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BILL TEXT

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INTRODUCED BY    Senator Price

FEBRUARY 23, 2012

An act to amend Sections 4600, 4601, 4602, 4602.5, 4603, 4603.7, 4612, and 4613 of, and to add Section 4603.8 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1238, Price. 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 therapist, including, but not limited to, (1) successfully completing curricula in massage and related subjects totaling a minimum of 500 hours, a minimum of 250 hours of which shall be from a school approved by the council and the other 250 hours may be secured as specified, or (2) passing a massage and bodywork competency assessment examination, as specified.

This bill would require an applicant for a massage therapist certificate to meet the other requirements for certification and to also successfully complete either (1) the 500 hours or the credit unit equivalent or (2) the competency assessment examination and curricula in massage and related subjects totaling a minimum of 250 hours, at an approved school.

Existing law requires the council to immediately suspend, on an interim basis, the certificate of a certificate holder, if the council receives notice that a certificate holder has been arrested for and charged with, among other crimes, soliciting or engaging in an act of prostitution or an act punishable as a sexually related crime, and to provide notices of the suspension to the certificate holder and any business that employs the certificate holder, in each case, as specified.

This bill would additionally authorize the council to immediately suspend the certificate of a certificate holder upon receipt of clear and convincing evidence that the holder has committed an act punishable as a sexually related crime or a felony that is substantially related to the qualifications, functions, or duties of a certificate holder. The bill would also require the council to consider any available credible mitigating evidence before making a decision to so suspend a certificate. The bill would grant the holder of a certificate so suspended the right to a hearing to be held within 30 days and require the council to send notice of suspension to the certificate holder and to other specified businesses.

Existing law requires the council, upon request of a law

enforcement agency or local government agency with responsibility for regulating massage or massage businesses, to provide information concerning a certificate holder, as specified.

This bill would authorize those agencies, upon request of the council, to provide information to the council concerning an applicant or certificate holder, including, but not limited to, information related to criminal activity or unprofessional conduct allegedly engaged in by that person.

Under existing law, conviction of a felony that is substantially related to the qualifications or duties of a certificate holder is a violation and basis for the council to deny an application or discipline a certificate holder.

This bill would also impose those consequences for a conviction of a felony, misdemeanor, infraction, or municipal code violation, or liability in an administrative or civil action, that is substantially related to the qualifications, functions, or duties of a certificate holder. The bill would also require a certificate holder to provide identifying information, upon request, as specified.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4600 of the Business and Professions Code is amended to read:

4600. As used in this chapter, the following terms shall have the following meanings:

(a) "Approved school" or "approved massage school" means a school approved by the council that meets minimum standards for training and curriculum in massage and related subjects and that meets any of the following requirements:

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

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

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

(A) A public institution.

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

(C) A for-profit institution.

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

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

(5) Is a school of equal or greater training that is recognized by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

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

(c) "Massage therapist," "bodyworker," "bodywork therapist," or "massage and bodywork therapist" means a person who is certified by the California Massage Therapy Council under subdivision (c) of Section 4601 and who administers massage for compensation.

(d) "Massage practitioner," "bodywork practitioner," or "massage and bodywork practitioner" means a person who is certified by the California Massage Therapy Council under subdivision (b) of Section 4601 and who administers massage for compensation.

(e) "Council" means the California Massage Therapy Council created pursuant to this chapter, which shall be a nonprofit organization exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code. The council may commence activities as authorized by this section once it has submitted a request to the Internal Revenue Service seeking this exemption. Whenever the term "organization" is used in this chapter, it shall mean the council, except where the context indicates otherwise.

(f) "Registered school" means a school approved by the council that meets minimum standards for training and curriculum in massage and related subjects and that either is approved by the Bureau for Private Postsecondary Education or the Department of Consumer Affairs, or is an institution accredited by the senior commission or the junior commission of the Western Association of Schools and Colleges as defined in paragraph (3) of subdivision (a), is a college or university of the state higher education system as defined in Section 100850 of the Education Code, or is a school of equal or greater training that is approved by the corresponding agency in another state.

(g) For purposes of this chapter, the terms "massage" and "bodywork" shall have the same meaning.

(h) "Operator of a massage business" means a person, whether owner or nonowner, who manages or operates a massage business.

SEC. 2. Section 4601 of the Business and Professions Code is amended to read:

4601. (a) The council shall issue a certificate under this chapter to an applicant who satisfies the requirements of this chapter.

(b) (1) In order to obtain certification as a massage practitioner, an applicant shall submit a written application and provide the council with satisfactory evidence that he or she meets all of the following requirements:

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

(B) The applicant has successfully completed, at an approved school, curricula in massage and related subjects, totaling a minimum of 250 hours or the credit unit equivalent, that incorporates 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, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.

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

(2) New certificates shall not be issued pursuant to this subdivision after December 31, 2015. Certificates issued pursuant to this section or subdivision (a) or (c) of Section 4604 on or before December 31, 2015, shall, after December 31, 2015, be renewed without any additional educational requirements, provided that the certificate holder continues to be qualified pursuant to this chapter.

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

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

(2) The applicant satisfies at least one of the following requirements:

(A) He or she has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours or the credit unit equivalent. Of this 500 hours, a minimum of 250 hours shall be from approved schools. The remaining 250 hours required may be secured either from approved or registered schools, or from continuing education providers approved by, or registered with, the council or the Department of Consumer Affairs. After December 31, 2015, applicants may only satisfy the curricula in massage and related subjects from approved schools.

(B) The applicant has done both of the following:

(i) Successfully completed, at an approved school, curricula in massage and related subjects totaling a minimum of 250 hours that incorporates 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, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.

(ii) Passed a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards, and that is approved by the board. The successful completion of this examination may have been accomplished before the date the council is authorized by this chapter to begin issuing certificates.

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

(d) The council shall issue a certificate 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 council shall have discretion to give credit for comparable academic work completed by an applicant in a program outside of California.

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

(f) Any certification issued under this chapter shall be subject to renewal every two years in a manner prescribed by the council, and shall expire unless renewed in that manner. The council may provide for the late renewal of a license.

(g) (1) The council shall have the responsibility to determine that the school or schools from which an applicant has obtained the education required by this chapter meet the requirements of this chapter. If the council has any reason to question whether or not the applicant received the education that is required by this chapter from the school or schools that the applicant is claiming, the council shall investigate the facts to determine that the applicant received the required education prior to issuing a certificate.

(2) For purposes of paragraph (1) and any other provision of this chapter for which the council is authorized to receive factual information as a condition of taking any action, the council shall have the authority to conduct oral interviews of the applicant and others or to make any investigation deemed necessary to establish that the information received is accurate and satisfies any criteria established by this chapter.

(h) The certificate issued pursuant to this chapter, as well as any identification card issued by the council, shall be surrendered to the council by any certificate holder whose certificate has been suspended or revoked.

SEC. 3. Section 4602 of the Business and Professions Code is amended to read:

4602. (a) The council may discipline a certificate holder by any, or a combination, of the following methods:

(1) Placing the certificate holder on probation.

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

(3) Revoking the certificate.

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

(5) Taking other action as the council, as authorized by this chapter or its bylaws, deems proper.

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

(c) (1) Notwithstanding any other provision of law, if the council receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of subdivision (b) of Section 647 of the Penal Code or any other offense described in subdivision (h) of Section 4603, the council shall take all of the following actions:

(A) Immediately suspend, on an interim basis, the certificate of that certificate holder.

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

(C) Notify any business within 10 business days that the council has in its records as employing the certificate holder that the certificate has been suspended.

(2) Upon notice to the council that the charges described in paragraph (1) have resulted in a conviction, the suspended certificate shall become subject to permanent revocation. The council shall provide notice to the certificate holder within 10 business days that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence within 15 days that the conviction is either invalid or that the information is otherwise erroneous.

(3) Upon notice that the charges have resulted in an acquittal, or have otherwise been dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any business that received notice pursuant to subparagraph (C) of paragraph (1) shall be notified of the reinstatement within 10 business days.

(d) Notwithstanding any other provision of law, if the council receives clear and convincing evidence that a certificate holder has committed an act punishable as a sexually related crime or a felony that is substantially related to the qualifications, functions, or duties of a certificate holder, the council may immediately suspend the certificate of that certificate holder. A decision to immediately suspend a certificate pursuant to this subdivision shall be based on clear and convincing evidence and the council shall also consider any available credible mitigating evidence before making a decision to suspend a certificate. Written statements by any person shall not be considered by the council when determining whether to immediately suspend a certificate unless made under penalty of perjury. If the council suspends the certificate of a certificate holder in accordance with this subdivision, the council shall take all of the following additional actions:

(1) Notify the certificate holder, at the address last filed with the council, within 10 business days by a method providing delivery confirmation, that the certificate has been suspended, the reason for the suspension, and that the certificate holder has the right to

request a hearing pursuant to paragraph (3).

(2) Notify by electronic mail or any other means consistent with the notice requirements of this chapter, within 10 business days, any business that the council has in its records as employing or contracting with the certificate holder for massage services, and the California city or county permitting authority that has jurisdiction over any business that the council has in its records as employing or contracting with the certificate holder, that the certificate has been suspended.

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

SEC. 4. Section 4602.5 of the Business and Professions Code is amended to read:

4602.5. (a) Upon the request of any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses, the council shall provide information concerning a certificate holder, including, but not limited to, the current status of the certificate, any history of disciplinary actions taken against the certificate holder, the home and work addresses of the certificate holder, and any other information in the council's possession that is necessary to verify facts relevant to administering the local ordinance.

(b) Upon the request of the council to any law enforcement agency or any other representative of a local government agency with responsibility for regulating or administering a local ordinance relating to massage or massage businesses, the law enforcement agency or local government agency is authorized to provide information to the council concerning a certificate applicant or certificate holder, including, but not limited to, the current status of any application or local permit; any history of disciplinary action taken against the certificate applicant or certificate holder; any information related to criminal activity or unprofessional conduct allegedly engaged in by a certificate applicant or certificate holder, including, but not limited to, police reports and declarations of conduct; the home and work addresses of the certificate applicant or certificate holder; and any other information in the law enforcement agency's or other local government agency's possession that is necessary to verify facts or implement the provisions of this chapter.

(c) The council shall accept information provided by any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses. The council shall have the responsibility to review any information received and to take any actions authorized by this chapter that are warranted by that information.

SEC. 5. Section 4603 of the Business and Professions Code is amended to read:

4603. It is a violation of this chapter for a certificate holder to commit, and the council may deny an application for a certificate or discipline a certificate holder for, any of the following:

(a) Unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other

disciplinary action against a certificate holder 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 certificate 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 rule or bylaw adopted by the council.

(d) Conviction of any felony, misdemeanor, infraction, or municipal code violation, or liability in an administrative or civil action, that is substantially related to the qualifications, functions, or duties of a certificate holder, in which event the record of the conviction or other judgment shall be conclusive evidence of the crime or liability.

(e) Impersonating an applicant or acting as a proxy for an applicant in any examination referred to under this chapter for the issuance of a certificate.

(f) Impersonating a certified practitioner or therapist, or permitting or allowing an uncertified person to use a certificate.

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

(h) Committing any act punishable as a sexually related crime.

SEC. 6. Section 4603.7 of the Business and Professions Code is amended to read:

4603.7. A certificate holder shall include the name under which he or she is certified and his or her certificate number in any and all advertising and shall display his or her original certificate at his or her place of business. A certificate holder shall have his or her identification card in his or her possession while providing massage services.

SEC. 7. Section 4603.8 is added to the Business and Professions Code, to read:

4603.8. A certificate holder shall, upon request at the location where he or she is providing massage services, provide his or her full name and certificate number to a member of the public, the council, or a member of law enforcement or a local government agency charged with regulating massage.

SEC. 8. Section 4612 of the Business and Professions Code is amended to read:

4612. (a) (1) The holder of a certificate issued pursuant to this chapter shall have the right to practice massage, consistent with this chapter and the qualifications established by his or her certification, in any city, county, or city and county in this state and shall not be required to obtain any other license, permit, or other authorization, except as provided in this section, to engage in that practice.

(2) Notwithstanding any other provision of law, a city, county, or city and county shall not enact an ordinance that requires a license, permit, or other authorization to provide massage for compensation by an individual who is certified pursuant to this chapter and who is practicing consistent with the qualifications established by his or her certification, or by a massage business or massage establishment that employs or uses only persons who are certified pursuant to this chapter to provide massage for compensation. No provision of any ordinance enacted by a city, county, or city and county that is in effect before the effective

date of this chapter, and that requires a license, permit, or other authorization to provide massage for compensation, may be enforced against an individual who is certified pursuant to this chapter or against a massage business or massage establishment that employs or uses only persons who are certified pursuant to this chapter to provide massage for compensation.

(3) Except as provided in subdivision (b), nothing in this section shall be interpreted to prevent a city, county, or city and county from adopting or enforcing any local ordinance that provides for reasonable health and safety requirements for massage establishments or businesses. Subdivision (b) shall not apply to any massage establishment or business that employs or uses persons to provide massage services who are not certified pursuant to this chapter.

(b) (1) This subdivision shall apply only to massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified pursuant to this chapter, and to massage establishments or businesses that employ or use only persons certified pursuant to this chapter to provide massage services. For purposes of this subdivision, a sole proprietorship is a business where the owner is the only person employed by that business to provide massage services.

(2) (A) Any massage establishment or business described in paragraph (1) shall maintain on its premises evidence for review by local authorities that demonstrates that all persons providing massage services are certified.

(B) Nothing in this section shall preclude a city, county, or city and county from including in a local ordinance a provision that requires a business described in paragraph (1) to file copies or provide other evidence of the certificates held by the persons who are providing massage services at the business.

(3) A city, county, or city and county may charge a massage business or establishment a business licensing fee, provided that the fee shall be no higher than the lowest fee that is applied to other individuals and businesses providing professional services, as defined in subdivision (a) of Section 13401 of the Corporations Code.

(4) Nothing in this section shall prohibit a city, county, or city and county from enacting ordinances, regulations, rules, requirements, restrictions, land use regulations, moratoria, conditional use permits, or zoning requirements applicable to an individual certified pursuant to this chapter or to a massage establishment or business that uses only individuals who are certified pursuant to this chapter to provide massage for compensation, provided that, unless otherwise exempted by this chapter, these ordinances, regulations, rules, requirements, restrictions, land use regulations, moratoria, conditional use permits, and zoning requirements shall be no different than the requirements that are uniformly applied to all other individuals and businesses providing professional services, as defined in subdivision (a) of Section 13401 of the Corporations Code. No provision of any ordinance, regulation, rule, requirement, restriction, land use regulation, moratoria, conditional use permit, or zoning requirement enacted by a city, county, or city and county that is in effect before the effective date of this chapter, and that is inconsistent with this paragraph, may be enforced against an individual who is certified pursuant to this chapter or against a massage business or massage establishment that uses only individuals who are certified pursuant to this chapter to provide massage for compensation.

(5) Local building code or physical facility requirements applicable to massage establishments or businesses shall not require



additional restroom, shower, or other facilities that are not uniformly applicable to other professional or personal service businesses, nor shall building or facility requirements be adopted that (A) require unlocked doors when there is no staff available to ensure security for clients and massage staff who are behind closed doors, or (B) require windows that provide a view into massage rooms that interfere with the privacy of clients of the massage business.

(6) A city, county, or city and county may adopt reasonable health and safety requirements with respect to massage establishments or businesses, including, but not limited to, requirements for cleanliness of massage rooms, towels and linens, and reasonable attire and personal hygiene requirements for persons providing massage services, provided that nothing in this paragraph shall be interpreted to authorize adoption of local ordinances that impose additional qualifications, such as medical examinations, background checks, or other criteria, upon any person certified pursuant to this chapter.

(7) Nothing in this section shall preclude a city, county, or city and county from doing any of the following:

(A) Requiring an applicant for a business license to operate a massage business or establishment to fill out an application that requests the applicant to provide relevant information, as long as the information requested is the same as that required of other individuals and professionals providing professional services as defined in subdivision (a) of Section 13401 of the Corporations Code.

(B) Making reasonable investigations into the information so provided.

(C) Denying or restricting a business license if the applicant has provided materially false information.

(c) An owner or operator of a massage business or establishment who is certified pursuant to this chapter shall be responsible for the conduct of all employees or independent contractors working on the premises of the business. Failure to comply with this chapter may result in revocation of the owner's or operator's certificate in accordance with Section 4603. Nothing in this section shall preclude a local ordinance from authorizing suspension, revocation, or other restriction of a license or permit issued to a massage establishment or business if violations of this chapter, or of the local ordinance, occur on the business premises.

(d) Nothing in this section shall preclude a city, county, or city and county from adopting a local ordinance that is applicable to massage businesses or establishments described in paragraph (1) of subdivision (b) and that does either of the following:

(1) Provides that duly authorized officials of the city, county, or city and county have the right to conduct reasonable inspections, during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements.

(2) Requires an owner or operator to notify the city, county, or city and county of any intention to rename, change management, or convey the business to another person.

(e)

Nothing in this chapter shall be construed to preclude a city, county, or city and county from requiring a background check of an owner or operator of a massage establishment who owns 5 percent or more of a massage business or massage establishment and who is not certified pursuant to this chapter. The background check may include, but is not limited to, a criminal background check, including requiring submission of fingerprints for a state and federal criminal

background check, submission of an application that requires the applicant to state information, including, but not limited to, the applicant's business, occupation, and employment history for the 10 years preceding the date of application, the inclusive dates of same, and the name and address of any massage business or other like establishment owned or operated by any person who is subject to the background check requirement of this subdivision. If a noncertified owner's or operator's background check results in a finding that the city, county, or city and county determines is relevant to owning or operating a massage establishment, then the provisions of subdivisions (a) and (b) shall not apply to that establishment and the city, county, or city and county may regulate that establishment in any manner it deems proper that is in accordance with the law.

SEC. 9. Section 4613 of the Business and Professions Code is amended to read:

4613. (a) Nothing in this chapter shall restrict or limit in any way the authority of a city, county, or city and county to adopt a local ordinance governing any person who is not certified pursuant to this chapter.

(b) Nothing in this chapter is intended to affect the practice rights of any person licensed by the state to practice or perform any functions or services pursuant to that license.

(c) Nothing in this chapter shall be construed to restrict or limit in any way the authority of a city, county, or city and county to adopt a local ordinance restricting the opening of a new massage establishment in a location in which a massage establishment has been closed due to criminal activity.