

AUTHOR'S COPY

## LEGISLATIVE COUNSEL'S DIGEST

Bill No.

General Subject: Massage therapy.

Existing law provides for the regulation of various healing arts professionals, including physicians and surgeons, chiropractors, physical therapists, and acupuncturists. Existing law authorizes the legislative body of a city or county to enact ordinances providing for the licensing and regulation of the business of massage when carried on within the city or county.

This bill would, commencing July 1, 2009, provide for the certification of massage practitioners and massage therapists by the Massage Therapy Organization, which would be a nonprofit organization meeting specified requirements, and would impose certain duties on the organization. The bill would require applicants for certification to be 18 years of age or older, to meet specified educational criteria, to provide to the organization and update certain information, to provide fingerprints for submission to the Department of Justice for a criminal background check, and to pay



fees required by the organization. The bill would require the Department of Justice to review specified information and to provide to the organization fitness determinations and certain other information. The bill would allow the organization to take certain disciplinary action against certificate holders and would require the organization to take certain action with regard to suspending or revoking a certificate if the certificate holder has been arrested for, and charged with, specified crimes. The bill would make it an unfair business practice for a person to state, advertise, or represent that he or she is certified or licensed by a governmental agency as a massage therapist or practitioner, or to make other false representations, as specified. The bill would prohibit a city, county, or city and county from enacting certain ordinances regulating the practice of massage by a certificate holder, as specified. The bill would make its provisions subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would repeal these provisions on January 1, 2015.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



# AUTHOR'S COPY

An act to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, relating to massage therapy.



080209903897BILL

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 10.5 (commencing with Section 4600) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 10.5. MASSAGE THERAPISTS

4600. As used in this chapter, the following terms shall have the following meanings:

(a) "Approved school" or "approved massage school" means a facility that meets minimum standards for training and curriculum in massage and related subjects and that is approved by any of the following:

(1) The Bureau For Private Postsecondary And Vocational Education pursuant to Section 94739 of the Education Code prior to July 1, 2007, and as of the date on which an applicant met the requirements of paragraph (2) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (c) of Section 4601.

(2) The Department of Consumer Affairs.

(3) An institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges and that is one of the following:

(A) A public institution.

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



(C) A for-profit institution.

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

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

(5) A school of equal or greater training that is approved by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

(b) "Compensation" means the payment, loan, advance, donation, contribution, deposit, or gift of money or anything of value.

(c) "Massage therapist," "bodyworker," "bodywork therapist," or "massage and bodywork therapist" means a person who is certified by the Massage Therapy Organization under subdivision (c) of Section 4601 and who administers massage for compensation.

(d) "Massage practitioner," "bodywork practitioner," or "massage and bodywork practitioner" means a person who is certified by the Massage Therapy Organization under subdivision (b) of Section 4601 and who administers massage for compensation.

(e) "Organization" means the Massage Therapy Organization created pursuant to this chapter, which shall be a nonprofit organization exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code. The organization may



commence activities as authorized by this section once it has submitted a request to the Internal Revenue Service seeking this exemption.

(f) "Registered school" means a facility that meets minimum standards for training and curriculum in massage and related subjects and that either was recognized by the Bureau for Private Postsecondary and Vocational Education pursuant to Section 94931 of the Education Code prior to July 1, 2007, and as of the date on which an applicant met the requirements of paragraph (2) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (c) of Section 4601, or is recognized by the organization or the Department of Consumer Affairs, by an institution accredited by the senior commission or the junior commission of the Western Association of Schools and Colleges as defined in paragraph (2) of subdivision (a) of Section 4600, by a college or university of the state higher education system as defined in Section 100850 of the Education Code, or by a school of equal or greater training that is approved by the corresponding agency in another state.

(g) For purposes of this chapter, the terms "massage" and "bodywork" shall have the same meaning.

4600.5. (a) A Massage Therapy Organization, as defined in subdivision (e) of Section 4600, shall be created and shall have the responsibilities and duties set forth in this chapter. The organization may take any reasonable actions to carry out the responsibilities and duties set forth in this chapter, including, but not limited to, hiring staff and entering into contracts.

(b) (1) The organization shall be governed by a board of directors made up of two representatives selected by each professional society, association, or other entity,



whose membership is comprised of massage therapists and that chooses to participate in the organization. To qualify, a professional society, association, or other entity shall have a membership in California of at least 1,000 individuals for the last three years, and shall have bylaws that require its members to comply with a code of ethics. The board of directors shall also include each of the following persons:

(A) One member selected by each statewide association of private postsecondary schools incorporated on or before January 1, 2009, whose member schools have together had at least 1,000 graduates in each of the previous three years from massage therapy programs meeting the approval standards set forth in subdivision (a) of Section 4600, except from those qualifying associations that choose not to exercise this right of selection.

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

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

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

The organization's bylaws shall establish a process by which any other directors may be selected.

(2) The initial board of directors shall establish the organization, initiate the request for tax-exempt status from the Internal Revenue Service, and solicit input from the massage community concerning the operations of the organization. The initial board of directors, in its discretion, may immediately undertake to issue the certificates



authorized by this chapter after adopting the necessary bylaws or other rules, or may establish by adoption of bylaws the permanent governing structure prior to issuing certificates.

(c) The board of directors shall establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties. Initial and renewal fees shall be established by the board of directors annually.

(d) It is the intent of the Legislature that the organization provide for open meetings similar to those required under the Bagley-Keene Open Meetings Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), that all certification procedures and requirements of the organization conform to due process standards, and that any certificate holder have standing to seek judicial review of any action by the organization.

4601. (a) The organization shall issue a certificate under this chapter to an applicant who satisfies the requirements of this chapter.

(b) (1) In order to obtain certification as a massage practitioner, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

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

(B) The applicant has successfully completed, at a single approved school, curricula in massage and related subjects totaling a minimum of 250 hours that incorporates appropriate school assessment of student knowledge and skills. Included in the hours shall be instruction addressing anatomy and physiology, contraindications,





health and hygiene, and business and ethics, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.

(C) All fees required by the organization have been paid.

(2) New certificates shall not be issued pursuant to this subdivision after December 31, 2014. Certificates issued pursuant to this section or subdivision (a) or (c) of Section 4604 on or before December 31, 2014, shall, after December 31, 2014, be renewed without any additional educational requirements, provided that the certificate holder continues to be qualified pursuant to this chapter.

(c) In order to obtain certification as a massage therapist, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

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

(2) The applicant satisfies at least one of the following requirements:

(A) He or she has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours. Of this 500 hours, a minimum of 250 hours shall be from approved schools. The remaining 250 hours required may be secured either from approved or registered schools, or from continuing education providers approved by, or registered with, the organization or the Department of Consumer Affairs. After December 31, 2014, applicants may only satisfy the curricula in massage and related subjects from approved schools.

(B) The applicant has passed an examination that has been approved by the organization.

(3) All fees required by the organization have been paid.



(d) The organization shall issue a certificate to an applicant who meets the other qualifications of this chapter and holds a current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed those defined within this chapter. The organization shall have discretion to give credit for comparable academic work completed by an applicant in a program outside of California.

(e) An applicant applying for a massage therapist or massage practitioner certificate shall file with the organization a written application provided by the organization, showing to the satisfaction of the organization that he or she meets all of the requirements of this chapter.

(f) Any certification issued under this chapter shall be subject to renewal every two years in a manner prescribed by the organization, and shall expire unless renewed in that manner. The organization may provide for the late renewal of a license.

(g) (1) The organization shall have the responsibility to determine that the school or schools from which an applicant has obtained the education required by this chapter meet the requirements of this chapter. If the organization has any reason to question whether or not the applicant received the education that is required by this chapter from the school or schools that the applicant is claiming, the organization shall investigate the facts to determine that the applicant received the required education prior to issuing a certificate.

(2) For purposes of paragraph (1) and any other provision of this chapter for which the organization is authorized to receive factual information as a condition of taking any action, the organization shall have the authority to conduct oral interviews



of the applicant and others or to make any investigation deemed necessary to establish that the information received is accurate and satisfies any criteria established by this chapter.

4601.2. No certificates shall be issued by the organization pursuant to this chapter prior to July 1, 2009.

4601.3. (a) Prior to issuing a certificate to the applicant or designating a custodian of records, the organization shall require the applicant or the custodian of records candidate to submit fingerprint images in a form consistent with the requirements of this section. The organization shall submit the fingerprint images and related information to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and of state and federal level arrests for which the Department of Justice establishes that the applicant or candidate was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and shall compile and disseminate a fitness determination regarding the applicant or candidate to the organization.

(b) The Department of Justice shall provide information to the organization pursuant to subdivision (p) of Section 11105 of the Penal Code.



(c) The Department of Justice and the organization shall charge a fee sufficient to cover the cost of processing the request for state and federal level criminal offender record information.

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

(e) It is the intent of the Legislature to create voluntary certification for the massage therapy profession that will enable consumers to easily identify credible certified massage therapists, to assure that certified massage therapists have completed sufficient training at approved schools, to phase in increased education and training standards consistent with other states, to assure that massage therapy can no longer be used as a subterfuge to violate subdivision (a) of Section 647 of the Penal Code or subdivision (b) of Section 647 of the Penal Code, and to create a self-funded nonprofit oversight body to approve certification and education requirements for massage therapists.

4601.4. Organization directors, employees, or volunteer individuals may undergo the background investigation process delineated in Section 4601.3.

4602. (a) The organization may discipline a certificate holder by any, or a combination, of the following methods:

(1) Placing the certificate holder on probation.



- (2) Suspending the certificate and the rights conferred by this chapter on a certificate holder for a period not to exceed one year.
- (3) Revoking the certificate.
- (4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.
- (5) Taking other action as the organization, as authorized by this chapter or its bylaws, deems proper.
  - (b) The organization may issue an initial certificate on probation, with specific terms and conditions, to any applicant.
  - (c) (1) Notwithstanding any other provision of law, if the organization receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of subdivision (b) of Section 647 of the Penal Code or any other offense described in subdivision (h) of Section 4603, the organization shall take all of the following actions:
    - (A) Immediately suspend, on an interim basis, the certificate of that certificate holder.
    - (B) Notify the certificate holder at the address last filed with the organization that the certificate has been suspended, and the reason for the suspension.
    - (C) Notify any business that the organization has in its records as employing the certificate holder that the certificate has been suspended.
  - (2) Upon notice to the organization that the charges described in paragraph (1) have resulted in a conviction, the suspended certificate shall become subject to permanent revocation. The organization shall provide notice to the certificate holder



that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence that the conviction is either invalid or that the information is otherwise erroneous.

(3) Upon notice that the charges have resulted in an acquittal, or have otherwise been dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any business that received notice pursuant to subparagraph (C) of paragraph (1) shall be immediately notified of the reinstatement.

4602.5. (a) Upon the request of any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses, the organization shall provide information concerning a certificate holder, including, but not limited to, the current status of the certificate, any history of disciplinary actions taken against the certificate holder, the home and work addresses of the certificate holder, and any other information in the organization's possession that is necessary to verify facts relevant to administering the local ordinance.

(b) The organization shall accept information provided by any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses. The organization shall have the responsibility to review any information received and to take any actions authorized by this chapter that are warranted by that information.



4603. It is a violation of this chapter for a certificate holder to commit, and the organization may deny an application for a certificate or discipline a certificate holder for, any of the following:

(a) Unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions.

(b) Procuring a certificate by fraud, misrepresentation, or mistake.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any rule or bylaw adopted by the organization.

(d) Conviction of any felony, or conviction of a misdemeanor that is substantially related to the qualifications or duties of a certificate holder, in which event the record of the conviction shall be conclusive evidence of the crime.

(e) Impersonating an applicant or acting as a proxy for an applicant in any examination referred to under this chapter for the issuance of a certificate.

(f) Impersonating a certified practitioner or therapist, or permitting or allowing an uncertified person to use a certificate.

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

(h) Committing any act punishable as a sexually related crime.



4603.5. It shall be the responsibility of any certificate holder to notify the organization of his or her home address, as well as the address of any business establishment where he or she regularly works as a massage therapist or massage practitioner, whether as an employee or as an independent contractor. A certificate holder shall notify the organization within 30 days of changing either his or her home address or the address of the business establishment where he or she regularly works as a massage therapist or massage practitioner.

4604. (a) Notwithstanding Section 4601, the organization may grant a massage practitioner certificate to any person who applies on or before January 1, 2011, with one of the following:

(1) A current valid massage permit or license from a California city, county, or city and county and documentation evidencing that the person has completed at least a 100-hour course in massage at a state-approved or registered school, or out-of-state school recognized by the organization as providing comparable education, has been practicing for at least three years, and has provided at least 1,000 hours of massage to members of the public for compensation.

(2) Documentation evidencing that the person has completed at least a 100-hour course in massage at a state-approved or registered school, or out-of-state school recognized by the organization as providing comparable education, has been practicing for at least three years, and has provided at least 1,750 hours of massage to members of the public for compensation. For purposes of this subdivision, evidence of practice shall include either of the following:





(A) A W-2 form or employer's affidavit containing the dates of the applicant's employment.

(B) Tax returns indicating self-employment as a massage practitioner or massage therapist or any other title that may demonstrate experience in the field of massage.

(3) Documentation evidencing that the person holds a current valid certificate of authorization as an instructor at an approved massage school, or holds the position of a massage instructor at a school accredited by an agency recognized by the United States Department of Education, or colleges and universities of the state higher education system, as defined in Section 100850 of the Education Code.

(b) (1) After reviewing the information submitted under subdivision (a), the organization may require additional information necessary to enable it to determine whether to issue a certificate.

(2) If an applicant under paragraph (1) of subdivision (a) or paragraph (1) of subdivision (c) has not complied with Section 4601.3, or its equivalent, when obtaining a license or permit from the city, county, or city and county, the organization shall require the applicant to comply with Section 4601.3 prior to issuing a certificate pursuant to this section.

(c) (1) A person applying for a massage practitioner certificate on or before January 1, 2011, who meets the educational requirements of either paragraph (1) or (2) of subdivision (a), but who has not completed the required number of practice hours prior to submitting an application pursuant to this section, may apply for a conditional certificate.



(2) An applicant for a conditional certificate shall, within five years of being issued the conditional certificate, be required to complete at least 30 hours of additional education per year from schools or courses described in paragraph (5) until he or she has completed a total of at least 250 hours of education, which may include massage education hours previously completed in a massage course described in either paragraph (1) or (2) of subdivision (a).

(3) Upon successful completion of the requirements of this subdivision, the organization shall issue a certificate to the person that is not conditional.

(4) The organization shall immediately revoke the conditional certificate issued to any person pursuant to this subdivision if the time period specified in paragraph (2) expires without proof of completion of the requirements having been filed with the organization.

(5) Any additional education required by this section may be completed through courses provided by any of the following:

(A) An approved school.

(B) A registered school.

(C) A provider approved by, or registered with, the organization or the Department of Consumer Affairs.

(D) A provider that establishes to the satisfaction of the organization that its course or courses are appropriate educational programs for this purpose.

(d) Nothing in this section shall preclude the organization from exercising any power or authority conferred by this chapter with respect to a conditional certificate holder.



4605. It is an unfair business practice for any person to state or advertise or put out any sign or card or other device, or to represent to the public through any print or electronic media, that he or she is certified, registered, or licensed by a governmental agency as a massage therapist or massage practitioner.

4606. It is an unfair business practice for any person to hold oneself out or use the title of “certified massage therapist” or “certified massage practitioner” or any other term, such as “licensed,” “registered,” or “CMT,” that implies or suggests that the person is certified as a massage therapist or practitioner without meeting the requirements of Section 4601 or 4604.

4607. The superior court in and for the county in which any person acts as a massage practitioner or massage therapist in violation of the provisions of this chapter, may, upon a petition by any person, issue an injunction or other appropriate order restraining the conduct. The proceedings under this paragraph shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

4608. Nothing in this chapter is intended to limit or prohibit a person who obtains a certification pursuant to this chapter from providing services pursuant to, and in compliance with, Sections 2053.5 and 2053.6.

4612. (a) (1) The holder of a certificate issued pursuant to this chapter shall have the right to practice massage, consistent with this chapter and the qualifications established by his or her certification, in any city, county, or city and county in this state and shall not be required to obtain any other license, permit, or other authorization, except as provided in this section, to engage in that practice.



(2) Notwithstanding any other provision of law, a city, county, or city and county shall not enact an ordinance that requires a license, permit, or other authorization to practice massage by an individual who is certified pursuant to this chapter and who is practicing consistent with the qualifications established by his or her certification. No provision of any ordinance enacted by a city, county, or city and county that is in effect before the effective date of this chapter, and that requires a license, permit, or other authorization to practice massage, may be enforced against an individual who is certified pursuant to this chapter.

(3) Except as provided in subdivision (b), nothing in this section shall be interpreted to prevent a city, county, or city and county from adopting or enforcing any local ordinance governing zoning, business licensing, and reasonable health and safety requirements for massage establishments or businesses. Subdivision (b) shall not apply to any massage establishment or business that employs or uses persons to provide massage services who are not certified pursuant to this chapter.

(b) (1) This subdivision shall apply only to massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified pursuant to this chapter, and to massage establishments or businesses that employ or use only persons certified pursuant to this chapter to provide massage services. For purposes of this subdivision, a sole proprietorship is a business where the owner is the only person employed by that business to provide massage services.

(2) (A) Any massage establishment or business described in paragraph (1) shall maintain on its premises evidence for review by local authorities that demonstrates that all persons providing massage services are certified.



(B) Nothing in this section shall preclude a city, county, or city and county from including in a local ordinance a provision that requires a business described in paragraph (1) to file copies or provide other evidence of the certificates held by the persons who are providing massage services at the business.

(3) A city, county, or city and county may charge a massage business or establishment a business licensing fee sufficient to cover the costs of the business licensing activities established by a local ordinance described in this section.

(4) Nothing in this section shall prohibit a city, county, or city and county from adopting land use and zoning requirements applicable to massage establishments or businesses, provided that these requirements shall be no different than the requirements that are uniformly applied to other professional or personal services businesses.

(5) Local building code or physical facility requirements applicable to massage establishments or businesses shall not require additional restroom, shower, or other facilities that are not uniformly applicable to other professional or personal service businesses, nor shall building or facility requirements be adopted that (A) require unlocked doors when there is no staff available to assure security for clients and massage staff who are behind closed doors, or (B) require windows that provide a view into massage rooms that interfere with the privacy of clients of the massage business.

(6) A city, county, or city and county may adopt reasonable health and safety requirements with respect to massage establishments or businesses, including, but not limited to, requirements for cleanliness of massage rooms, towels and linens, and reasonable attire and personal hygiene requirements for persons providing massage services, provided that nothing in this paragraph shall be interpreted to authorize



adoption of local ordinances that impose additional qualifications, such as medical examinations, background checks, or other criteria, upon any person certified pursuant to this chapter.

(7) Nothing in this section shall preclude a city, county, or city and county from doing any of the following:

(A) Requiring an applicant for a business license to operate a massage business or establishment to fill out an application that requests the applicant to provide relevant information.

(B) Making reasonable investigations into the information so provided.

(C) Denying or restricting a business license if the applicant has provided materially false information.

(c) An owner or operator of a massage business or establishment subject to subdivision (b) shall be responsible for the conduct of all employees or independent contractors working on the premises of the business. Nothing in this section shall preclude a local ordinance from authorizing suspension, revocation, or other restriction of a license or permit issued to a massage establishment or business if violations of this chapter, or of the local ordinance, occur on the business premises.

(d) Nothing in this section shall preclude a city, county, or city and county from adopting a local ordinance that is applicable to massage businesses or establishments described in paragraph (1) of subdivision (b) and that does either of the following:

(1) Provides that duly authorized officials of the city, county, or city and county have the right to conduct reasonable inspections, during regular business hours, to



080209903897BILL

ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements.

(2) Requires an owner or operator to notify the city, county, or city and county of any intention to rename, change management, or convey the business to another person.

4613. (a) Nothing in this chapter shall restrict or limit in any way the authority of a city, county, or city and county to adopt a local ordinance governing any person who is not certified pursuant to this chapter.

(b) Nothing in this chapter is intended to affect the practice rights of any person licensed by the state to practice or perform any functions or services pursuant to that license.

4615. This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

4620. This chapter shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

