

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2068

Session of
1989

INTRODUCED BY HERMAN, MICHLOVIC, MELIO, GRUPPO, BARLEY AND BUNT,
NOVEMBER 14, 1989

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,
NOVEMBER 14, 1989

AN ACT

1 Providing for the licensing of massage therapists; establishing
2 a board to determine standards and qualifications; providing
3 standards for licenses; and fixing fees and penalties.

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1 Section 15. Effective date.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Massage
6 Therapy Practice Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Board." The State Board of Massage Therapy.

12 "Department." The Department of State of the Commonwealth.

13 "Massage." The application of any or all of the following to
14 the human body by the hands or any other means: touching,
15 stroking, friction, kneading, vibration and percussion. It shall
16 include, but not be limited to, deep muscle massage, trigger
17 point therapy, acupressure, reflexology, hydrotherapy and other
18 physical procedures recognized by the State Board of Massage
19 Therapy.

20 "Massage therapist." A person who is licensed to practice
21 massage under this act.

22 "Practice of message therapy." Holding oneself out to the
23 public by any title or description of services incorporating the
24 term "licensed massage therapist," or using any words or symbols
25 indicating or tending to indicate that he or she is a licensed
26 massage therapist and, under such description, offering to
27 render or rendering a service in which a special knowledge of
28 massage therapy techniques is involved.

29 Section 3. Exemptions.

30 This act shall not apply to the following classes of persons:

1 (1) Persons authorized by the laws of this Commonwealth
2 to practice medicine, surgery, dentistry, osteopathy,
3 chiropractic, podiatry or physical therapy.

4 (2) Registered nurses and licensed practical nurses.

5 (3) Barbers, cosmetologists, cosmeticians and
6 manicurists, insofar as they deal with the face, head, hands
7 and feet.

8 Section 4. Licenses required; unlawful acts.

9 It shall be unlawful for any person to:

10 (1) practice massage therapy without first having
11 validly obtained a massage therapist license pursuant to this
12 act; or

13 (2) violate any of the provisions of this act.

14 Section 5. State Board of Massage Therapy.

15 (a) Board created.--There is hereby created, under the
16 administrative jurisdiction of the department, the State Board
17 of Massage Therapy, consisting of seven members, as follows: the
18 Commissioner of Professional and Occupational Affairs, four
19 massage therapist licensees and two consumers.

20 (b) Terms.--Two members of the initial board shall be
21 appointed for a term of one year; two for a term of two years;
22 and two for a term of three years. Thereafter, when the term of
23 each appointed member of the board ends, the Governor shall
24 appoint a successor to serve for a term of three years. Any
25 vacancy occurring on the board shall be filled by the Governor
26 by appointment for the unexpired term. A board member whose term
27 has expired may serve until the successor is appointed, or six
28 months beyond the expiration of the term, whichever first
29 occurs. The commissioner shall serve on the board concurrently
30 with his term as commissioner.

1 (c) Appointment process.--Members, other than the
2 Commissioner of Professional and Occupational Affairs, shall be
3 appointed to the board by the Governor, by and with the advice
4 and consent of a majority of the members elected to the Senate.
5 The membership of the commissioner on the board shall be
6 automatic upon his appointment as commissioner.

7 (d) Officers.--The board shall elect annually from its
8 membership a chairman, vice chairman and secretary. The
9 secretary shall keep a written record of the proceedings of the
10 board.

11 (e) Meetings.--The board shall meet at least two times each
12 year and at such other times as deemed necessary and advisable
13 by the chairman or by a majority of its members. A majority of
14 the members present at a meeting shall constitute a quorum.

15 (f) Compensation.--Each member of the board, except the
16 commissioner, shall receive per diem compensation at the rate of
17 \$60 per diem when actually attending to the work of the board.
18 Members shall also receive reasonable traveling, hotel and other
19 necessary expenses incurred in the performance of their duties
20 in accordance with Commonwealth regulations.

21 Section 6. Powers and duties of board.

22 The board shall have the following powers and duties:

23 (1) To pass upon the qualifications and fitness of
24 applicants for licenses and reciprocal licenses.

25 (2) To adopt and revise such rules and regulations not
26 inconsistent with law as may be necessary to effectuate the
27 provisions of this act.

28 (3) To examine for, deny, approve, issue, revoke,
29 suspend and renew licenses pursuant to this act, and to
30 conduct hearings in connection therewith.

1 (4) To conduct hearings upon complaints concerning
2 violations of the provisions of, and the rules and
3 regulations adopted pursuant to, this act and cause the
4 prosecution and enjoinder of all such violations.

5 (5) To submit a report annually to the Professional
6 Licensure Committee of the House of Representatives and to
7 the Consumer Protection and Professional Licensure Committee
8 of the Senate, containing a description of the types of
9 complaints received, status of cases, board action which has
10 been taken and the length of time from the initial complaint
11 to final board resolution.

12 Section 7. Qualifications for licensure.

13 (a) Individual license.--All applications for a massage
14 therapist license shall be made to the board, which shall issue
15 such license upon satisfactory proof that the applicant:

16 (1) is 18 years of age or older;

17 (2) is a citizen of the United States and has resided in
18 this Commonwealth for at least one year;

19 (3) is of good moral character;

20 (4) is not addicted to the habitual use of alcohol or
21 narcotics or other habit-forming drugs;

22 (5) has not been convicted of a felony or of the crime
23 of prostitution or any other sex-related offense in the
24 courts of this Commonwealth or any other state, territory or
25 country;

26 (6) has a diploma from a recognized school of massage
27 having a curriculum approved by the board, certifying that
28 such person has completed 500 hours of study in the basic
29 subjects of anatomy, physiology, hygiene, corrective
30 exercises, gymnastics, hydrotherapy, techniques of massage

1 and has served a clinical internship or apprenticeship of six
2 months. The board may reduce the required hours of study to
3 not less than 400 hours and equivalent experience under a
4 qualified massage therapist; and

5 (7) has passed to the satisfaction of the board, a
6 practical and a written examination which shall test the
7 applicant's knowledge of the basic subjects listed in
8 paragraph (6) and such other subjects as the board may deem
9 necessary to test the applicant's fitness to practice body
10 massage. Such examination shall be administered by an
11 independent, objective testing service that is selected or
12 approved by the board.

13 (b) Waiver of examination.--The board shall issue a license
14 as a massage therapist to an applicant who meets the educational
15 requirements of this section, who has practiced massage for
16 three years prior to the effective date of this act and who
17 makes application to the board within one year after the
18 effective date of regulations promulgated under this act.

19 (c) Renewal.--A massage therapist license shall be renewed
20 biennially without reexamination of the holder thereof.

21 Section 8. Display of licenses.

22 A massage therapist license issued in accordance with this
23 act shall be conspicuously displayed at any massage
24 establishment where the massage therapist practices body
25 massage. Also, a wallet card license shall be carried on the
26 person of the individual massage therapist any time he practices
27 massage therapy.

28 Section 9. Revocation and suspension of licenses.

29 (a) Violations.--The board may refuse, revoke or suspend a
30 massage therapist license or massage establishment license upon

1 satisfactory proof of any of the following:

2 (1) That the licensee did not properly meet or no longer
3 meets the licensing requirements of this act, or obtained
4 licensure by fraud or misrepresentation.

5 (2) That the licensee is addicted to, or habitually uses
6 intoxicating liquor, narcotics or other drugs.

7 (3) That the licensee has attempted to diagnose or treat
8 classified diseases, practiced spinal adjustments or
9 prescribed medicines.

10 (4) That the licensee committed repeated occasions of
11 negligence or incompetence in the practice of massage
12 therapy.

13 (5) That the licensee has practiced massage while
14 knowingly suffering from a contagious or infectious disease.

15 (6) That the licensee has been found guilty of
16 unprofessional conduct, or of making untrue and intentionally
17 misleading professional representations.

18 (7) That the licensee has violated any of the provisions
19 of this act or the rules and regulations promulgated by the
20 board.

21 (8) That the licensee no longer meets one or more
22 qualifications for licensure as set forth in section 7.

23 (9) That the licensee has had professional disciplinary
24 action taken against him or has had a license to practice
25 massage therapy refused, revoked or suspended by another
26 state.

27 (b) Hearing and appeal.--All final actions or orders of the
28 board shall be taken subject to the right of notice, hearing and
29 adjudication and the right of appeal therefrom in accordance
30 with the provisions of 2 Pa.C.S. Chs. 5 (relating to practice

1 and procedure) and 7 (relating to judicial review).

2 Section 10. Foreign licensure.

3 (a) Reciprocity.--Upon application and payment of the
4 license fee as provided in section 13(b), the board shall issue
5 a massage therapist license to a person who has a valid massage
6 therapist license from another state, if the board is satisfied:

7 (1) that the other state maintains a system and standard
8 of qualifications equivalent to that provided in this act;
9 and

10 (2) that the other state gives similar recognition and
11 endorsement to massage therapist licenses of this
12 Commonwealth.

13 (b) Reporting of multiple licensure.--Any licensed massage
14 therapist of this Commonwealth who is also licensed to practice
15 massage therapy in any other state, territory or country shall
16 report this information to the board on the biennial
17 registration application. Any disciplinary action taken in such
18 other jurisdiction shall be reported to the board on the
19 biennial registration application, or within 90 days of final
20 disposition, whichever occurs sooner. Multiple licensure or
21 registration shall be noted by the board on the licensee's
22 record, and such state, territory or country shall be notified
23 by the board of any disciplinary actions taken against the
24 massage therapist in this Commonwealth.

25 Section 11. Penalties.

26 Any person who sells or fraudulently obtains or furnishes a
27 massage therapist license or massage establishment license,
28 practices massage or operates a massage establishment under a
29 license illegally or fraudulently obtained, or without a valid
30 license to do so, or while such license is suspended or revoked,

1 or otherwise violates the provisions of this act commits a
2 misdemeanor of the third degree.

3 Section 12. Municipal authority.

4 Nothing contained in this act shall be construed as
5 prohibiting any municipality from adopting appropriate
6 ordinances not inconsistent with the provisions of this act or
7 the rules and regulations adopted thereunder, as may be deemed
8 necessary to promote or protect the public health or safety,
9 which regulate the conduct of massage therapists or of massage
10 establishments; and any such ordinances heretofore or hereafter
11 adopted shall be enforceable by such municipalities.

12 Section 13. Fees and fines for board.

13 (a) Disposition.--All fees and fines collected under the
14 provisions of this act shall be paid into the Professional
15 Licensure Augmentation Account established pursuant to and for
16 use in accordance with the act of July 1, 1978 (P.L.700,
17 No.124), known as the Bureau of Professional and Occupational
18 Affairs Fee Act.

19 (b) Regulations required.--All application forms and license
20 fees required under this act shall be fixed by the board, by
21 regulation, and shall be subject to review in accordance with
22 the act of June 25, 1982 (P.L.633, No.181), known as the
23 Regulatory Review Act. If the revenues generated by fees, fines
24 and civil penalties imposed in accordance with the provisions of
25 this act are not sufficient to match expenditures over a two-
26 year period, the board shall increase those fees by regulation,
27 subject to review in accordance with the Regulatory Review Act,
28 such that the projected revenues will meet or exceed projected
29 expenditures.

30 (c) Increasing of fees and fines.--If the Bureau of

1 Professional and Occupational Affairs determines that the fees
2 established by the board are inadequate to meet the minimum
3 enforcement efforts required, then the bureau, after
4 consultation with the board, shall increase the fees by
5 regulation, subject to review in accordance with the Regulatory
6 Review Act, such that adequate revenues are raised to meet the
7 required enforcement effort.

8 Section 14. Appropriation.

9 The sum of \$85,000, or as much thereof as may be necessary,
10 is hereby appropriated from the Professional Licensure
11 Augmentation Account within the General Fund to the Bureau of
12 Professional and Occupational Affairs in the Department of State
13 for the payment of costs of processing licenses and renewals,
14 for the operation of the board and for other general costs of
15 the bureau operations necessary for carrying out the provisions
16 of this act. The appropriation granted shall be repaid by the
17 board within three years of the beginning of issuance of
18 licenses by the board.

19 Section 15. Effective date.

20 (1) Section 12 of this act shall take effect
21 immediately.

22 (2) Section 4 of this act shall take effect in 120 days.

23 (3) The remainder of this act shall take effect in 60
24 days.