

AMENDED IN SENATE JUNE 20, 2016

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, 4604, ~~4607~~, 4610, and 4621 ~~of of,~~
and to amend and repeal Section 4620 of, the Business and Professions
Code, *and to amend Section 51034 of the Government Code,* relating
to ~~massage therapy.~~ *massage.*

LEGISLATIVE COUNSEL'S DIGEST

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

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. *Existing law authorizes the council to discipline an owner or operator of a massage business or establishment who is certified for the conduct of all individuals providing massage for compensation on the business premises.* 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. *By June 1, 2016, existing law requires the council to provide a report to the appropriate policy committees of the Legislature that includes specified information.*

This bill would extend the operation of these provisions ~~until~~ to January 1, ~~2019~~, 2020, and make nonsubstantive changes to delete obsolete provisions related to the interim board. *The bill would also authorize the council to discipline an owner or operator of a massage business or establishment under those circumstances if the owner or operator is an applicant for certification.* 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. *The bill would instead require that report to be submitted by January 1, 2017.*

Existing law authorizes the legislative body of a city or county for incorporated areas to enact an ordinance providing for the licensing for regulation of the business of massage when carried on within the city or county. Existing law authorizes that ordinance to condition the issuance of a license to engage in the business of massage upon proof that a massage business meets specified reasonable standards set by the ordinance. Existing law prohibits a city, county, or city and county from requiring a massage establishment to have specified internal physical structures, including windows, and requiring a person certified under the Massage Therapy Act to undergo a background check beyond what is required by the Massage Therapy Act.

This bill would specify that internal physical structures includes showers and would also specify that a background check includes a criminal background check or requiring submission of fingerprints for a federal or state criminal background check.

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.

27 (f) The council shall be governed by a board of directors
28 comprised of 13 members who shall be chosen in the following
29 manner:

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.

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

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

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

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

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

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

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

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

1 which a qualifying professional society, association, or other entity
2 has the authority to appoint shall be determined by alphabetical
3 order based on the full legal name of the entity as of January 1,
4 2014.

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

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

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

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

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

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

5 SEC. 2. Section 4604 of the Business and Professions Code is
6 amended to read:

7 4604. (a) In order to obtain certification as a massage therapist,
8 an applicant shall submit a written application and provide the
9 council with satisfactory evidence that he or she meets all of the
10 following requirements:

- 11 (1) The applicant is 18 years of age or older.
- 12 (2) The applicant has successfully completed the curricula in
13 massage and related subjects totaling a minimum of 500 hours, or
14 the credit unit equivalent, that incorporates appropriate school
15 assessment of student knowledge and skills.
 - 16 (A) Of the 500 hours, a minimum of 100 hours of instruction
17 shall address anatomy and physiology, contraindications, health
18 and hygiene, and business and ethics.
 - 19 (B) All of the 500 hours shall be from approved schools.
- 20 (3) The applicant has passed a massage and bodywork
21 competency assessment examination that meets generally
22 recognized psychometric principles and standards and that is
23 approved by the council. The successful completion of this
24 examination may have been accomplished before the date the
25 council is authorized by this chapter to begin issuing certificates.
- 26 (4) The applicant has successfully passed a background
27 investigation pursuant to Section 4606, and has not violated any
28 of the provisions of this chapter.
- 29 (5) All fees required by the council have been paid.
- 30 (6) The council may issue a certificate to an applicant who meets
31 the qualifications of this chapter if he or she holds a current and
32 valid registration, certification, or license from any other state
33 whose licensure requirements meet or exceed those defined within
34 this chapter. If an applicant has received education at a school that
35 is not approved by the council, the council shall have the discretion
36 to give credit for comparable academic work completed by an
37 applicant in a program outside of California.
- 38 (b) A certificate issued pursuant to this chapter and any
39 identification card issued by the council shall be surrendered to

1 the council by any certificate holder whose certificate is suspended
2 or revoked.

3 *SEC. 3. Section 4607 of the Business and Professions Code is*
4 *amended to read:*

5 4607. The council may discipline an owner or operator of a
6 massage business or establishment who is certified pursuant to
7 this chapter *or is an applicant for certification pursuant to this*
8 *chapter* for the conduct of all individuals providing massage for
9 compensation on the business premises.

10 ~~SEC. 3.~~

11 *SEC. 4.* Section 4610 of the Business and Professions Code is
12 amended to read:

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

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

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

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

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

26 (4) Revoking the certificate.

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

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

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

38 (e) A procedure is fair and reasonable if the procedures specified
39 in subdivision (f) or (g) are followed or if all of the following
40 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 or first-class
31 mail to any establishment or employer, whether public or private,
32 that the council has in its records as employing the certificate
33 holder, within 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 determines
11 that a certificate holder has committed an act punishable as a
12 sexually related crime or a felony that is substantially related to
13 the qualifications, functions, or duties of a certificate holder, the
14 council may immediately suspend the certificate of that certificate
15 holder. A determination to immediately suspend a certificate
16 pursuant to this subdivision shall be based upon a preponderance
17 of the evidence and the council shall also consider any available
18 credible mitigating evidence before making a decision. Written
19 statements by any person shall not be considered by the council
20 when determining whether to immediately suspend a certificate
21 unless made under penalty of perjury. If the council suspends a
22 certificate in accordance with this subdivision, the council shall
23 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, an
38 oral hearing or consideration of a written statement to challenge
39 the factual basis for the suspension. If the holder of the suspended
40 certificate requests an oral hearing or consideration of a written

1 statement on the suspension, the oral hearing or consideration of
 2 a written statement shall be held within 30 calendar days after
 3 receipt of the request. A holder whose certificate is suspended
 4 based on paragraph (1) shall be subject to revocation or other
 5 discipline in accordance with subdivision (a).

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

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

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

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

32 *SEC. 5. Section 4620 of the Business and Professions Code is*
 33 *amended to read:*

34 4620. (a) On or before ~~June 1, 2016~~, *January 1, 2017*, for the
 35 time period beginning on January 1, 2015, the council shall provide
 36 a report to the appropriate policy committees of the Legislature
 37 that includes all of the following:

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

1 (2) The council’s compensation guidelines and current salary
2 levels.

3 (3) The status of the council’s progress towards revising the
4 school approval process.

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

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

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

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

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

15 (E) The total number of complaints about certificate holders
16 received annually, including a subtotal of complaints received
17 from local law enforcement and the action taken by the council as
18 a result of those complaints.

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

21 (c) *This section shall be repealed on January 1, 2021.*

22 ~~SEC. 4.~~

23 *SEC. 6.* Section 4621 of the Business and Professions Code is
24 amended to read:

25 4621. (a) This chapter shall remain in effect only until January
26 1, ~~2019~~, 2020, and as of that date is repealed, unless a later enacted
27 statute, that is enacted before January 1, ~~2019~~, 2020, deletes or
28 extends that date.

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

32 *SEC. 7. Section 51034 of the Government Code is amended to*
33 *read:*

34 51034. (a) The Legislature in enacting this chapter recognizes
35 the existing power of a city or county to regulate a lawful massage
36 business pursuant to Section 37101, or pursuant to Section 16000
37 or 16100 of the Business and Professions Code, or under Section
38 7 of Article XI of the California Constitution.

39 (b) Nothing contained in this chapter shall be a limitation on
40 that existing power or on the existing authority of a city to license

1 for revenue purposes. A city, county, or city and county shall not
 2 enact or enforce an ordinance that conflicts with the provisions of
 3 this section or Chapter 10.5 (commencing with Section 4600) of
 4 Division 2 of the Business and Professions Code.

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

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

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

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

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

19 (5) Prohibit a massage establishment from locking its external
 20 doors if the massage establishment is a business entity owned by
 21 one individual with one or no employees or independent
 22 contractors.

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

27 (7) Impose a requirement that a person certified pursuant to
 28 Chapter 10.5 (commencing with Section 4600) of Division 2 of
 29 the Business and Professions Code take any test, medical
 30 examination, or ~~background-check~~ *check, including, but not limited*
 31 *to, a criminal background check or requiring submission of*
 32 *fingerprints for a federal or state criminal background check*, or
 33 comply with education requirements beyond what is required by
 34 Chapter 10.5 (commencing with Section 4600) of Division 2 of
 35 the Business and Professions Code.

36 (8) Impose a requirement that an individual holding a certificate
 37 issued in accordance with Chapter 10.5 (commencing with Section
 38 4600) of Division 2 of the Business and Professions Code, obtain
 39 any other license, permit, certificate, or other authorization to
 40 provide massage for compensation. However, this paragraph shall

1 not be construed to prohibit a city, county, or city and county from
2 requiring by ordinance that a massage business or establishment
3 obtain a license, permit, certificate, or other authorization in order
4 to operate lawfully within the jurisdiction.

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

10 (10) Prohibit a person certified pursuant to Chapter 10.5
11 (commencing with Section 4600) of Division 2 of the Business
12 and Professions Code from performing massage for compensation
13 on the gluteal muscles, prohibit specific massage techniques
14 recognized by the California Massage Therapy Council as
15 legitimate, or impose any other specific restriction on professional
16 practice beyond those set forth in subparagraph (E) of paragraph
17 (1) of subdivision (a) of Section 4609 of the Business and
18 Professions Code, except as authorized by Section 460 of the
19 Business and Professions Code.

O