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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2499 Session of  
2008

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INTRODUCED BY McCALL, SHIMKUS, BELFANTI, BEYER, BOBACK, BOYD,  
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McILVAINE SMITH, SOLOBAY, SONNEY, SURRA AND WHEATLEY,  
MAY 13, 2008

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REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MAY 13, 2008

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AN ACT

1 Regulating massage therapy; establishing the State Board of  
2 Massage Therapy; providing for funds, for licensure, for  
3 disciplinary action, for remedies and for penalties; and  
4 making an appropriation.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Massage  
9 Therapy Law.

10 Section 2. Declaration of policy.

11 The General Assembly finds and declares as follows:

12 (1) The practice of massage therapy may cause public  
13 safety issues if the practice is not subject to responsible  
14 regulation.

15 (2) Reasonable regulation is in furtherance of public  
16 health, safety and welfare interests.

1           (3) Regulation is necessary to set educational standards  
2       within the profession and to protect the public from  
3       unqualified massage therapy practitioners and unscrupulous  
4       individuals.

5           (4) Consumer protection with respect to both health and  
6       economic matters will be afforded the public through the  
7       regulation and associated legal remedies provided for in this  
8       act.

9       Section 3. Definitions.

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

13       "Account." The Professional Licensure Augmentation Account.

14       "Applicant." An individual who applies for a license.

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

16       "Bureau." The Bureau of Professional and Occupational  
17       Affairs.

18       "Commissioner." The Commissioner of Professional and  
19       Occupational Affairs.

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

21       "License." A license to practice massage therapy under this  
22       act.

23       "Licensee." An individual who holds a license to practice  
24       massage therapy.

25       "Massage therapist." An individual licensed by the board to  
26       practice massage therapy.

27       "Massage therapy." The application of a system of structured  
28       touch, pressure, movement, holding and treatment of the soft  
29       tissue manifestations of the human body in which the primary  
30       intent is to enhance health and well-being of the client without

1 limitation, except as provided in this act. The term includes  
2 the external application of water, heat, cold, lubricants or  
3 other topical preparations, lymphatic techniques, myofascial  
4 release techniques and the use of electro-mechanical devices  
5 which mimic or enhance the action of the massage techniques. The  
6 term does not include the diagnosis or treatment of impairment,  
7 illness, disease or disability, a medical procedure, a  
8 chiropractic manipulation/adjustment, physical therapy  
9 mobilization/manual therapy, therapeutic exercise, electrical  
10 stimulation, ultrasound or prescription of medicines for which a  
11 license to practice medicine, chiropractic, physical therapy,  
12 occupational therapy, podiatry or other practice of the healing  
13 arts is required.

14 "Reflexology." The physical act of using thumbs, fingers and  
15 hand techniques to apply specific pressure on the reflex area in  
16 the feet, hands or ears of the client.

17 "Sexual behavior." Conduct which is or is intended to be  
18 sexual in nature or which may be construed by a reasonable  
19 person as sexual in nature.

20 "Sexual exploitation." Sexual behavior with a current client  
21 which uses trust, knowledge, emotions or influence derived from  
22 the professional relationship.

23 "Sexual offense." An offense under any provision of 18  
24 Pa.C.S. (relating to crimes and offenses).

25 Section 4. Board.

26 (a) Establishment.--There is established the State Board of  
27 Massage Therapy, an administrative board within the department.  
28 The board shall consist of nine members who are citizens of the  
29 United States and who have been residents of this Commonwealth  
30 for at least a two-year period prior to the effective date of

1 this section. Two members shall be public members, five members  
2 shall be individuals who meet the educational and experience  
3 qualifications for licensure under section 6, one member shall  
4 be the Secretary of Health or a designee and one member shall be  
5 the commissioner or a designee.

6 (b) Term of office.--Except as provided in subsection (c),  
7 the members of the board shall serve for four-year terms and  
8 shall be appointed by the Governor by and with the advice and  
9 consent of a majority of the members elected to the Senate.

10 (c) Initial appointments.--Within 90 days of the effective  
11 date of this section, the Governor shall nominate two  
12 professional members to serve four-year terms, one public member  
13 and one professional member to serve three-year terms, one  
14 public member and one professional member to serve two-year  
15 terms and one professional member to serve a one-year term. A  
16 professional member initially appointed to the board pursuant to  
17 this act need not be licensed at the time of appointment but at  
18 the time of appointment must have satisfied the eligibility  
19 requirements for licensure and must have practiced massage  
20 therapy for at least five consecutive years immediately  
21 preceding the appointments.

22 (d) Continuation in office.--Each board member shall  
23 continue in office until a successor is appointed and qualified  
24 but no longer than six months after the expiration of the term.  
25 If a board member shall die, resign or otherwise become  
26 disqualified during the term of office, a successor shall be  
27 appointed in the same way and with the same qualifications as  
28 set forth in this section and shall hold office for the  
29 unexpired portion of the term.

30 (e) Limit on terms.--No board member shall be eligible for

1 reappointment to serve more than two consecutive four-year  
2 terms.

3 (f) Forfeiture of membership.--A board member who fails to  
4 attend three consecutive meetings without permission of the  
5 commissioner shall forfeit the member's seat unless the  
6 commissioner, upon written request from the member, finds that  
7 the member should be excused from a meeting because of illness  
8 or the death of a family member.

9 (g) Compensation.--A member of the board, except the  
10 commissioner, shall receive per diem compensation at the rate of  
11 \$60 when actually attending to the work of the board. Members  
12 shall also receive reasonable traveling, hotel and other  
13 necessary expenses incurred in the performance of their duties  
14 in accordance with regulations.

15 (h) Forfeiture for nonattendance.--A public member who fails  
16 to attend two consecutive statutorily mandated training seminars  
17 in accordance with section 813(e) of the act of April 9, 1929  
18 (P.L.177, No.175), known as The Administrative Code of 1929,  
19 shall forfeit the public member's seat unless the commissioner,  
20 upon written request from the public member, finds that the  
21 public member should be excused from a meeting because of  
22 illness or the death of a family member.

23 (i) Quorum.--A majority of the members of the board shall  
24 constitute a quorum for the purposes of conducting the business  
25 of the board. Except for temporary and automatic suspensions  
26 under section 10(d), a member may not be counted as part of a  
27 quorum or vote on any issue unless the member is physically in  
28 attendance at the meeting.

29 (j) Chairperson.--The board shall annually select a  
30 chairperson from among its members.

1 (k) Meetings.--The board shall meet at least four times a  
2 year in Harrisburg and at other times and places as the board  
3 shall determine is necessary to conduct board business.

4 (l) Notice.--Reasonable notice of all meetings shall be  
5 given in conformity with 65 Pa.C.S. Ch. 7 (relating to open  
6 meetings).

7 (m) Operating procedures.--The board shall meet within 30  
8 days after the appointment of its initial members and shall  
9 institute operating procedures and an application form for  
10 licensing massage therapists. It shall be the responsibility of  
11 the board to educate the public as to the requirements of  
12 licensing in order to hold oneself out or to practice as a  
13 licensed massage therapist within this Commonwealth.

14 Section 5. Powers and duties of board.

15 The board has the following powers and duties:

16 (1) To pass upon the qualifications and fitness of  
17 applicants for licenses and reciprocal licenses and to  
18 promulgate regulations requiring applicants to pass  
19 examinations relating to qualifications as a prerequisite to  
20 the issuance of a license.

21 (2) To promulgate regulations not inconsistent with this  
22 act and only as necessary to carry out this act.

23 (3) To examine, deny, approve, issue, revoke, suspend or  
24 renew licenses of massage therapists under this act and to  
25 conduct hearings in connection with those powers and duties.

26 (4) To conduct hearings upon complaints concerning  
27 violations of this act and the regulations promulgated under  
28 this act and to seek the prosecution and enjoinder of  
29 violations.

30 (5) To expend money necessary to the proper carrying out

1 of its assigned duties.

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

9 (7) To submit annually to the Appropriations Committee  
10 of the Senate and the Appropriations Committee of the House  
11 of Representatives, within 15 days after the Governor has  
12 submitted a budget to the General Assembly, a copy of the  
13 budget request for the upcoming fiscal year which the board  
14 previously submitted to the department.

15 (8) To establish standards of eligibility for license  
16 renewal. These standards shall include, but not be limited  
17 to, the demonstration of satisfactory completion of a minimum  
18 of 24 hours of continuing education related to the practice  
19 of massage therapy in accordance with board regulations. No  
20 credit may be given for courses in office management or  
21 practice building. The board may waive all or part of the  
22 continuing education requirement to a licensee who shows to  
23 the satisfaction of the board that the licensee was unable to  
24 complete the requirement due to illness, emergency or  
25 hardship.

26 Section 6. Qualification for licensure.

27 (a) Applicants.--An applicant shall be considered to be  
28 qualified for a license if the applicant submits proof  
29 satisfactory to the board of all of the following:

30 (1) The applicant is of good moral character.

1           (2) The applicant has a high school diploma or its  
2 equivalent.

3           (3) The applicant has completed a massage program of at  
4 least 600 hours of in-class, postsecondary education  
5 instruction approved by the Department of Education or by the  
6 board. The program under this paragraph must include training  
7 in the human immunodeficiency virus and related risks and  
8 training in cardiopulmonary resuscitation.

9           (4) The applicant has passed an examination under  
10 section 8.

11          (5) The applicant has paid a fee as established by the  
12 board by regulation.

13          (6) The applicant is not addicted to alcohol, narcotics  
14 or other habit-forming drugs.

15          (7) The following apply:

16           (i) The applicant has not been convicted of a felony  
17 under the act of April 14, 1972 (P.L.233, No.64), known  
18 as The Controlled Substance, Drug, Device and Cosmetic  
19 Act, or of an offense under the laws of another  
20 jurisdiction which, if committed in this Commonwealth,  
21 would be a felony under The Controlled Substance, Drug,  
22 Device and Cosmetic Act, unless the following apply:

23           (A) At least ten years have elapsed from the  
24 date of conviction.

25           (B) The applicant satisfactorily demonstrates to  
26 the board that the applicant has made significant  
27 progress in personal rehabilitation since the  
28 conviction and that licensure of the applicant should  
29 not be expected to create a substantial risk of harm  
30 to the health and safety of the applicant's clients



1 or the public or a substantial risk of further  
2 criminal violations.

3 (C) The applicant otherwise satisfies the  
4 qualifications required under this act.

5 (ii) The term "convicted" shall include a judgment,  
6 an admission of guilt or a plea of nolo contendere.

7 (b) Existing practitioners.--The board shall issue a license  
8 to an applicant who, on the effective date of this subsection,  
9 complies with all of the following paragraphs:

10 (1) Is an active professional practitioner of massage  
11 therapy.

12 (2) Meets the qualifications described in subsection  
13 (a)(1), (2), (5), (6) and (7).

14 (3) Complies with one of the following subparagraphs:

15 (i) Has:

16 (A) been in active, continuous practice for at  
17 least five years immediately preceding the effective  
18 date of this section; and

19 (B) completed 150 hours of instruction in  
20 massage and related subjects.

21 (ii) Has passed an examination administered by a  
22 certifying agency which is approved by the National  
23 Commission of Certifying Agencies and is in good standing  
24 with the certifying agency or with the board.

25 (iii) Has completed 500 hours of instruction in  
26 massage and related subjects from a massage therapy  
27 program approved by the Department of Education or by the  
28 board.

29 (c) Temporary practice permit.--

30 (1) The board may issue a temporary practice permit to

1 an applicant in order to permit the applicant to practice  
2 massage therapy during the six-month period after completion  
3 of the applicant's education program.

4 (2) The temporary practice permit issued under paragraph  
5 (1) shall be nonrenewable and shall expire on the earlier of:

6 (i) six months from the date of issuance; or

7 (ii) the date the applicant fails the licensing  
8 examination.

9 (d) Transferability.--A license and a temporary practice  
10 permit are not transferable.

#### 11 Section 7. Biennial renewal of license.

12 (a) Duration of license.--A license shall be valid for two  
13 years. The expiration date shall be established by regulation of  
14 the board. Application for renewal of a license shall be  
15 forwarded to an individual holding a current license prior to  
16 the expiration date of the current renewal.

17 (b) Procedure.--To renew a license, a licensee must do all  
18 of the following:

19 (1) File a renewal application with the board which  
20 includes the following:

21 (i) Current certification to administer  
22 cardiopulmonary resuscitation.

23 (ii) Certification of successful completion of a  
24 minimum of 24 hours of continuing education in the field  
25 of massage therapy during the immediately preceding two  
26 years. Certification of continuing education credit hours  
27 submitted by the massage therapist shall be properly  
28 signed as being correct and true.

29 (2) Pay a fee established by regulation of the board.

30 (c) Inactive status.--Any person licensed under this act may

1 request an application for inactive status. The application may  
2 be completed and returned to the board; upon receipt of each  
3 application, the applicant shall be maintained on inactive  
4 status without fee and shall be entitled to apply for an active  
5 license at any time. An application to reactivate a license  
6 which has been placed on inactive status for less than five  
7 years shall be accompanied by a verification of nonpractice, the  
8 renewal fee and documentation evidencing the satisfactory  
9 completion of the continuing education requirement for the  
10 preceding biennial period. Any person who requests an active  
11 status license who has been on inactive status for a period of  
12 five consecutive years or longer shall, prior to receiving an  
13 active license, satisfy the requirements of the board's  
14 regulations for ensuring continued competence and remit the  
15 required fee. A person shall not be denied active status as a  
16 result of any increased educational requirements for licensure  
17 since the time he or she received his or her original license.

18 (d) Reporting of multiple licensure.--A licensee who is  
19 licensed to practice massage therapy in another jurisdiction  
20 shall report this information to the board on the license  
21 renewal application. Any disciplinary action taken in another  
22 jurisdiction shall be reported to the board on the license  
23 renewal application or within 90 days of final disposition,  
24 whichever is sooner. Multiple licensure shall be noted by the  
25 board on the licensee's record, and the other licensing  
26 jurisdiction shall be notified by the board of any disciplinary  
27 actions taken against the licensee in this Commonwealth.

28 Section 8. Examinations.

29 The board shall contract with a professional testing  
30 organization for the examination of qualified applicants for

1 licensure. The board shall approve the examination before it is  
2 administered. All written, oral and practical examinations shall  
3 be prepared and administered by a qualified and approved  
4 professional testing organization in the manner prescribed for  
5 written examinations by section 812.1 of the act of April 9,  
6 1929 (P.L.177, No.175), known as The Administrative Code of  
7 1929.

8 Section 9. Reciprocity.

9 The board has the power to grant a reciprocal license to an  
10 applicant who is licensed or certified as a massage therapist or  
11 similar practice in another state and has demonstrated  
12 qualifications which equal or exceed those required under this  
13 act in the determination of the board. No license shall be  
14 granted under this section to an applicant unless the state in  
15 which the applicant is licensed affords reciprocal treatment to  
16 individuals who are residents of this Commonwealth and who are  
17 licensed under this act.

18 Section 10. Refusal, suspension and revocation of licenses.

19 (a) Grounds.--The board may refuse, suspend, revoke, limit  
20 or restrict a license or discipline a licensee for any of the  
21 following:

22 (1) Being convicted under Federal law, under the law of  
23 any state or under the law of another jurisdiction of an  
24 offense of moral turpitude or of an offense which, if  
25 committed in this Commonwealth, would constitute a sexual  
26 offense or a felony. As used in this paragraph, the term  
27 "convicted" includes a finding or verdict of guilt, an  
28 admission of guilt or a plea of nolo contendere or receiving  
29 probation without verdict, disposition in lieu of trial or an  
30 accelerated rehabilitative disposition in the disposition of

1 felony charges.

2 (2) Being found to have engaged in immoral or  
3 unprofessional conduct. In proceedings based on this  
4 paragraph, actual injury to the client need not be  
5 established. As used in this paragraph, the term  
6 "unprofessional conduct" includes:

7 (i) a departure from or failure to conform to the  
8 standards of acceptable and prevailing practice; and

9 (ii) sexual exploitation of a client.

10 (3) Violating standards of professional practice or  
11 conduct as established by board regulation.

12 (4) Presenting false credentials or documents or making  
13 a false statement of fact in support of the individual's  
14 application for a license.

15 (5) Submitting a false or deceptive license renewal to  
16 the board.

17 (6) Having a license suspended, revoked or refused or  
18 receiving other disciplinary action by the proper licensing  
19 authority of another jurisdiction.

20 (7) Violating a regulation promulgated by the board or  
21 violating an order of the board previously entered in a  
22 disciplinary proceeding.

23 (8) Incompetence, negligence or misconduct in carrying  
24 out the practice of massage therapy.

25 (9) Practicing beyond the licensee's defined scope of  
26 practice.

27 (10) Knowingly aiding, assisting, hiring or advising  
28 someone in the unlawful practice of massage therapy.

29 (11) Being unable to practice with reasonable skill and  
30 safety by reason of illness; drunkenness; use of drugs,

1     narcotics, chemicals or any other type of material; or as a  
2     result of any mental or physical condition. In enforcing this  
3     paragraph, the board, upon probable cause, has authority to  
4     compel a licensee to submit to a mental or physical  
5     examination by a physician approved by the board. Failure of  
6     a licensee to submit to an examination when directed by the  
7     board, unless the failure is due to circumstances beyond the  
8     licensee's control, may result in a default and final order  
9     entered against the licensee without the taking of testimony  
10    or presentation of evidence. A licensee affected under this  
11    paragraph shall be afforded an opportunity to demonstrate  
12    that the licensee can resume competent practice with  
13    reasonable skill and safety.

14    (b) Board action.--If the board finds that the license or  
15    application for license may be refused, revoked, restricted or  
16    suspended under the terms of subsection (a), the board may do  
17    any of the following:

18        (1) Deny the application for a license.

19        (2) Administer a public reprimand.

20        (3) Revoke, suspend, limit or otherwise restrict a  
21    license.

22        (4) Require a licensee to submit to the care, counseling  
23    or treatment of a physician.

24        (5) Suspend enforcement of its findings and place a  
25    licensee on probation with the right to vacate the  
26    probationary order for noncompliance.

27        (6) Restore a suspended license and impose any  
28    disciplinary or corrective measure which it might originally  
29    have imposed.

30    (c) Administrative Agency Law.--Actions of the board under

1 subsections (a) and (b) are subject to 2 Pa.C.S. Ch. 5 Subch. A  
2 (relating to practice and procedure of Commonwealth agencies)  
3 and Ch. 7 Subch. A (relating to judicial review of Commonwealth  
4 agency action).

5 (d) Temporary and automatic suspension.--A license issued  
6 under this act shall be temporarily suspended under  
7 circumstances determined by the board to be an immediate and  
8 clear danger to the public health and safety. The board shall  
9 issue an order to that effect without a hearing, but upon due  
10 notice, to the licensee concerned at his or her last known  
11 address, which shall include a written statement of all  
12 allegations against the licensee. The provisions of subsection  
13 (c) shall not apply to temporary suspension. The board shall  
14 thereupon commence formal action to suspend, revoke or restrict  
15 the license of the person concerned as otherwise provided for in  
16 this act. All actions shall be taken promptly and without delay.  
17 Within 30 days following the issuance of an order temporarily  
18 suspending a license, the board shall conduct or cause to be  
19 conducted a preliminary hearing to determine that there is a  
20 prima facie case supporting the suspension. The licensee whose  
21 license has been temporarily suspended may be present at the  
22 preliminary hearing and may be represented by counsel, cross-  
23 examine witnesses, inspect physical evidence, call witnesses,  
24 offer evidence and testimony and make a record of the  
25 proceedings. If it is determined that there is not a prima facie  
26 case, the suspended license shall be immediately restored. The  
27 temporary suspension shall remain in effect until vacated by the  
28 board, but in no event longer than 180 days.

29 Section 11. Reinstatement of license.

30 Unless ordered to do so by a court of competent jurisdiction,

1 the board shall not reinstate the license of an individual which  
2 has been revoked. An individual whose license has been revoked  
3 may reapply for a license after a period of at least five years,  
4 and must meet all of the licensing requirements of this act.

5 Section 12. Impaired professional.

6 (a) Appointment of professional consultant.--The board, with  
7 the approval of the commissioner, shall appoint and fix the  
8 compensation of a professional consultant who is a licensee of  
9 the board, or such other professional as the board may determine  
10 with education and experience in the identification, treatment  
11 and rehabilitation of persons with physical or mental  
12 impairments. Such consultant shall be accountable to the board  
13 and shall act as a liaison between the board and treatment  
14 programs, such as alcohol and drug treatment programs licensed  
15 by the Department of Health, psychological counseling and  
16 impaired professional support groups, which are approved by the  
17 board and which provide services to licensees under this act.

18 (b) Subsequent action by board.--The board may defer and  
19 ultimately dismiss any of the types of corrective action set  
20 forth in this act for an impaired professional so long as the  
21 professional is progressing satisfactorily in an approved  
22 treatment program, provided that the provisions of this  
23 subsection shall not apply to a professional convicted of a  
24 felonious act prohibited by the act of April 14, 1972 (P.L.233,  
25 No.64), known as The Controlled Substance, Drug, Device and  
26 Cosmetic Act, or convicted of, pleaded guilty to or entered a  
27 plea of nolo contendere to a felony relating to a controlled  
28 substance in a court of law of the United States or any other  
29 state, territory or country. An approved program provider shall,  
30 upon request, disclose to the consultant such information in its



1 possession regarding any impaired professional in treatment  
2 which the program provider is not prohibited from disclosing by  
3 an act of the United States, this Commonwealth or any other  
4 state. Such requirement of disclosure by an approved program  
5 provider shall apply in the case of impaired professionals who  
6 enter an agreement in accordance with this section, impaired  
7 professionals who are the subject of a board investigation or  
8 disciplinary proceeding and impaired professionals who  
9 voluntarily enter a treatment program other than under the  
10 provisions of this section but who fail to complete the program  
11 successfully or to adhere to an aftercare plan developed by the  
12 program provider.

13 (c) Agreement.--An impaired professional who enrolls in an  
14 approved treatment program shall enter into an agreement with  
15 the board under which the professional's license shall be  
16 suspended or revoked, but enforcement of the suspension or  
17 revocation may be stayed for the length of time the professional  
18 remains in the program and makes satisfactory progress, complies  
19 with the terms of the agreement and adheres to any limitations  
20 on his or her practice imposed by the board to protect the  
21 public. Failure to enter into such an agreement shall disqualify  
22 the professional from the impaired professional program and  
23 shall activate an immediate investigation and disciplinary  
24 proceeding by the board.

25 (d) Report by provider.--If, in the opinion of the  
26 consultant after consultation with the provider, an impaired  
27 professional who is enrolled in an approved treatment program  
28 has not progressed satisfactorily, the consultant shall disclose  
29 to the board all information in his or her possession relevant  
30 to the issue of impairment regarding said professional, and the

1 board shall institute proceedings to determine if the stay of  
2 the enforcement of the suspension or revocation of the impaired  
3 professional's license shall be vacated.

4 (e) Immunity.--An approved program provider who makes a  
5 disclosure pursuant to this section shall not be subject to  
6 civil liability for such disclosure or its consequences.

7 (f) Reports by others.--Any hospital or health care  
8 facility, peer or colleague who has substantial evidence that a  
9 professional has an active addictive disease for which the  
10 professional is not receiving treatment, is diverting a  
11 controlled substance or is mentally or physically incompetent to  
12 carry out the duties of his or her license shall make or cause  
13 to be made a report to the board, provided that any person or  
14 facility who acts in a treatment capacity to an impaired  
15 professional in an approved treatment program is exempt from the  
16 mandatory reporting requirement of this subsection. Any person  
17 or facility who reports pursuant to this section in good faith  
18 and without malice shall be immune from any civil or criminal  
19 liability arising from such report. Failure to provide such  
20 report within a reasonable time from receipt of knowledge of  
21 impairment shall subject the person or facility to a fine of not  
22 more than \$1,000. The board shall levy this penalty only after  
23 affording the accused party the opportunity for a hearing, as  
24 provided under 2 Pa.C.S. (relating to administrative law and  
25 procedure).

26 Section 13. Records and fees.

27 (a) Records.--A record of all licensees shall be kept in the  
28 office of the board and shall be open to public inspection and  
29 copying upon payment of a reasonable fee for copying the record.

30 (b) Fees.--

1           (1) All fees required under this act shall be fixed by  
2           the board by regulation. If the revenue raised by fees, fines  
3           and civil penalties imposed under this act are not sufficient  
4           to meet expenditures over a two-year period, the board shall  
5           increase those fees by regulation so that the projected  
6           revenues will meet or exceed projected expenditures.

7           (2) If the bureau determines that the fees established  
8           by the board under paragraph (1) are inadequate to meet the  
9           minimum enforcement efforts required by this act, the bureau,  
10          after consultation with the board, shall increase the fees by  
11          regulation in an amount so that adequate revenues are raised  
12          to meet the required enforcement effort.

13 Section 14. Other professions.

14          Nothing in this act shall be construed as preventing,  
15          restricting or requiring licensure of any of the following  
16          activities:

17           (1) The practice of a profession by an individual who is  
18           licensed, certified or registered by a Commonwealth agency  
19           under other law and who is performing services or advertising  
20           within the authorized scope of practice.

21           (2) The practice of massage therapy by an individual  
22           employed by the Federal Government while the individual is  
23           engaged in the performance of duties under Federal law.

24           (3) A student enrolled in a massage therapy education  
25           program who is:

26                   (i) conducting massage therapy activities under the  
27                   supervision of:

28                           (A) a licensee; or

29                           (B) instructors or supervisors who meet the

30                   licensing criteria of the Department of Education or

1 the board; and

2 (ii) enrolled in a school approved by the Department  
3 of Education or by the board.

4 (4) The practice by an individual while performing  
5 reflexology.

6 (5) The practice of an individual who uses touch, words  
7 and directed movement to deepen awareness of existing  
8 patterns of movement in the body and to suggest new  
9 possibilities of movement, while engaged within the scope of  
10 practice of a profession with established standards and  
11 ethics.

12 (6) The practice of an individual who uses touch to  
13 affect the energy systems, accupoints, Qi meridians or  
14 channels of energy of the human body while engaged within the  
15 scope of practice of a profession with established standards  
16 and ethics.

17 Section 15. Unlawful practice.

18 (a) General rule.--Except as set forth in section 14(1) and  
19 (2), an individual may not practice massage therapy or hold  
20 oneself out as a massage therapist unless licensed by the board.

21 (b) Title.--An individual who holds a license or is  
22 maintained on inactive status may use the title "Licensed  
23 Massage Therapist" and the abbreviation "L.M.T." No other  
24 individual may use the title "Licensed Massage Therapist" or the  
25 title "Massage Therapist" or hold oneself out to others as a  
26 massage therapist. This subsection includes advertising as a  
27 massage therapist and adopting or using any title or  
28 description, including massage therapist, massage practitioner,  
29 masseur, masseuse, myotherapist or a derivative of those terms  
30 and their related abbreviations, which implies directly or

1 indirectly that massage services are being provided.

2 (c) Employment.--An individual, corporation, partnership,  
3 firm or other entity may not employ an individual in massage  
4 therapy unless the individual is licensed by the board.

5 (d) Terminology.--Except as set forth in section 14(1), a  
6 business entity may not utilize in connection with a business  
7 name or activity the words, "massage," "massage therapist,"  
8 "massage practitioner," "masseur," "masseuse" or "myotherapist,"  
9 or any derivative of these terms and their related  
10 abbreviations, which imply directly or indirectly that massage  
11 therapy services are being provided, unless the services of the  
12 business are provided by licensees.

13 (e) Injunction.--Unlawful practice may be enjoined by the  
14 courts upon petition of the commissioner or the board. In a  
15 proceeding under this section, it shall not be necessary to show  
16 that an individual has been injured. Procedure in such cases  
17 shall be the same as in any other injunction suit.

18 (f) Remedy cumulative.--The injunctive remedy provided in  
19 this section shall be in addition to any other civil or criminal  
20 prosecution and punishment.

21 Section 16. Violation of act.

22 (a) General rule.--Notwithstanding any law to the contrary,  
23 a person that violates a provision of this act or a regulation  
24 of the board commits a misdemeanor of the third degree and  
25 shall, upon conviction, be sentenced to pay a fine of not more  
26 than \$1,000 or to imprisonment for not more than six months for  
27 the first violation and to pay a fine of not more than \$2,000 or  
28 to imprisonment for not less than six months or more than one  
29 year, or both, for each subsequent violation.

30 (b) Civil penalty.--In addition to any other civil remedy or

1 criminal penalty provided for in this act, the board, by a vote  
2 of the majority of the maximum number of the authorized  
3 membership of the board or by a vote of the majority of the  
4 qualified and confirmed membership or a minimum of five members,  
5 whichever is greater, may levy a civil penalty of up to \$10,000  
6 on any of the following:

7 (1) A massage therapist who violates a provision of this  
8 act.

9 (2) A person that employs a massage therapist in  
10 violation of this act.

11 (3) An individual who holds himself out as a licensee  
12 without being properly licensed as provided in this act.

13 (4) The responsible officers or employees of a  
14 corporation, partnership, firm or other entity that violates  
15 a provision of this act.

16 (c) Administrative Agency Law.--Action of the board under  
17 subsection (b) is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating  
18 to practice and procedure of Commonwealth agencies) and Ch. 7  
19 Subch. A (relating to judicial review of Commonwealth agency  
20 action).

21 Section 49. Appropriation and repayment.

22 (a) Appropriation.--The sum of \$85,000, or as much thereof  
23 as may be necessary, is hereby appropriated from the  
24 Professional Licensure Augmentation Account to the department  
25 for the payment of costs associated with processing licenses and  
26 renewing licenses, for the operation of the board and for other  
27 costs associated with this act.

28 (b) Repayment.--The appropriation shall be repaid by the  
29 board to the account within three years of the beginning of  
30 issuance of licenses by the board.

1 Section 50. Regulations.

2 The board shall promulgate regulations to carry out this act.

3 Publication of the final-form regulations under this section

4 shall take place within 18 months of the effective date of this

5 section. The board shall report, within 60 days of the effective

6 date of this section, and every 30 days thereafter, on the

7 status of the regulations to the Consumer Protection and

8 Professional Licensure Committee of the Senate and the

9 Professional Licensure Committee of the House of

10 Representatives.

11 Section 51. Effective date.

12 This act shall take effect as follows:

13 (1) The following provisions shall take effect

14 immediately:

15 (i) Section 50.

16 (ii) This section.

17 (2) The remainder of this act shall take effect in two

18 years.