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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, 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.

LEGISLATIVE COUNSEL'S DIGEST

AB 2194, as amended, Salas. California Massage Therapy Council: 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 to January 1, 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 a county for ~~incorporated~~ *unincorporated* 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~~ *prohibit a city, county, or city and county from requiring a massage establishment to have a shower or bath* 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.

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

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

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

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

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

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

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

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

38 (B) If there is more than one professional society, association,
39 or other entity that meets the requirements of subparagraph (A),
40 the appointment shall rotate based on a four-year term between

1 each of the qualifying entities. The qualifying entity shall maintain
2 its appointment authority during the entirety of the four-year term
3 during which it holds the appointment authority. The order in
4 which a qualifying professional society, association, or other entity
5 has the authority to appoint shall be determined by alphabetical
6 order based on the full legal name of the entity as of January 1,
7 2014.

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

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

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

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

36 (j) Prior to holding a meeting to vote upon a proposal to increase
37 the certification fees, the board shall provide at least 90 days'
38 notice of the meeting, including posting a notice on the council's
39 Internet Web site unless at least two-thirds of the board members
40 concur that there is an active threat to public safety and that voting

1 at a meeting without prior notice is necessary. However, the board
2 shall not waive the requirements of subdivision (i).

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

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

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

- 13 (1) The applicant is 18 years of age or older.
- 14 (2) The applicant has successfully completed the curricula in
15 massage and related subjects totaling a minimum of 500 hours, or
16 the credit unit equivalent, that incorporates appropriate school
17 assessment of student knowledge and skills.
 - 18 (A) Of the 500 hours, a minimum of 100 hours of instruction
19 shall address anatomy and physiology, contraindications, health
20 and hygiene, and business and ethics.
 - 21 (B) All of the 500 hours shall be from approved schools.
- 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 SEC. 3. Section 4607 of the Business and Professions Code is
6 amended to read:

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

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

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

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

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

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

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

27 (4) Revoking the certificate.

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

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

33 (d) Any denial or discipline shall be decided upon and imposed
34 in good faith and in a fair and reasonable manner. Any procedure
35 that conforms to the requirements of subdivision (f) is fair and
36 reasonable, but a court may also find other procedures to be fair
37 and reasonable when the full circumstances of the denial or
38 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, 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 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. 5. Section 4620 of the Business and Professions Code is
 36 amended to read:

37 4620. (a) On or before January 1, 2017, for the time period
 38 beginning on January 1, 2015, the council shall provide a report
 39 to the appropriate policy committees of the Legislature that
 40 includes all of the following:

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

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

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

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

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

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

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

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

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

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

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

25 SEC. 6. Section 4621 of the Business and Professions Code is
26 amended to read:

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

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

34 SEC. 7. Section 51034 of the Government Code is amended
35 to read:

36 51034. (a) The Legislature in enacting this chapter recognizes
37 the existing power of a city or county to regulate a lawful massage
38 business pursuant to Section 37101, or pursuant to Section 16000
39 or 16100 of the Business and Professions Code, or under Section
40 7 of Article XI of the California Constitution.

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

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

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

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

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

18 (4) *Require a massage establishment to have a shower or bath.*

19 ~~(4)~~

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

23 ~~(5)~~

24 (6) Prohibit a massage establishment from locking its external
25 doors if the massage establishment is a business entity owned by
26 one individual with one or no employees or independent
27 contractors.

28 ~~(6)~~

29 (7) Require a massage establishment to post any notice in an
30 area that may be viewed by clients that contains explicit language
31 describing sexual acts, mentions genitalia, or specific contraception
32 devices.

33 ~~(7)~~

34 (8) Impose a requirement that a person certified pursuant to
35 Chapter 10.5 (commencing with Section 4600) of Division 2 of
36 the Business and Professions Code take any test, medical
37 examination, or background check, including, but not limited to,
38 a criminal background check or requiring submission of
39 fingerprints for a federal or state criminal background check, or
40 comply with education requirements beyond what is required by

1 Chapter 10.5 (commencing with Section 4600) of Division 2 of
2 the Business and Professions Code.

3 ~~(8)~~

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

13 ~~(9)~~

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

19 ~~(10)~~

20 (11) 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