

By: Patrick, Dan

S.B. No. 854

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the operation and regulation of massage establishments;
3 imposing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 455.151, Occupations Code, is amended by
6 adding Subsection (a-1) to read as follows:

7 (a-1) Unless the person is exempt from the licensing
8 requirement, a person may not act as a massage therapist without
9 proof of licensure satisfactory to the department.

10 SECTION 2. Section 455.205, Occupations Code, is amended by
11 adding Subsection (f) to read as follows:

12 (f) A massage establishment may not have on its premises any
13 sexual device that can be used for sexual gratification. A massage
14 establishment may be assessed an administrative penalty under
15 Subchapter G of \$1,000 for each item on its premises that violates
16 this subsection.

17 SECTION 3. Chapter 455, Occupations Code, is amended by
18 adding Subchapter E-1 to read as follows:

19 SUBCHAPTER E-1. OPERATION OF MASSAGE ESTABLISHMENTS

20 Sec. 455.221. HOURS OF OPERATION. (a) A massage
21 establishment may provide services only between the hours of 8 a.m.
22 and 10 p.m.

23 (b) A massage establishment that violates this section may
24 be assessed an administrative penalty under Subchapter G of \$1,000

1 for each violation. Each hour the massage establishment is open in
2 violation of Subsection (a) constitutes a separate violation for
3 purposes of imposing a penalty.

4 Sec. 455.222. SLEEPING QUARTERS PROHIBITED. (a) An owner
5 or operator of a massage establishment may not permit a person to
6 sleep in a room used as part of the establishment.

7 (b) A person may not act as a massage therapist or be
8 employed in a massage establishment in a room used as sleeping
9 quarters.

10 (c) A person who violates this section may be assessed an
11 administrative penalty under Subchapter G of not less than \$500 or
12 more than \$2,000 for each violation.

13 Sec. 455.223. CRIMINAL HISTORY RECORD CHECK. (a) An owner
14 or operator of a massage establishment shall conduct a criminal
15 history record check on a person who is:

16 (1) an applicant for a position of employment at a
17 massage establishment to whom an offer of employment is made; or

18 (2) an employee of the massage establishment.

19 (b) A criminal history record check under this section is in
20 addition to the criminal background check conducted under Section
21 455.1525.

22 (c) An owner or operator of a massage establishment may not
23 knowingly employ in a massage establishment a person who has been
24 convicted of, entered a plea of nolo contendere or guilty to, or
25 received deferred adjudication for an offense involving
26 prostitution or another sexual offense.

27 Sec. 455.224. EMPLOYEE WITH CERTAIN COMMUNICABLE DISEASE

1 PROHIBITED. (a) An owner or operator of a massage establishment
2 may not knowingly employ in a massage establishment a person with a
3 communicable skin disease or a venereal disease.

4 (b) A person who knows the person has a communicable skin
5 disease or a venereal disease may not work in a massage
6 establishment.

7 Sec. 455.225. RECORD OF EMPLOYEES. (a) A massage
8 establishment shall maintain on the premises:

9 (1) a record for each employee that contains the name,
10 address, date of birth, state identification number or social
11 security number, job function, and a photograph of the employee;
12 and

13 (2) a daily register that contains the name, date of
14 birth, state identification number or social security number, and
15 job function of each employee present at the establishment that
16 day.

17 (b) The massage establishment shall preserve the daily
18 register required by Subsection (a)(2) for 90 days after the date
19 the register was made.

20 (c) On request, a massage establishment shall permit a peace
21 officer of this state or an official of the department to inspect
22 during the establishment's normal business hours any record
23 required by this section. The inspecting officer or official shall
24 inform the establishment of the officer's status as a peace officer
25 or an official of the department.

26 SECTION 4. Section 455.302(a), Occupations Code, is amended
27 to read as follows:

1 (a) Except as otherwise provided by this chapter, the [The]
2 amount of an administrative penalty may not exceed \$1,000 for each
3 violation. Each day a violation continues or occurs is a separate
4 violation for purposes of imposing a penalty.

5 SECTION 5. Subchapter G, Chapter 455, Occupations Code, is
6 amended by adding Sections 455.3021 and 455.3022 to read as
7 follows:

8 Sec. 455.3021. ADMINISTRATIVE PENALTY FOR CERTAIN
9 VIOLATIONS. An owner or operator of a massage establishment who
10 fails to conduct a background check required by Section 455.223(a)
11 or employs a person in violation of Section 455.223(c) or
12 455.224(a) may be assessed an administrative penalty under this
13 subchapter of not less than \$500 or more than \$2,000. Each day a
14 violation continues or occurs constitutes a separate violation for
15 purposes of imposing a penalty.

16 Sec. 455.3022. ADMINISTRATIVE PENALTY FOR RECORDKEEPING
17 VIOLATIONS. A massage establishment that violates Section 455.225
18 may be assessed an administrative penalty under this subchapter in
19 the amount of:

20 (1) \$1,000 for each record required under Section
21 455.225(a)(1) that is missing; and

22 (2) \$500 for each register required under Section
23 455.225(a)(2) that is missing.

24 SECTION 6. Section 455.352, Occupations Code, is amended by
25 adding Subsection (a-2) and amending Subsections (c), (d), and (e)
26 to read as follows:

27 (a-2) A person commits an offense if the person violates

1 Section 455.151(a-1). An offense under this subsection is a Class C
2 misdemeanor, unless:

3 (1) the actor has previously been convicted one time
4 of an offense under this subsection, in which event it is a Class B
5 misdemeanor;

6 (2) the actor has previously been convicted two times
7 of an offense under this subsection, in which event it is a Class A
8 misdemeanor; or

9 (3) the actor has previously been convicted three or
10 more times of an offense under this subsection, in which event the
11 offense is a state jail felony.

12 (c) An owner or operator of a massage school commits an
13 offense if the person knowingly violates Section 455.151(a),
14 455.159, 455.203(a) or (c), 455.204(b) or (c), [~~or~~] 455.205(b),
15 (c), or (d), or 455.353(b).

16 (d) Except as provided by Subsections (a-1), (a-2), (b), and
17 (e), an offense under this section is a Class C misdemeanor.

18 (e) Except as provided by Subsections (a-1), (a-2), and (b),
19 if [~~If~~] it is shown at the trial of an offense under this section
20 that the defendant has been previously convicted of an offense
21 under this section, the offense is a Class A misdemeanor.

22 SECTION 7. Section 455.353, Occupations Code, is amended to
23 read as follows:

24 Sec. 455.353. ENFORCEMENT BY PEACE OFFICERS. (a) A peace
25 officer of this state, including a peace officer employed by a
26 political subdivision of the state, may enforce this chapter.

27 (b) During normal business hours a peace officer may enter a

1 message establishment to conduct an inspection and an owner or
2 operator of a message establishment may not deny entrance to the
3 message establishment to a peace officer conducting an inspection.

4 SECTION 8. Subchapter F, Chapter 411, Government Code, is
5 amended by adding Section 411.1183 to read as follows:

6 Sec. 411.1183. ACCESS TO CRIMINAL HISTORY RECORD
7 INFORMATION: EMPLOYER AT MESSAGE ESTABLISHMENT. (a) In this
8 section, "message establishment" has the meaning assigned by
9 Section 455.001, Occupations Code.

10 (b) An owner or operator of a message establishment is
11 entitled to obtain from the department criminal history record
12 information maintained by the department that pertains to a person
13 who is:

14 (1) an applicant for a position of employment at a
15 message establishment to whom an offer of employment is made; or

16 (2) an employee of the message establishment.

17 (c) Criminal history record information obtained under
18 Subsection (b) may not be released or disclosed to any person except
19 on court order or with the written consent of the person who is the
20 subject of the criminal history record information.

21 SECTION 9. The change in law made by this Act applies only
22 to a violation or an offense committed on or after the effective
23 date of this Act. A violation or an offense committed before the
24 effective date of this Act is covered by the law in effect
25 immediately before the effective date of this Act, and the former
26 law is continued in effect for that purpose. For purposes of this
27 section, a violation or an offense was committed before the

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1 effective date of this Act if any element of the violation or
2 offense was committed before that date.

3 SECTION 10. This Act takes effect September 1, 2009.