

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 2687 Committee on Business and Professions – As Amended April 21, 2022

**SUBJECT:** California Massage Therapy Council.

**SUMMARY:** Extends the operation of the Massage Therapy Act until January 1, 2027.

**EXISTING LAW:**

- 1) Establishes the Massage Therapy Act to provide for the voluntary certification of massage therapists. (Business and Professions Code (BPC) §§ 4600 *et seq.*)
- 2) Creates the California Massage Therapy Council (CAMTC) as a nonprofit organization exempt from taxation. (BPC § 4601(d); § 4602(a))
- 3) Defines “massage” as the scientific manipulation of the soft tissues. (BPC § 4601(e))
- 4) Defines “approved school” as a school approved by CAMTC that meets minimum standards for training and curriculum in massage and related subjects as well as other requirements. (BPC § 4601(a))
- 5) Provides CAMTC with authority to take any reasonable actions necessary to carry out the responsibilities and duties set forth in the Massage Therapy Act, including, but not limited to, hiring staff, entering into contracts, and developing policies, procedures, rules, and bylaws to implement this chapter. (BPC § 4602(b))
- 6) Provides that CAMTC shall be governed by a board of directors comprised of 13 members, each appointed by an agency or organization representing local government, anti-trafficking advocates, higher education, and the massage industry. (BPC § 4602(f))
- 7) States that protection of the public shall be the highest priority for CAMTC in exercising its certification and disciplinary authority, and any other functions; whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 4603)
- 8) Requires an applicant for certification as a massage therapist to have received 500 hours of education at an approved massage school and successfully completed a background investigation. (BPC § 4604)
- 9) Provides that it is a violation of the Massage Therapy Act for a certified massage therapist or applicant to commit unprofessional conduct, including numerous sexual or erotic acts; commit any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder; or dress while engaged in the practice of massage in a manner that is deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California. (BPC § 4609)

- 10) Authorizes CAMTC to discipline a certificate holder by placing them on probation, suspending their certificate, revoking their certificate, or taking other action as CAMTC deems proper, in accordance with certain procedures. (BPC § 4610)
- 11) Provides that it is an unfair business practice for any person to hold themselves out or to use the title of “certified massage therapist” or “certified massage practitioner,” or any other term, such as “licensed,” “certified,” “CMT,” or “CMP,” in any manner whatsoever that implies or suggests that the person is certified as a massage therapist or massage practitioner, unless that person currently holds an active and valid certificate issued by CAMTC. (BPC § 4611)
- 12) Provides CAMTC with responsibility for approving massage schools. (BPC § 4615)
- 13) Finds and declares that due to important health, safety, and welfare concerns that affect the entire state, establishing a uniform standard of certification for massage practitioners and massage therapists upon which consumers may rely to identify individuals who have achieved specified levels of education, training, and skill is a matter of statewide concern and not a municipal affair. (BPC § 4618)
- 14) Provides that the Massage Therapy Act shall be liberally construed to effectuate its purposes. (BPC § 4619)
- 15) Requires CAMTC to provide a report to the appropriate policy committees of the Legislature on or before January 1, 2017 that includes, among other things, a feasibility study of licensure for the massage profession, including a proposed scope of practice, legitimate techniques of massage, and related statutory recommendations; and the council’s compensation guidelines and current salary levels. (BPC § 4620)
- 16) Provides that the Massage Therapy Act shall remain in effect only until January 1, 2023, and as of that date is repealed. (BPC § 4621)

**THIS BILL:**

- 1) Extends the operation of the Massage Therapy Act and the authority granted to CAMTC from January 1, 2023 until January 1, 2027.
- 2) Repeals language stating the intent of the Legislature to consider creating a new licensing board to regulate massage therapy through the sunrise process.
- 3) Allows CAMTC to appoint an attorney who represents a county or a city and county in lieu of a city attorney.

**FISCAL EFFECT:** Unknown; this bill is currently keyed nonfiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is the sunset review vehicle for the California Massage Therapy Council, authored by the Assembly Business and Professions Committee. The bill will ultimately be amended to extend the sunset date for the Committee and to enact technical changes, statutory improvements, and policy reforms in response to issues raised during the Board’s sunset review oversight process.

**Background.**

*Sunset review.* In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunset" unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to laws governing the regulation of professionals.

Currently, the sunset review process applies to 36 different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils. Each entity is required to present a report to the Legislature's policy committees, which in return prepare a comprehensive background paper on the efficacies and efficiencies of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process.

This bill would extend the repeal date for CAMTC from January 1, 2023 to January 1, 2027.

*California Massage Therapy Council.* CAMTC was first established in 2009. Unlike most regulatory bodies responsible for overseeing professions and vocations in California, CAMTC is not a state agency and does not function as part of the state's government. Instead, it is incorporated as a private nonprofit public benefit corporation with 501(c)(3) tax exempt status. Certificates granted by CAMTC are voluntary at the state level, though only certificate holders may use the terms "certified massage therapist" or other language that implies certification.

Prior to the creation of CAMTC, massage therapy was almost exclusively regulated at the local level. Several early bills were considered that would have established a new state-level agency tasked with regulating massage professionals, including Assembly Bill 1388 (Kehoe) in 2003, which would have established a new entity under the Department of Consumer Affairs (DCA). In 2005, the Joint Committee on Boards, Commissions, and Consumer Protection in the California State Legislature considered state licensure of massage therapists through the Sunrise Review process, as required by statute whenever creating a new state board or legislation creating a new category of licensed professional.

Ultimately, the Joint Committee recommended that regulation of massage therapists be shifted from the local jurisdiction approach to a state-based approach to provide more uniform standards. The recommendation cited criticisms alleging that the majority of local ordinances were aimed more at curbing illicit adult services than regulating a healing arts profession. Shortly after the final recommendations were published, Senate Bill 412 was amended by Senator Figueroa, Chair of the Joint Committee, to create the Massage Therapy Organization (MTO) to serve as a new nonprofit state-level regulator of massage professionals.

Following two years of negotiations, Senate Bill 412 failed passage on the Assembly Floor by a vote of 24 to 38. The next year, Senator Jenny Oropeza introduced Senate Bill 731, which was substantially similar to the prior Figueroa bill; it maintained the MTO's nongovernmental status, the voluntary nature of the MTO's certificate program, and the continued role of local governments in regulating massage businesses. Senate Bill 731 was signed into law in 2008, creating at last a voluntary statewide certification of massage professionals.

As of June 2019, there are 50,551 certified massage therapists in California. The practice of massage, also referred to as bodywork, is defined in statute as “the scientific manipulation of the soft tissues.” According to the National Institutes of Health, massage therapy has been found to provide short-term relief for several kinds of pain, and massage therapy may be helpful for anxiety and depression in people with fibromyalgia, cancer, or HIV/AIDS.

While a number of recent studies support the promotion of massage therapy as a complementary approach to pain management, for much of the profession’s history it has been treated less as a healing art and more as a potential front for illicit activities such as sex trafficking and prostitution. Through partnerships with local law enforcement, CAMTC considers efforts to combat human trafficking to be at the core of its mission and mandate from the Legislature. Local governments frequently include a requirement that all massage professionals possess a certificate from CAMTC as part of their anti-trafficking ordinances. As a result, while certification by CAMTC is technically voluntary at the state level, it is mandated in numerous jurisdictions across the state and is often framed by local government as a form of “vice” regulation rather than health care practice.

CAMTC has the authority to grant or deny applications for certification and to discipline certificate holders by denying, suspending, or placing probationary conditions on certificates. CAMTC is also responsible for approving and unapproving massage schools whose students are eligible for certification.

As discussed throughout CAMTC’s sunset review background paper, there are potential downsides to empowering an entity outside the auspices of state government to exercise regulatory control over a profession. There are many reforms, both minor and significant, that the background paper suggested may be contemplated by the Committees as CAMTC undergoes its current sunset review. There is little doubt that statute could be revised to require the council to further emulate the state licensing board model in areas that would increase public confidence and allow the industry to more closely resemble other health care professionals. However, each potential new mandate or structural change would likely be at the expense of the advantages that come with constructing CAMTC as a nonprofit corporation.

Currently, this bill makes a modest change to the composition of CAMTC’s Board of Directors and extends its sunset date by four years. Additional language will likely be discussed and added to the bill to further address various issues raised during CAMTC’s sunset review. These additional provisions will be crafted in consultation with the Senate and stakeholders as this bill continues through the comprehensive sunset review legislative process.

**Current Related Legislation.** AB 2671 (Business and Professions) is the sunset review vehicle for the California Board of Occupational Therapy. *This bill is pending in this committee.*

AB 2684 (Business and Professions) is the sunset review vehicle for the Board of Registered Nursing. *This bill is pending in this committee.*

AB 2685 (Business and Professions) is the sunset review vehicle for the Naturopathic Medicine Committee. *This bill is pending in this committee.*

AB 2686 (Business and Professions) is the sunset review vehicle for the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board. *This bill is pending in this committee.*

**Prior Related Legislation.** AB 1537 (Low, Chapter 179, Statutes of 2021) extended CAMTC's sunset date by one year.

AB 2194 (Salas, Chapter 411, Statutes of 2016) extended CAMTC's sunset date by four years and enacted reforms to the Massage Therapy Act.

AB 1147 (Bonilla, Chapter 406, Statutes of 2014) extended CAMTC's sunset date by two years and implemented a number of reforms to address issues raised in the background paper.

AB 731 (Oropeza, Chapter 384, Statutes of 2008) established both CAMTC and the Massage Therapy Act.

**ARGUMENTS IN SUPPORT:**

None on file.

**ARGUMENTS IN OPPOSITION:**

**Associated Bodywork and Massage Professionals** (ABMP) opposes this bill unless amended, writing: "ABMP and the massage community continue to work toward introducing a bill for statewide licensure in the coming year. As a result, we are in opposition to Assembly Bill 2687 (AB 2687) unless amended. ABMP asks that the Business and Professions Committee consider amending AB 2687 to revise the sunset date to January 1, 2024, and to reinsert §4621(c) regarding 'subsequent consideration of legislation to create a new state board and a new category of licensed professionals.'"

**REGISTERED SUPPORT:**

None on file.

**REGISTERED OPPOSITION:**

Associated Bodywork and Massage Professionals

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