

- SUBJECT:** Regulation of massage therapy and massage establishments
- COMMITTEE:** Government Reform — committee substitute recommended
- VOTE:** 6 ayes — Uresti, Y. Davis, Frost, Gonzales, Hunter, Veasey
0 nays
1 absent — Otto
- WITNESSES:** For — Kathryn Armstrong, Armstrong Massage Studio NW; John Dagen, Dallas Police Department; D. Alex Matthews, Austin Community College, Texas Massage Therapy Legislative Coalition; Doreen McGookey, City of Dallas, City Attorney's Office; Janine Ray, Texas Association of Massage Therapists; Les Tanaka, Greater Dallas Asian American Chamber of Commerce; Gary Turner; Jerry Valdez, Career Colleges & Schools of Texas Association

Against — Raul Flores, The Texas Coalition of Massage Schools

On — (*Registered, but did not testify*: Douglas Barhorst; Heather Muehr, Department of State Health Services)
- BACKGROUND:** The Department of State Health Services (DSHS) governs a massage therapy program that registers and regulates massage therapists, instructors, schools, and establishments in accordance with the Massage Therapy Registration Act.
- DIGEST:** CSHB 1842 would change the current system for authorizing the practice of massage therapy in Texas from one of registration to one of licensure under the Department of State Health Services (DSHS) and the executive commissioner of the Health and Human Services Commission (HHSC).

The bill would make technical and conforming changes such that all references to the former Texas Board of Health and its administration of law related to massage therapy would be removed and replaced with DSHS. All references to the Texas Board of Health with respect to rulemaking authority would be removed and replaced with the executive

commissioner of HHSC. In addition, references to registration would be changed to refer to license.

The definition of a massage establishment would be expanded to include a place of business that advertised or offered any service described by a derivation of the terms “massage therapy” or “other massage services.” “Other massage services” would include any services offered or performed for compensation at a massage establishment that involved physical contact with a client, and could include the use of oil, lubricant, salt glow, a heat lamp, a hot and cold pack, or a tub, shower, jacuzzi, sauna, steam, or cabinet bath. The definition of “massage therapist” would be expanded to include such services.

HHSC would adopt rules regarding records kept by an establishment and therapist, including standards to require an establishment to obtain for each client an initial consultation document containing a copy of a verifiable form of identification for the client and to develop a privacy protection policy for all client records. A massage establishment would have to maintain, secure, and make available to DSHS consultation documents, session notes, and billing records. DSHS would prepare a registry of licensed massage therapists on an annual basis, and the registry would be made available to the public, license holders, other state agencies, and peace officers. A massage establishment could not change its location without obtaining a new license. A person would have to be at least 18 years old to obtain a license.

A massage establishment would employ only licensed therapists to perform massage or other massage services. The establishment could not:

- employ an individual who was not a U.S. citizen or legal permanent resident with a valid work permit;
- employ a minor unless the minor’s parent or guardian provided written authorization;
- allow a nude or partially nude employee to provide massage therapy or other services;
- allow any individual to engage in sexual contact in the establishment; or
- allow any individual to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual.

“Nude” would be defined as a person entirely unclothed or whose clothes revealed any portion of the breasts below the top of the areola or any portion of the genitals or buttocks.

“Sexual contact” would be defined as touching of the genitalia or anus or of the breasts of a female without consent. It also would include an offer or agreement to engage in:

- kissing without the consent of both persons;
- deviate sexual intercourse, sexual intercourse, sexual contact, indecent exposure, sexual assault, prostitution, and promotions of prostitution;
- any behavior, gesture, or expression that reasonably could be interpreted as inappropriately seductive or sexual; or
- inappropriate sexual comments about or to a client, including sexual comments about a person’s body.

The Massage Therapy Registration Act would not limit a municipality’s authority to regulate establishments that offered bathing or showering services. A sexually oriented business could not use the word “bath” on a sign or any form of advertising.

A person would commit an offense if he or she knowingly violated provisions regarding hiring employees for a massage establishment, allowed certain practices at a massage establishment, or used the term “bath” in advertising. The following violations would be considered a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for the first offense, a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for the second and third offenses, and a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) for the fourth and any subsequent offenses:

- performing massage therapy for compensation or without compensation at or for a sexually oriented business;
- holding a license as a massage establishment and acting as a sexually oriented business;
- using “bath” in advertising for sexually oriented businesses;
- acting as a massage therapist, school, instructor, or establishment without the proper license;
- hiring unlicensed employees; or

- not posting all practicing massage therapists' licenses at an establishment or failing to present DSHS representatives and peace officers with licenses on request.

A person advertising massage therapy or other massage services would be presumed to be engaging in conduct regulated by the Massage Therapy Act, and a peace officer could enter the premises of a license holder to ensure compliance with the act. DSHS would conduct background checks on all applicants for licensure. An applicant would not be eligible to receive a license if the applicant had been convicted of a misdemeanor involving moral turpitude or a felony within the last five years. DSHS also could conduct a criminal background check when a person made a request for license renewal.

A municipal attorney, district attorney, or the attorney general could institute an action for injunctive relief to restrain a violation by a person who violated massage therapy regulations or was operating an establishment that offered massage services without a license. A municipal attorney, a district attorney, or the attorney general also could institute an action to collect a civil penalty between \$1,000 and \$10,000 for each violation.

This bill would take effect September 1, 2005, and would apply to offenses committed on or after that date. Procedures and rules for the new provisions would be adopted by December 31, 2005, and would be applied only to license applications filed with DSHS on or after January 1, 2006. A certificate of registration would be treated the same as a license until its expiration date, and upon renewal, an individual who formerly held a certificate of registration would be issued a license.

**SUPPORTERS
SAY:**

CSHB 2696 would crack down on sexually oriented businesses that advertise themselves as massage parlors and bathhouses as a front for carrying out illegal practices. These illegitimate businesses shelter criminals who promote illegal sexual activity, prostitution of underage girls, and the enslavement of women transported illegally from other countries to provide sexual services. The actions and advertisements for the growing number of sexually oriented businesses operating under this façade also are hindering economic development. Property values have depreciated around such businesses as legitimate businesses and neighborhood residents have moved due to the negative social consequences that follow these illegitimate businesses. Their operations

also cast a poor reflection on businesses engaging in legitimate massage practice.

Even though ads and Web sites for sexually oriented businesses make it clear that they are providers of prostitution and other inappropriate services, local law enforcement currently does not have proper authority to regulate these businesses. Texas regulates massage therapy through DSHS, yet the department only has four inspectors for the entire state. This bill specifically would provide local law enforcement with the ability to enter an establishment that claimed to be providing massage services and ensure that it was in compliance. Legitimate businesses would have no problem with such inspections, because they have nothing to hide, yet inspections would help to identify the businesses that were engaging in illegal practices. The bill also would allow city attorneys to issue injunctions so violations could be dealt with in a more timely fashion. The public would benefit from the speedy cessation of these illegal activities.

Nudity and sexually oriented behaviors are not appropriate for massage establishments. Through more specific definitions for what would constitute illegal practice, the bill would allow for better enforcement practices and bring more businesses under the jurisdiction of law enforcement.

This bill appropriately would disallow minors from working as massage therapists. A 16-year-old girl should not be engaging in physical contact with a much older man and may not have a thorough understanding of how to deal with a patron who acted inappropriately. This bill also would give parents the right to consent for their minor child to work at such an establishment in other capacities.

**OPPONENTS
SAY:**

This bill would go too far in allowing law enforcement to inspect all massage establishments when the source of the problem is businesses that are not even engaging in massage services. The invasion of law enforcement into legitimate businesses only will perpetuate the poor reputation of massage therapy being generated by illegitimate practice. When the industry already is trying to allay public fears, this bill would only drive away more clientele and deal another blow to public trust.

The definitions placed in the Massage Therapy Act do not reflect the practices of legitimate massage businesses. The whole premise of expanding the definitions in this code to contain illegal practices is the

wrong way to go about regulation of crimes such as prostitution. Law enforcement instead should rely more on current statutes in the Penal Code to regulate illegal activities. In addition, Occupation Code, ch. 455.353, already allows a peace officer of the state, including a peace officer employed by a political subdivision, to enforce regulations related to massage therapy.

The definition of nudity and sexual contact go too far in the bill and are more appropriate when left only in the administrative rules. In an effort to be specific, the definition of nudity might actually be so narrow as to not apply in certain situations. If such definitions were left only in the administrative rules, there would be more room to change these definitions as necessary to deal with inappropriate dress and behavior.

In addition, minors should not be restricted from acting as massage therapists when they are allowed to work in physical therapists' offices and related establishments. Massage conveys therapeutic benefits just as many other medical professions do, and its practice would not harm a minor.

NOTES:

The original bill included a provision that would have required parental consent for a minor to enter a massage establishment or receive massage services. The committee substitute differs from the original bill in that it would add more extensive definitions for massage establishment and other massage services, more extensive requirements for obtaining and maintaining records on clients and operations, a definition of sexual contact, and specific prohibitions of nude individuals providing services or individuals engaging in sexual contact within a massage establishment.

HB 1842 by Delisi, which also would change the current regulatory system for massage therapy from registration to licensure, passed the House on May 5.