

BILL ANALYSIS

Senate Research Center

H.B. 2696
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Health & Human Services
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Under current law, massage parlor operators and therapists are only required to register with the State of Texas. Additionally, the rules and regulations do not meet the same standards and code of ethics taught by legitimate massage therapy schools. As a result, many illegitimate businesses posing as massage parlors or providers of other massage services are serving as possible fronts for prostitution and human trafficking. These illegitimate businesses have begun to open in or around inner city areas and even in some rural areas. This has negatively affected massage parlors and therapists who are operating in a legitimate fashion. Furthermore, property values have depreciated because legitimate businesses and neighborhood residents have been forced to move as a result of the negative social impacts of these illegitimate businesses.

H.B. 2696 amends the Occupations Code by requiring massage parlor operators, massage therapists and providers of other massage services to become licensed with the State of Texas, and sets forth criteria for such licensure. H.B. 2696 also sets forth requirements for the operation and inspection of massage establishments, massage schools, massage therapy instructors, and advertising or competitive bidding for massage therapy services.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Health is transferred to the executive commissioner of the Health and Human Services in SECTION 4 (Section 455.051, Occupations Code) and SECTION 11 (Section 455.155, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 455.001, Occupations Code, by amending Subdivisions (1)-(7) and (9) and adding Subdivision (11), to delete the definition of "board" and redefine "department," "instructor," "massage establishment," "massage school," "massage therapist," and "massage therapy instructor" and define "executive commissioner" and "other massage services."

SECTION 2. Amends Section 455.004, Occupations Code, as follows:

Sec. 455.004. **APPLICABILITY OF CHAPTER.** Provides that this chapter does not apply to an occupational therapist and other health related occupations subject to state licensing while the person is participating within the scope of the license. Provides that also does not apply to an instructor otherwise approved by the state to teach in an area of study included in the required course of instruction for issuance of a massage therapist license, rather than a registration as a massage therapist.

SECTION 3. Amends Section 455.005, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Makes conforming changes.

(d) Prohibits this chapter from being construed to limit a municipality's authority to regulate establishments that offer bathing or showering services.

SECTION 4. Amends Subchapter B, Chapter 455, Occupations Code, as follows:

New title: SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER

Sec. 455.051. GENERAL RULEMAKING AUTHORITY. Requires the executive commissioner of Health and Human Services, rather than Texas Board of Health, to adopt rules consistent with this chapter as necessary for the performance of duties under this chapter. Makes a nonsubstantive change.

Sec. 455.052. RULES REGARDING MASSAGE ESTABLISHMENTS. Requires rules adopted under this chapter relating to a massage establishment to contain minimum standards for the issuance, denial, renewal, suspension, revocation, or probation of a license, rather than a certificate of registration, under this chapter; and the provision of massage therapy or other massage services by a massage establishment.

Sec. 455.053. Makes conforming changes.

Sec. 455.054. Makes a conforming changes.

Sec. 455.055. Makes conforming changes.

Sec. 455.056. New heading: RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. Makes conforming changes.

Sec. 455.057. Makers conforming changes.

SECTION 5. Amends Section 455.103(b), Occupations Code, to make conforming changes.

SECTION 6. Amends Section 455.104, Occupations Code, as follows:

Sec. 455.104. INSPECTIONS; INVESTIGATIONS. (a) Makes conforming changes.

(b) Authorizes a peace officer appointed or employed by a law enforcement agency of a political subdivision of this state to enter the premises of a massage establishment to ensure compliance with this chapter and rules adopted under this chapter.

SECTION 7. Amends Subchapter C, Chapter 455, Occupations Code, by adding Section 455.105, as follows:

Sec. 455.105. REGISTRY. (a) Requires the Texas Department of State Health Services (department) annually prepare a registry of licensed massage therapists.

(b) Requires the department to make the registry available to the public, license holders, other state agencies, and peace officers.

SECTION 8. Amends the heading to Subchapter D, Chapter 455, Occupations Code, to read as follows:

SUBCHAPTER D. LICENSING

SECTION 9. Amends Sections 455.151 and 455.152, Occupations Code, to make conforming changes.

SECTION 10. Amends Subchapter D, Chapter 455, Occupations Code, by adding Section 455.1525, as follows:

Sec. 455.1525. CRIMINAL BACKGROUND CHECKS. (a) Requires the department, on receipt of an application for a license under this chapter, to conduct a criminal background check on the applicant.

(b) Provide that an applicant is not eligible for a license under this chapter if the applicant, in the five years preceding the date of the application, has been finally convicted of a misdemeanor involving moral turpitude or a felony.

SECTION 11. Amends Sections 455.153-455.156, Occupations Code, as follows:

Sec. 455.153. New heading: APPLICATION FOR LICENSE. Makes conforming changes.

Sec. 455.154. New heading: GENERAL PROVISIONS RELATING TO LICENSE. Makes conforming changes.

Sec. 455.155. New heading: LICENSE EXEMPTION. (a) Provides that Section 455.151 (Registration Required) does not apply to an establishment or a certain person.

(b)-(d) Makes conforming changes.

Sec. 455.156. New heading: LICENSE REQUIREMENTS FOR MASSAGE THERAPISTS. (a) Makes a nonsubstantive and conforming changes.

(b) Requires an applicant for a license under this section to be an individual of at least 18 years of age. Makes conforming changes.

SECTION 12. Amends Section 455.1565(a) and (d), Occupations Code, to make conforming changes.

SECTION 13. Amends Sections 455.1571-455.158, Occupations Code, as follows:

Sec. 455.1571. New heading: APPLICANT LICENSED IN ANOTHER JURISDICTION. Makes conforming changes.

Sec. 455.1572. New heading: PROVISIONAL LICENSE. Makes conforming changes.

Sec. 455.158. New heading: STUDENT EXEMPTION FROM LICENSING REQUIREMENTS. Makes a conforming change.

SECTION 14. Amends Section 455.159(a), Occupations Code, to make a conforming change.

SECTION 15. Amends Sections 455.160 and 455.161, Occupations Code, as follows:

Sec. 455.160. New heading: LICENSE RENEWAL. (a)-(g) Makes conforming changes.

(h) Authorizes the department, on receipt of a request for a renewal of a license issued under this chapter, to conduct a criminal background check under Section 455.1525.

Sec. 455.161. New heading: RENEWAL OF EXPIRED LICENSE OF OUT-OF-STATE PRACTITIONER. Makes conforming changes.

SECTION 16. Amends the heading to Subchapter E, Chapter 455, Occupations Code, to read as follows:

SUBCHAPTER E. PRACTICE BY LICENSE HOLDERS

SECTION 17. Amends Sections 455.201 and 455.202, Occupations Code, as follows:

Sec. 455.201. REFERRAL FROM PHYSICIAN. Makes a conforming change.

Sec. 455.202. PRACTICE BY MASSAGE ESTABLISHMENT. (a) Makes conforming changes.

(b) Prohibits a massage establishment from employing certain individuals and allowing certain actions.

(c) Requires a massage establishment to properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records; and make available to the department on request the information kept as provided by Subdivision (1).

(d) Defines "nude" and sexual contact."

SECTION 18. Sections 455.203(a), (b), and (c), Occupations Code, to make conforming changes.

SECTION 19. Amends Section 455.204, Occupations Code, as follows:

Sec. 455.204. New heading: DISPLAY OF LICENSE. Makes conforming changes.

SECTION 20. Amends Section 455.205, Occupations Code, by amending Subsections (b), (c), and (d) and adding Subsection (e), as follows:

(b)-(d) Makes conforming changes.

(e) Provides that a person advertising massage therapy or other massage services is presumed to be engaging in conduct regulated by this chapter.

SECTION 21. Amends Subchapter E, Chapter 455, Occupations Code, by adding Section 455.206, as follows:

Sec. 455.206. ESTABLISHMENT CHANGE OF LOCATION PROHIBITED. Prohibits a massage establishment from changing the location of the establishment without obtaining a new massage establishment license under this chapter.

SECTION 22. Amends The heading to Subchapter F, Occupations Code, to read as follows:

SUBCHAPTER F. LICENSE DENIAL OR
DISCIPLINARY PROCEDURES

SECTION 23. Amends Section 455.251, Occupations Code, as follows:

Sec. 455.251. New heading: GROUNDS FOR LICENSE [REGISTRATION] DENIAL OR DISCIPLINARY ACTION. Makes conforming changes.

SECTION 24. Amends Section 455.252(a), Occupations Code, to make conforming changes.

SECTION 25. Amends Section 455.253, Occupations Code, makes conforming changes.

SECTION 26. Amends Sections 455.254(a) and (b), Occupations Code, makes conforming changes.

SECTION 27. Amends Section 455.304(b), Occupations Code, makes a conforming change

SECTION 28. Amends Section 455.305(b), Occupations Code, makes a conforming change.

SECTION 29. Amends Section 455.306, Occupations Code, as follows:

Sec. 455.306. New heading: DECISION BY EXECUTIVE COMMISSIONER. Makes a conforming change.

SECTION 30. Amends Section 455.310(b), Occupations Code, makes a conforming change.

SECTION 31. Amends Sections 455.351(a) and (b), Occupations Code, as follows:

(a) Authorizes the attorney general, a district or county attorney, a municipal attorney, or the department to institute an action for injunctive relief to restrain a violation by a

person who is operating an establishment that offers massage therapy or other massage services regulated by this chapter and is not licensed under this chapter. Makes a conforming change.

(b) Makes conforming changes. Requires the amount of a civil penalty shall be not less than \$1,000, rather than \$100, or more than \$10,000, rather than \$1,000, for each violation.

SECTION 32. Amends Section 455.352, Occupations Code, by amending Subsections (a), (b), and (d) and adding Subsection (a-1), as follows:

(a) Makes conforming and nonsubstantive changes.

(a-1) Provides that a person commits an offense if the person is required to be licensed under this chapter and the person knowingly violates Section 455.205(a) (Prohibited Practices). Provides that an offense under this subsection is a Class B misdemeanor, unless the actor has previously been convicted one or two times of an offense under this subsection, in which event it is a Class A misdemeanor. Provides that if the actor has previously been convicted three or more times of an offense under this subsection, the offense is a state jail felony.

(b) Provides that an offense under this subsection is a Class B misdemeanor, unless the actor has previously been convicted one or two times of an offense under this subsection, in which event it is a Class A misdemeanor. Provides that if the actor has previously been convicted three or more times of an offense under this subsection, the offense is a state jail felony. Makes nonsubstantive changes.

(d) Provides that except as provided by Subsections (a-1), (b), and (e), an offense under this section is a Class C misdemeanor. Makes nonsubstantive changes.

SECTION 33. Amends Section 411.110, Government Code, as follows:

Sec. 411.110. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES. (a) Entitles the department to obtain from the department criminal history record information maintained by the department that relates to an applicant for a license, the owner or manager of an applicant for a massage establishment license, or a license holder under Chapter 455 (Massage Therapy), Occupations Code.

(b)-(e) Makes conforming changes.

SECTION 34. Repealer: Sections 455.102 (Examiners Compensation) and 455.157 (Temporary Registration), Occupations Code.

SECTION 35. (a) Requires the department, not later than December 31, 2005, to prescribe the forms and procedures and the executive commissioner of the Health and Human Services Commission to adopt the rules that are necessary to implement Chapter 455, Occupations Code, as amended by this Act.

(b) Makes application of the requirements for issuing a license under Chapter 455, Occupations Code, prospective to January 1, 2006.

(c) Requires the department to treat a person who holds a certificate of registration under Chapter 455, Occupations Code, immediately before the effective date of this Act, as if the person holds a license under Chapter 455, Occupations Code, as amended by this Act. Provides that a person who holds a certificate of registration under Chapter 455, Occupations Code, on the effective date of this Act is entitled to issuance of a license on expiration of the certificate of registration if the person otherwise meets the requirements for renewal of a license.

(d) Provides that a person who holds a certificate of registration under Chapter 455, Occupations Code, immediately before the effective date of this Act, or is issued a certificate of registration under Subsection (b) of this section, and otherwise complies with Chapter 455 is not subject to disciplinary action or penalties, including a criminal penalty under Section 455.352, Occupations Code, as amended by this Act, for failure to hold a license under Chapter 455 until the certificate of registration's expiration date.

SECTION 36. Makes application of Section 455.351, Occupations Code, as amended by this Act, prospective.

SECTION 37. Makes application of Section 455.352, Occupations Code, as amended by this Act, prospective.

(b) Provides that an offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 38. Effective date: September 1, 2005.