

The following is what has been submitted to the California Legislative Counsel, January 2005, as proposed occupational regulation of the practice of massage.

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) [no changes to (a)]

(b) Subdivision (a) applies to the following boards or committees:

(1)

(24) Board of Massage Therapy.

SEC. 2. 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. The Legislature finds and declares that the public interest is served through the licensing of massage practitioners and massage therapists, and that the health and welfare of citizens of California will be protected by identifying to the public those individuals who are qualified to call themselves massage practitioners and massage therapists. The Legislature finds that the public interest is better served through having a central agency to license and regulate the massage profession, and investigate consumer complaints, than is possible through a patchwork of local regulations. This chapter establishes minimum qualifications for entry into the profession and effective discipline for practitioners who violate the law.

4601. As used in this chapter, the following terms shall have the following meaning:

(a) "Massage" means the application of a system of structured touch, pressure, movement, and holding to the soft tissues of the human body with the intent to enhance or restore the health and well-being of the client. The practice includes the external application of water, heat, cold, lubricants, salt scrubs, or other topical preparations; use of devices that mimic or enhance the actions of the hands; and determination of whether massage therapy is appropriate or contraindicated, or whether referral to another health care practitioner is appropriate. For purposes of this chapter, massage and bodywork are interchangeable.

(b) "Massage Therapist," "Bodyworker," "Bodywork Therapist," or "Massage and Bodywork Therapist" means a person who is licensed by the Board of Massage Therapy under subdivision (b) of Section 4604.1 and administers massage for compensation.

(c) "Massage Practitioner," "Bodywork Practitioner," or "Massage and Bodywork Practitioner" means a person who is licensed by the Board of Massage Therapy under subdivision (a) of Section 4604.1 and administers massage for compensation.

(d) "Board" means the Board of Massage Therapy within the Department of Consumer Affairs.

(e) "Massage Therapy Fund" or "Fund" means a fund set up by the board to accept and disburse fees paid by licensees for the purpose of administering the provisions of this chapter.

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

(g) "Registered school" means a facility that meets minimum standards for training and curriculum in massage and related subjects as determined by this chapter and that is recognized by the Bureau For Private Postsecondary And Vocational Education pursuant to Section 94931 of the Education Code, by an institution accredited by the senior commission or junior commission of the Western Association of Schools and Colleges as defined in paragraph (7) of subdivision (b) of Section 94739 of the Education Code, colleges and universities of the state higher education system as defined in Section 100850 of the Education Code, or a school of equal or greater training that is approved by the corresponding agency in another state.

(h) "Approved school" or "approved massage school" means a facility that meets minimum standards for training and curriculum in massage and related subjects as determined by this chapter and that is approved by the Bureau For Private Postsecondary And Vocational Education pursuant to Section 94915 of the Education Code, by an institution accredited pursuant to paragraph (7) of subdivision (b) of Section 94739 of the Education Code, colleges and universities of the state higher education system as defined in Section 100850 of the Education Code, or a school providing 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.

(i) "Person" means an individual, partnership, unincorporated organization, or corporation.

(j) "Professional" means both Licensed Massage Practitioner and Licensed Massage Therapist.

(k) "Recognized professional association" means an organization offering services to massage professionals that has a code of ethics and a grievance resolution procedure, eligibility requirements and education standards.

(m) "Massage establishment" means any premises, building or part of a building where any activity required to be licensed under this chapter is practiced.

4602. (a) The Board of Massage Therapy is hereby created in the Department of Consumer Affairs.

(b) The board shall have the following powers and duties:

(1) Administer, coordinate, and enforce the provisions of this chapter, and evaluate the qualifications of applicants for licensing under this chapter.

(2) Issue, renew, deny, suspend, or revoke licenses under this chapter. Licenses shall be valid for a period not to exceed two years. Licenses shall be issued to qualified applicants within 60 days of receipt of a completed application.

(3) Conduct investigation of persons engaged in massage or massage establishments and to inspect the professional practice of licensees for compliance. The refusal of a practitioner to permit inspections shall be grounds for revocation, suspension or refusal

to issue a license pursuant to this chapter. Investigations shall be conducted within 90 days.

(4) Provide a system for adjudication and investigation of consumer complaints and seek an injunction through the Attorney General's office against any person or massage establishment not in compliance with the provisions of this chapter.

(5) Conduct proceedings under this chapter in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(6) Employ appropriate professional, clerical, or other special personnel necessary to carry out its duties subject to Sections 107 and 154.

(7) Consider the diversity of disciplines within the profession, and how this diversity impacts the public, at all times when making decisions, and stay current and informed regarding the various disciplines of massage therapy practice.

(8) Establish reasonable fees for applications, initial and renewal licenses, fines, and other services provided by the board. Initial and renewal license fees shall be established by the board in an amount that does not exceed fifty dollars (\$50) per year. An application fee shall not exceed fifty dollars (\$50). A late renewal fee shall be 150% of the established renewal fee. The fee for criminal history record checks shall be sufficient to recover the actual costs to collect and process fingerprints and the information obtained thereby. Any other fee authorized by this chapter shall not exceed the actual costs of providing the services for which the fee is required.

(9) Maintain a record of all proceedings and make such records available to all licensees in an annual report.

(10) Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

4602.10. (a) The board shall be composed of seven members who are residents of California, as follows:

(1) Five professional members currently licensed as either massage practitioners or massage therapists with at least three years of consecutive, recent experience in the practice of massage or massage therapy. A maximum of two members can be individuals who also own or direct massage therapy schools.

(2) Two public members who are not and have never been licensed under this chapter, are not in training to become massage practitioners or massage therapists, are not the spouse of a person so licensed, are not related to or share a household with someone so licensed, have not had within two years of the appointment a substantial financial interest in a licensee regulated by the board, and otherwise have no financial interest, directly or indirectly, in the profession. One public member may hold a license in another health care profession.

(b) The board may appoint advisors to obtain input concerning any sector of the massage profession that the board may require.

(c) All members shall be appointed for a term of four years. The Governor shall appoint five members, three of whom shall be professional members and two of whom shall be public members, the Senate Committee on Rules shall appoint one member,

and the Speaker of the Assembly shall appoint one member. Initial appointments to the board shall be made from those eligible for licensing under Section 4603. Initial appointments shall be made as follows:

(1) The Governor shall appoint two board members for a term of one year, two board members for a term of two years, and one board member for a term of three years. Initial appointments by the Senate Committee on Rules and Speaker of the Assembly shall be for four years.

(2) Appointments made thereafter shall be for four-year terms, but no person may be appointed to serve more than two consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section.

(3) Vacancies shall be filled by appointment for the unexpired term.

(d) Each member shall serve until his or her successor is appointed and qualified, unless the member is no longer competently performing the duties of office. Any vacancy on the board shall be filled for the balance of the unexpired term by the appointing power who appointed the board member whose departure created the vacancy. The appointing power may remove members of the board from office for neglect of any duty imposed by state law, for incompetence, or for unprofessional or dishonorable conduct.

(e) Members of the board shall receive no compensation for their services but shall be entitled to reasonable travel and other expenses incurred in the execution of their powers and duties in accordance with Section 103.

(f) The members of the board shall annually elect officers in accordance with rules established by the board.

(g) The board shall meet as frequently as shall be reasonably necessary to implement the provisions of this act, but not less than twice a year. The board may convene from time to time until its business is concluded. Special meetings of the board may be held at any time and place designated by the board.

(h) Notice of each meeting of the board shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). Four members of the board shall constitute a quorum for the purpose of transacting board business.

4602.20. (a) All fees collected by the board shall be paid into the State Treasury and shall be credited to the Massage Therapy Fund which is hereby created in the State Treasury. The money in the fund shall be available to the board for expenditure for the purposes of this chapter only upon appropriation by the Legislature.

(b) Notwithstanding subdivision (a), all money received and credited to the Massage Therapy Fund in the 2006-07 fiscal year is hereby appropriated to the board for the purpose of implementing this chapter.

4602.30. (a) The board may, after a hearing, suspend or revoke a license, or place a licensee on probation under terms and conditions the board deems reasonable.

Notwithstanding subdivision (c), the board may deny an application for an initial license without hearing upon its determination that the applicant has failed to meet the requirements of this chapter. A denial shall specify the basis for the board's determination that the applicant has failed to meet these requirements.

(b) As used in this chapter, "license" includes a license, limited permit, or any other authorization to engage in practice regulated by this chapter.

(c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

4602.40. (a) The board may discipline a licensee by any or a combination of the following methods:

- (1) Placing the licensee on probation.
- (2) Suspending the license and the right to practice massage therapy for a period not to exceed one year.
- (3) Revoking the license.
- (4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.
- (5) Taking other action as the board, in its discretion, deems proper, including the levying of fines as provided by Section 125.9.

(b) The board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any provision of this chapter or the regulations adopted pursuant to it, but who has met all other requirements for licensure.

4602.50. The board may deny an application for a license or discipline a licensee for any of the following:

- (a) Unprofessional conduct, including, but not limited to, the following:
 - (1) Incompetence or gross negligence in carrying out usual massage or massage therapy functions.
 - (2) Repeated similar negligent acts in carrying out usual massage or massage therapy functions.
 - (3) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a licensee 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 license 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 regulation adopted pursuant to this chapter.
- (d) Conviction of a crime substantially related to the qualifications, functions, or duties of a licensee, in which event the record of the conviction shall be conclusive evidence of the crime.
- (e) Impersonating an applicant or acting as proxy for an applicant in any examination referred to under this chapter for the issuance of a license.

(f) Impersonating a licensed practitioner, or permitting or allowing another unlicensed person to use a license.

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

(h) Committing any act punishable as a sexually related crime, if that act is substantially related to the qualifications, functions, or duties of a licensee.

4602.60. The board shall retain jurisdiction to proceed with any investigation, action or disciplinary proceeding against a licensee, or to render a decision suspending or revoking a license, regardless of the expiration, lapse, or suspension of the license by operation of law, by order or decision of the board or a court of law, or by the voluntary surrender of a license by the licensee.

4602.70. If a license is suspended, the holder may not practice massage therapy during the term of suspension. Upon the expiration of the term of suspension, the license shall be reinstated and the holder entitled to resume practice under any remaining terms of the discipline, unless it is established to the satisfaction of the board that the holder of the license practiced in this state during the term of suspension. In this event, the board may, after a hearing on this issue alone, revoke the license.

4603. It shall be unlawful to advertise the practice of massage or massage therapy using the term massage or other term that implies massage without holding a current, valid license issued by the board. It shall also be unlawful for any licensee to advertise in any public publication or communication without including in the advertisement the license number and title of the massage therapist or practitioner. Advertising by multi-practitioner practices may alternatively state "All massage professionals at this facility possess a valid California massage license" or substantially identical words.

4604. (a) Except as provided in Section 4606, it shall be unlawful for any person to practice massage or massage therapy unless that person holds a current valid license issued in accordance with the provisions of this chapter. It shall further be unlawful for any person to hold himself or herself out as a massage practitioner, bodywork practitioner, massage and bodywork practitioner, massage therapist, bodywork therapist, bodyworker, or massage and bodywork therapist, or any titles or initials with the intent to represent that the person practices or is authorized to practice massage or massage therapy, unless that person holds a current valid license issued in accordance with the provisions of this chapter or is exempted from this statute under provisions of Section 4606. Only an individual may be licensed to practice massage or massage therapy.

(b) Any person who violates subdivision (a) is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment of not more than six months in a county jail, or by both that fine and imprisonment.

4604.1. The board shall issue a license to any applicant who satisfies all of the requirements of this chapter.

(a) In order to obtain a license as a massage practitioner, applicants shall submit a written application as required by subdivision (d) and provide the board with satisfactory evidence of (1), (2) and (3) as follows:

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

(2) The applicant has successfully completed, at a single approved school, curricula in massage and related subjects, totaling a minimum of 250 hours, which curricula must incorporate 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; at least 100 hours of the required minimum of 250 hours shall be devoted to these curriculum areas.

(3) All required fees have been paid.

(b) In order to obtain a license as a massage therapist, applicants shall submit a written application as provided by subdivision (d) and provide the board with satisfactory evidence of all of the following:

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

(2) The applicant satisfies one of the following:

(A) The applicant has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours. Of this total, a minimum of 250 hours shall be from programs which satisfy the criteria established in paragraph (2) of subdivision (a).

The remaining 250 hours required may be secured either from these programs, from registered schools, or from approved continuing education providers meeting qualifications set forth in subdivision (b) of Section 4604.3.

(B) The applicant has passed a certification exam that has been approved by the board.

(C) The Board shall have discretion to grant a Massage Therapist license to a licensed Massage Practitioner or applicant possessing a combination of relevant additional education knowledge, skills and client contact experience that the Board deems sufficient. The board is authorized to require payment of a fee to cover its costs of issuing a new license upgrading a licensee from "Massage Practitioner" to "Massage Therapist." To assure fairness in applicant satisfaction of continuing education requirements, the term of such newly issued license shall expire at the same date as when the massage practitioner license was scheduled to expire, unless the request for the upgrade is made simultaneous with a license renewal, in which case a new two year Massage Therapist license will be issued to qualified applicants.

(3) All required fees have been paid.

(c) The board shall issue a license 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 board shall have discretion to give credit for comparable academic work completed by an applicant in a program outside California.

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

(e) Any license issued under this chapter shall be subject to renewal in a manner prescribed by the board and shall expire unless renewed in that manner. The board may provide for the late renewal of a license.

(f) (1) The board shall submit fingerprint images and related information to the Department of Justice of applicants for licensure for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and state and federal level arrests for which the Department of Justice establishes that the applicant 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.

(2) Pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, the Department of Justice shall provide the following information to the board:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

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

(4) Fingerprint images and related information submitted pursuant to this section include fingerprint images and related information transmitted electronically.

(5) The board 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 for which fingerprint images and related information are submitted to conduct a search for state and federal level criminal offender record information.

(g) Upon a written request, the board may grant inactive status to a massage practitioner or massage therapist who is in good standing, who meets the requirements of this section. An inactive licensee shall not be required to satisfy continuing education requirements during the period of inactivity, and shall be re-issued a license upon payment of a renewal fee and proof that no event has occurred that would disqualify the inactive licensee from holding a license.

4604.2. (a) Notwithstanding Section 4604.1, the board may grant a massage practitioner license to any person who applies on or before January 1, 2008, with evidence of one of the following:

(1) A current valid massage permit or license from a California city or county.

(2) Documentation of having completed at least a 100 hour course in massage at a state approved or registered school and of having provided at least 250 hours of massage to members of the public for compensation; Proof of practice shall include one of the following:

(A) A W2 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 of having provided, prior to the effective date of the law, at least 500 hours of massage to members of the public for compensation. Proof of practice shall include one of the following:

(A) A W2 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.

(4) Documentation of holding a current valid certificate of authorization as an instructor at a BPPVE-approved massage school, or holding 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) After reviewing the information submitted under subdivision (a), the board may require additional information necessary to enable it to determine whether to grant a license under this section.

4604.3. (a) Massage practitioners and massage therapists shall show proof of completion of a minimum of 16 hours of approved continuing education in massage and related subjects during the just completed two-year period as a condition of renewal of a license. A maximum of 8 hours may be carried over from the previous licensing period.

(b) (1) Registered or approved schools, as defined in subdivisions (g) and (h) of Section 4601 shall be approved as providers of continuing education.

(2) Successful completion of courses offered by a provider approved by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) shall qualify as hours required by subdivision (a).

(3) The board may approve any other continuing education provider that establishes to the board's satisfaction that it provides appropriate continuing education.

4606. The following persons are exempted from the provisions of this chapter:

(a) Any person licensed, or otherwise recognized in this state by any other law or regulation when that person is engaged in the profession or occupation for which he or she is licensed or otherwise recognized, and who is performing services within their authorized scope of practice and who does not hold himself or herself out to be a massage practitioner or therapist.

(b) Students enrolled in a program described in subdivisions (g) or (h) of Section 4601 while completing a clinical requirement or supervised fieldwork experience for graduation, performed under the supervision of a person licensed under this chapter, provided the student does not hold himself or herself out as a licensed massage practitioner or massage therapist and does not receive compensation for massage.

(c) Individuals duly licensed, registered, or certified in another state or a foreign country when teaching a course related to massage therapy, or to consult with a person licensed under this chapter.

(d) Individuals giving massage to members of his or her immediate family, or as part of a charitable service, for no compensation.

(e) Individuals who restrict their manipulation of the soft tissues of the human body to the hands, feet or ears and do not hold themselves out to be massage practitioners or therapists or to do massage or massage therapy.

(f) Individuals using methods which involve only techniques which are specifically intended to affect the human energy fields or systems, including, but not limited to, Polarity Therapy, Reiki, Ayurveda, Touch for Health or Jin Shin Do, in which their services are not designated or implied to be massage or massage therapy.

(g) Individuals who use touch, words and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged in the scope of practice of a profession with established standards and ethics, provided that their services are not designated or implied to be massage or massage therapy. These practices include, but are not limited to, the Feldenkrais Method of Somatic Education, the Trager Approach to Movement Education, the Rosen Method, and Body-Mind Centering.

(h) Any individuals performing massage therapy services in the state, if those services are performed for no more than 45 days in a calendar year, and for no more than 30 days within any 60 consecutive day period, and the individual is not a resident of California, and if one of the following conditions is satisfied:

(1) The individual is licensed under the laws of another state which the board determines has licensure requirements at least as stringent as the requirements of this chapter.

(2) The individual is incidentally in this state to provide service as part of an emergency response team working in conjunction with disaster relief officials.

(3) The individual travels with and provides massage therapy exclusively to members of an athletic team, dance troupe, or other performing artists while such groups or individuals are temporarily in the state.

(4) The individual is part of an organized team of therapists providing massage services without compensation at a public event such as the Olympic Games, Special Olympics, a marathon or triathlon, provided that these services are performed only during a period from 48 hours prior to the commencement of the event until 24 hours after the completion of the event.

(i) Any individuals who are not a resident of this state performing massage therapy services in the state solely for the purposes of educational instruction and demonstration to an audience, if those services are performed for no more than 16 calendar days in a year, and the individual satisfies at least one of the criteria for continuing education providers set forth in subdivision (b) of Section 4604.3.

4607. (a) A city, county, or other political jurisdiction within the state may not enact an ordinance that regulates the practice of massage, as defined in this chapter, by an individual who is licensed under this chapter. No provision of any ordinance enacted by a city, county, or other political jurisdiction that is in effect before the effective date of this chapter, and that relates to the practice of massage, may be enforced against a person who is issued a license by the board under this chapter.

(b) Nothing in this Chapter shall be interpreted to prevent any local jurisdiction from adopting or enforcing any local ordinance that is not in conflict with any provision of this

chapter, and that does not conflict with subdivision (a). Nothing in this chapter shall preclude application of any local ordinance with respect to a person licensed pursuant to this chapter where that ordinance is equally applied to any person operating any other lawful business within the local jurisdiction.

4609. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable.

SEC. 3. Chapter 6 (commencing with Section 51030) of Part 1 of Division 1 of Title 5 of the Government Code is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.