

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY MAY 31, 2013

AMENDED IN ASSEMBLY MAY 13, 2013

AMENDED IN ASSEMBLY MAY 1, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1147

**Introduced by Assembly Member Gomez
(Coauthor: Assembly Member Muratsuchi)**

February 22, 2013

An act to amend Sections 4601, 4603, 4612, and 4613 of *add Section 4612.5* to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as amended, Gomez. 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 requires specified businesses and other establishments, upon the availability of a model notice developed by the Department of Justice, to post a notice that contains information related to slavery and human trafficking, including information related to specified nonprofit organizations that provide services in support of the elimination of slavery and human trafficking. Existing law exempts from the posting requirements massage establishments or businesses that are the sole proprietorship of an individual who is voluntarily certified

pursuant to the provisions described above or that employ or use only persons who are so certified.

This bill would, notwithstanding any other law, subject massage establishments or businesses that are the sole proprietorship of an individual who is voluntarily certified pursuant to the provisions described above or that employ or use only persons who are so certified to the posting requirements described above.

~~Existing law specifies the requirements for the council to issue to an applicant a certificate as a massage practitioner, including, but not limited to, successfully completing curricula in massage and related subjects totaling a minimum of 250 hours or the credit unit equivalent, as specified.~~

~~This bill would additionally require an applicant for a certificate as a massage practitioner to pass a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards, and that is approved by the council.~~

~~Existing law specifies the requirements for the council to issue to an applicant a certificate as a massage therapist. Among these requirements, existing law requires an applicant to either (1) successfully complete a minimum of 500 hours, or the credit unit equivalent, of curricula in massage and related subjects, with at least 250 hours being from approved schools, or (2) successfully complete a minimum of 250 hours of curricula in massage and related subjects at an approved school, with at least 100 hours of instruction in certain subjects, and to pass a massage and bodywork competency assessment examination, as specified, that is approved by the council.~~

~~This bill would instead require an applicant for a certificate as a massage therapist to successfully complete a minimum of 250 hours of curricula in massage and related subjects at an approved school, with at least 100 hours of instruction in certain subjects, and to pass the massage and bodywork competency assessment examination as described above.~~

~~Existing law authorizes a city, county, or city and county to impose certain requirements on massage establishments or businesses that are the sole proprietorship of an individual certified pursuant to existing state law or that employ or use only persons who are so certified. Existing law authorizes a city, county, or city and county to charge a massage business or establishment a business licensing fee that is not higher than the lowest fee applied to other individuals and businesses providing professional services, as specified. Existing law also~~

~~authorizes a city, county, or city and county to enact ordinances, regulations, rules, requirements, and restrictions applicable to the massage establishments or businesses described above, provided that these local requirements are not different from requirements that are uniformly applied to all individuals and businesses providing professional services, as specified, except as provided.~~

~~This bill would instead authorize a city, county, or city and county to charge a business licensing fee that shall not exceed the average licensing fee applied to other individuals and businesses that provide professional services, as specified. The bill would authorize a city, county, or city and county to enact ordinances, regulations, rules, requirements, and restrictions applicable to the massage establishments or businesses described above that are owned by an individual or individuals who are certified by the council, as specified, provided that these local requirements are not different from requirements that are uniformly applied to at least one other class of individuals or businesses that provide professional services, as specified, except as provided.~~

~~This bill would authorize a city, county, or city and county to require a massage establishment or business described above to apply for and receive a revocable certificate of registration prior to commencing the operation of a new massage establishment or business or continuing the operation of an existing massage establishment or business. The bill would authorize a city, county, or city and county to require from an applicant, among other things, copies of specified identification and a statement that the business will only employ or use certified persons to provide massage services and that failure to comply with this provision may result in the suspension or revocation of, imposition of conditions upon, or action against the certificate of registration. The bill would authorize a city, county, or city and county to require a massage establishment or business to comply with specified local ordinances, regulations, rules, requirements, or restrictions as a condition of granting or maintaining a revocable certificate of registration and would authorize a city, county, or city and county to, at its sole discretion, deny, suspend, revoke, or impose conditions upon a certificate of registration for failure to comply with the provisions of an ordinance adopted pursuant to these provisions.~~

~~Existing law specifies certain violations for which the council may deny an application for a certificate or discipline a certificate holder.~~

~~This bill would include among these violations being a sole proprietor who fails to obtain and maintain a certificate of registration, as specified;~~

and being a certificate holder who works at a business that fails to obtain and maintain a certificate of registration and has knowledge for at least 30 days of the failure to maintain, except as provided.

Existing law specifies that the provisions of law governing the voluntary certification of massage practitioners and massage therapists shall not restrict or limit the authority of a city, county, or city and county to, among other things, 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.

This bill would instead specify that these provisions shall not restrict or limit 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, or within 300 feet of a location, in which a massage establishment has been closed due to criminal activity in the past year.

This bill would make additional clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4612.5 is added to the Business and
2 Professions Code, to read:

3 4612.5. Notwithstanding any other law, a massage
4 establishment or business described in paragraph (1) of subdivision
5 (b) of Section 4612 shall comply with the posting requirements
6 specified in Section 52.6 of the Civil Code.

7 SECTION 1. Section 4601 of the Business and Professions
8 Code is amended to read:

9 4601. (a) The council shall issue a certificate under this chapter
10 to an applicant who satisfies the requirements of this chapter.

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

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

16 (B) The applicant has successfully completed, at an approved
17 school, curricula in massage and related subjects, totaling a
18 minimum of 250 hours or the credit unit equivalent, that
19 incorporates appropriate school assessment of student knowledge
20 and skills. Included in the hours shall be instruction addressing

1 anatomy and physiology, contraindications, health and hygiene,
2 and business and ethics, with at least 100 hours of the required
3 minimum 250 hours devoted to these curriculum areas.

4 (C) The applicant has passed a massage and bodywork
5 competency assessment examination that meets generally
6 recognized psychometric principles and standards, and that is
7 approved by the council. The successful completion of this
8 examination may have been accomplished before the date the
9 council is authorized by this chapter to begin issuing certificates.

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

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

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

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

22 (2) The applicant has successfully completed the curricula in
23 massage and related subjects totaling a minimum of 500 hours or
24 the credit unit equivalent. Of this 500 hours, a minimum of 250
25 hours shall be from approved schools. Included in the 250 hours
26 from approved schools shall be instruction addressing anatomy
27 and physiology, contraindications, health and hygiene, and business
28 and ethics, with at least 100 hours of the required 250 hours from
29 approved schools devoted to these curriculum areas. The remaining
30 250 hours required may be secured either from approved or
31 registered schools, or from continuing education providers
32 approved by, or registered with, the council or the Department of
33 Consumer Affairs. After December 31, 2015, applicants may only
34 satisfy the curricula in massage and related subjects from approved
35 schools.

36 (3) The applicant has passed a massage and bodywork
37 competency assessment examination that meets generally
38 recognized psychometric principles and standards, and that is
39 approved by the council. The successful completion of this

1 examination may have been accomplished before the date the
2 council is authorized by this chapter to begin issuing certificates:

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

4 (d) The council shall issue a certificate to an applicant who
5 meets the other qualifications of this chapter and holds a current
6 and valid registration, certification, or license from any other state
7 whose licensure requirements meet or exceed those defined within
8 this chapter. The council shall have discretion to give credit for
9 comparable academic work completed by an applicant in a program
10 outside of California.

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

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

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

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

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

38 SEC. 2.— Section 4603 of the Business and Professions Code is
39 amended to read:

- 1 ~~4603. It is a violation of this chapter for a certificate holder to~~
2 ~~commit, and the council may deny an application for a certificate~~
3 ~~or discipline a certificate holder for, any of the following:~~
- 4 ~~(a) Unprofessional conduct, including, but not limited to, denial~~
5 ~~of licensure, revocation, suspension, restriction, or any other~~
6 ~~disciplinary action against a certificate holder by another state or~~
7 ~~territory of the United States, by any other government agency, or~~
8 ~~by another California health care professional licensing board. A~~
9 ~~certified copy of the decision, order, or judgment shall be~~
10 ~~conclusive evidence of these actions.~~
 - 11 ~~(b) Procuring a certificate by fraud, misrepresentation, or~~
12 ~~mistake.~~
 - 13 ~~(c) Violating or attempting to violate, directly or indirectly, or~~
14 ~~assisting in or abetting the violation of, or conspiring to violate,~~
15 ~~any provision or term of this chapter or any rule or bylaw adopted~~
16 ~~by the council.~~
 - 17 ~~(d) Conviction of any felony, misdemeanor, infraction, or~~
18 ~~municipal code violation, or liability in an administrative or civil~~
19 ~~action, that is substantially related to the qualifications, functions,~~
20 ~~or duties of a certificate holder, in which event the record of the~~
21 ~~conviction or other judgment shall be conclusive evidence of the~~
22 ~~crime or liability.~~
 - 23 ~~(e) Impersonating an applicant or acting as a proxy for an~~
24 ~~applicant in any examination referred to under this chapter for the~~
25 ~~issuance of a certificate.~~
 - 26 ~~(f) Impersonating a certified practitioner or therapist, or~~
27 ~~permitting or allowing an uncertified person to use a certificate.~~
 - 28 ~~(g) Committing any fraudulent, dishonest, or corrupt act that is~~
29 ~~substantially related to the qualifications or duties of a certificate~~
30 ~~holder.~~
 - 31 ~~(h) Committing any act punishable as a sexually related crime.~~
 - 32 ~~(i) Being a sole proprietor who fails to obtain and maintain a~~
33 ~~certificate of registration as required by an ordinance adopted~~
34 ~~pursuant to subdivision (e) of Section 4612.~~
 - 35 ~~(j) Being a certificate holder who works at a business that fails~~
36 ~~to obtain and maintain a certificate of registration as required by~~
37 ~~an ordinance adopted pursuant to subdivision (e) of Section 4612~~
38 ~~and who has knowledge for at least 30 days of that failure. A~~
39 ~~certificate holder shall not be subject to discipline for a violation~~

1 of this subdivision if the business is making a good faith effort to
2 obtain or reinstate the certificate of registration.

3 SEC. 3. Section 4612 of the Business and Professions Code is
4 amended to read:

5 4612. (a) (1) The holder of a certificate issued pursuant to
6 this chapter shall have the right to practice massage, consistent
7 with this chapter and the qualifications established by his or her
8 certification, in any city, county, or city and county in this state
9 and shall not be required to obtain any other license, permit, or
10 other authorization, except as provided in this section, to engage
11 in that practice.

12 (2) A city, county, or city and county shall not enact an
13 ordinance that requires a license, permit, or other authorization to
14 provide massage for compensation by an individual who is certified
15 pursuant to this chapter and who is practicing consistent with the
16 qualifications established by his or her certification, or by a
17 massage business or massage establishment that employs or uses
18 only persons who are certified pursuant to this chapter to provide
19 massage for compensation, except as provided in this section. No
20 provision of any ordinance enacted by a city, county, or city and
21 county that is in effect before the effective date of this chapter,
22 and that requires a license, permit, or other authorization to provide
23 massage for compensation, may be enforced against an individual
24 who is certified pursuant to this chapter or against a massage
25 business or massage establishment that employs or uses only
26 persons who are certified pursuant to this chapter to provide
27 massage for compensation.

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

36 (b) (1) This subdivision shall apply only to massage
37 establishments or businesses that are sole proprietorships, where
38 the sole proprietor is certified pursuant to this chapter, and to
39 massage establishments or businesses that employ or use only
40 persons certified pursuant to this chapter to provide massage

1 services. For purposes of this subdivision, a sole proprietorship is
2 a business where the owner is the only person employed by that
3 business to provide massage services.

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

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

13 (3) A city, county, or city and county may charge a massage
14 business or establishment a business licensing fee that shall not
15 exceed the average licensing fee applied to other individuals and
16 businesses that provide professional services, as defined in
17 subdivision (a) of Section 13401 of the Corporations Code.

18 (4) Nothing in this section shall prohibit a city, county, or city
19 and county from enacting ordinances, regulations, rules,
20 requirements, restrictions, land use regulations, moratoria,
21 conditional use permits, or zoning requirements applicable to a
22 massage establishment or business described in paragraph (1) that
23 is owned by an individual or individuals certified pursuant to this
24 chapter. Unless otherwise exempted by this chapter, any
25 ordinances, regulations, rules, requirements, restrictions, land use
26 regulations, moratoria, conditional use permits, and zoning
27 requirements enacted pursuant to this paragraph shall be no
28 different than the requirements that are uniformly applied to at
29 least one other class of individuals or businesses that provide
30 professional services, as defined in subdivision (a) of Section
31 13401 of the Corporations Code. A provision of any ordinance,
32 regulation, rule, requirement, restriction, land use regulation,
33 moratoria, conditional use permit, or zoning requirement enacted
34 by a city, county, or city and county that is in effect before the
35 effective date of this chapter, and that is inconsistent with this
36 paragraph, shall not be enforced against a massage establishment
37 or business described in paragraph (1) that is owned by an
38 individual or individuals certified pursuant to this chapter.

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

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

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

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

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

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

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

32 (D) Enacting ordinances, regulations, rules, requirements,
 33 restrictions, moratoria, and conditional use permits to regulate
 34 massage businesses or establishments that fail to obtain or maintain
 35 a certificate of registration as required by an ordinance adopted
 36 pursuant to subdivision (e).

37 (e) An owner or operator of a massage business or establishment
 38 who is certified pursuant to this chapter shall be responsible for
 39 the conduct of all employees or independent contractors working
 40 on the premises of the business. Failure to comply with this chapter

1 may result in revocation of the owner's or operator's certificate in
2 accordance with Section 4603. Nothing in this section shall
3 preclude a local ordinance from authorizing suspension, revocation,
4 or other restriction of a license or permit issued to a massage
5 establishment or business if violations of this chapter, or of the
6 local ordinance, occur on the business premises.

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

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

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

19 (e) (1) Nothing in this chapter shall preclude a city, county, or
20 city and county from including a provision in a local ordinance
21 requiring the owner or owners of a massage establishment or
22 business described in paragraph (1) of subdivision (b) to apply for
23 and receive a revocable certificate of registration prior to
24 commencing the operation of a new massage establishment or
25 business, or continuing the operation of an existing massage
26 establishment or business.

27 (2) As part of the application for a certificate of registration, a
28 city, county, or city and county may require the following from
29 an applicant:

30 (A) The full true name under which the massage establishment
31 or business will be conducted.

32 (B) The present or proposed address where the massage
33 establishment or business will be conducted.

34 (C) The full true legal name and mailing address of the owner
35 or owners of the massage establishment or business.

36 (D) A copy of a certificate, or any other evidence of certification,
37 issued to each person pursuant to this chapter who will be providing
38 massage services at the massage establishment or business.

1 ~~(E) A copy of a photographic government-issued identification~~
2 ~~card of the owner or owners of the massage establishment or~~
3 ~~business.~~

4 ~~(F) A statement that the business will only employ or use~~
5 ~~persons certified pursuant to this chapter to provide massage~~
6 ~~services and that failure to comply with this provision may result~~
7 ~~in the suspension or revocation of, imposition of conditions upon,~~
8 ~~or action against the certificate of registration.~~

9 ~~(G) A statement that the applicant will provide written~~
10 ~~notification of any changes to the original application within 10~~
11 ~~days of that change occurring.~~

12 ~~(H) Authorization for the city, county, or city and county to~~
13 ~~investigate the truth of the information contained in the application.~~

14 ~~(I) The payment of a fee to conduct a background check pursuant~~
15 ~~to Section 4613 if the owner or owners of the massage~~
16 ~~establishment or business applying for the certificate of registration~~
17 ~~are not certified pursuant to this chapter and own 5 percent or more~~
18 ~~of the massage establishment or business.~~

19 ~~(J) A copy of any lease or rental agreement executed by the~~
20 ~~applicant for purposes of operating the massage establishment or~~
21 ~~business.~~

22 ~~(3) A city, county, or city and county may require a massage~~
23 ~~establishment or business to comply with any applicable local~~
24 ~~ordinance, regulation, rule, requirement, or restriction that complies~~
25 ~~with subdivision (b) or (d) as a condition of granting or maintaining~~
26 ~~a revocable certificate of registration, including, but not limited~~
27 ~~to, those provisions pertaining to health and safety.~~

28 ~~(4) A city, county, or city and county may exempt certain classes~~
29 ~~of persons or businesses from compliance with the requirements~~
30 ~~for a certificate of registration.~~

31 ~~(5) A city, county, or city and county may make the certificate~~
32 ~~of registration nontransferable.~~

33 ~~(6) A city, county, or city and county may, at its sole discretion,~~
34 ~~deny, suspend, revoke, impose conditions upon, or otherwise act~~
35 ~~against a certificate of registration for failure to comply with the~~
36 ~~provisions of an ordinance adopted pursuant to this subdivision.~~

37 ~~SEC. 4. Section 4613 of the Business and Professions Code is~~
38 ~~amended to read:~~

39 ~~4613. (a) Nothing in this chapter shall restrict or limit in any~~
40 ~~way the authority of a city, county, or city and county to adopt a~~

1 local ordinance governing any person who is not certified pursuant
2 to this chapter.

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

6 (c) ~~Nothing in this chapter shall be construed to restrict or limit~~
7 ~~in any way the authority of a city, county, or city and county to~~
8 ~~adopt a local ordinance restricting the opening of a new massage~~
9 ~~establishment in a location, or within 300 feet of a location, in~~
10 ~~which a massage establishment has been closed due to criminal~~
11 ~~activity in the past year.~~

12 (d) ~~Nothing in this chapter shall be construed to preclude a city,~~
13 ~~county, or city and county from requiring a background check of~~
14 ~~an owner or operator of a massage establishment who owns 5~~
15 ~~percent or more of a massage business or massage establishment~~
16 ~~and who is not certified pursuant to this chapter. The background~~
17 ~~check may include, but is not limited to, a criminal background~~
18 ~~check, including requiring submission of fingerprints for a state~~
19 ~~and federal criminal background check, and submission of an~~
20 ~~application that requires the applicant to provide information,~~
21 ~~including, but not limited to, the applicant's business, occupation,~~
22 ~~and employment history for the 10 years preceding the date of~~
23 ~~application, the inclusive dates of same, and the name and address~~
24 ~~of any massage business or other like establishment owned or~~
25 ~~operated by any person who is subject to the background check~~
26 ~~requirement of this subdivision. If a noncertified owner's or~~
27 ~~operator's background check discloses information that the city,~~
28 ~~county, or city and county determines is relevant to owning or~~
29 ~~operating a massage establishment, the city, county, or city and~~
30 ~~county may regulate that establishment in any manner it deems~~
31 ~~proper that is in accordance with the law.~~

O