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AMENDED IN SENATE AUGUST 4, 2014  
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AMENDED IN ASSEMBLY MAY 1, 2013  
AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1147**

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**Introduced by Assembly Members Bonilla, Gomez, and Holden  
(Coauthors: Assembly Members Chau, Gatto, ~~Muratsuchi, and  
Skinner and Muratsuchi~~)**

February 22, 2013

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An act to amend Section 460 of, and to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of, the Business and Professions Code, and to amend Section 51034 of the Government Code, relating to healing arts.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as amended, Bonilla. Massage therapy.

Existing law, until January 1, 2015, provides for the voluntary certification of massage practitioners and massage therapists by the California Massage Therapy Council. Existing law specifies the requirements for the council to issue to an applicant a certificate as a massage practitioner or massage therapist. Existing law authorizes a city, county, or city and county to impose certain requirements on massage establishments or businesses that are the sole proprietorship of an individual certified pursuant to existing state law or that employ or use only persons who are so certified. Existing law authorizes a city, county, or city and county to, among other things, adopt reasonable health and safety requirements, as specified, pertaining to those massage establishments or businesses, and to require an applicant for a business license to operate a massage business or establishment to fill out an application that requests relevant information, as specified.

This bill would reenact, revise, and recast these provisions to, among other things, establish an interim board of directors to govern the council until September 15, 2015, and provide for the appointment of a new board of directors consisting of 13 members, as specified, whose 4-year terms would begin on that date. The bill would authorize the board to establish fees reasonably related to the costs of providing services and performing its duties, not to exceed \$300. The bill would require the board to provide at least 90 days' advance notice prior to holding a meeting to vote upon a proposal to increase the certification fees, as specified, except as provided. The bill would also require the board to notify certificate holders of a board action that increases those fees.

The bill would discontinue the issuance of new massage practitioner certificates after January 1, 2015, except as provided, but would authorize the renewal of massage practitioner certificates issued prior to January 1, 2015. The bill would require that all certificates issued pursuant to these provisions be subject to renewal every 2 years, except as provided. The bill would require the council to develop policies, procedures, rules, or bylaws governing the approval and unapproval of schools that provide education required for certification, as specified.

The bill would authorize the council to deny an application for a certificate, or to discipline a certificate holder for a violation of these provisions, as specified. The bill would require the board to exercise its denial or discipline authority by means of fair and reasonable

procedures that, among other things, provide the applicant or certificate holder with notice and an opportunity to be heard, as specified. The bill would provide that unprofessional conduct in violation of these provisions includes, among other things, engaging in sexually suggestive advertising related to massage services and engaging in sexual activity while providing massage services for compensation.

The bill would, notwithstanding any other law, prohibit a city, county, or city and county from enacting or enforcing an ordinance that conflicts with these provisions or other corresponding specified provisions. However, the bill would authorize a city, county, or city and county to adopt or enforce local ordinances that govern zoning, business licensing, or reasonable health and safety requirements for establishments or businesses of a licensed or certified healing arts professional, including a certified massage therapist. The bill would also make clarifying and conforming changes regarding local regulation of massage establishments or businesses.

The bill would authorize a court to issue an injunction or to provide any other relief it deems appropriate for violations of these provisions, as specified. The bill would provide that the powers and duties of the council are subject to review by the appropriate committees of the Legislature and would require the council to provide a specified report to these committees on or before June 1, 2016.

The bill would provide that these provisions are issues of statewide concern, and therefore applicable statewide. The bill would also provide that its provisions are severable.

The bill would repeal these provisions on January 1, 2017.

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

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 460 of the Business and Professions Code
- 2 is amended to read:
- 3 460. (a) No city, county, or city and county shall prohibit a
- 4 person or group of persons, authorized by one of the agencies in
- 5 the Department of Consumer Affairs or an entity established
- 6 pursuant to this code by a license, certificate, or other means to
- 7 engage in a particular business, from engaging in that business,
- 8 occupation, or profession or any portion of that business,
- 9 occupation, or profession.

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

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

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

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

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

26  
27 CHAPTER 10.5. MASSAGE THERAPY ACT  
28

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

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

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

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

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

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

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

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

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

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

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

1 (A) A public institution.

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

6 (C) A for-profit institution.

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

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

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

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

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

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

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

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

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

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

1 (i) “Sole provider” means a massage business where the owner  
2 owns 100 percent of the business, is the only person who provides  
3 massage services for compensation for that business pursuant to  
4 a valid and active certificate issued in accordance with this chapter,  
5 and has no other employees or independent contractors.

6 4602. (a) The California Massage Therapy Council, as defined  
7 in subdivision (d) of Section 4601, is hereby established and shall  
8 carry out the responsibilities and duties set forth in this chapter.

9 (b) The council may take any reasonable actions necessary to  
10 carry out the responsibilities and duties set forth in this chapter,  
11 including, but not limited to, hiring staff, entering into contracts,  
12 and developing policies, procedures, rules, and bylaws to  
13 implement this chapter.

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

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

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

30 (f) Until September 15, 2015, the council shall be governed by  
31 a board of directors comprised of two representatives selected by  
32 each professional society, association, or other entity, which  
33 membership is comprised of massage therapists and that chooses  
34 to participate in the council. To qualify, a professional society,  
35 association, or other entity shall have a dues-paying membership  
36 in California of at least 1,000 individuals for the last three years  
37 and shall have bylaws that require its members to comply with a  
38 code of ethics. The board of directors shall also include each of  
39 the following persons:

1 (1) One member selected by each statewide association of  
2 private postsecondary schools incorporated on or before January  
3 1, 2010, which member schools have together had at least 1,000  
4 graduates in each of the previous three years from massage therapy  
5 programs that meet the approval standards set forth in subdivision  
6 (a) of Section 4601, unless a qualifying association chooses not  
7 to exercise this right of selection.

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

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

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

15 (5) One member appointed by the Office of the Chancellor of  
16 the California Community Colleges, unless that entity chooses not  
17 to exercise this right of selection. The person appointed, if any,  
18 shall not be part of any massage therapy certificate or degree  
19 program.

20 (6) The council's bylaws shall establish a process for appointing  
21 other professional directors to the council who have knowledge  
22 of the massage industry or can bring needed expertise to the  
23 operation of the council for purposes of complying with Section  
24 4603.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (4) Revoking the certificate.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (1) The current status of an application or certificate.

27 (2) Any history of disciplinary actions.

28 (3) The home and work addresses of the applicant or certificate  
29 holder.

30 (4) The name and home and work addresses of any person whose  
31 certificate has been suspended and the length of the suspension,  
32 if the work address is located within the jurisdiction of agency  
33 making the request.

34 (5) Any other information in the council's possession that is  
35 necessary to verify facts relevant to administering the local  
36 ordinance.

37 (b) Upon the request of the council, any law enforcement agency  
38 or any other representative of a local government agency with  
39 responsibility for regulating or administering a local ordinance  
40 relating to massage or massage establishments is authorized to

1 provide information to the council concerning an applicant or  
2 certificate holder, including, but not limited to, any of the  
3 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

O