

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 3616  
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Business & Commerce  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the Texas Commission of Licensing and Regulation (TCLR) must deny or revoke a massage therapy license if the individual enters a plea of no-contest or guilty, is found guilty of prostitution or another sexual offense, or if TCLR finds the person practiced massage therapy at a sexually oriented business.

In 2017, the legislature used the Sunset process to transfer the massage therapy licensing program from the Texas Department of State Health Services (DSHS) to the Texas Department of Licensing and Regulation (TDLR). The agency has since become aware of situations where DSHS granted licenses and renewals to people that statute does not currently allow a license. Because DSHS did not immediately deny or revoke massage therapy licenses for past involvement in sexual offenses, TDLR has since brought the program into compliance by revoking more than 80 licenses. The required revocation and denial of licenses, however, does not align with the legislature's recent move to provide licensing agencies more authority to determine which past criminal offenses are disqualifying.

H.B. 3616 will provide TCLR with the authority to consider each person's criminal history as well as their rehabilitative efforts when determining if an occupational license should be granted or renewed. It would also align TDLR's massage therapy licensing program with its other regulatory programs by giving TCLR authority to levy administrative penalties when appropriate.

H.B. 3616 amends current law relating to the regulation of massage therapy.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 3 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 455.152, Occupations Code, as follows:

Sec. 455.152. INELIGIBILITY FOR LICENSE. Provides that a person is not eligible for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor if the person is an individual and has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for:

(1) an offense under Chapter 20A (Trafficking of Persons), Penal Code, or Section 43.03 (Promotion of Prostitution), 43.031 (Online Promotion of Prostitution), 43.04 (Aggravated Promotion of Prostitution), 43.041 (Aggravated Online Promotion of Prostitution), or 43.05 (Compelling Prostitution), rather than an offense under Chapter 20A, Penal Code, or Subchapter A (Prostitution), Chapter 43 (Public Indecency), Penal Code; or

(2) an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of an offense described by Subdivision (1), rather than another sexual offense.

Makes nonsubstantive changes.

SECTION 2. Amends Section 455.251, Occupations Code, as follows:

Sec. 455.251. New heading: GROUND FOR LICENSE DENIAL, DISCIPLINARY ACTION, OR ADMINISTRATIVE PENALTY. (a) Provides that the Texas Commission of Licensing and Regulation (TCLR) or the executive director of the Texas Department of Licensing and Regulation (executive director) is authorized to refuse to issue a license to a person, suspend, revoke, or refuse to renew the license of a person, or impose an administrative penalty under Subchapter F (Administrative Penalty), Chapter 51 (Texas Department of Licensing and Regulation), on a person licensed under Chapter 455 (Massage Therapy) under certain circumstances, including if the person obtains or attempts to obtain a license, rather than obtains a license, by fraud, misrepresentation, or concealment of material facts. Deletes existing text providing that TCLR or the executive director may refuse to issue a license and is required to suspend, revoke, or refuse to renew the license of a person or reprimand a person issued a license under Chapter 455 under certain circumstances.

(b) Requires TCLR or the executive director to revoke the license of a person licensed as a massage therapist or massage therapy instructor if:

(1) the person is convicted of, enters a plea of nolo contendere or guilty to, or receives deferred adjudication for:

(A) an offense under Chapter 20A, Penal Code, or Section 43.03, 43.031, 43.04, 43.041, or 43.05, Penal Code, rather than an offense involving prostitution or another sexual offense; or

(B) an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of an offense described by Paragraph (A); or

(2) makes no changes to this subdivision.

(c) Provides that TCLR or the executive director:

(1) makes nonsubstantive changes to this subdivision; and

(2) is authorized to revoke the license of a person licensed as a massage school or massage establishment if TCLR or the executive director determines that any of the following offenses occurred on the premises of the school or establishment and resulted in a conviction for the offense, a plea of nolo contendere or guilty to the offense, or a grant of deferred adjudication for the offense:

(A) an offense under Chapter 20A, Penal Code;

(B) an offense under Subchapter A, Chapter 43, Penal Code;

(C) an offense under federal law containing elements that are substantially similar to the elements of an offense described by Paragraph (A) or (B); or

(D) another sexual offense under the laws of this state.

Deletes existing text requiring TCLR or the executive director to revoke the license of a person licensed as a massage school or massage establishment if TCLR or the executive director determines that an offense involving prostitution or another sexual offense that resulted in a conviction for the offense, a plea of

nolo contendere or guilty to the offense, or a grant of deferred adjudication for the offense occurred on the premises of the school or establishment.

SECTION 3. Requires TCLR, as soon as practicable after the effective date of this Act, to adopt rules necessary to implement Sections 455.152 and 455.251, Occupations Code, as amended by this Act.

SECTION 4. Effective date: September 1, 2021.