

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 978, L.D. 1421, Bill, "An Act to Provide for the Regulation of Massage Therapists"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 32 MRSA c.125 is enacted to read:

CHAPTER 125

MASSAGE THERAPISTS

§14301. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commissioner. "Commissioner" means Commissioner of Professional and Financial Regulation.

2. Department. "Department" means Department of Professional and Financial Regulation.

3. Massage therapist. "Massage therapist" means a person who provides or offers to provide massage therapy for a fee, monetary or otherwise. This definition includes the use of different forms of the term "massage therapist," such as "masseuse" or "masseur."

4. Massage therapy. "Massage therapy" means a scientific or skillful manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle tone and circulation and promoting health and physical well-being. The

2 term includes, but is not limited to, manual and mechanical
3 procedures for the purpose of treating soft tissue only, the use
4 of supplementary aids such as rubbing alcohol, liniments, oils,
5 antiseptics, powders, herbal preparations, creams or lotions,
6 procedures such as oil rubs, salt glows and hot or cold packs or
7 other similar procedures or preparations commonly used in this
8 practice. This term specifically excludes manipulation of the
9 spine or its articulations and excludes sexual contact as
10 defined in Title 17-A, section 251, subsection , paragraph D.

11 **§14302. Commissioner; powers and duties**

12 The commissioner or the commissioner's designee has the
13 following powers and duties in addition to all other powers and
14 duties set forth in this chapter.

15 1. Standards. The commissioner shall administer and
16 enforce this chapter.

17 2. Rules. The commissioner shall adopt rules in accordance
18 with the Maine Administrative Procedure Act necessary to carry
19 out the purposes of this chapter.

20 3. Complaints. The commissioner shall investigate or cause
21 to be investigated all complaints concerning violations of this
22 chapter or rules adopted by the department, made on the
23 commissioner's own motion or on written complaint filed with the
24 department, and all cases of noncompliance with or violation of
25 this chapter or any rules adopted by the department.

26 4. Contracts. The commissioner may enter into contracts to
27 carry out the commissioner's responsibilities under this chapter.

28 5. Register. The commissioner shall make available, at
29 cost, a register that contains the names of all individuals
30 registered.

31 6. Hearings. The commissioner may conduct hearings to
32 assist with investigations and to determine whether grounds exist
33 for denial of reregistration, suspension of registration or other
34 action necessary to the fulfillment of the commissioner's
35 responsibilities under this chapter.

36 7. Advisory Council. The commissioner, as necessary, may
37 select members of the profession and other interested parties to
38 serve on an advisory council to advise and consult with the
39 commissioner concerning the regulation of massage therapists.
40 Service on the council is not in itself a conflict of interest
41 regardless of the occupations or associations of the members.

2 **§14303. Employees**

4 The commissioner may appoint, subject to the Civil Service
6 Law, employees necessary to carry out this chapter. Any person
8 so employed is considered to be in the department and under the
 administrative and supervisory direction of the commissioner.

10 **§14304. Registration**

12 1. Registration required. Effective January 1, 1992 a
14 person, unless specifically exempted by this chapter, may not use
 the title "massage therapist" or profess to be a massage
 therapist unless registered in accordance with this chapter.

16 Each individual using the title "massage therapist" or professing
18 to be a massage therapist shall register with the department
20 every year. Each individual who registers shall fill out a form
22 designated by the department. Registration expires yearly on
24 December 31st or on such other date as the commissioner
 determines. Notice of expiration must be mailed to each
 registered massage therapist's last known address at least 30
 days before the expiration of the registration. The notice must
 include any requests for information necessary for renewal.

26 2. Individual registration. Only an individual may be
28 registered under this chapter.

30 **§14305. Requirements for registration**

32 To be eligible for registration as a massage therapist an
 applicant must:

34 1. Age. Be at least 18 years of age;

36 2. Photograph. Furnish to the department 2 signed
38 photographs of the applicant. The photographs must be a minimum
 size of 5 inches by 3 inches;

40 3. Doctor's certificate. Present a written statement from
42 a physician licensed to practice in the State stating that the
44 applicant has been examined and found to be free of an infectious
 or communicable disease and showing that the examination was
 conducted within 60 days prior to the submission of the
 application;

46 4. Criminal history. Present or have submitted to the
48 department a report from the Department of Public Safety setting
50 forth the state and federal criminal record of the applicant or
 the absence thereof;

2 5. References. Present 3 character references citing that
3 the applicant is of good moral character, one of which must be
4 from a health care provider who is not a massage therapist;

6 6. High school. Possess a high school diploma or its
7 equivalent; and

8 7. Fee. Pay a one-time application fee of \$25 and a yearly
9 registration fee of \$100. All fees are nonrefundable.

10 **§14306. Registration not allowed**

12 An individual whose license, certification or registration
13 has been refused, revoked or suspended for violations that would
14 be grounds for similar action under section 14308 in this or any
15 other state and in this or any related field may not be
16 registered to practice in this State unless the period of
17 refusal, revocation or suspension has been completed and the
18 department has conducted a review and determined that
19 rehabilitation has taken place.

21 **§14307. Exemptions to registration**

23 1. Other professionals. This chapter does not apply to the
24 activities or services of members of other professions licensed,
25 certified or registered by the State, including, but not limited
26 to, physicians, chiropractors, physical therapists,
27 cosmetologists or registered nurses performing soft tissue
28 manipulation consistent with the laws of the State governing
29 their practices, provided they do not use the title "massage
30 therapist."

31 2. Other exemptions. This chapter does not apply to the
32 activities and services of individuals who practice other forms
33 of tissue work exclusive of massage therapy, such as rolfing,
34 Trager, reflexology, Shiatsu, Reiki and polarity, if those
35 practitioners do not use the title "massage therapist," unless
36 they choose to meet the requirements of this chapter.

37 **§14308. Disciplinary action; grounds; procedure; complaints**

38 1. Grounds. The commissioner may suspend, revoke or refuse
39 to renew registration under the same grounds as contained in
40 Title 5, section 10004. In addition, the commissioner may take
41 the same action granted to bureaus, boards and commissions
42 pursuant to Title 10, section 8003, subsection 5. The
43 commissioner's actions may be based on any of the following
44 grounds:

45 A. The practice of fraud or deceit in obtaining
46 registration status under this chapter or in connection with
47 service rendered within the scope of the registration issued;
48

2 B. Habitual intemperance in the use of alcohol or the
4 habitual use of narcotic or other drugs that has resulted in
6 the regulated person being unable to perform necessary
 duties or performing those duties in a manner that would
 endanger the health or safety of clients;

8 C. A current medical finding of mental incompetence that
10 affects the registrant's ability to perform the registrant's
 occupation in a healthy and safe manner;

12 D. Aiding or abetting persons not duly registered under
 this chapter who profess to be registered;

14 E. Subject to the limitations of Title 5, chapter 341,
16 conviction of a crime that involves dishonesty or false
18 statement or that directly relates to the practice of
 massage therapy or conviction of a crime for which
20 incarceration for one year or more may be imposed;

22 F. Revocation in any state of a professional or
 occupational license, certification or registration for
24 disciplinary reasons, or rejection of any application for
 reasons related to untrustworthiness, within 3 years of the
26 date of application; and

28 G. Violating any provisions of this chapter or any rule of
 the department.

30 2. Procedure. Except as provided in Title 5, section 10004
32 a registration may not be denied, suspended, revoked or refused
34 for renewal for the reasons set forth in subsection 1 without
 prior written notice and opportunity for hearing on that denial,
36 suspension or revocation. A registration may not be denied,
 suspended or revoked under this section except by a decision of
 the commissioner or the commissioner's designee.

38 3. Complaints. Any person may file a complaint with the
40 commissioner seeking disciplinary action against a massage
42 therapist concerning violations of this chapter or rules adopted
 by the department. Complaints must be in writing. If the
44 commissioner determines that a complaint alleges facts that, if
 true, would require denial, revocation, suspension or nonrenewal
46 or other disciplinary action of a registered therapist, the
 commissioner or the commissioner's designee may conduct a hearing
48 pursuant to the Maine Administrative Procedure Act. Whenever the
 commissioner establishes that a complaint does not state facts
 that warrant action the complaint may be dismissed.

50 The commissioner shall conduct proceedings under this subsection
52 in accordance with the provisions of Title 5, chapter 375,
 subchapter IV.

2 §14309. Penalty; injunction

4 Any person who violates this chapter commits a Class E
 6 crime. The State may bring an action in Superior Court to enjoin
 8 any person from violating this chapter, regardless of whether
proceedings have been or may be instituted in the Administrative
Court or whether criminal proceedings have been or may be
instituted.

10 **Sec. 2. Allocation.** The following funds are allocated from
 12 Other Special Revenue funds to carry out the purposes of this Act.

14 1991-92 1992-93

16 **PROFESSIONAL AND FINANCIAL**
 18 **REGULATION, DEPARTMENT OF**

20 **Division of Licensing and**
Enforcement

22	Positions	(0.5)	(0.5)
	Personal Services	\$7,800	\$10,400
24	All Other	10,000	10,000
	Capital Expenditures	5,000	
26		\$22,800	\$20,400
28	TOTAL		

30 Provides funds for a
 32 part-time Clerk Typist III
 34 position, general operations,
 36 computer software and capital
 equipment including a
 computer to support the
 registration of massage
 therapists.

38 **Division of Administrative Services**

40	All Other	\$3,000	\$3,000
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42 Provides funds for general
 44 operating expenses related to
 the registration of massage
 therapists.

46 **DEPARTMENT OF PROFESSIONAL AND**
 48 **FINANCIAL REGULATION**
TOTAL

		\$25,800	\$23,400
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FISCAL NOTE

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1991-92 1992-93

APPROPRIATIONS/ALLOCATIONS

Other Funds \$25,800 \$23,400

REVENUES

Other Funds \$25,800 \$23,400

This bill requires that persons who wish to call themselves massage therapists register with the Department of Professional and Financial Regulation. Allocations of Other Special Revenue funds to the Department of Professional and Financial Regulation of \$25,800 in fiscal year 1991-92 and \$23,400 in fiscal year 1992-93 are required to provide for a Clerk Typist III position, general operating expenses, indirect costs related to accounting and capital equipment including a computer. Dedicated revenues from registration fees will generate sufficient resources to provide for this allocation.

This bill also establishes a new Class E crime and provides that complaints may be filed in Superior Court to enjoin violations of the new requirements. The additional work load and administrative costs associated with a minimal number of new cases filed in District Court as a result of the violations and the new cases filed in Superior Court for injunctive relief will be absorbed within the budgeted resources of the Judicial Department.

The Department of the Attorney General will absorb the costs of filing complaints within its budgeted resources.

Sentences imposed for a Class E offense must be served in a county jail facility. The projected cost to a county for each person sentenced under the new Class E crime is approximately \$3,820 and is based upon an average length of stay of 67 days.'

STATEMENT OF FACT

The original bill requires that to practice massage therapy a person must either be registered with the State with no qualifications required or certified by the State as possessing certain qualifications. There are a number of grounds for disciplinary action including incompetence and unprofessional conduct. A board is established to regulate the practice.

This amendment removes regulation of the practice of massage therapy by the Board of Massage Therapy. It requires that to use

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2 the title "massage therapist" a person must be registered with
the State. Among the qualifications for registration are freedom
4 from infectious disease and 3 character references. Also,
pursuant to the Maine Revised Statutes, Title 5, chapter 341, the
6 Commissioner of Professional and Financial Regulation, who is
responsible for regulating the practice of massage therapy, may
8 consider conviction for certain crimes, including those directly
related to the practice of massage therapy, in deciding whether
to grant registration. Incompetence and unprofessional conduct
10 are eliminated as grounds for disciplinary action. A yearly
registration fee of \$100 plus a one-time application fee of \$25
12 is required.

Reported by the Committee on Business Legislation
Reproduced and distributed under the direction of the Clerk of the
House
(5/30/91) (Filing No. H-481)