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AMENDED IN SENATE AUGUST 4, 2014
AMENDED IN SENATE JULY 1, 2014
AMENDED IN SENATE JUNE 17, 2014
AMENDED IN SENATE APRIL 23, 2014
AMENDED IN ASSEMBLY JANUARY 14, 2014
AMENDED IN ASSEMBLY JANUARY 6, 2014
AMENDED IN ASSEMBLY MAY 31, 2013
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 Members Bonilla, Gomez, and Holden
(Coauthors: Assembly Members Chau, Gatto, *Muratsuchi*, and
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, establish an interim board of directors to govern the council until September 15, 2015, and 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 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 increases those fees.

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~~ *develop policies, procedures, rules, or bylaws governing the approval and unapproval of schools that provide education required for certification, as specified.*

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 or enforcing an ordinance that conflicts with these provisions 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.~~ *adopt or enforce local ordinances that govern zoning, business licensing, or reasonable health and safety requirements for establishments or businesses of a licensed or certified healing arts professional, including a certified massage therapist. The bill would also make clarifying and conforming changes regarding local regulation of massage establishments or businesses.*

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 the Legislature that this act~~
- 2 ~~enable consumers and local governments to more easily identify~~
- 3 ~~trained massage professionals, provide for the consistent and~~

1 statewide certification and oversight of massage professionals,
 2 ensure that schools teaching massage provide a high level of
 3 training and protection for students, assist local governments and
 4 law enforcement in maintaining the highest standards of
 5 performance by certificated professionals, provide for a self-funded
 6 nonprofit oversight body to certify massage professionals, and
 7 ensure full compliance with, and execution of, the requirements
 8 of this act.

9 (b) It is the intent of the Legislature that broad control over land
 10 use in regulating massage establishments be returned to local
 11 governments so that they may manage those establishments in the
 12 best interest of the individual community, and that the requirements
 13 and practice of the profession of massage therapy remain a matter
 14 of statewide concern, regulation, and oversight.

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

24 ~~SEC. 2.~~

25 *SECTION 1.* Section 460 of the Business and Professions Code
 26 is amended to read:

27 460. (a) No city, county, or city and county shall prohibit a
 28 person or group of persons, authorized by one of the agencies in
 29 the Department of Consumer Affairs or an entity established
 30 pursuant to this code by a license, certificate, or other means to
 31 engage in a particular business, from engaging in that business,
 32 occupation, or profession or any portion of that business,
 33 occupation, or profession.

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

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

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

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

18 ~~SEC. 3.~~

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

21
22 CHAPTER 10.5. MASSAGE THERAPY ACT

23
24 4600. This chapter shall be known and may be cited as the
25 Massage Therapy Act. Whenever a reference is made to the
26 Massage Therapy Act by any statute, it shall be construed to refer
27 to this chapter.

28 4600.5. (a) *It is the intent of the Legislature that this act enable*
29 *consumers and local governments to more easily identify certified*
30 *massage professionals, provide for consistent statewide*
31 *certification and oversight of massage professionals, ensure that*
32 *schools approved by the council that are teaching massage provide*
33 *a high level of training, assist local governments and law*
34 *enforcement in meeting their duty to maintain the highest standards*
35 *of conduct in massage establishments by vetting and disciplining*
36 *certificate holders, provide for a self-funded nonprofit oversight*
37 *body to certify massage professionals, and ensure full compliance*
38 *with, and execution of, the requirements of this act.*

39 (b) *It is the intent of the Legislature that broad control over*
40 *land use in regulating massage establishments be vested in local*

1 governments so that they may manage those establishments in the
2 best interests of the individual community, and that the
3 requirements and practice of the profession of massage therapy
4 remain a matter of statewide concern, regulation, and oversight.

5 (c) It is the intent of the Legislature that local governments
6 impose and enforce only reasonable and necessary fees and
7 regulations, in keeping with the requirements of existing law and
8 being mindful of the need to protect legitimate business owners
9 and massage professionals, particularly sole providers, during
10 the transition period after this act becomes law and thereafter for
11 the sake of developing a healthy and vibrant local economy.

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

21 4601. As used in this chapter, the following terms shall have
22 the following meanings:

23 (a) “Approved school” or “approved massage school” means a
24 school approved by the council that meets minimum standards for
25 training and curriculum in massage and related subjects, that meets
26 any of the following requirements, and that has not been otherwise
27 ~~disapproved~~ *unapproved* by the council:

28 (1) Is approved by the Bureau for Private Postsecondary
29 Education.

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

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

36 (A) A public institution.

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

1 (C) A for-profit institution.

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

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

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

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

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

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

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

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

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

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

35 (i) “Sole provider” means a massage business where the owner
36 owns 100 percent of the business, is the only person who provides
37 massage services for compensation for that business pursuant to
38 a valid and active certificate issued in accordance with this chapter,
39 and has no other employees or independent contractors.

1 4602. (a) The California Massage Therapy Council, as defined
2 in subdivision (d) of Section 4601, is hereby established and shall
3 carry out the responsibilities and duties set forth in this chapter.

4 (b) The council may take any reasonable actions necessary to
5 carry out the responsibilities and duties set forth in this chapter,
6 including, but not limited to, hiring staff, entering into contracts,
7 and developing ~~policies and procedures~~ *policies, procedures, rules,*
8 *and bylaws* to implement this chapter.

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

13 (d) The council shall issue a certificate to an individual applicant
14 who satisfies the requirements of this chapter for that certificate.

15 (e) The council is authorized to determine whether the
16 information provided to the council in relation to the certification
17 of an applicant is true and correct and meets the requirements of
18 this chapter. If the council has any reason to question whether the
19 information provided is true or correct or meets the requirements
20 of this chapter, the council is authorized to make any investigation
21 it deems necessary to establish that the information received is
22 accurate and satisfies any criteria established by this chapter. The
23 applicant has the burden to prove that he or she is entitled to
24 certification.

25 (f) Until September 15, 2015, the council shall be governed by
26 a board of directors comprised of two representatives selected by
27 each professional society, association, or other entity, which
28 membership is comprised of massage therapists and that chooses
29 to participate in the council. To qualify, a professional society,
30 association, or other entity shall have a dues-paying membership
31 in California of at least 1,000 individuals for the last three years
32 and shall have bylaws that require its members to comply with a
33 code of ethics. The board of directors shall also include each of
34 the following persons:

- 35 (1) One member selected by each statewide association of
36 private postsecondary schools incorporated on or before January
37 1, 2010, which member schools have together had at least 1,000
38 graduates in each of the previous three years from massage therapy
39 programs that meet the approval standards set forth in subdivision

1 (a) of Section 4601, unless a qualifying association chooses not
2 to exercise this right of selection.

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

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

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

10 (5) One member appointed by the Office of the Chancellor of
11 the California Community Colleges, unless that entity chooses not
12 to exercise this right of selection. The person appointed, if any,
13 shall not be part of any massage therapy certificate or degree
14 program.

15 (6) The council's bylaws shall establish a process for appointing
16 other professional ~~directors, as determined by the board~~ *directors*
17 *to the council who have knowledge of the massage industry or can*
18 *bring needed expertise to the operation of the council for purposes*
19 *of complying with Section 4603.*

20 (g) At 12 p.m. Pacific standard time on September 15, 2015,
21 the term of each member of the board of directors established
22 pursuant to subdivision (f) shall terminate, and the terms of 13
23 new members of the board of directors who shall be chosen in the
24 following manner, shall begin:

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

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

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

34 (4) One member shall be a representative of an "anti-human
35 trafficking" organization to be determined by the council. This
36 organization shall appoint one member, unless the organization
37 chooses not to exercise this right to appoint.

38 (5) One member shall be appointed by the Office of the
39 Chancellor of the California Community Colleges, unless that
40 office chooses not to exercise this right to appoint.

1 (6) One member shall be a member of the public appointed by
 2 the Director of *the Department of Consumer Affairs*, unless the
 3 director chooses not to exercise this right to appoint.

4 (7) One member shall be appointed by the California Association
 5 of Private Postsecondary Schools, unless that entity chooses not
 6 to exercise this right to appoint.

7 (8) One member shall be appointed by the American Massage
 8 Therapy Association, California Chapter, who shall be a
 9 California-certified massage therapist or massage practitioner who
 10 is a California resident and who has been practicing massage for
 11 at least three years, unless that entity chooses not to exercise this
 12 right to appoint.

13 (9) One member shall be a public health official representing a
 14 city, county, city and county, or state health department, *to be*
 15 *determined by the council. The city, county, city and county, or*
 16 *state health department chosen, shall appoint one member unless*
 17 *that entity chooses not to exercise this right to appoint.*

18 (10) (A) One member shall be a certified massage therapist or
 19 a certified massage practitioner who is a California resident who
 20 has practiced massage for at least three years prior to the
 21 appointment, selected by a professional society, association, or
 22 other entity which membership is comprised of massage therapist
 23 professionals, and that chooses to participate in the council. To
 24 qualify, a professional society, association, or other entity shall
 25 have a dues-paying membership in California of at least 1,000
 26 individuals, have been established since 2000, and shall have
 27 bylaws that require its members to comply with a code of 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 (11) The members appointed to the board in accordance with
 39 paragraphs (1) to (10), 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. *The council shall establish in its bylaws a*
7 *process for appointing an additional member, provided that the*
8 *member has knowledge of the massage industry or can bring*
9 *needed expertise to the operation of the council for purposes of*
10 *complying with Section 4603.*

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

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

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

26 (k) Prior to holding a meeting to vote upon a proposal to increase
27 the certification fees, the board shall provide at least 90 days'
28 notice of the meeting, including posting a notice on the council's
29 Internet Web site unless at least two-thirds of the board members
30 concur that there is an active threat to public safety and that voting
31 at a meeting without prior notice is necessary. However, the board
32 shall not waive the requirements of subdivision (j).

33 (l) If the board approves an increase in the certification fees,
34 the council shall update all relevant areas of its Internet Web site
35 and notify all certificate holders and affected applicants by email
36 within 14 days of the board's action.

37 4603. Protection of the public shall be the highest priority for
38 the council in exercising its certification and disciplinary authority,
39 and *any* other functions. Whenever the protection of the public is

1 inconsistent with other interests sought to be promoted, the
2 protection of the public shall be paramount.

3 4604. (a) In order to obtain certification as a massage therapist,
4 an applicant shall submit a written application and provide the
5 council with satisfactory evidence that he or she meets all of the
6 following requirements:

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

8 (2) The applicant has successfully completed the curricula in
9 massage and related subjects totaling a minimum of 500 hours, or
10 the credit unit equivalent, that incorporates appropriate school
11 assessment of student knowledge and skills.

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

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

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

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

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

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

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

1 4604.1. (a) The council shall not accept applications to issue
2 any new certificates to practice as a certified massage practitioner
3 on or after January 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 4604.2. (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 4604.1, 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.

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 custodian of records candidates for whom fingerprint images and
20 related information are submitted to conduct a search for state and
21 federal level criminal offender record information.

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

25 4607. ~~An~~ *The council may discipline an* owner or operator of
26 a massage business or establishment who is certified pursuant to
27 this chapter ~~shall be responsible~~ for the conduct of all individuals
28 providing massage for compensation on the business premises.

29 4608. In addition to the other requirements of this chapter, a
30 certificate holder shall:

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

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

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

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

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

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

19 (A) Engaging in sexually suggestive advertising related to
20 massage services.

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

24 (C) Engaging in sexual activity while providing massage
25 services for compensation.

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

28 (E) Providing massage of the genitals or anal region.

29 (F) Providing massage of female breasts without the written
30 consent of the person receiving the massage and a referral from a
31 licensed California health care provider.

32 (2) Procuring or attempting to procure a certificate by fraud,
33 misrepresentation, or mistake.

34 (3) Failing to fully disclose all information requested on the
35 application.

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

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

- 1 (6) Violating or attempting to violate, directly or indirectly, or
 2 assisting in or abetting the violation of, or conspiring to violate,
 3 any provision of this chapter or any rule or bylaw adopted by the
 4 council.
- 5 (7) Committing any fraudulent, dishonest, or corrupt act that is
 6 substantially related to the qualifications or duties of a certificate
 7 holder.
- 8 (8) Denial of licensure, revocation, suspension, restriction,
 9 citation, or any other disciplinary action against an applicant or
 10 certificate holder by another state or territory of the United States,
 11 by any other government agency, or by another California health
 12 care professional licensing board. A certified copy of the decision,
 13 order, judgment, or citation shall be conclusive evidence of these
 14 actions.
- 15 (9) Being convicted of any felony, misdemeanor, infraction, or
 16 municipal code violation, or being held liable in an administrative
 17 or civil action for an act, that is substantially related to the
 18 qualifications, functions, or duties of a certificate holder. A record
 19 of the conviction or other judgment or liability shall be conclusive
 20 evidence of the crime or liability.
- 21 (10) Dressing while engaged in the practice of massage for
 22 compensation, or while *visible to clients* in a massage
 23 establishment, in ~~a~~ *any of the following*:
- 24 (A) *Attire that is transparent, see-through, or substantially*
 25 *exposes the certificate holder's undergarments.*
- 26 (B) *Swim attire, if not providing a water-based massage*
 27 *modality approved by the council.*
- 28 (C) A manner that exposes the certificate holder's breasts,
 29 buttocks, or ~~genitals, that is transparent or see-through, that~~
 30 *genitals.*
- 31 (D) *A manner that* constitutes a violation of Section 314 of the
 32 ~~Penal Code, or that Code.~~
- 33 (E) *A manner that* is otherwise deemed by the council to
 34 constitute unprofessional attire based on the custom and practice
 35 of the profession in California.
- 36 (11) Committing any act punishable as a sexually related crime
 37 or being required to register pursuant to the Sex Offender
 38 Registration Act (Chapter 5.5 (commencing with Section 290) of
 39 Title 9 of Part 1 of the Penal Code), or being required to register
 40 as a sex offender in another state.

1 (b) The council may deny an application for a certificate for the
2 commission of any of the acts described in subdivision (a). The
3 council may also discipline a certificate holder, in any manner
4 permitted by this chapter, for the commission of any of those acts
5 by a certificate holder.

6 (c) *The council shall deny an application for a certificate, or*
7 *revoke the certificate of a certificate holder, if the applicant or*
8 *certificate holder is required to register pursuant to the Sex*
9 *Offender Registration Act (Chapter 5.5 (commencing with Section*
10 *290) of Title 9 of Part 1 of the Penal Code), or is required to*
11 *register as a sex offender in another state.*

12 4610. (a) An applicant for a certificate shall not be denied a
13 certificate, and a certificate holder shall not be disciplined pursuant
14 to this chapter except according to procedures that satisfy the
15 requirements of this section. Denial or discipline that is not in
16 accord with this section shall be void and without effect.

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

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

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

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

25 (4) Revoking the certificate.

26 (5) Taking other action as ~~the council~~, *council deems proper*,
27 as authorized by this chapter or ~~policies~~ *policies, procedures, rules,*
28 *or bylaws* adopted by the ~~board~~, *deems proper board*.

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

31 (d) Any denial or discipline shall be decided upon and imposed
32 in good faith and in a fair and reasonable manner. Any procedure
33 that conforms to the requirements of subdivision (f) is fair and
34 reasonable, but a court may also find other procedures to be fair
35 and reasonable when the full circumstances of the denial or
36 discipline are considered.

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

1 (1) Denial or discipline shall be based on a preponderance of
2 the evidence. In determining the basis for the denial or discipline,
3 the council may consider all written documents or statements as
4 evidence, but shall weigh the reliability of those documents or
5 statements.

6 (2) The provisions of the procedure are publicly available on
7 the council’s Internet Web site.

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

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

15 (f) (1) Notwithstanding any other law, if the council receives
16 notice that a certificate holder has been arrested and charges have
17 been filed by the appropriate prosecuting agency against the
18 certificate holder alleging a violation of subdivision (b) of Section
19 647 of the Penal Code or any other offense described in paragraph
20 (11) of subdivision (a) of Section 4609, the council shall
21 immediately suspend, on an interim basis, the certificate of that
22 certificate holder, and take all of the following additional actions:

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

26 (B) Provide notification of the suspension by email to the clerk
27 or other designated contact of the city, county, or city and county
28 in which the certificate holder lives or works, pursuant to the
29 council’s records, within 10 business days.

30 (C) Provide notification of the suspension by email to any
31 establishment or employer, whether public or private, that the
32 council has in its records as employing the certificate holder, within
33 10 business days.

34 (2) Upon notice to the council that the charges described in
35 paragraph (1) have resulted in a conviction, the council shall
36 permanently revoke the suspended certificate. The council shall
37 provide notice to the certificate holder, at the address last filed
38 with the council by a method providing delivery confirmation,
39 within 10 business days that it has evidence of a valid record of
40 conviction and that the certificate will be revoked unless the

1 certificate holder provides evidence within 15 days from the date
2 of the council’s mailing of the notice that the conviction is either
3 invalid or that the information is otherwise erroneous.

4 (3) Upon notice that the charges described in paragraph (1) have
5 resulted in an acquittal or have been otherwise dismissed prior to
6 conviction, the certificate shall be immediately reinstated and the
7 certificate holder and any establishment or employer that received
8 notice pursuant to this section shall be notified of the reinstatement
9 within 10 business days.

10 (g) (1) Notwithstanding any other law, if the council
11 determines that a certificate holder has committed an act punishable
12 as a sexually related crime or a felony that is substantially related
13 to the qualifications, functions, or duties of a certificate holder,
14 the council may immediately suspend the certificate of that
15 certificate holder. A determination to immediately suspend a
16 certificate pursuant to this subdivision shall be based upon a
17 preponderance of the evidence and the council shall also consider
18 any available credible mitigating evidence before making a
19 decision. Written statements by any person shall not be considered
20 by the council when determining whether to immediately suspend
21 a certificate unless made under penalty of perjury. If the council
22 suspends a certificate in accordance with this subdivision, the
23 council shall take all of the following additional actions:

24 (A) Notify the certificate holder within 10 business days, at the
25 address last filed with the council, by a method providing delivery
26 confirmation, that the certificate has been suspended, the reason
27 for the suspension, and that the certificate holder has the right to
28 request a hearing pursuant to paragraph (2).

29 (B) Notify by email or any other means consistent with the
30 notice requirements of this chapter, any business or employer,
31 whether public or private, that the council has in its records as
32 employing or contracting with the certificate holder for massage
33 services, and the California city, county, or city and county that
34 has jurisdiction over that establishment or employer, that the
35 certificate has been suspended within 10 business days.

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

1 receipt of the request. A holder whose certificate is suspended
2 based on paragraph (1) shall be subject to revocation or other
3 discipline in accordance with subdivision (a).

4 (3) If the council determines, after a hearing conducted pursuant
5 to this subdivision, to lift the suspension, the certificate shall be
6 immediately reinstated and the certificate holder, any establishment
7 or employer, and the city, county, or city and county that has
8 jurisdiction over that establishment or employer, that received
9 notice pursuant to this section shall be notified of the reinstatement
10 within 10 business days.

11 (h) Any notice required under this section may be given by any
12 method reasonably calculated to provide actual notice. Any notice
13 given by mail shall be given by first-class or certified mail sent to
14 the last address of the applicant or certificate holder shown on the
15 council's records.

16 (i) An applicant or certificate holder may challenge a denial or
17 discipline decision issued pursuant to this section in a court of
18 competent jurisdiction. Any action challenging a denial or
19 discipline, including any claim alleging defective notice, shall be
20 commenced within one year after the effective date of the denial
21 or discipline. If the action is successful, the court may order any
22 relief, including reinstatement, that it finds equitable under the
23 circumstances.

24 (j) This section governs only the procedures for denial or
25 discipline decision and not the substantive grounds for the denial
26 or discipline. Denial or discipline based upon substantive grounds
27 that violates contractual or other rights of the applicant or certificate
28 holder, or is otherwise unlawful, is not made valid by compliance
29 with this section.

30 4611. (a) It is an unfair business practice for a person to do
31 any of the following:

32 (1) To hold himself or herself out or to use the title of "certified
33 massage therapist" or "certified massage practitioner," or any other
34 term, such as "licensed," "certified," "CMT," or "CMP," in any
35 manner whatsoever that implies or suggests that the person is
36 certified as a massage therapist or massage practitioner, unless
37 that person currently holds an active and valid certificate issued
38 by the council pursuant to this chapter.

39 (2) To falsely state or advertise or put out any sign or card or
40 other device, or to falsely represent to the public through any print

1 or electronic media, that he or she or any other individual is
2 licensed, certified, or registered by a governmental agency as a
3 massage therapist or massage practitioner.

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

7 4612. (a) Notwithstanding any other law, a city, county, or
8 city and county shall not enact or enforce an ordinance that
9 conflicts with this chapter or Section 51034 of the Government
10 Code.

11 (b) Nothing in this chapter shall prevent a city, county, or city
12 and county from licensing, regulating, prohibiting, or permitting
13 an individual who provides massage for compensation without a
14 valid certificate.

15 4614. (a) Upon the request of any law enforcement agency or
16 any other representative of a local government agency with
17 responsibility for regulating or administering a local ordinance
18 relating to massage or massage establishments, the council shall
19 provide information concerning an applicant or a certificate holder,
20 including, but not limited to, ~~the current status of an application~~
21 ~~or certificate, any history of disciplinary actions, the home and~~
22 ~~work addresses of the applicant or certificate holder, and any other~~
23 ~~information in the council's possession that is necessary to verify~~
24 ~~facts relevant to administering the local ordinance.~~ *any of the*
25 *following:*

26 (1) *The current status of an application or certificate.*

27 (2) *Any history of disciplinary actions.*

28 (3) *The home and work addresses of the applicant or certificate*
29 *holder.*

30 (4) *The name and home and work addresses of any person whose*
31 *certificate has been suspended and the length of the suspension,*
32 *if the work address is located within the jurisdiction of agency*
33 *making the request.*

34 (5) *Any other information in the council's possession that is*
35 *necessary to verify facts relevant to administering the local*
36 *ordinance.*

37 (b) Upon the request of the council, any law enforcement agency
38 or any other representative of a local government agency with
39 responsibility for regulating or administering a local ordinance
40 relating to massage or massage establishments is authorized to

1 provide information to the council concerning an applicant or
2 certificate holder, including, but not limited to, ~~the current status~~
3 ~~of any local application or permit, any history of legal or~~
4 ~~administrative action taken against the applicant or certificate~~
5 ~~holder, any information related to criminal activity or~~
6 ~~unprofessional conduct allegedly engaged in by a certificate~~
7 ~~applicant or certificate holder, including, but not limited to, police~~
8 ~~reports and declarations of conduct, the home and work addresses~~
9 ~~of the applicant or certificate holder, and any other information in~~
10 ~~the possession of the law enforcement agency or other local~~
11 ~~government agency that is necessary to verify information or~~
12 ~~otherwise implement this chapter.~~ *any of the following:*

- 13 (1) *The current status of any local application or permit.*
14 (2) *Any history of legal or administrative action taken against*
15 *the applicant or certificate holder.*
16 (3) *Any information related to criminal activity or*
17 *unprofessional conduct allegedly engaged in by a certificate*
18 *applicant or certificate holder, including, but not limited to, police*
19 *reports and declarations of conduct.*
20 (4) *The home and work addresses of the applicant or certificate*
21 *holder.*
22 (5) *Any other information in the possession of the law*
23 *enforcement agency or other local government agency that is*
24 *necessary to verify information or otherwise implement this*
25 *chapter.*

26 (c) The council shall accept information provided by any law
27 enforcement agency or any other representative of a local
28 government agency with responsibility for regulating or
29 administering a local ordinance relating to massage and review
30 that information in a timely manner. The council shall have the
31 responsibility to review any information received pursuant to this
32 subdivision and to take any actions authorized by this chapter that
33 are warranted by that information.

34 4615. (a) The council shall have the responsibility to determine
35 whether the school from which an applicant has obtained the
36 education required by this chapter meets the requirements of this
37 chapter.

38 (1) If the council has any reason to question whether or not the
39 applicant received the education that is required by this chapter
40 from the school or schools that the applicant is claiming, the

1 council shall investigate the facts to determine that the applicant
2 received the required education prior to issuing a certificate.

3 (2) For purposes of this section and any other provision of this
4 chapter that authorizes the council to receive factual information
5 as a condition of taking any action, the council may conduct oral
6 interviews of the applicant and others or conduct any investigation
7 deemed necessary to establish that the information received is
8 accurate and satisfies the criteria established by this chapter.

9 *(b) The council shall develop policies, procedures, rules, or*
10 *bylaws governing the requirements and process for the approval*
11 *and unapproval of schools consistent with Section 4601, including*
12 *any corrective action required to return a school to approved*
13 *status. These policies, procedures, rules, or bylaws shall address*
14 *topics including, but not limited to, what constitutes an acceptable*
15 *curriculum, facility requirements, student-teacher ratios, clinical*
16 *practice requirements, and provisions for the acceptance of*
17 *accreditation from a recognized accreditation body or other form*
18 *of acceptance. The council shall exercise its authority to approve*
19 *and unapprove schools and specify corrective action in keeping*
20 *with the purposes set forth in Section 4603.*

21 ~~(b)~~

22 (c) The council may charge a reasonable fee for the inspection
23 or approval of schools, provided the fees do not exceed the
24 reasonable cost of the inspection or approval process.

25 ~~(e) The council shall develop policies and procedures governing~~
26 ~~the requirements and approval process for schools and the~~
27 ~~curriculum and programs for these schools, including provisions~~
28 ~~for acceptance of accreditation from a recognized accreditation~~
29 ~~body or other form of acceptance.~~

30 4616. The council shall be sued only in the county of its
31 principal office, which shall be in Sacramento, unless otherwise
32 designated by the council.

33 4617. The superior court of a county of competent jurisdiction
34 may, upon a petition by any person, issue an injunction or any
35 other relief the court deems appropriate for a violation of this
36 chapter by any person or establishment operating in that county
37 subject to the provisions of this chapter. An injunction proceeding
38 under this section shall be governed by Chapter 3 (commencing
39 with Section 525) of Title 7 of Part 2 of the Code of Civil
40 Procedure.

1 4618. The Legislature finds and declares that due to important
2 health, safety, and welfare concerns that affect the entire state,
3 establishing a uniform standard of certification for massage
4 practitioners and massage therapists upon which consumers may
5 rely to identify individuals who have achieved specified levels of
6 education, training, and skill is a matter of statewide concern and
7 not a municipal affair, as that term is used in Section 5 of Article
8 XI of the California Constitution. Therefore, this chapter shall
9 apply to all cities, counties, and cities and counties, including
10 charter cities and charter counties.

11 4619. (a) This chapter shall be liberally construed to effectuate
12 its purposes.

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

17 (c) If any provision of this chapter or the application of these
18 provisions to any person or circumstance is held to be invalid, the
19 invalidity shall not affect other provisions or applications of the
20 chapter that can be given effect without the invalid provision or
21 application, and to this end the provisions of this chapter are
22 severable.

23 4620. (a) On or before June 1, 2016, for the time period
24 beginning on January 1, 2015, the council shall provide a report
25 to the appropriate policy committees of the Legislature that
26 includes all of the following:

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

30 (2) The council's compensation guidelines and current salary
31 levels.

32 (3) The status of the council's progress towards revising the
33 school approval process.

34 (4) Performance metrics, including, but not limited to:

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

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

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

3 (D) The number of schools ~~inspected, approved, and~~
4 ~~disapproved, the number of schools that have had their approvals~~
5 ~~suspended or revoked,~~ *inspected and unapproved* and a brief
6 description of the grounds for each decision *to unapprove*.

7 (E) The total number of complaints about certificate holders
8 received annually, including a subtotal of complaints received
9 from local law enforcement and the action taken by the council as
10 a result of those complaints.

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

13 4621. (a) This chapter shall remain in effect only until January
14 1, 2017, and as of that date is repealed, unless a later enacted
15 statute, that is enacted before January 1, 2017, deletes or extends
16 that date.

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

20 ~~SEC. 4.~~

21 *SEC. 3.* Section 51034 of the Government Code is amended
22 to read:

23 51034. (a) The Legislature in enacting this chapter recognizes
24 the existing power of a city or county to regulate a lawful massage
25 business pursuant to Section 37101, or pursuant to Section 16000
26 or 16100 of the Business and Professions Code, or under Section
27 7 of Article XI of the California Constitution.

28 (b) Nothing contained in this chapter shall be a limitation on
29 that existing power or on the existing authority of a city to license
30 for revenue purposes. A city, county, or city and county shall not
31 enact or enforce an ordinance that conflicts with the provisions of
32 this section or Chapter 10.5 (commencing with Section 4600) of
33 Division 2 of the Business and Professions Code.

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

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

38 (2) Define a massage establishment as an adult entertainment
39 business, or otherwise regulate a massage establishment as adult
40 entertainment.

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

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

8 (5) Prohibit a massage establishment from locking its external
9 doors if the massage establishment is a business entity owned by
10 one individual with one or no employees or independent
11 contractors.

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

16 (7) Impose a requirement that a person certified pursuant to
17 Chapter 10.5 (commencing with Section 4600) of Division 2 of
18 the Business and Professions Code take any test, medical
19 examination, or background check or comply with education
20 requirements beyond what is required by Chapter 10.5
21 (commencing with Section 4600) of Division 2 of the Business
22 and Professions Code.

23 (8) Impose a requirement that an ~~individual, other than a sole~~
24 ~~proprietor,~~ *individual* holding a certificate issued in accordance
25 with Chapter 10.5 (commencing with Section 4600) of Division
26 2 of the Business and Professions Code, obtain any other license,
27 permit, certificate, or other authorization to provide massage for
28 compensation. *However, this paragraph shall not be construed to*
29 *prohibit a city, county, or city and county from requiring by*
30 *ordinance that a massage business or establishment obtain a*
31 *license, permit, certificate, or other authorization in order to*
32 *operate lawfully within the jurisdiction.*

33 (9) Impose a dress code requirement on a person certified
34 pursuant to Chapter 10.5 (commencing with Section 4600) of
35 Division 2 of the Business and Professions Code in excess of those
36 already imposed pursuant to paragraph (10) of subdivision (a) of
37 Section 4609 of the Business and Professions Code.

38 (10) Prohibit a person certified pursuant to Chapter 10.5
39 (commencing with Section 4600) of Division 2 of the Business
40 and Professions Code from performing massage for compensation

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

O