

AMENDED IN ASSEMBLY APRIL 19, 2016

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2194

Introduced by Assembly Member Salas
(Principal coauthor: Senator Hill)

February 18, 2016

An act to amend Sections ~~4602~~ 4602, 4604, 4610, and 4621 of the Business and Professions Code, relating to massage therapy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2194, as amended, Salas. California Massage Therapy Council: extension of sunset date.

The Massage Therapy Act, until January 1, 2017, provides for certification of massage practitioners and massage therapists by the California Massage Therapy Council. Existing law also provides for the council to be governed by an interim board of directors until September 15, 2015, and for the appointment of a new board of directors having 4-year terms. *That act requires the council to immediately suspend, on an interim basis, the certificate of a certificate holder if the council receives notice that a certificate holder has been arrested and charges have been filed alleging a violation of certain provisions of law and requires the council to notify an establishment or employer of the suspension by email within 10 business days. That act authorizes the council, if it determines that a certificate holder has committed an act punishable as a sexually related crime, to immediately suspend the certificate of that certificate holder, and provides that the certificate holder has the right to request a hearing to challenge the suspension.*

This bill would extend the operation of these provisions until January 1, 2019, and make nonsubstantive changes to delete obsolete provisions related to the interim board. *The bill would additionally authorize the council to notify an establishment or employer of the suspension of a certificate by first-class mail, and would authorize a certificate holder whose certificate is suspended to request an oral hearing or consideration of a written statement to challenge the suspension.*

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 4602 of the Business and Professions
2 Code is amended to read:
3 4602. (a) The California Massage Therapy Council, as defined
4 in subdivision (d) of Section 4601, is hereby established and shall
5 carry out the responsibilities and duties set forth in this chapter.
6 (b) The council may take any reasonable actions necessary to
7 carry out the responsibilities and duties set forth in this chapter,
8 including, but not limited to, hiring staff, entering into contracts,
9 and developing policies, procedures, rules, and bylaws to
10 implement this chapter.
11 (c) The council may require background checks for all
12 employees, contractors, volunteers, and board members as a
13 condition of their employment, formation of a contractual
14 relationship, or participation in council activities.
15 (d) The council shall issue a certificate to an individual applicant
16 who satisfies the requirements of this chapter for that certificate.
17 (e) The council is authorized to determine whether the
18 information provided to the council in relation to the certification
19 of an applicant is true and correct and meets the requirements of
20 this chapter. If the council has any reason to question whether the
21 information provided is true or correct, or meets the requirements
22 of this chapter, the council is authorized to make any investigation
23 it deems necessary to establish that the information received is
24 accurate and satisfies any criteria established by this chapter. The
25 applicant has the burden to prove that he or she is entitled to
26 certification.

1 (f) The council shall be governed by a board of directors
2 comprised of 13 members who shall be chosen in the following
3 manner:

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

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

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

13 (4) One member shall be a representative of an “anti-human
14 trafficking” organization to be determined by the council. This
15 organization shall appoint one member, unless the organization
16 chooses not to exercise this right to appoint.

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

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

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

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

32 (9) One member shall be a public health official representing a
33 city, county, city and county, or state health department, to be
34 determined by the council. The city, county, city and county, or
35 state health department chosen, shall appoint one member unless
36 that entity chooses not to exercise this right to appoint.

37 (10) (A) One member shall be a certified massage therapist or
38 a certified massage practitioner who is a California resident who
39 has practiced massage for at least three years prior to the
40 appointment, selected by a professional society, association, or

1 other entity which membership is comprised of massage therapist
2 professionals, and that chooses to participate in the council. To
3 qualify, a professional society, association, or other entity shall
4 have a dues-paying membership in California of at least 1,000
5 individuals, have been established since 2000, and shall have
6 bylaws that require its members to comply with a code of ethics.

7 (B) If there is more than one professional society, association,
8 or other entity that meets the requirements of subparagraph (A),
9 the appointment shall rotate based on a four-year term between
10 each of the qualifying entities. The qualifying entity shall maintain
11 its appointment authority during the entirety of the four-year term
12 during which it holds the appointment authority. The order in
13 which a qualifying professional society, association, or other entity
14 has the authority to appoint shall be determined by alphabetical
15 order based on the full legal name of the entity as of January 1,
16 2014.

17 (11) The members appointed to the board in accordance with
18 paragraphs (1) to (10), inclusive, shall appoint three additional
19 members, at a duly held board meeting in accordance with the
20 board's bylaws. One of those appointees shall be an attorney
21 licensed by the State Bar of California, who has been practicing
22 law for at least three years and who at the time of appointment
23 represents a city in the state. One of those appointees shall represent
24 a massage business entity that has been operating in the state for
25 at least three years. The council shall establish in its bylaws a
26 process for appointing an additional member, provided that the
27 member has knowledge of the massage industry or can bring
28 needed expertise to the operation of the council for purposes of
29 complying with Section 4603.

30 (g) Board member terms shall be for four years.

31 (h) The board of directors shall establish fees reasonably related
32 to the cost of providing services and carrying out its ongoing
33 responsibilities and duties. Initial and renewal fees for certificates
34 shall be in an amount sufficient to support the functions of the
35 council in the administration of this chapter, but in no event shall
36 exceed three hundred dollars (\$300). The renewal fee shall be
37 reassessed biennially by the board.

38 (i) The meetings of the council shall be subject to the rules of
39 the Bagley-Keene Open Meeting Act (Article 9 (commencing with
40 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of

1 the Government Code). The board may adopt additional policies
2 and procedures that provide greater transparency to certificate
3 holders and the public than required by the Bagley-Keene Open
4 Meeting Act.

5 (j) Prior to holding a meeting to vote upon a proposal to increase
6 the certification fees, the board shall provide at least 90 days'
7 notice of the meeting, including posting a notice on the council's
8 Internet Web site unless at least two-thirds of the board members
9 concur that there is an active threat to public safety and that voting
10 at a meeting without prior notice is necessary. However, the board
11 shall not waive the requirements of subdivision (i).

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

16 *SEC. 2. Section 4604 of the Business and Professions Code is*
17 *amended to read:*

18 4604. (a) In order to obtain certification as a massage therapist,
19 an applicant shall submit a written application and provide the
20 council with satisfactory evidence that he or she meets all of the
21 following requirements:

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

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

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

30 (B) All of the 500 hours shall be from ~~schools approved by the~~
31 ~~council.~~ *approved schools.*

32 (3) The applicant has passed a massage and bodywork
33 competency assessment examination that meets generally
34 recognized psychometric principles and standards and that is
35 approved by the council. The successful completion of this
36 examination may have been accomplished before the date the
37 council is authorized by this chapter to begin issuing certificates.

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

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

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

10 (b) A certificate issued pursuant to this chapter and any
11 identification card issued by the council shall be surrendered to
12 the council by any certificate holder whose certificate is suspended
13 or revoked.

14 *SEC. 3. Section 4610 of the Business and Professions Code is*
15 *amended to read:*

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

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

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

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

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

29 (4) Revoking the certificate.

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

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

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

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

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

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

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

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

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

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

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

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

37 (2) Upon notice to the council that the charges described in
38 paragraph (1) have resulted in a conviction, the council shall
39 permanently revoke the suspended certificate. The council shall
40 provide notice to the certificate holder, at the address last filed

1 with the council by a method providing delivery confirmation,
 2 within 10 business days that it has evidence of a valid record of
 3 conviction and that the certificate will be revoked unless the
 4 certificate holder provides evidence within 15 days from the date
 5 of the council’s mailing of the notice that the conviction is either
 6 invalid or that the information is otherwise erroneous.

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

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

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

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

39 (2) A certificate holder whose certificate is suspended pursuant
 40 to this subdivision shall have the right to request, in writing, ~~a~~ *an*

1 *oral hearing or consideration of a written statement* to challenge
2 the factual basis for the suspension. If the holder of the suspended
3 certificate requests ~~a~~ *an oral hearing or consideration of a written*
4 *statement* on the suspension, the *oral hearing or consideration of*
5 *a written statement* 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 ~~SEC. 2.~~

36 *SEC. 4.* Section 4621 of the Business and Professions Code is
37 amended to read:

38 4621. (a) This chapter shall remain in effect only until January
39 1, 2019, and as of that date is repealed, unless a later enacted

1 statute, that is enacted before January 1, 2019, deletes or extends
2 that date.

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

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