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AMENDED IN SENATE AUGUST 4, 2014
AMENDED IN SENATE JULY 1, 2014
AMENDED IN SENATE JUNE 17, 2014
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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 and Muratsuchi~~)**

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 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 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.

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. Section 460 of the Business and Professions Code
- 2 is amended to read:
- 3 460. (a) No city, county, or city and county shall prohibit a
- 4 person or group of persons, authorized by one of the agencies in
- 5 the Department of Consumer Affairs or an entity established
- 6 pursuant to this code by a license, certificate, or other means to
- 7 engage in a particular business, from engaging in that business,
- 8 occupation, or profession or any portion of that business,
- 9 occupation, or profession.

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

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

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

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

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

26
27 CHAPTER 10.5. MASSAGE THERAPY ACT
28

29 4600. This chapter shall be known and may be cited as the
30 Massage Therapy Act. Whenever a reference is made to the
31 Massage Therapy Act by any statute, it shall be construed to refer
32 to this chapter.

33 4600.5. (a) It is the intent of the Legislature that this act enable
34 consumers and local governments to more easily identify certified
35 massage professionals, provide for consistent statewide certification
36 and oversight of massage professionals, ensure that schools
37 approved by the council that are teaching massage provide a high
38 level of training, assist local governments and law enforcement in
39 meeting their duty to maintain the highest standards of conduct in
40 massage establishments by vetting and disciplining certificate

1 holders, provide for a self-funded nonprofit oversight body to
2 certify massage professionals, and ensure full compliance with,
3 and execution of, the requirements of this act.

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

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

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

26 4601. As used in this chapter, the following terms shall have
27 the following meanings:

28 (a) “Approved school” or “approved massage school” means a
29 school approved by the council that meets minimum standards for
30 training and curriculum in massage and related subjects, that meets
31 any of the following requirements, and that has not been otherwise
32 unapproved by the council:

33 (1) Is approved by the Bureau for Private Postsecondary
34 Education.

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

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

1 (A) A public institution.

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

6 (C) A for-profit institution.

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

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

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

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

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

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

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

30 (f) “Massage establishment” or “establishment” means a fixed
31 location where massage is performed for compensation, excluding
32 those locations where massage is only provided on an out-call
33 basis.

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

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

1 (i) “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, procedures, rules, and bylaws to
13 implement this chapter.

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

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

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

30 (f) Until September 15, 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 to the council who have knowledge
22 of the massage industry or can bring needed expertise to the
23 operation of the council for purposes of complying with Section
24 4603.

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

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

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

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

39 (4) One member shall be a representative of an "anti-human
40 trafficking" organization to be determined by the council. This

1 organization shall appoint one member, unless the organization
2 chooses not to exercise this right to appoint.

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

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

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

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

18 (9) One member shall be a public health official representing a
19 city, county, city and county, or state health department, to be
20 determined by the council. The city, county, city and county, or
21 state health department chosen, shall appoint one member unless
22 that entity chooses not to exercise this right to appoint.

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

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

1 order based on the full legal name of the entity as of January 1,
2 2014.

3 (11) The members appointed to the board in accordance with
4 paragraphs (1) to (10), inclusive, shall appoint three additional
5 members, at a duly held board meeting in accordance with the
6 board's bylaws. One of those appointees shall be an attorney
7 licensed by the State Bar of California, who has been practicing
8 law for at least three years and who at the time of appointment
9 represents a city in the state. One of those appointees shall represent
10 a massage business entity that has been operating in the state for
11 at least three years. The council shall establish in its bylaws a
12 process for appointing an additional member, provided that the
13 member has knowledge of the massage industry or can bring
14 needed expertise to the operation of the council for purposes of
15 complying with Section 4603.

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

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

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

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

38 (l) If the board approves an increase in the certification fees,
39 the council shall update all relevant areas of its Internet Web site

1 and notify all certificate holders and affected applicants by email
2 within 14 days of the board's action.

3 4603. Protection of the public shall be the highest priority for
4 the council in exercising its certification and disciplinary authority,
5 and any other functions. Whenever the protection of the public is
6 inconsistent with other interests sought to be promoted, the
7 protection of the public shall be paramount.

8 4604. (a) In order to obtain certification as a massage therapist,
9 an applicant shall submit a written application and provide the
10 council with satisfactory evidence that he or she meets all of the
11 following requirements:

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

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

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

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

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

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

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

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

1 (b) A certificate issued pursuant to this chapter and any
2 identification card issued by the council shall be surrendered to
3 the council by any certificate holder whose certificate is suspended
4 or revoked.

5 4604.1. (a) The council shall not accept applications to issue
6 any new certificates to practice as a certified massage practitioner
7 on or after January 1, 2015.

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

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

14 4604.2. (a) A person who was issued a conditional certificate
15 to practice as a massage practitioner shall, within five years of
16 being issued the conditional certificate by the council, complete
17 and report to the council the completion of, at least 30 hours of
18 additional education per year from approved schools or from
19 continuing education providers approved by the council, until he
20 or she has completed a total of at least 250 hours of education.

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

26 (c) Notwithstanding subdivision (a) of Section 4604.1, the
27 council shall issue a new certificate to practice as a massage
28 practitioner to a person that successfully completes the
29 requirements described in subdivision (a).

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

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

1 (b) The council shall submit the fingerprint images and related
2 information to the Department of Justice for the purpose of
3 obtaining information as to the existence and nature of a record of
4 state and federal level convictions and of state and federal level
5 arrests for which the Department of Justice establishes that the
6 applicant or candidate was released on bail or on his or her own
7 recognizance pending trial.

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

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

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

26 (f) The council is authorized to receive arrest notifications and
27 other background—~~material~~ *materials* about applicants and
28 certificate holders from a city, county, or city and county.

29 4607. The council may discipline an owner or operator of a
30 massage business or establishment who is certified pursuant to
31 this chapter for the conduct of all individuals providing massage
32 for compensation on the business premises.

33 4608. In addition to the other requirements of this chapter, a
34 certificate holder shall:

35 (a) Display his or her original certificate wherever he or she
36 provides massage for compensation. A certificate holder shall have
37 his or her identification card in his or her possession while
38 providing massage services for compensation.

39 (b) Provide his or her full name and certificate number upon
40 the request of a member of the public, the council, or a member

1 of law enforcement, or a local government agency charged with
2 regulating massage or massage establishments, at the location
3 where he or she is providing massage services for compensation.

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

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

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

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

22 (A) Engaging in sexually suggestive advertising related to
23 massage services.

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

27 (C) Engaging in sexual activity while providing massage
28 services for compensation.

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

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

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

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

37 (3) Failing to fully disclose all information requested on the
38 application.

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

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

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

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

13 (8) Denial of licensure, revocation, suspension, restriction,
14 citation, or any other disciplinary action against an applicant or
15 certificate holder by another state or territory of the United States,
16 by any other government agency, or by another California health
17 care professional licensing board. A certified copy of the decision,
18 order, judgment, or citation shall be conclusive evidence of these
19 actions.

20 (9) Being convicted of any felony, misdemeanor, infraction, or
21 municipal code violation, or being held liable in an administrative
22 or civil action for an act, that is substantially related to the
23 qualifications, functions, or duties of a certificate holder. A record
24 of the conviction or other judgment or liability shall be conclusive
25 evidence of the crime or liability.

26 (10) Dressing while engaged in the practice of massage for
27 compensation, or while visible to clients in a massage
28 establishment, in any of the following:

29 (A) Attire that is transparent, see-through, or substantially
30 exposes the certificate holder's undergarments.

31 (B) Swim attire, if not providing a water-based massage
32 modality approved by the council.

33 (C) A manner that exposes the certificate holder's breasts,
34 buttocks, or genitals.

35 (D) A manner that constitutes a violation of Section 314 of the
36 Penal Code.

37 (E) A manner that is otherwise deemed by the council to
38 constitute unprofessional attire based on the custom and practice
39 of the profession in California.

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

6 (b) The council may deny an application for a certificate for the
7 commission of any of the acts described in subdivision (a). The
8 council may also discipline a certificate holder, in any manner
9 permitted by this chapter, for the commission of any of those acts
10 by a certificate holder.

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

17 4610. (a) An applicant for a certificate shall not be denied a
18 certificate, and a certificate holder shall not be disciplined pursuant
19 to this chapter except according to procedures that satisfy the
20 requirements of this section. Denial or discipline that is not in
21 accord with this section shall be void and without effect.

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

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

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

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

30 (4) Revoking the certificate.

31 (5) Taking other action as the council deems proper, as
32 authorized by this chapter or policies, procedures, rules, or bylaws
33 adopted by the board.

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

36 (d) Any denial or discipline shall be decided upon and imposed
37 in good faith and in a fair and reasonable manner. Any procedure
38 that conforms to the requirements of subdivision (f) is fair and
39 reasonable, but a court may also find other procedures to be fair

1 and reasonable when the full circumstances of the denial or
2 discipline are considered.

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

6 (1) Denial or discipline shall be based on a preponderance of
7 the evidence. In determining the basis for the denial or discipline,
8 the council may consider all written documents or statements as
9 evidence, but shall weigh the reliability of those documents or
10 statements.

11 (2) The provisions of the procedure are publicly available on
12 the council's Internet Web site.

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

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

20 (f) (1) Notwithstanding any other law, if the council receives
21 notice that a certificate holder has been arrested and charges have
22 been filed by the appropriate prosecuting agency against the
23 certificate holder alleging a violation of subdivision (b) of Section
24 647 of the Penal Code or any other offense described in paragraph
25 (11) of subdivision (a) of Section 4609, the council shall
26 immediately suspend, on an interim basis, the certificate of that
27 certificate holder, and take all of the following additional actions:

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

31 (B) Provide notification of the suspension by email to the clerk
32 or other designated contact of the city, county, or city and county
33 in which the certificate holder lives or works, pursuant to the
34 council's records, within 10 business days.

35 (C) Provide notification of the suspension by email to any
36 establishment or employer, whether public or private, that the
37 council has in its records as employing the certificate holder, within
38 10 business days.

39 (2) Upon notice to the council that the charges described in
40 paragraph (1) have resulted in a conviction, the council shall

1 permanently revoke the suspended certificate. The council shall
2 provide notice to the certificate holder, at the address last filed
3 with the council by a method providing delivery confirmation,
4 within 10 business days that it has evidence of a valid record of
5 conviction and that the certificate will be revoked unless the
6 certificate holder provides evidence within 15 days from the date
7 of the council's mailing of the notice that the conviction is either
8 invalid or that the information is otherwise erroneous.

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

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

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

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

1 (2) A certificate holder whose certificate is suspended pursuant
2 to this subdivision shall have the right to request, in writing, a
3 hearing to challenge the factual basis for the suspension. If the
4 holder of the suspended certificate requests a hearing on the
5 suspension, the hearing shall be held within 30 calendar days after
6 receipt of the request. A holder whose certificate is suspended
7 based on paragraph (1) shall be subject to revocation or other
8 discipline in accordance with subdivision (a).

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

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

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

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

35 4611. (a) It is an unfair business practice for a person to do
36 any of the following:

37 (1) To hold himself or herself out or to use the title of "certified
38 massage therapist" or "certified massage practitioner," or any other
39 term, such as "licensed," "certified," "CMT," or "CMP," in any
40 manner whatsoever that implies or suggests that the person is

1 certified as a massage therapist or massage practitioner, unless
2 that person currently holds an active and valid certificate issued
3 by the council pursuant to this chapter.

4 (2) To falsely state or advertise or put out any sign or card or
5 other device, or to falsely represent to the public through any print
6 or electronic media, that he or she or any other individual is
7 licensed, certified, or registered by a governmental agency as a
8 massage therapist or massage practitioner.

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

12 4612. (a) Notwithstanding any other law, a city, county, or
13 city and county shall not enact or enforce an ordinance that
14 conflicts with this chapter or Section 51034 of the Government
15 Code.

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

20 4614. (a) Upon the request of any law enforcement agency or
21 any other representative of a local government agency with
22 responsibility for regulating or administering a local ordinance
23 relating to massage or massage establishments, the council shall
24 provide information concerning an applicant or a certificate holder,
25 including, but not limited to, any of the 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, any of the
3 following:

4 (1) The current status of any local application or permit.

5 (2) Any history of legal or administrative action taken against
6 the applicant or certificate holder.

7 (3) Any information related to criminal activity or unprofessional
8 conduct allegedly engaged in by a certificate applicant or certificate
9 holder, including, but not limited to, police reports and declarations
10 of conduct.

11 (4) The home and work addresses of the applicant or certificate
12 holder.

13 (5) Any other information in the possession of the law
14 enforcement agency or other local government agency that is
15 necessary to verify information or otherwise implement this
16 chapter.

17 (c) The council shall accept information provided by any law
18 enforcement agency or any other representative of a local
19 government agency with responsibility for regulating or
20 administering a local ordinance relating to massage and review
21 that information in a timely manner. The council shall have the
22 responsibility to review any information received pursuant to this
23 subdivision and to take any actions authorized by this chapter that
24 are warranted by that information.

25 4615. (a) The council shall have the responsibility to determine
26 whether the school from which an applicant has obtained the
27 education required by this chapter meets the requirements of this
28 chapter.

29 (1) If the council has any reason to question whether or not the
30 applicant received the education that is required by this chapter
31 from the school or schools that the applicant is claiming, the
32 council shall investigate the facts to determine that the applicant
33 received the required education prior to issuing a certificate.

34 (2) For purposes of this section and any other provision of this
35 chapter that authorizes the council to receive factual information
36 as a condition of taking any action, the council may conduct oral
37 interviews of the applicant and others or conduct any investigation
38 deemed necessary to establish that the information received is
39 accurate and satisfies the criteria established by this chapter.

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

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

16 4616. The council shall be sued only in the county of its
17 principal office, which shall be in Sacramento, unless otherwise
18 designated by the council.

19 4617. The superior court of a county of competent jurisdiction
20 may, upon a petition by any person, issue an injunction or any
21 other relief the court deems appropriate for a violation of this
22 chapter by any person or establishment operating in that county
23 subject to the provisions of this chapter. An injunction proceeding
24 under this section shall be governed by Chapter 3 (commencing
25 with Section 525) of Title 7 of Part 2 of the Code of Civil
26 Procedure.

27 4618. The Legislature finds and declares that due to important
28 health, safety, and welfare concerns that affect the entire state,
29 establishing a uniform standard of certification for massage
30 practitioners and massage therapists upon which consumers may
31 rely to identify individuals who have achieved specified levels of
32 education, training, and skill is a matter of statewide concern and
33 not a municipal affair, as that term is used in Section 5 of Article
34 XI of the California Constitution. Therefore, this chapter shall
35 apply to all cities, counties, and cities and counties, including
36 charter cities and charter counties.

37 4619. (a) This chapter shall be liberally construed to effectuate
38 its purposes.

39 (b) The provisions of this chapter are severable. If any provision
40 of this chapter or its application is held invalid, that invalidity shall

1 not affect other provisions or applications that can be given effect
2 without the invalid provision or application.

3 (c) If any provision of this chapter or the application of these
4 provisions to any person or circumstance is held to be invalid, the
5 invalidity shall not affect other provisions or applications of the
6 chapter that can be given effect without the invalid provision or
7 application, and to this end the provisions of this chapter are
8 severable.

9 4620. (a) On or before June 1, 2016, for the time period
10 beginning on January 1, 2015, the council shall provide a report
11 to the appropriate policy committees of the Legislature that
12 includes all of the following:

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

16 (2) The council's compensation guidelines and current salary
17 levels.

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

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

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

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

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

28 (D) The number of schools inspected and unapproved and a
29 brief description of the grounds for each decision to unapprove.

30 (E) The total number of complaints about certificate holders
31 received annually, including a subtotal of complaints received
32 from local law enforcement and the action taken by the council as
33 a result of those complaints.

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

36 4621. (a) This chapter shall remain in effect only until January
37 1, 2017, and as of that date is repealed, unless a later enacted
38 statute, that is enacted before January 1, 2017, deletes or extends
39 that date.

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

4 SEC. 3. Section 51034 of the Government Code is amended
5 to read:

6 51034. (a) The Legislature in enacting this chapter recognizes
7 the existing power of a city or county to regulate a lawful massage
8 business pursuant to Section 37101, or pursuant to Section 16000
9 or 16100 of the Business and Professions Code, or under Section
10 7 of Article XI of the California Constitution.

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

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

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

21 (2) Define a massage establishment as an adult entertainment
22 business, or otherwise regulate a massage establishment as adult
23 entertainment.

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

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

31 (5) Prohibit a massage establishment from locking its external
32 doors if the massage establishment is a business entity owned by
33 one individual with one or no employees or independent
34 contractors.

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

39 (7) Impose a requirement that a person certified pursuant to
40 Chapter 10.5 (commencing with Section 4600) of Division 2 of

1 the Business and Professions Code take any test, medical
2 examination, or background check or comply with education
3 requirements beyond what is required by Chapter 10.5
4 (commencing with Section 4600) of Division 2 of the Business
5 and Professions Code.

6 (8) Impose a requirement that an individual holding a certificate
7 issued in accordance with Chapter 10.5 (commencing with Section
8 4600) of Division 2 of the Business and Professions Code, obtain
9 any other license, permit, certificate, or other authorization to
10 provide massage for compensation. However, this paragraph shall
11 not be construed to prohibit a city, county, or city and county from
12 requiring by ordinance that a massage business or establishment
13 obtain a license, permit, certificate, or other authorization in order
14 to operate lawfully within the jurisdiction.

15 (9) Impose a dress code requirement on a person certified
16 pursuant to Chapter 10.5 (commencing with Section 4600) of
17 Division 2 of the Business and Professions Code in excess of those
18 already imposed pursuant to paragraph (10) of subdivision (a) of
19 Section 4609 of the Business and Professions Code.

20 (10) Prohibit a person certified pursuant to Chapter 10.5
21 (commencing with Section 4600) of Division 2 of the Business
22 and Professions Code from performing massage for compensation
23 on the gluteal muscles, prohibit specific massage techniques
24 recognized by the California Massage Therapy Council as
25 legitimate, or impose any other specific restriction on professional
26 practice beyond those set forth in subparagraph (E) of paragraph
27 (1) of subdivision (a) of Section 4609 of the Business and
28 Professions Code, except as authorized by Section 460 of the
29 Business and Professions Code.

O