies
- 37 and procedures of the council, if the operator knew or should have
- 38 known of the conduct.
- 39 (e) A certificate may be issued by the council pursuant to this
- 40 section on or after January 1, 2016.

1 4604.2. (a) The council shall not accept applications to issue
2 any new certificates to practice as a certified massage practitioner
3 on or after August 1, 2015.

4 (b) Certificates to practice as a certified massage practitioner
5 for applications accepted prior to January 1, 2015, may be renewed
6 without any additional educational requirements.

7 (c) A massage practitioner certificate and any identification card
8 issued by the council, shall be surrendered to the council by any
9 certificate holder whose certificate is suspended or revoked.

10 4604.3. (a) A person who was issued a conditional certificate
11 to practice as a massage practitioner shall, within five years of
12 being issued the conditional certificate by the council, complete
13 and report to the council the completion of, at least 30 hours of
14 additional education per year from approved schools or from
15 continuing education providers approved by the council, until he
16 or she has completed a total of at least 250 hours of education.

17 (b) A conditional certificate issued to any person pursuant to
18 this section shall immediately be nullified, without need for further
19 action by the council, if proof of completion of the requirements
20 specified in subdivision (a) is not filed with the council within the
21 time period specified in subdivision (a).

22 (c) Notwithstanding subdivision (a) of Section 4604.2, the
23 council shall issue a new certificate to practice as a massage
24 practitioner to a person that successfully completes the
25 requirements described in subdivision (a).

26 4605. Except as otherwise provided, a certification issued
27 pursuant to this chapter shall be subject to renewal every two years
28 in the manner prescribed by the council. A certificate issued by
29 the council shall expire after two years unless renewed as
30 prescribed. The council may provide for the late renewal of a
31 certificate or registration.

32 4606. (a) Prior to issuing a certificate to an applicant, or
33 designating a custodian of records, the council shall require the
34 applicant or the custodian of records candidate to submit fingerprint
35 images as directed by the council and in a form consistent with
36 the requirements of this section.

37 (b) The council shall submit the fingerprint images and related
38 information to the Department of Justice for the purpose of
39 obtaining information as to the existence and nature of a record of
40 state and federal level convictions and of state and federal level

1 arrests for which the Department of Justice establishes that the
 2 applicant or candidate was released on bail or on his or her own
 3 recognizance pending trial.

4 (c) Requests for federal level criminal offender record
 5 information received by the Department of Justice pursuant to this
 6 section shall be forwarded to the Federal Bureau of Investigation
 7 by the Department of Justice. The Department of Justice shall
 8 review the information returned from the Federal Bureau of
 9 Investigation, and shall compile and disseminate a fitness
 10 determination regarding the applicant or candidate to the council.
 11 The Department of Justice shall provide information to the council
 12 pursuant to subdivision (p) of Section 11105 of the Penal Code.

13 (d) The Department of Justice and the council shall charge a
 14 fee sufficient to cover the cost of processing the request for state
 15 and federal level criminal offender record information.

16 (e) The council shall request subsequent arrest notification
 17 service from the Department of Justice, as provided under Section
 18 11105.2 of the Penal Code, for all applicants for certification or
 19 registration, or custodian of records candidates for whom
 20 fingerprint images and related information are submitted to conduct
 21 a search for state and federal level criminal offender record
 22 information.

23 (f) The council is authorized to receive arrest notifications and
 24 other background material about applicants and certificate holders
 25 from a city, county, or city and county.

26 4608. In addition to the other requirements of this chapter, a
 27 certificate holder shall:

28 (a) Display his or her original certificate wherever he or she
 29 provides massage for compensation. A certificate holder shall have
 30 his or her identification card in his or her possession while
 31 providing massage services for compensation.

32 (b) Provide his or her full name and certificate number upon
 33 the request of a member of the public, the council, or a member
 34 of law enforcement, or a local government agency charged with
 35 regulating massage or massage establishments, at the location
 36 where he or she is providing massage services for compensation.

37 (c) Include the name under which he or she is certified and his
 38 or her certificate number in any and all advertising of massage for
 39 compensation.

1 (d) Notify the council within 30 days of any changes in the
2 certificate holder's home address or the address of any massage
3 establishment or other location where he or she provides massage
4 for compensation, excluding those locations where massage is
5 only provided on an out-call basis, or is employed as a massage
6 establishment operator. A certificate holder also shall notify the
7 council of his or her primary email address, if any, and notify the
8 council within 30 days of a change of the primary email address.

9 4609. (a) It is a violation of this chapter for an applicant or a
10 certificate holder to commit any of the following acts, the
11 commission of which is grounds for the council to deny an
12 application for a certificate or to impose discipline on a certificate
13 holder:

14 (1) Unprofessional conduct, including, but not limited to, any
15 of the following:

16 (A) Engaging in sexually suggestive advertising related to
17 massage services.

18 (B) Engaging in any form of sexual activity on the premises of
19 a massage establishment where massage is provided for
20 compensation, excluding a residence.

21 (C) Engaging in sexual activity while providing massage
22 services for compensation.

23 (D) Practicing massage on a suspended certificate or practicing
24 outside of the conditions of a restricted certificate.

25 (E) Providing massage of the genitals or anal region, or of
26 female breasts, for compensation without the written consent of
27 the person receiving the massage and supervision by a physician.

28 (2) Procuring or attempting to procure a certificate by fraud,
29 material misrepresentation, or mistake.

30 (3) Failing to fully disclose all information requested on the
31 application.

32 (4) Impersonating an applicant or acting as a proxy for an
33 applicant in any examination referred to in this chapter for the
34 issuance of a certificate.

35 (5) Impersonating a certificate holder, or permitting or allowing
36 a noncertified person to use a certificate.

37 (6) Violating or attempting to violate, directly or indirectly, or
38 assisting in or abetting the violation of, or conspiring to violate,
39 any provision of this chapter or any rule or bylaw adopted by the
40 council.

1 (7) Committing any fraudulent, dishonest, or corrupt act that is
2 substantially related to the qualifications or duties of a certificate
3 holder.

4 (8) Denial of licensure, revocation, suspension, restriction,
5 citation, or any other disciplinary action against an applicant or
6 certificate holder by another state or territory of the United States,
7 by any other government agency, or by another California health
8 care professional licensing board. A certified copy of the decision,
9 order, judgment, or citation shall be conclusive evidence of these
10 actions.

11 (9) Being convicted of any felony, misdemeanor, infraction, or
12 municipal code violation, or being held liable in an administrative
13 or civil action for an act, that is substantially related to the
14 qualifications, functions, or duties of a certificate holder while
15 holding a valid certificate. A record of the conviction or other
16 judgment or liability shall be conclusive evidence of the crime or
17 liability.

18 (10) Dressing while engaged in the practice of massage for
19 compensation in a manner that exposes the certificate ~~holders~~
20 *holder's* breasts or genitals, is transparent or see-through, or that
21 otherwise constitutes a violation of Section 314 of the Penal Code.

22 (11) Committing any act punishable as a sexually related crime
23 or being required to register pursuant to the Sex Offender
24 Registration Act (Chapter 5.5 (commencing with Section 290) of
25 Title 9 of Part 1 of the Penal Code), or being required to register
26 as a sex offender in another state.

27 (b) The council may deny an application for a certificate for the
28 commission of any of the acts described in subdivision (a). The
29 council may also discipline a certificate holder, in any manner
30 permitted by this chapter, for the commission of any of those acts
31 by a certificate holder.

32 4610. (a) An applicant for a certificate shall not be denied a
33 certificate, and a certificate holder shall not be disciplined pursuant
34 to this chapter except according to procedures that satisfy the
35 requirements of this section. Denial or discipline that is not in
36 accord with this section shall be void and without effect.

37 (b) The council may discipline a certificate holder by any, or a
38 combination, of the following methods:

39 (1) Placing the certificate holder on probation, which may
40 include limitations or conditions on practice.

1 (2) Suspending the certificate and the rights conferred by this
2 chapter on a certificate holder or registered establishment for a
3 period not to exceed one year.

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

6 (4) Revoking the certificate.

7 (5) Taking other action as the council, as authorized by this
8 chapter or policies adopted by the board, deems proper.

9 (c) The council may issue an initial certificate on probation,
10 with specific terms and conditions, to any applicant.

11 (d) Any denial or discipline shall be decided upon and imposed
12 in good faith and in a fair and reasonable manner. Any procedure
13 that conforms to the requirements of subdivision (f) is fair and
14 reasonable, but a court may also find other procedures to be fair
15 and reasonable when the full circumstances of the denial or
16 discipline are considered.

17 (e) A procedure is fair and reasonable if the procedures specified
18 in subdivision (f) or (g) are followed or if all of the following
19 apply:

20 (1) Denial or discipline shall be based on a preponderance of
21 the evidence. In determining the basis for the denial or discipline,
22 the council may consider all written documents or statements as
23 evidence, but shall weigh the reliability of those documents or
24 statements.

25 (2) The provisions of the procedure are publically available on
26 the council's Internet Web site.

27 (3) The council provides 15 calendar days prior notice of the
28 denial or discipline and the reasons for the denial or discipline.

29 (4) The council provides an opportunity for the applicant,
30 certificate holder, to be heard, orally or in writing, not less than
31 five days before the effective date of the denial or discipline, by
32 a person or body authorized to decide whether the proposed denial
33 or discipline should go into effect.

34 (f) (1) Notwithstanding any other law, if the council receives
35 notice that a certificate holder has been arrested and charges have
36 been filed by the appropriate prosecuting agency against the
37 certificate holder alleging a violation of subdivision (b) of Section
38 647 of the Penal Code or any other offense described in paragraph
39 (10) of subdivision (a) of Section 4609, the council shall

1 immediately suspend, on an interim basis, the certificate of that
2 certificate holder, and take all of the following additional actions:

3 (A) Notify the certificate holder at the address last filed with
4 the council that the certificate has been suspended and the reason
5 for the suspension within 10 business days.

6 (B) The council shall notify the clerk of the city, county, or city
7 and county when the certificate is suspended pursuant to this
8 section within 10 business days of the decision to suspend.

9 (2) Upon notice to the council that the charges described in
10 paragraph (1) have resulted in a conviction, the council shall
11 permanently revoke the suspended certificate. The council shall
12 provide notice to the certificate holder, at the address last filed
13 with the council by a method providing delivery confirmation,
14 within 10 business days that it has evidence of a valid record of
15 conviction and that the certificate will be revoked unless the
16 certificate holder provides evidence within 15 days from the date
17 of the council’s mailing of the notice that the conviction is either
18 invalid or that the information is otherwise erroneous.

19 (3) Upon notice that the charges described in paragraph (1) have
20 resulted in an acquittal or have been otherwise dismissed prior to
21 conviction, the certificate shall be immediately reinstated and the
22 certificate holder and any establishment or employer that received
23 notice pursuant to this section shall be notified of the reinstatement
24 within 10 business days.

25 (g) (1) Notwithstanding any other law, if the council determines
26 that a certificate holder has committed an act punishable as a
27 sexually related crime or a felony that is substantially related to
28 the qualifications, functions, or duties of a certificate holder, the
29 council may immediately suspend the certificate of that certificate
30 holder. A determination to immediately suspend a certificate
31 pursuant to this subdivision shall be based upon a preponderance
32 of the evidence and the council shall also consider any available
33 credible mitigating evidence before making a decision. Written
34 statements by any person shall not be considered by the council
35 when determining whether to immediately suspend a certificate
36 unless made under penalty of perjury. If the council suspends a
37 certificate in accordance with this subdivision, the council shall
38 take all of the following additional actions:

39 (A) Notify the certificate holder within 10 business days, at the
40 address last filed with the council, by a method providing delivery

1 confirmation, that the certificate has been suspended, the reason
2 for the suspension, and that the certificate holder has the right to
3 request a hearing pursuant to paragraph (2).

4 (B) Notify by email or any other means consistent with the
5 notice requirements of this chapter, any business or employer,
6 whether public or private, that the council has in its records as
7 employing or contracting with the certificate holder for massage
8 services, and the California city, county, or city and county that
9 has jurisdiction over that establishment or employer, that the
10 certificate has been suspended within 10 business days.

11 (2) A certificate holder whose certificate is suspended pursuant
12 to this subdivision shall have the right to request, in writing, a
13 hearing to challenge the factual basis for the suspension. If the
14 holder of the suspended certificate requests a hearing on the
15 suspension, the hearing shall be held within 30 calendar days after
16 receipt of the request. A holder whose certificate is suspended
17 based on paragraph (1) shall be subject to revocation or other
18 discipline in accordance with subdivision (a).

19 (3) If the council determines, after a hearing conducted pursuant
20 to this subdivision, to lift the suspension, the certificate shall be
21 immediately reinstated and the certificate holder, any establishment
22 or employer, and the city, county, or city and county that has
23 jurisdiction over that establishment or employer, that received
24 notice pursuant to this section shall be notified of the reinstatement
25 within 10 business days.

26 (h) Any notice required under this section may be given by any
27 method reasonably calculated to provide actual notice. Any notice
28 given by mail shall be given by first-class or certified mail sent to
29 the last address of the ~~applicant, certificate holder, or registered~~
30 ~~establishment~~ *applicant or certificate holder* shown on the
31 council's records.

32 (i) An applicant or certificate holder may challenge a denial or
33 discipline decision issued pursuant to this section in a court of
34 competent jurisdiction. Any action challenging a denial or
35 discipline, including any claim alleging defective notice, shall be
36 commenced within one year after the effective date of the denial
37 or discipline. If the action is successful, the court may order any
38 relief, including reinstatement, that it finds equitable under the
39 circumstances.

1 (j) This section governs only the procedures for denial or
2 discipline decision and not the substantive grounds for the denial
3 or discipline. Denial or discipline based upon substantive grounds
4 that violates contractual or other rights of the applicant, certificate
5 holder, or registered establishment, or is otherwise unlawful, is
6 not made valid by compliance with this section.

7 4611. (a) It is an unfair business practice for a person to do
8 any of the following:

9 (1) To hold himself or herself out or to use the title of “certified
10 massage therapist,” “certified massage practitioner,” “certified
11 operator,” or any other term, such as “licensed,” “certified,”
12 “CMT,” or “CMP,” in any manner whatsoever that implies or
13 suggests that the person is certified as a massage therapist or
14 massage establishment operator, unless that person currently holds
15 an active and valid certificate issued by the council pursuant to
16 this chapter.

17 (2) To falsely state or advertise or put out any sign or card or
18 other device, or to falsely represent to the public through any print
19 or electronic media, that he or she or any other individual is
20 licensed, certified, or registered by a governmental agency as a
21 massage therapist or, massage practitioner, or massage
22 establishment operator.

23 (b) In addition to any other available remedies, engaging in any
24 of the prohibited behaviors described in subdivision (a) constitutes
25 unfair competition under Section 17200.

26 4612. (a) Notwithstanding any other law, a city, county, or
27 city and county shall not enact an ordinance that conflicts with
28 this chapter, ~~nor shall any ordinance enacted by a city, county, or~~
29 ~~city and county or enforce an ordinance that is in effect before the~~
30 ~~effective date of this chapter that conflicts with this chapter or~~
31 *Section 51034 of the Government Code.*

32 ~~(b) A city, county, or city and county shall not enact an~~
33 ~~ordinance relating to a certified massage therapist, certified~~
34 ~~massage practitioner, or certified massage establishment operator~~
35 ~~that does any of the following:~~

36 ~~(1) Imposes a requirement that a certificate holder take or pass~~
37 ~~any test, medical examination, or background check, or comply~~
38 ~~with educational requirements beyond what is required by this~~
39 ~~chapter.~~

1 ~~(2) A prohibition against locked doors in a registered massage~~
2 ~~establishment with two or more people working at the~~
3 ~~establishment.~~

4 ~~(3) Imposes a requirement that an individual holding a certificate~~
5 ~~issued in accordance with this chapter obtain any other license,~~
6 ~~permit, certificate, or other authorization to provide massage for~~
7 ~~compensation.~~

8 ~~(4) Imposes a dress code requirement in excess of those already~~
9 ~~required of certificate holders pursuant to paragraph (9) of~~
10 ~~subdivision (a) of Section 4608.~~

11 ~~(5) Prohibits a certificate holder from performing massage for~~
12 ~~compensation on the gluteal muscles, prohibits specific massage~~
13 ~~techniques recognized by the board as legitimate, or imposes any~~
14 ~~other specific restriction on professional practice beyond those set~~
15 ~~forth in subparagraph (E) of paragraph (1) of subdivision (a) of~~
16 ~~Section 4608.~~

17 ~~(e)~~

18 ~~(b) Nothing in this chapter shall prevent a city, county, or city~~
19 ~~and county from licensing, regulating, prohibiting, or permitting~~
20 ~~an individual who provides massage for compensation without a~~
21 ~~valid certificate.~~

22 4614. (a) Upon the request of any law enforcement agency or
23 any other representative of a local government agency with
24 responsibility for regulating or administering a local ordinance
25 relating to massage, the council shall provide information
26 concerning a certificate holder, including, but not limited to, the
27 current status of the certificate, any history of disciplinary actions
28 taken against the certificate holder, the home and work addresses
29 of the applicant or certificate holder, and any other information in
30 the council's possession that is necessary to verify facts relevant
31 to administering the local ordinance.

32 (b) Upon the request of the council, any law enforcement agency
33 or any other representative of a local government agency with
34 responsibility for regulating or administering a local ordinance
35 relating to massage or massage establishments is authorized to
36 provide information to the council concerning an applicant or
37 certificate holder, including, but not limited to, the current status
38 of any local application or permit, any history of legal or
39 administrative action taken against the applicant, certificate holder,
40 any information related to criminal activity or unprofessional

1 conduct allegedly engaged in by a certificate applicant or certificate
2 holder, including, but not limited to, police reports and declarations
3 of conduct, the home and work addresses of the applicant,
4 certificate holder, and any other information in the possession of
5 the law enforcement agency or other local government agency that
6 is necessary to verify information or otherwise implement this
7 chapter.

8 (c) The council shall accept information provided by any law
9 enforcement agency or any other representative of a local
10 government agency with responsibility for regulating or
11 administering a local ordinance relating to massage and review
12 that information in a timely manner.

13 4615. (a) The council shall have the responsibility to determine
14 whether the school, continuing education provider, or provider of
15 education for massage establishment operators from which an
16 applicant has obtained the education required by this chapter meets
17 the requirements of this chapter.

18 (1) If the council has any reason to question whether or not the
19 applicant received the education that is required by this chapter
20 from the school or schools that the applicant is claiming, the
21 council shall investigate the facts to determine that the applicant
22 received the required education prior to issuing a certificate.

23 For purposes of this section and any other provision of this
24 chapter that authorizes the council ~~is~~ to receive factual information
25 as a condition of taking any action, the council may ~~authority to~~
26 conduct oral interviews of the applicant and others or conduct any
27 investigation deemed necessary to establish that the information
28 received is accurate and satisfies the criteria established by this
29 chapter.

30 (b) The council may charge a reasonable fee for inspection or
31 approval of schools, continuing education providers, and massage
32 establishment operator education providers, provided the fees do
33 not exceed the reasonable cost of the inspection or approval
34 process.

35 (c) The council shall develop policies and procedures governing
36 the requirements and approval process for schools, continuing
37 education providers, massage establishment operator education
38 providers, curriculum and programs for schools, continuing
39 education classes, and programs for massage establishment operator
40 education providers, including provisions for acceptance of

1 accreditation from a recognized accreditation body or other form
2 of acceptance.

3 4616. The council shall be sued only in the county of its
4 principal office, which shall be in Sacramento, unless otherwise
5 designated by the council.

6 4617. The superior court of a county of competent jurisdiction
7 may, upon a petition by any person, issue an injunction or any
8 other relief the court deems appropriate for a violation of this
9 chapter by any person or establishment operating in that county
10 subject to the provisions of this chapter. An injunction proceeding
11 under this section shall be governed by Chapter 3 (commencing
12 with Section 525) of Title 7 of Part 2 of the Code of Civil
13 Procedure.

14 4618. The Legislature finds and declares that due to important
15 health, safety, and welfare concerns that affect the entire state,
16 establishing a uniform standard of certification for massage
17 practitioners, massage therapists, and massage establishment
18 operators upon which consumers may rely to identify individuals
19 who have achieved specified levels of education, training, and skill
20 is a matter of statewide concern and not a municipal affair, as that
21 term is used in Section 5 of Article XI of the California
22 Constitution. Therefore, this chapter shall apply to all cities,
23 counties, and cities and counties, including charter cities and
24 charter counties.

25 4619. (a) This chapter shall be liberally construed to effectuate
26 its purposes.

27 (b) The provisions of this chapter are severable. If any provision
28 of this chapter or its application is held invalid, that invalidity shall
29 not affect other provisions or applications that can be given effect
30 without the invalid provision or application.

31 (c) If any provision of this chapter or the application of these
32 provisions to any person or circumstance is held to be invalid, the
33 invalidity shall not affect other provisions or applications of the
34 chapter that can be given effect without the invalid provision or
35 application, and to this end the provisions of this chapter are
36 severable.

37 4620. (a) On or before June 1, 2016, for the time period
38 beginning on January 1, 2015, the council shall provide a report
39 to the appropriate policy committees of the Legislature that
40 includes all of the following:

1 (1) A feasibility study of licensure for the massage profession,
2 including a proposed scope of practice, legitimate techniques of
3 massage, and related statutory recommendations.

4 (2) The council's compensation guidelines and current salary
5 levels.

6 (3) Performance metrics, including, but not limited to:

7 (A) The annual number of denied certificate applications, and
8 a brief description of the grounds for each decision.

9 (B) The annual number of suspended, revoked, or otherwise
10 disciplined certificates, and a brief description of the grounds for
11 each decision.

12 (C) The number of certificates taken off suspension, and a brief
13 description of the grounds for each decision.

14 (D) The number of schools inspected, approved, and
15 disapproved, the number of schools that have had their approvals
16 suspended or revoked, and a brief description of the grounds for
17 each decision.

18 (E) The total number of complaints about certificate holders
19 ~~and registered establishments~~ received annually, including a
20 subtotal of complaints received from local law enforcement and
21 the action taken by the council as a result of those complaints.

22 (b) The council shall testify in person if requested by the
23 appropriate policy committees of the Legislature.

24 4621. (a) This chapter shall remain in effect only until January
25 1, 2017, and as of that date is repealed, unless a later enacted
26 statute, that is enacted before January 1, 2017, deletes or extends
27 that date.

28 (b) Notwithstanding any other law, the powers and duties of the
29 council shall be subject to review by the appropriate policy
30 committees of the Legislature.

31 SEC. 4. Section 51034 of the Government Code is amended
32 to read:

33 51034. (a) The Legislature in enacting this chapter recognizes
34 the existing power of a city or county to regulate a lawful massage
35 business pursuant to Section 37101, or pursuant to Section 16000
36 or 16100 of the Business and Professions Code, or under Section
37 7 of Article XI of the California Constitution.

38 (b) Nothing contained in this chapter shall be a limitation on
39 that existing power or on the existing authority of a city to license
40 for revenue purposes. *A city, county, or city and county shall not*

1 *enact an ordinance that conflicts with the provisions of this section*
2 *or Chapter 10.5 (commencing with Section 4600) of Division 2 of*
3 *the Business and Professions Code.*

4 (c) Nothing contained in this chapter shall authorize a city,
5 county, or city and county to do any of the following:

6 (1) Prohibit a person of one sex from engaging in the massage
7 of a person of the other sex.

8 (2) Define a massage establishment as an adult entertainment
9 business, or otherwise regulate a massage establishment as adult
10 entertainment.

11 (3) Require a massage establishment to have windows or walls
12 that do not extend from the floor to ceiling, or have other internal
13 ~~physical structures including~~, *structures, including* windows, that
14 interfere with a client's reasonable expectation of privacy.

15 (4) Impose client draping requirements that extend beyond the
16 covering of genitalia and female breasts, or otherwise mandate
17 that the client wear special clothing.

18 (5) Prohibit a massage establishment from locking its external
19 ~~doors when there is only one individual working on the premises~~
20 ~~and that individual is engaged in providing massage for~~
21 ~~compensation to a client~~ *if the massage establishment is a business*
22 *entity owned by one individual with one or no employees or*
23 *independent contractors.*

24 (6) Require a massage establishment to post any notice in an
25 area that may be viewed by clients that contains explicit language
26 describing sexual acts, mentions genitalia, or specific contraception
27 devices.

28 (7) *Impose a requirement that a certificate holder take any test,*
29 *medical examination, or background check or comply with*
30 *education requirements beyond what is required by Chapter 10.5*
31 *(commencing with Section 4600) of Division 2 of the Business and*
32 *Professions Code.*

33 (8) *Impose a requirement that an individual, other than a sole*
34 *proprietor, holding a certificate issued in accordance with Chapter*
35 *10.5 (commencing with Section 4600) of Division 2 of the Business*
36 *and Professions Code, obtain any other license, permit, certificate,*
37 *or other authorization to provide massage for compensation.*

38 (9) *Impose a dress code requirement in excess of those already*
39 *imposed on a certificate holder pursuant to paragraph (10) of*

1 *subdivision (a) of Section 4609 of the Business and Professions*
2 *Code.*
3 *(10) Prohibit a certificate holder from performing massage for*
4 *compensation on the gluteal muscles, prohibit specific massage*
5 *techniques recognized by the California Massage Therapy Council*
6 *as legitimate, or impose any other specific restriction on*
7 *professional practice beyond those set forth in subparagraph (E)*
8 *of paragraph (1) of subdivision (a) of Section 4609 of the Business*
9 *and Professions Code, except as authorized by Section 460 of the*
10 *Business and Professions Code.*

O