
**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Richard Roth, Chair
2021 - 2022 Regular

Bill No: AB 2687 **Hearing Date:** June 27, 2022
Author: Committee on Business and Professions
Version: June 16, 2022
Urgency: No **Fiscal:** No
Consultant: Elissa Silva

Subject: California Massage Therapy Council

SUMMARY: Extends the sunset date of the California Massage Therapy Council (CAMTC) by four years, until January 1, 2027, exempts applicants for certification from a requirement to take and pass a national examination until January 1, 2027, and provides the CAMTC with discretion to give credit for comparable coursework, as specified.

Existing law:

- 1) Establishes the CAMTC to administer a voluntary certification program for massage therapists and schools offering massage therapy curriculum for purposes of certification and to enforce the provisions of the Massage Therapy Practice Act (Act). (Business and Professions Code (BPC) § 4600 et seq.)
- 2) Sunsets the CAMTC and its authority to operate a voluntary certification program for massage therapists on January 1, 2023. (BPC § 4621)
- 3) States that it is the intent of the Legislature that the Act enable consumers and local governments to more easily identify certified massage professionals, provide for consistent statewide certification and oversight of massage professionals, ensure that schools approved by CAMTC are teaching massage provide a high level of training(BPC § 4600.5)
- 4) Permits the CAMTC to take any reasonable actions necessary to carry out the responsibilities and duties set forth in the Act, including but not limited to, hiring staff, entering into contracts, and developing policies, procedures, rules, and bylaws to implement the Act. (BPC § 4602(b))
- 5) Specifies that the CAMTC be governed by a board of directors comprised of 13 members, appointed by various stakeholders. (BPC §4602(g))
- 6) States that protection of the public is the highest priority for the CAMTC in exercising its certification and disciplinary authority and any other functions, and whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public is paramount. (BPC § 4603)
- 7) Defines an “approved school” as a school approved by the CAMTC that meets minimum standards for training and curriculum in massage and related subjects, is a

college or university of the state higher education system or is approved or accredited by specified agencies, and that has not been otherwise unapproved by the CAMTC. (BPC § 4601(a))

- 8) Requires local governments to impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers. (BPC § 4603.1)
- 9) Requires an applicant for certification as a massage therapist to submit a written application and provide the CAMTC with satisfactory evidence that the applicant meets all of the following requirements:
 - a) Is 18 or older and has successfully completed a the curricula in massage and related subjects totaling 500 hours, or the credit unit equivalent that incorporates appropriate school assessment of student knowledge and skills, as specified;
 - b) The applicant has passed a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards that is approved by the CAMTC; and permits the successful completion of the examination to have been accomplished before the date the CAMTC was authorized to issue certificates, which has been suspended until January 1, 2023;
 - c) The applicant has successfully passed a background investigation; and,
 - d) All fees have been paid. (BPC § 4604(a))
- 10) Permits the CAMTC to discipline an owner or operator of a massage business or establishment who is certified, or is an applicant for certification, for the conduct of all individuals providing massage for compensation on the business premises. (BPC § 4607)
- 11) States that the meetings of the CAMTC are subject to the rules of the Bagley-Keene Open Meeting Act (Bagley-Keene), as specified, and authorizes the CAMTC to adopt additional policies and procedures that provide greater transparency to certificate holders and the public than required by the Bagley-Keene. (BPC Section 4602(j))
- 12) States the various acts, which are grounds for the CAMTC to deny an application for a certificate or impose discipline on a certificate holder, as specified. (BPC § 4609(a))
- 13) Prohibits a city, county, city or county from enacting or enforcing an ordinance that conflicts with provisions in the Government Code (GC) related to the regulation of massage therapists. (BPC § 4612(a))
- 14) Prohibits a city, county, or city and county from the following:

- a) Prohibiting a person of one sex from engaging in the massage of a person of the other sex;
- b) Define a massage establishment as an adult entertainment business, or otherwise regulate a massage establishment as adult entertainment;
- c) Require a massage establishment to have windows or walls that do not extend from the floor to the ceiling, or have other internal physical structures including windows, that interfere with a client's reasonable expectation of privacy;
- d) Impose client draping requirements, as specified;
- e) Prohibit a massage establishment from locking its external doors if the massage establishment is a business entity owned by one individual with one or no employees or independent contractors;
- f) Require a massage establishment to post a notice in an area viewed by clients that contains explicit language, as specified;
- g) Require a certified individual to take any test, medical examination, or background check, or comply with education requirements beyond what is required under the Massage Therapy Act; and,
- h) Impose a requirement that an individual holding a certificate in accordance with the Massage Therapy Act, obtain any other license, permit, certificate or other authorization to provide massage for compensation, as specified; however, a city is not prohibited from requiring an ordinance that a massage business or establishment obtain a license, permit, certificate, or other authorization in order to operate lawfully within the jurisdiction. (GC Section 51034(c)(1-8))

This bill:

- 1) Extends the operation of the CAMTC by four years, until January 1, 2027.
- 2) Extends the implementation date for the passage of a massage and bodywork competency assessment examination, as specified, to obtain certification, until January 1, 2027.
- 3) Provides the CAMTC discretion to give credit for comparable academic work completed by an applicant for certification if the applicant has received education at a school located outside of California or a school located outside of the United States, as specified.
- 4) Makes other minor technical and clarifying changes.

FISCAL EFFECT: This bill is not keyed fiscal by Legislative Counsel.

COMMENTS:

- 1. **Purpose.** The Author is the Sponsor of this bill.

2. **Oversight Hearings and Sunset Review of Licensing Boards and Programs.** In early 2022, the Senate Business, Professions and Economic Development Committee and the Assembly Committee on Business and Professions (Committees) began their comprehensive sunset review oversight of 10 regulatory entities including the CAMTC. The Committees conducted three oversight hearings in March of this year. This bill and the accompanying sunset bills are intended to implement legislative changes as recommended by staff of the Committees, and which are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed this year.
3. **Background on California Massage Therapy Council (CAMTC).** The CAMTC is a nonprofit organization responsible for the voluntary certification and recertification of massage therapists. The certification law was initially enacted by SB 731 (Oropeza, Chapter 384, Statutes of 2008.) Because certification is voluntary, non-certified individuals may provide massage services in accordance with local rules and regulations. SB 731 authorized the creation of a governing certification entity, the Massage Therapy Organization, which was, renamed the CAMTC by AB 619 (Halderman Chapter 162, Statutes of 2011).

Unlike most other practice acts in the BPC, the Massage Therapy Act is administered by a private nonprofit organization, not an agency under the DCA. The provision authorizing the establishment of the nonprofit oversight body for administering the voluntary massage certification program is specified in BPC Section 4602. As a nonprofit public benefit organization, the CAMTC must abide by nonprofit corporations law, as specified in the Corporations Code. The CAMTC is authorized by statute to take any reasonable actions necessary to carry out its responsibilities and duties, as specified in BPC Section 4600 *et seq.*

CAMTC-certified professionals are recognized throughout California to provide massage services but may still be subject to local ordinances and business regulations. GC § 51034 provides modest restrictions on local ordinances regarding certified massage professionals and massage businesses. For individuals who are not certified by the CAMTC, local jurisdictions may regulate those individuals according to their local ordinances. Since 2014, there have been increased number of jurisdictions that require a CAMTC-certificate in order to practice massage therapy in that jurisdiction.

The law also authorizes the CAMTC to deny applications and discipline certificate holders by denying an applicant or revoking, suspending, or placing probationary conditions on an individual's certificate.

CAMTC School Approval Process. Prior to 2016, CAMTC did not proactively approve schools. Instead, schools were approved by the CAMTC if they met minimum training and curriculum requirements for massage therapy certification and were approved by any of the following: the BPPE, the DCA, organizations that accredit junior and community colleges, and corresponding agencies in other states. If CAMTC found that a school did not meet the training requirements or was not affirmatively approved by one of the above-mentioned entities, it would simply deem that school “unapproved”.

As part of the CAMTC's first sunset review oversight conducted by the Committees in 2014, the issue of CAMTC's, lack of a more *formalized* mechanism for approving schools was raised as an issue in the staff background paper. As a result, AB 1147 (Bonilla, Gomez and Holden, Chapter 406, Statutes of 2014) required the CAMTC to develop policies, procedures, rules, or bylaws governing the approval and disapproval of schools that provide education required for certification, as specified. In addition, the law provided the CAMTC with the authority to charge a fee for the inspection and approval process as long as the fee does not cost more than the reasonable costs to carry out the process. At this time, there is no national accrediting body overseeing massage therapy education, leaving the approval of massage therapy schools and education requirements to each state that regulates the practice of massage therapy.

4. **Review of the CAMTC.** The CAMTC was last reviewed as part of the sunset review program in 2016, and again in 2021. Due to the constraints of the COVID-19 pandemic on legislative business, the legislature extended the CCIDC's sunset date, by one year, in order to allow for a comprehensive review. The following are some of the issues pertaining to the CAMTC along with background information concerning the particular issue. Recommendations noted by Committee staff regarding the particular issue areas that needed to be addressed include the following:

a) Sunset Issue 15: Competency Assessment Examination.

Background. AB 1147 established new requirements for massage therapy certification, including a requirement that all applicants pass a massage and bodywork competency assessment examination that is approved by CAMTC. The following exams have been approved by the CAMTC: the Massage and Bodywork Licensing Examination (MBLEx); the National Certification Examination for Therapeutic Massage and Bodywork and the National Certification Examination for Therapeutic Massage if taken prior to February of 2015; and the Board Certification Examination for Therapeutic Massage and Bodywork. However, the MBLEx is the examination recognized by the majority of states that require licensure, except New York, which requires the passage of its own examination. Only three states currently do not regulate the practice of massage, and California is the only state to offer a voluntary certification. The rest of the states require a license to practice.

In order to take the MBLEx, an individual is required to complete 500 hours of education, which is the certification requirement in California. The New York State Massage Therapy Examination is only available if an individual meets specified educational requirements from New York. The Board Certification Exam in Therapeutic Massage and Bodywork requires 750 hours. The National Certification Exam for Therapeutic Massage and Bodywork must have been taken on or before February 2015. Therefore, for applicants for certification who have studied in California, under the state's 500- hour education requirements, the MBLEx is the only exam that can be taken to achieve certification. The Federation of State Massage Therapy Board (FSMTB, the provider of the MBLEx) began requiring candidates seeking to take the MBLEx to demonstrate

that they have received their education from an “approved massage therapy education program” beginning July 1, 2017.

The massage therapy school must be approved or recognized by the state board or agency authorized to regulate massage therapy. In California, CAMTC is the body recognized by the FSMTB; to be eligible to sit for the MBLEx, an applicant must have attended a school that was affirmatively approved by the council. The CAMTC only began approving schools in 2016; prior to that, schools were presumed approved until unapproved. Due to the ineligibility of many qualified applicants for certification as massage therapists in California to take the MBLEx, the examination requirement was suspended in 2018 through Senate Bill 1480 (Hill). This suspension was further extended in 2020 through Senate Bill 1474 (Committee on Business, Professions, and Economic Development). While CAMTC and the Committees have considered issues to resolve the outstanding issues with the FSMTB, it may also be considered whether an examination requirement is necessary for a massage therapist to provide services in California. The suspension of the examination requirement is due to expire on January 1, 2023. In order to continue to assess the effectiveness of an examination, this bill maintains the current pause on requiring an examination to obtain certification.

Recommendation and Proposed Statutory Change. The Committee staff background recommended that the CAMTC should provide its opinion on whether an examination requirement should be restored and propose any newly identified solutions to the issues with MBLEx eligibility. *This bill extends the current pause on a requirement for new applicants to take and pass a national examination until January 1, 2027.*

b) Sunset Issue 18: Foreign Education.

Background. CAMTC previously accepted hours of education from a foreign school for purposes of certification if it determined that the education was “at least substantially equivalent to the requirements applied to California school programs.” However, on February 22, 2018, CAMTC’s Board of Directors formally voted to no longer accept any foreign transcripts for massage certification. Statute only allows CAMTC to accept out-of-state education that is: “recognized by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.” CAMTC has interpreted this statute to prohibit acceptance of education from schools outside the United States.

Recommendation and Proposed Statutory Change: CAMTC should explain why it no longer believes it has authority to grant certificates to applicants who were educated at foreign massage schools and what language it believes would be necessary to allow for such education to be accepted again. *This bill adds clarifying language that provides the CAMTC with the discretion to give credit for comparable education obtained outside of California or the United States.*

c) Sunset Issue 27: Continued Regulation.

Background. As intended by SB 731, the health, safety and welfare of consumers are better protected through a voluntary certification of massage professionals, ensuring greater consistency and quality amongst professionals while giving local governments the tools to more easily identify trustworthy professionals. The current regulatory scheme combines education, training, and background standards into a systematic formal review process whereby only those individuals who have met those standards can dutifully represent themselves as massage therapists or massage practitioners. That system would be overseen by a regulating entity with a mission "to protect the public through the administration of a successful certification process." That mission is worthy of continuation.

Recommendation and Proposed Statutory Change: Some mode of state-level oversight of the massage profession should be continued as the Legislature contemplates whether solutions to the issues raised in the background paper may reasonably be implemented by CAMTC in its current form. *This bill extends the operations of the CAMTC by four years, until January 1, 2027.*

5. **Prior Related Legislation.** AB 1537 (Low, Chapter 179, Statutes of 2021) extends the operations of the CAMTC by one year, until January 1, 2023 and adds Legislative intent specifying that there be subsequent consideration of legislation to create a new state board and a new category of licensed professionals.

AB 775 (Chau, Chapter 290, Statutes of 2019) established a one-year timeframe for CAMTC's school approval process and requires a school that is not approved by the CAMTC to notify a student applicant and obtain signed acknowledgement that each applicant understands that the school is not approved and that the education will not count towards voluntary certification.

SB 1480 (Hill, Chapter 571, Statutes of 2014), suspended the requirement that an applicant for certification as a massage therapist pass an examination from January 1, 2019 to January 1, 2021 and revised education eligibility requirements for applicants for certification, to require the CAMTC accept education completed at a school that was approved by the CAMTC, at the time the student's hours were completed, among numerous other provisions.

AB 2194 (Salas, Chapter 411, Statutes of 2016) extended the sunset date for the CAMTC, and made other technical and clarifying changes.

AB 1147 (Bonilla, Gomez and Holden, Chapter 406, Statutes of 2014) revised and made a number of substantive, clarifying, conforming and technical changes to the Act as follows: deleted the preemption of ordinances and local land use authority for "certified-only" massage establishments; reconstituted the CAMTC; reinforced local massage ordinances; raised professional and educational standards for massage therapists; and, expanded the disciplinary authority of the CAMTC.

6. **Arguments in Support.** Supporters generally support the extension of the CAMTC and its work to address human trafficking concerns, and to ensure standards for practitioners.

7. **Arguments in Opposition.** The Associated Bodywork and Massage Professionals is opposed unless amended and requests the bill be amended, “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.”

SUPPORT AND OPPOSITION:

Support:

Asian Americans for Community Involvement
California District Attorneys Association
California Massage Therapy Council
Hands on Trade Association
National Center on Sexual Exploitation
Nuad Thai and Spa Association of America
South Bay Coalition to End Human Trafficking
Numerous individuals

Opposition:

Associated Bodywork and Massage Professionals

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