



June 6, 2006

Dear California ABMP Member:

The last major update letter you received on California massage legislative developments was exactly six months ago. A mostly frustrating six months is how I would characterize the period, largely dealing with parties not as keenly interested in massage regulation as we are or, in some cases, organizations determined to make it difficult for the massage profession to carve out a scope of practice embodied in statute.

I'm communicating to you this week because an updated version of SB 412 is now in print (reprinted as the final 17 pages of this 21 page PDF). I offer a few comments below on recent discussions and notable bill revisions, assuming you previously examined the December 2005 ABMP letter and attachments. If instead you are new to this issue, it might be helpful first to [review those materials](#).

The new bill draft does reflect ongoing conversations with organizations representing California cities and counties. New language attempts to address concerns their representatives raised. Those organizations will now circulate the new bill drafts to their constituent members. Likely it will be late June before we get formal feedback from those city and county organizations. Reaching resolution with those groups is important as the core of SB 412 is a substitution of consistent state regulation of massage therapy for the current patchwork of diverse local regulations.

A major concern voiced in the December 2005 communication was about the grandfathering provisions. Essentially grandfathering addresses individuals with at least 100 but fewer than 250 hours of massage education. By proving a certain amount of work experience, those qualifying for grandfathering into the Massage Practitioner tier would not have to obtain additional schooling. Those not qualifying would have to increase their massage education to at least 250 hours, in many cases having to persuade their original school to add courses. Moving the ball forward on this subject has proven challenging. Here are the improvements in the bill for individuals possessing a current permit or license issued by a city or county:

Previous Bill Version	New June 5, 2006 Bill
Must have practiced massage for ≥ 5 years	Must have practiced massage for ≥ 3 years
At least 1,250 hours of documented experience	At least 1,000 hours of documented experience
≥ 250 experience hours in each of the 5 years	No yearly requirement—just acquire $\geq 1,000$ total hours sometime during their career

I have recently expressed concern to legislators that many individuals completing their massage education in 2006 would be frozen out from any opportunity to qualify for grandfathering because they couldn't possibly gain three years of work experience by January 1, 2009. A summary of ABMP's perspective is provided in a 2 page memo immediately following this letter, titled simply "Grandfathering." Those views have been thoughtfully considered by staff for Senator Figueroa, the bill sponsor, but those staff members disagree philosophically about the extent of grandfathering that is appropriate. At this point, if you continue to have concerns about grandfathering provisions, the best place to voice them would be to:

The Honorable Judy Chu, Chair
 Assembly Appropriations Committee
 State Capitol, Room 2114

Sacramento, CA 95814
(916) 319-2181 (fax)
(916) 319-2080 (telephone)

The committee's communication preference would be first a fax or letter, second a telephone call. E-mails are too readily deleted to have full impact, but if that is your only available option, please direct it to assemblymember.chu@assembly.ca.gov

One other continuing discussion has been with the California Chiropractic Association (CCA), with focus on language defining "massage." Despite several meetings and numerous renditions of proposed changes to the definition, CCA has taken a "Just say 'NO,'" position. The CCA will oppose the bill unless language is added that would narrow the scope of practice for massage therapists seeking a certification (which narrowing ABMP will not accept). We provided considerable research and evidence to support our position regarding the level and types of work that are within a broadly accepted scope of practice for massage therapy. Without producing any rebutting evidence, the CCA has unfortunately determined the definition of massage proposed in this bill will infringe on their scope of practice. It's a shame because many California ABMP members work constructively with or receive referrals from chiropractors who understand the value of the two professions working together. If you have a business relationship with a chiropractor who supports massage therapy, you might ask him or her to examine our proposed definition of "massage" (on page three of the new SB 412 draft) and, if they find that definition reasonable, to then express their views on the bill to the Assembly Appropriations Committee.

On one other issue highlighted in my December communication—possible permanent retention of a 250 education-hour entry level into the profession, there has been no budge to date by the bill sponsor.

Where from here? Until now, the process has consistently taken longer to develop than was originally anticipated. Soon that will no longer be true because SB 412 either emerges from the Legislature before it adjourns toward the end of August or the bill dies. SB 412 still needs to traverse the Assembly Appropriations Committee, the full Assembly, and—because its contents have changed—gain concurrence of the Senate. It is possible the Appropriations Committee could take it up in late June, but more likely this bill will be part of the usual mad August rush. (The Legislature is scheduled to take a one month recess from July 7-August 7.) Stay tuned for website updates. It won't be another six months before our next report.

Sincerely,

A handwritten signature in black ink that reads "Bob Benson". The signature is written in a cursive, slightly slanted style.

Bob Benson
Chairman

Grandfathering

California Massage Education Patterns

ABMP estimates 34,353 individuals in California currently practice massage therapy (or one of the numerous related modalities generally encompassed by the term "massage therapy"). Their median tenure in the field is slightly under four years. That's driven partly by a recent surge in demand for massage, partly by a high exit rate from the profession.

Compared to practitioners in most other states, California massage therapists possess relatively modest core education in the field. Measured by core education received, the breakout is:

Core education	100-249 hours	250-499 hours	500 or more hours
# of practitioners	17,927	8,101	8,325
% of practitioners	52.2%	23.6%	24.2%

This distribution is mirrored by the primary program offerings of the 250 independent massage training programs approved by the BPPVE plus three community college massage programs. Looking strictly at the distribution of graduates, in 2005 a full 64.7% of graduates completed a program of from 100-249 hours. This proportion is higher than the 52.2% number shown above because rates for actually starting practice are lower and attrition rates are higher for those with more modest education levels.

In terms of who can qualify for certification, the thrust of SB 412 should be to balance three desirable results:

- Gradually upgrade the scope and content of California massage education programs, first to a minimum of 250 hours;
- Prevent market disruption in the supply of massage services that an overly precipitous movement to higher education requirements could entail; and
- Treat fairly the 17,927 individuals now practicing with fewer than 250 education-hours as well as the estimated 8,800 additional individuals who will graduate in 2006 from a massage program of fewer than 250 hours duration.

Characteristics of the Profession

While there are notable exceptions, massage therapy remains largely a part-time profession dominated by women. They transition in and out of the field as life challenges and opportunities arise. Many of them take periods of time off from work to have a child or care for elderly parents. Or their family moves and, once settled, it takes time to hang out a shingle and rebuild clientele. Many other individuals don't face such transitions, but simply are attracted to the idea of combining massage with some other different kind of part-time work.

Consider these facts from ABMP's 2004 and 2005 member surveys:

45.2%	Proportion of massage practitioners who hold at least one additional job outside the massage profession.
\$7,750	Median income from massage in first year of practice.
221	Median number of client sessions in 2004—first year practitioners.
\$14,500	Median income from massage—all practitioners.
\$18,950	Average income from massage—all practitioners.
400	Median number of client sessions in 2004—all practitioners.
42%	Proportion providing 500 hours or more of massage in 2004.
61%	Proportion providing 300 hours or more of massage in 2004.
78.8%	Female proportion of massage practitioners.
41.3	Average practitioner age.
25%	Annual exit rate from the massage profession.

The proposed grandfathering language in Section 4604 (a) (1) (B), requiring **both** a) demonstrated work experience of at least 1,000 hours (with city or county permit) or 1,750 hours (without); and b) a history of providing massage therapy services for at least the past three years, is out of balance with the above described behavioral norms. Even allowing for the fact that the median of 221 client sessions reported for 2004 for first-year practitioners may reflect some partial year reporting, it is difficult for the rookie practitioner to build a practice from scratch. (This reality drives many recent graduates to seek spa employment, at least part-time.)

What is particularly unfair is the way the proposed bill would affect 52% of the approximately 16,956 individuals who will graduate from California massage schools in 2006. These 8,800 individuals in good faith enrolled in a state agency approved program, expecting upon graduation to be able to qualify to practice and to draw any available related permits or certificates. Current SB 412 requirements to qualify for regular grandfathering would freeze them out because, by definition, they could not possibly accumulate three years of practice—no matter how many client hours they completed in 2007, 2008 and the remainder of 2006—before the grandfathering window clangs shut on January 1, 2009. While they could file for “conditional grandfathering,” in essence current bill language would force them to go back to school to raise their total massage training hours up to 250. That smacks of changing the rules in mid-stream.

Individuals electing to enroll in massage school in 2007 or 2008 would do so with their eyes open about the impending requirements. As a practical matter, most massage schools currently specializing in 100-249 hour core programs would scramble to adjust their offerings to the new 250 hour standard. (Even that could prove challenging. Every program change requires BPPVE approval and that agency is badly backlogged even without having 200+ program owners filing in the next few months for a major change in program content.)

Those graduating in 2006, though, deserve a better shake—at least an opportunity to meet the experience requirement.

Voluntary Certification?

Those individuals generally unenamored with the concept of grandfathering readily point out that SB 412 sets up a voluntary certification opportunity. Technically that is true. Pragmatically, it would create strong pressure to certify in most parts of the state. That’s because, in order to satisfy cities and counties focused on prostitution abatement (the link is hijacking of the term “massage” by individuals actually offering sexual services), extensive language in the bill exempts massage therapists certified pursuant to the act from numerous local government regulations, but expressly permits those governments to apply rigorous rules to individuals not choosing to become certified.

Creating incentives to certify is fine. The public will be better informed in a landscape in which certification becomes the norm. The economics of the proposed new massage organization will be enhanced the more individuals elect to certify. It becomes disingenuous, though, to suggest that the details of grandfathering provisions don’t matter because certification is “voluntary.”

Recommendation

Give 2006 entrants to the massage profession an opportunity to qualify for a certificate under regular grandfathering by accumulating sufficient work experience between now and January 1, 2009. While ABMP would prefer elimination of the “time in profession” standard (instead just specifying minimum client contact hour experience), make two changes in Section 4604 (a) (1) (B):

- 1) change the time in profession requirement from 3 to 2 years; and
- 2) lower the number of required experience hours from 1,000 to 700 (to match up better with actual prevalent industry rates of experience acquisition).

AMENDED IN ASSEMBLY JUNE 5, 2006
AMENDED IN ASSEMBLY AUGUST 15, 2005
AMENDED IN ASSEMBLY JUNE 20, 2005
AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 412

Introduced by Senator Figueroa

February 17, 2005

An act to add and repeal Chapter 10.5 (commencing with Section 4600) to Division 2 of the Business and Professions Code, relating to massage therapy.

LEGISLATIVE COUNSEL'S DIGEST

SB 412, as amended, Figueroa. Massage therapy.

Existing law provides for the regulation of various healing arts professionals, including physicians and surgeons, chiropractors, physical therapists, and acupuncturists. Existing law authorizes the legislative body of a city or county to enact ordinances providing for the licensing and regulation of the business of massage when carried on within the city or county.

This bill would, *commencing July 1, 2007*, provide for the certification of massage practitioners and massage therapists by the Massage Therapy Organization, which would be a nonprofit organization that meets specified requirements, *and would impose certain duties on the organization*. The bill would require applicants for certification as massage practitioners or massage therapists to be 18 years of age or older, to meet specified educational criteria, *to provide to the organization and update certain information*, to provide fingerprints for submission to the Department of Justice for a criminal

background check, and to pay fees required by the organization. *The bill would require the Department of Justice to review specified information and to provide to the organization fitness determinations and certain other information.* The bill would allow the organization to take certain disciplinary action against certificate holders ~~and, would make the violation of specified provisions—would be a misdemeanor, and would require the organization to take certain action with regard to suspending or revoking a certificate if the certificate holder has been arrested for, and charged with, specified crimes.~~ The bill would prohibit a city, county, or other local government from enacting ~~an ordinance~~ *certain ordinances* regulating the practice of massage by a certificate holder. The bill would make the Massage Therapy Organization subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would require the organization to provide the committee with a related report by September 1, ~~2008~~ *2011*. The bill would repeal these provisions on January 1, ~~2010~~ *2013*.

Because this bill would make the violation of specified provisions a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Chapter 10.5 (commencing with Section 4600)
 2 is added to Division 2 of the Business and Professions Code, to
 3 read:

4
 5 CHAPTER 10.5. MASSAGE THERAPISTS
 6

7 4600. As used in this chapter, the following terms shall have
 8 the following meanings:

9 (a) “Approved school” or “approved massage school” means a
 10 facility that meets minimum standards for training and

1 curriculum in massage and related subjects and that is approved
2 by the Bureau For Private Postsecondary And Vocational
3 Education pursuant to Section 94915 of the Education Code, by
4 an institution accredited pursuant to paragraph (7) of subdivision
5 (b) of Section 94739 of the Education Code, by colleges or
6 universities of the state higher education system as defined in
7 Section 100850 of the Education Code, or by a school of equal or
8 greater training that is approved by the corresponding agency in
9 another state or accredited by an agency recognized by the
10 United States Department of Education.

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

14 (c) (1) "Massage" means the application of a system of
15 structured touch, pressure, movement, and holding to the soft
16 tissues of the human body with the ~~intent to enhance or restore~~
17 *purpose of positively affecting* the health and well-being of the
18 client. The practice includes the external application of water,
19 heat, cold, lubricants, salt scrubs, or other topical preparations;
20 *and the use of devices that mimic or enhance the actions of the*
21 ~~hands; and determination of whether massage therapy is~~
22 ~~appropriate or contraindicated, or whether referral to another~~
23 ~~health care practitioner is appropriate. For purposes of. *Massage*~~
24 ~~does not include the prescription of legend drugs or controlled~~
25 ~~substances, the diagnosis of illness or disease, or any treatment~~
26 ~~for which a license to practice medicine, chiropractic, physical~~
27 ~~therapy, or podiatry is required.~~

28 (2) "Massage" does not include touching that meets either of
29 the following criteria:

30 (A) *It is done as part of movement education, energy*
31 *balancing, or any other technique, profession, or modality in*
32 *which any soft tissue manipulation is incidental to, and not the*
33 *central aim of, the practice.*

34 (B) *It is done while engaging in the practice of another*
35 *somatic technique, profession, or modality with established*
36 *standards and ethics in which a practitioner is qualified,*
37 *provided that such services are not designated or implied to be*
38 *massage or massage therapy.*

39 (3) For purposes of this chapter, massage and bodywork are
40 interchangeable.

1 (d) “Massage therapist,” “bodyworker,” “bodywork therapist,”
2 or “massage and bodywork therapist” means a person who is
3 certified by the Massage Therapy Organization under subdivision
4 (c) of Section 4601 and who administers massage for
5 compensation.

6 (e) “Massage practitioner,” “bodywork practitioner,” or
7 “massage and bodywork practitioner” means a person who is
8 certified by the Massage Therapy Organization under subdivision
9 (b) of Section 4601 and who administers massage for
10 compensation.

11 (f) “Organization” means the Massage Therapy Organization
12 created pursuant to this chapter, which shall be a nonprofit
13 organization, exempt from taxation under paragraph (3) of
14 subsection (c) of Section 501 of Title 26 of the United States
15 Code. The organization may commence activities as authorized
16 by this section once it has submitted a request to the Internal
17 Revenue Service seeking this exemption.

18 (g) “Registered school” means a facility that meets minimum
19 standards for training and curriculum in massage and related
20 subjects that is recognized by the Bureau For Private
21 Postsecondary And Vocational Education pursuant to Section
22 94931 of the Education Code, by an institution accredited by the
23 senior commission or the junior commission of the Western
24 Association of Schools and Colleges as defined in paragraph (7)
25 of subdivision (b) of Section 94739 of the Education Code, by
26 colleges and universities of the state higher education system as
27 defined in Section 100850 of the Education Code, or by a school
28 of equal or greater training that is approved by the corresponding
29 agency in another state.

30 4600.5. (a) A Massage Therapy Organization, as defined in
31 subdivision (f) of Section 4600, shall be created and shall have
32 the responsibilities and duties set forth in this chapter. The
33 organization may take any reasonable actions, including hiring
34 staff or entering into contracts, to carry out the responsibilities
35 and duties set forth in this chapter.

36 (b) (1) The organization shall be governed by a board of
37 directors made up of at least two representatives from each
38 professional society, association, or other entity, whose
39 membership is comprised of massage therapists, that chooses to
40 participate in the organization. To qualify, a professional society,

1 association, or other entity must have a membership in California
2 of at least 1,000 individuals for the last three years, and have
3 bylaws that require its members to comply with a code of ethics.
4 In addition, the board of directors shall include a person selected
5 by the League of California Cities, a person selected by the
6 California State Association of Counties, and a person selected
7 by the Bureau Chief of the Bureau for Private Postsecondary
8 Vocational Education, unless these entities choose not to exercise
9 this right of selection. The organization's bylaws shall establish a
10 process by which any other directors may be selected.

11 (2) The initial board of directors shall establish the
12 organization, initiate the request for tax-exempt status from the
13 Internal Revenue Service, and solicit input from the massage
14 community concerning the operations of the organization. The
15 initial board of directors, in its discretion, may immediately
16 undertake to issue the certificates authorized by this chapter after
17 adopting the necessary bylaws or other rules, or may establish by
18 adoption of bylaws the permanent governing structure prior to
19 issuing certificates.

20 (c) The board of directors shall establish fees reasonably
21 related to the cost of providing services and carrying out its
22 ongoing responsibilities and duties. Initial and renewal fees shall
23 be established by the board of directors annually.

24 4601. (a) The organization shall issue a certificate ~~to~~
25 *authorizing* an applicant who satisfies the requirements of this
26 chapter *to perform massage services as described in this chapter*
27 *in any jurisdiction in the state.*

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

32 (1)

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

34 (2)

35 (B) The applicant has successfully completed, at a single
36 approved school, curricula in massage and related subjects
37 totaling a minimum of 250 hours, that incorporates appropriate
38 school assessment of student knowledge and skills. Included in
39 the hours shall be instruction addressing anatomy and
40 physiology, contraindications, health and hygiene, and business

1 and ethics, with at least 100 hours of the required minimum 250
2 hours devoted to these curriculum areas.

3 ~~(3)~~

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

5 (2) (A) *Certificates issued pursuant to this subdivision or*
6 *pursuant to subdivision (a) or (c) of Section 4604 on or prior to*
7 *December 31, 2012, shall, after December 31, 2012, be renewed*
8 *without any additional educational requirements, provided that*
9 *the certificate holder continues to be qualified pursuant to this*
10 *chapter.*

11 (B) *New certificates shall not be issued pursuant to this*
12 *subdivision after December 31, 2012.*

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

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

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

19 (A) He or she has successfully completed the curricula in
20 massage and related subjects totaling a minimum of 500 hours.
21 Of this 500 hours, a minimum of 250 hours shall be from
22 programs that satisfy the criteria established in paragraph (2) of
23 subdivision (b). The remaining 250 hours required may be
24 secured either from these programs, from registered schools, or
25 from approved continuing education providers.

26 (B) The applicant has passed an examination that has been
27 approved by the organization.

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

29 (d) The organization shall issue a certificate to an applicant
30 who meets the other qualifications of this chapter and holds a
31 current and valid registration, certification, or license from any
32 other state whose licensure requirements meet or exceed those
33 defined within this chapter. The organization shall have
34 discretion to give credit for comparable academic work
35 completed by an applicant in a program outside of California.

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

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

5 (g) (1) *The organization shall have the responsibility to*
6 *determine that the school or schools from which an applicant has*
7 *obtained the education required by this chapter meet the*
8 *requirements of this chapter. If the organization has any reason*
9 *to question whether or not the applicant received the education*
10 *that is required by this chapter from the school or schools that*
11 *the applicant is claiming, the organization shall investigate the*
12 *facts to determine that the applicant received the required*
13 *education prior to issuing a certificate.*

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

21 4601.2. *No certificates shall be issued by the organization*
22 *pursuant to this chapter prior to July 1, 2007.*

23 4601.5. (a) Prior to issuing a certificate to the applicant, the
24 organization shall require the applicant to submit fingerprint
25 images in a form consistent with the requirements of this section.
26 The organization shall submit the fingerprint images and related
27 information to the Department of Justice for the purpose of
28 obtaining information as to the existence and nature of a record
29 of state and federal level convictions and of state and federal
30 level arrests for which the Department of Justice establishes that
31 the applicant was released on bail or on his or her own
32 recognizance pending trial. Requests for federal level criminal
33 offender record information received by the Department of
34 Justice pursuant to this section shall be forwarded to the Federal
35 Bureau of Investigation by the Department of Justice. *The*
36 *Department of Justice shall review the information returned from*
37 *the Federal Bureau of Investigation, and shall compile and*
38 *disseminate a fitness determination regarding the candidate to*
39 *the organization.*

1 ~~(b) Pursuant to subdivision (p) of Section 11105 of the Penal~~
2 ~~Code, the Department of Justice shall provide the following~~
3 ~~information to the organization:~~

4 ~~(1) Every conviction rendered against the applicant.~~

5 ~~(2) Every arrest for an offense for which the applicant is~~
6 ~~presently awaiting trial, whether the applicant is incarcerated or~~
7 ~~has been released on bail or on his or her own recognizance~~
8 ~~pending trial.~~

9 *(b) The Department of Justice shall provide information to the*
10 *organization pursuant to subdivision (p) of Section 11105 of the*
11 *Penal Code.*

12 (c) The Department of Justice and the organization shall
13 charge a fee sufficient to cover the cost of processing the request
14 for state and federal level criminal offender record information.

15 ~~(d) Fingerprint images and related information submitted~~
16 ~~pursuant to this section include fingerprint images and related~~
17 ~~information that is transmitted electronically.~~

18 ~~(e)~~

19 (d) The organization shall request subsequent arrest
20 notification service from the Department of Justice, as provided
21 under Section 11105.2 of the Penal Code, for all applicants for
22 licensure for whom fingerprint images and related information
23 are submitted to conduct a search for state and federal level
24 criminal offender record information.

25 *(e) This section shall become operative July 1, 2007.*

26 4602. (a) The organization may discipline a certificate holder
27 by any, or a combination, of the following methods:

28 (1) Placing the certificate holder on probation.

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

32 (3) Revoking the certificate.

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

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

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

39 *(c) (1) Notwithstanding any other provision of law, if the*
40 *organization receives notice that a certificate holder has been*

1 *arrested and charges have been filed by the appropriate*
2 *prosecuting agency against the certificate holder alleging a*
3 *violation of subdivision (b) of Section 647 of the Penal Code or*
4 *any other offense described in subdivision (h) of Section 4603,*
5 *the organization shall take all of the following actions:*

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

8 *(B) Notify the certificate holder at the address last filed with*
9 *the organization that the certificate has been suspended, and the*
10 *reason for the suspension.*

11 *(C) Notify any business that the organization has in its records*
12 *as employing the certificate holder that the certificate has been*
13 *suspended.*

14 *(2) Upon notice to the organization that the charges described*
15 *in paragraph (1) have resulted in a conviction, the suspended*
16 *certificate shall become subject to permanent revocation. The*
17 *organization shall provide notice to the certificate holder that it*
18 *has evidence of a valid record of conviction and that the*
19 *certificate will be revoked unless the certificate holder provides*
20 *evidence that the conviction is either invalid or that the*
21 *information is otherwise erroneous.*

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

28 *4602.5. (a) Upon the request of any law enforcement agency*
29 *or any other representative of a local government agency with*
30 *responsibility for regulating, or administering a local ordinance*
31 *relating to, massage or massage businesses, the organization*
32 *shall provide information concerning a certificate holder,*
33 *including, but not limited to, the current status of the certificate,*
34 *any history of disciplinary actions taken against the certificate*
35 *holder, the home and work addresses of the certificate holder,*
36 *and any other information in the organization's possession that*
37 *is necessary to verify facts relevant to administering the local*
38 *ordinance.*

39 *(b) The organization shall accept information provided by any*
40 *law enforcement agency or any other representative of a local*

1 *government agency with responsibility for regulating, or*
2 *administering a local ordinance relating to, massage or massage*
3 *businesses. The organization shall have the responsibility to*
4 *review any information received and to take any actions*
5 *authorized by this chapter that is warranted by that information.*

6 4603. It is a violation of this chapter for a certificate holder to
7 commit, and the organization may deny an application for a
8 certificate or discipline a certificate holder for, any of the
9 following:

10 (a) Unprofessional conduct, including, but not limited to, the
11 following:

12 (1) Incompetence or gross negligence in carrying out usual
13 massage or massage therapy functions.

14 (2) Repeated similar negligent acts in carrying out usual
15 massage or massage therapy functions.

16 (3) Denial of licensure, revocation, suspension, restriction, or
17 any other disciplinary action against a certificate holder by
18 another state or territory of the United States, by any other
19 government agency, or by another California health care
20 professional licensing board. A certified copy of the decision,
21 order, or judgment shall be conclusive evidence of these actions.

22 (b) Procuring a certificate by fraud, misrepresentation, or
23 mistake.

24 (c) Violating or attempting to violate, directly or indirectly, or
25 assisting in or abetting the violation of, or conspiring to violate,
26 any provision or term of this chapter or any rule or bylaw
27 adopted by the organization.

28 (d) Conviction of any felony, or conviction of a misdemeanor
29 that is substantially related to the qualifications, functions, or
30 duties of a certificate holder, in which event the record of the
31 conviction shall be conclusive evidence of the crime.

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

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

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

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

1 4603.5. *It shall be the responsibility of any certificate holder*
2 *to notify the organization of his or her home address, as well as*
3 *the address of any business establishment where he or she*
4 *regularly works as a massage therapist or massage practitioner,*
5 *whether as an employee or as an independent contractor. A*
6 *certificate holder shall notify the organization within 30 days of*
7 *changing either his or her home address or the address of the*
8 *business establishment where he or she regularly works as a*
9 *massage therapist or massage practitioner.*

10 4604. (a) Notwithstanding Section 4601, the organization
11 may grant a massage practitioner certificate to any person who
12 applies on or before January 1, ~~2008~~ 2009, with one of the
13 following:

14 (1) Both of the following:

15 (A) A current valid massage permit or license from a
16 California city or county.

17 (B) Documentation evidencing that the person has completed
18 at least a 100-hour course in massage at a state-approved or
19 registered school, or out-of-state school recognized by the
20 organization as providing comparable education, ~~and has~~
21 ~~provided at least 250 hours of massage to members of the public~~
22 ~~for compensation each year for the past five years. has been~~
23 ~~practicing for at least three years, and has provided at least 1000~~
24 ~~hours of massage to members of the public for compensation.~~

25 (2) Documentation evidencing that the person has completed
26 at least a 100-hour course in massage at a state-approved or
27 registered school, or out-of-state school recognized by the
28 organization as providing comparable education, ~~and has~~
29 ~~provided, prior to the effective date of the law, at least 400 hours~~
30 ~~of massage to members of the public for compensation each year~~
31 ~~for the past 5 years has been practicing for at least three years,~~
32 ~~and has provided at least 1750 hours of massage to members of~~
33 ~~the public for compensation.~~ For purposes of this subdivision,
34 evidence of practice shall include either of the following:

35 (A) A W-2 form or employer's affidavit containing the dates
36 of the applicant's employment.

37 (B) Tax returns indicating self-employment as a massage
38 practitioner or massage therapist or any other title that may
39 demonstrate experience in the field of massage.

1 (3) Documentation evidencing that the person holds a current
2 valid certificate of authorization as an instructor at a
3 BPPVE-approved massage school, or holds the position of a
4 massage instructor at a school accredited by an agency
5 recognized by the United States Department of Education, or
6 colleges and universities of the state higher education system, as
7 defined in Section 100850 of the Education Code.

8 (b) (1) After reviewing the information submitted under
9 subdivision (a), the organization may require additional
10 information necessary to enable it to determine whether to issue
11 a certificate.

12 (2) *If an applicant under paragraph (1) of subdivision (a) or*
13 *subdivision (c) has not complied with Section 4601.5, or its*
14 *equivalent, when obtaining a license or permit from the city or*
15 *county, the organization shall require the applicant to comply*
16 *with Section 4601.5 prior to issuing a certificate pursuant to this*
17 *section.*

18 (c) (1) A person *applying for a massage practitioner*
19 *certificate on or before January 1, 2009*, who meets the
20 educational requirements of either paragraph (1) or (2) of
21 subdivision (a), but who has not ~~practiced for five years~~
22 *completed the required number of practice hours* prior to
23 submitting an application pursuant to this section, may apply for
24 a conditional certificate.

25 (2) An applicant for a conditional certificate shall be required
26 to complete 30 hours of additional education *per year* from
27 schools or courses described in paragraph (5) ~~for each year that~~
28 ~~the person is unable to establish the practice experience required~~
29 ~~by paragraph (1) or (2) of subdivision (a). The applicant's total~~
30 ~~education shall not exceed 250 hours. The additional educational~~
31 ~~requirements provided by this subdivision shall be completed~~
32 ~~within a time period based on one year for each 30 hours of~~
33 ~~education required. until he or she has completed a total of 250~~
34 *hours of education.*

35 (3) Upon successful completion of the requirements of this
36 subdivision, the organization shall issue a certificate to the
37 person that is not conditional.

38 (4) The organization shall immediately revoke the conditional
39 certificate issued to any person pursuant to this subdivision if the
40 time period specified in paragraph (2) expires without proof of

1 completion of the requirements having been filed with the
2 organization.

3 (5) Any additional education required by this section may be
4 completed through courses provided by any of the following:

5 (A) Approved schools, as defined in subdivision (a) of Section
6 4600.

7 (B) Registered schools, as defined in subdivision (g) of
8 Section 4600.

9 (C) A provider approved by the National Certification Board
10 for Therapeutic Massage and Bodywork (NCBTMB).

11 (D) A provider that establishes to the satisfaction of the
12 organization that its course or courses are appropriate educational
13 programs for this purpose.

14 (d) Nothing in this section shall preclude the organization
15 from exercising any power or authority conferred by this chapter
16 with respect to a conditional certificate holder.

17 4605. It is an unfair business practice for any ~~certified~~
18 ~~massage therapist or certified massage practitioner to state or~~
19 ~~person to state or~~ advertise or put out any sign or card or other
20 device, or to represent to the public through any print or
21 electronic media, that he or she is ~~state~~ certified, registered, or
22 licensed by a governmental agency to perform the functions of a
23 massage therapist or massage practitioner.

24 ~~4610.~~

25 4606. (a) It is an unfair business practice for any person to
26 hold oneself out or use the title of “certified massage therapist”
27 or “certified massage practitioner” or any other term, *such as*
28 *“licensed,” “registered,” or “CMT,”* that implies or suggests
29 that the person is certified as a massage therapist or practitioner
30 without meeting the requirements of Section 4601.

31 (b) Any person who holds himself or herself out or uses the
32 title of “certified massage therapist” or “certified massage
33 practitioner” or any other term, *such as “licensed,” “registered,”*
34 *or “CMT,”* that implies or suggests that the person is certified as
35 a massage therapist or practitioner, without possessing a valid
36 certificate issued pursuant to this chapter, is guilty of a
37 misdemeanor punishable by up to 90 days in a county jail, a fine
38 of fifty dollars (\$50) for the first violation, one hundred dollars
39 (\$100) for the second violation, and two hundred dollars (\$200)

1 for the third and subsequent violations, or by both that
2 imprisonment and fine.

3 ~~4611.~~

4 4607. The superior court in and for the county in which any
5 person acts as a massage practitioner or massage therapist in
6 violation of the provisions of this chapter, may, upon a petition
7 by any person, issue an injunction or other appropriate order
8 restraining the conduct. The proceedings under this paragraph
9 shall be governed by Chapter 3 (commencing with Section 525)
10 of Title 7 of Part 2 of the Code of Civil Procedure.

11 ~~4612. (a) A city, county, or other political jurisdiction within~~
12 ~~the state shall not enact an ordinance that regulates the practice of~~
13 ~~massage, as defined in this chapter, by an individual who is~~
14 ~~certified under this chapter. No provision of any ordinance~~
15 ~~enacted by a city, county, or other political jurisdiction that is in~~
16 ~~effect before the effective date of this chapter, and that relates to~~
17 ~~the practice of massage, may be enforced against a person who is~~
18 ~~issued a certificate under this chapter.~~

19 ~~(b) Nothing in this chapter shall be interpreted to prevent any~~
20 ~~local jurisdiction from adopting or enforcing any local ordinance~~
21 ~~that is not in conflict with any provision of this chapter, as long~~
22 ~~as it does not conflict with subdivision (a). Nothing in this~~
23 ~~chapter shall preclude application of any local ordinance with~~
24 ~~respect to a person certified pursuant to this chapter where that~~
25 ~~ordinance is equally applied to any person operating any other~~
26 ~~lawful business within the local jurisdiction.~~

27 4608. *Nothing in this chapter is intended to limit or prohibit*
28 *a person who obtains a certification pursuant to this chapter*
29 *from providing services pursuant to, and in compliance with,*
30 *Sections 2053.5 and 2053.6.*

31 4612. (a) (1) *The holder of a certificate issued pursuant to*
32 *this chapter shall have the right to practice massage, consistent*
33 *with this chapter, in any city, county, or city and county in this*
34 *state and shall not be required to obtain any other license,*
35 *permit, or other authorization, except as provided in this section,*
36 *to engage in that practice.*

37 (2) *Notwithstanding any other provision of law, a city, county,*
38 *or city and county shall not enact an ordinance that requires a*
39 *license, permit, or other authorization to practice massage, as*
40 *defined in this chapter, by an individual who is certified pursuant*

1 to this chapter. No provision of any ordinance enacted by a city,
2 county, or city and county that is in effect before the effective
3 date of this chapter, and that requires a license, permit, or other
4 authorization to practice massage, may be enforced against an
5 individual who is certified pursuant to this chapter.

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

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

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

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

31 (3) Notwithstanding subdivision (a), a city, county, or city and
32 county may adopt an ordinance requiring business license fees
33 and business license requirements applicable to massage
34 establishments or businesses that are no different than the fees or
35 requirements that are applied to any person operating any other
36 lawful professional or personal services business within the
37 jurisdiction.

38 (4) Nothing in this section shall prohibit a city, county, or city
39 and county from adopting land use and zoning requirements
40 applicable to massage establishments or businesses, provided

1 *that these requirements shall be no different than the*
2 *requirements that are uniformly applied to other professional or*
3 *personal services businesses.*

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

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

24 *(7) Nothing in this section shall preclude a city, county, or city*
25 *and county from (A) requiring an applicant for a business license*
26 *to operate a massage business or establishment to fill out an*
27 *application that requests the applicant to provide relevant*
28 *information, (B) making reasonable investigations into the*
29 *information so provided, or, (C) denying or restricting a business*
30 *license if the applicant has provided materially false information.*

31 *(c) An owner or operator of a massage business or*
32 *establishment subject to subdivision (b) shall be responsible for*
33 *the conduct of all employees or independent contractors working*
34 *on the premises of the business. Nothing in this section shall*
35 *preclude a local ordinance from authorizing suspension,*
36 *revocation, or other restriction of a license or permit issued to a*
37 *massage establishment or business if violations of this chapter,*
38 *or of the local ordinance, occur on the business premises.*

39 *(d) Nothing in this section shall preclude a city, county, or city*
40 *and county from adopting a local ordinance that is applicable to*

1 *massage businesses or establishments described in paragraph (1)*
2 *of subdivision (b) and that does either of the following:*

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

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

11 4615. (a) This chapter shall be subject to the review required
12 by Division 1.2 (commencing with Section 473).

13 (b) The Massage Therapy Organization shall provide to the
14 Joint Committee on Boards, Commissions, and Consumer
15 Protection by September 1, ~~2008~~ 2011, a report as required by
16 Section 473.2.

17 4620. This chapter shall remain in effect only until January 1,
18 ~~2010~~ 2013, and as of that date is repealed, unless a later enacted
19 statute, that is enacted before January 1, ~~2010~~ 2013, deletes or
20 extends that date.

21 SEC. 2. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the
26 penalty for a crime or infraction, within the meaning of Section
27 17556 of the Government Code, or changes the definition of a
28 crime within the meaning of Section 6 of Article XIII B of the
29 California Constitution.