

1
2
3
4
5
6
7
8
9
10
11

12
13
14
15
16
17
18
19
20

S.270

Introduced by Senators Hardy, Balint, Baruth, Bray, Campion, Clarkson,
Ingram, Lyons, McCormack and Perchlik

Referred to Committee on

Date:

Subject: Professions and occupations; Secretary of State, Office of
Professional Regulation; massage therapy; licensure

Statement of purpose of bill as introduced: This bill proposes to require
individuals and establishments offering massage therapy to be licensed and
professionally regulated by the Secretary of State's Office of Professional
Regulation.

An act relating to the professional regulation of massage therapy

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

The Office of Professional Regulation is created within the Office of the
Secretary of State. The Office shall have a director who shall be appointed by
the Secretary of State and shall be an exempt employee. The following boards
or professions are attached to the Office of Professional Regulation:

* * *

1 (49) Massage therapists

2 Sec. 2. 3 V.S.A. § 123 is amended to read:

3 § 123. DUTIES OF OFFICE

4 * * *

5 (j)(1) The Office may inquire into the criminal background histories of
6 applicants for licensure and for biennial license renewal for the following
7 professions:

8 (A) licensed nursing assistants, licensed practical nurses, registered
9 nurses, and advanced practice registered nurses licensed under 26 V.S.A.
10 chapter 28;

11 (B) private investigators, security guards, and other persons licensed
12 under 26 V.S.A. chapter 59;

13 (C) real estate appraisers and other persons or business entities
14 licensed under 26 V.S.A. chapter 69; ~~and~~

15 (D) osteopathic physicians licensed under 26 V.S.A. chapter 33; and

16 (E) massage therapists licensed under 26 V.S.A. chapter 105.

17 * * *

18 Sec. 3. 26 V.S.A. chapter 105 is added to read:

19 CHAPTER 105. MASSAGE THERAPY

20 Subchapter 1. General Provisions

1 § 5401. PURPOSE AND EFFECT

2 In order to safeguard the health, safety, and welfare of the public, a person
3 shall not practice, or offer to practice, massage therapy unless currently
4 licensed under this chapter.

5 § 5402. DEFINITIONS

6 As used in this chapter:

7 (1) “Director” means the Director of the Office of Professional
8 Regulation.

9 (2) “Establishment” means a facility regularly used to offer or perform
10 the practice of massage therapy.

11 (3) “License” means a current authorization granted by the Director
12 permitting the practice of massage therapy.

13 (4) “Massage therapist” means a person who is licensed under this
14 chapter to engage in the practice of massage therapy.

15 (5) “Practice of massage therapy” means the provision, for a
16 consideration, of a system of structured touch, palpation, or movement of the
17 soft tissue of another person’s body in order to enhance or restore the general
18 health and well-being of the recipient. This system includes techniques such as
19 effleurage (stroking or gliding), petrissage (kneading), tapotement or
20 percussion, friction, vibration, compression, passive and active stretching
21 within the normal anatomical range of movement, hydromassage, and thermal

1 massage. These techniques may be applied with or without the aid of
2 lubricants, salt, or herbal preparations; water; heat; or a massage device that
3 mimics or enhances the actions possible by human hands.

4 § 5403. PROHIBITIONS; OFFENSES

5 (a) It shall be a violation of this chapter for any person, including any
6 corporation, association, or individual, to:

7 (1) sell or fraudulently obtain or furnish any massage therapy degree,
8 diploma, certificate of registration, or any other related document or record or
9 to aid or abet another person to do so;

10 (2) practice massage therapy under cover of any degree, diploma,
11 certificate of registration, or related document or record illegally or
12 fraudulently obtained or signed or issued unlawfully or under fraudulent
13 representation;

14 (3) offer or practice massage therapy unless currently licensed under the
15 provisions of this chapter;

16 (4) represent himself or herself or his or her establishment as being
17 licensed by this State to practice massage therapy or use in connection with a
18 name any words, letters, signs, or figures that imply that an individual is a
19 massage therapist or that his or her establishment is licensed when he, she, or it
20 is not licensed as required under this chapter;

1 (5) practice massage therapy during the time a license issued under this
2 chapter is suspended or revoked;

3 (6) employ an unlicensed individual to practice as a massage therapist;
4 or

5 (7) offer or practice massage therapy in an establishment not currently
6 licensed as required under the provisions of this chapter.

7 (b) Any person violating this section shall be subject to the penalties
8 provided in 3 V.S.A. § 127.

9 § 5404. EXEMPTIONS

10 (a) The following shall not require a license under this chapter:

11 (1) the practice of massage therapy by a student as part of a professional
12 massage therapy education program approved by the Director or by an
13 apprentice as part of a massage therapy apprenticeship approved by the
14 Director, in order for the student or apprentice to pursue licensure under this
15 chapter;

16 (2) the furnishing of assistance in the case of an emergency or disaster;
17 or

18 (3) the practice of any other occupation or profession by a person duly
19 licensed or otherwise authorized under the laws of this State.

20 (b) Nothing in this chapter shall prohibit a massage therapist from
21 practicing massage therapy at a location that is not an establishment, so long as

1 the location is agreed upon by the massage therapist and his or her client and
2 the massage therapist otherwise complies with the requirements of this chapter
3 and any rules adopted in accordance with this chapter.

4 Subchapter 2. Administration

5 § 5411. DUTIES OF THE DIRECTOR

6 (a) Generally. The Director shall:

7 (1) provide general information to applicants for licensure as a massage
8 therapist or a massage therapy establishment;

9 (2) receive applications for licensure and provide licenses to applicants
10 qualified under this chapter;

11 (3) administer fees as established by law;

12 (4) refer all disciplinary matters to an administrative law officer;

13 (5) renew, revoke, and reinstate licenses as ordered by an administrative
14 law officer; and

15 (6) explain appeal procedures to licensed massage therapists and
16 designees of establishments and to applicants, and complaint procedures to the
17 public.

18 (b) Rules.

19 (1) The Director, after consulting with the Commissioner of Health,
20 shall adopt rules relating to infection control procedures and public health

1 practices to be followed in the practice of massage therapy in order to protect
2 the public from communicable diseases.

3 (2)(A) The Director shall adopt rules requiring massage therapists to
4 disclose to each new client before the first treatment the following information:

5 (i) the massage therapist's professional qualifications and
6 experience;

7 (ii) the infection control procedures and public health practices to
8 be followed to protect the public from communicable diseases;

9 (iii) the actions that constitute unprofessional conduct; and

10 (iv) the method for filing a complaint or making a consumer
11 inquiry.

12 (B) The rules described in this subdivision (2) shall include
13 provisions relating to the manner in which the information disclosed shall be
14 displayed and signed by both the massage therapist and the client.

15 (3) The Director:

16 (A) shall adopt rules providing standards for the education or
17 apprenticeship and the examinations required of applicants for licensure under
18 this chapter; and

19 (B) may adopt other rules necessary to perform his or her duties
20 under this chapter.

1 § 5412. ADVISOR APPOINTEES

2 (a)(1) The Secretary of State shall appoint three massage therapists for five-
3 year staggered terms to serve at the Secretary's pleasure as advisors in matters
4 relating to massage therapy.

5 (2) An appointee shall have not less than five years' experience as a
6 massage therapist immediately preceding appointment, shall be licensed as a
7 massage therapist in Vermont, and shall be actively engaged in the practice of
8 massage therapy in this State during incumbency.

9 (b) The Director shall seek the advice of the massage therapy advisor
10 appointees in carrying out the provisions of this chapter.

11 Subchapter 3. Licenses

12 § 5421. MASSAGE THERAPISTS; LICENSURE

13 An applicant for licensure as a massage therapist shall:

14 (1) be at least 18 years of age;

15 (2)(A) be a graduate of a professional massage therapy education
16 program accredited by a national accreditation agency approved by the
17 Director; or

18 (B) have successfully completed a massage therapy apprenticeship
19 that prepares an applicant to practice massage therapy under this chapter as
20 approved by the Director; and

21 (3) pass an examination approved by the Director.

1 § 5422. MASSAGE THERAPISTS; LICENSURE BY ENDORSEMENT

2 The Director may issue a license to an individual under this chapter if the
3 individual holds a license or other authorization to practice massage therapy
4 from a U.S. or Canadian jurisdiction that the Director finds has requirements
5 for the practice of massage therapy that are substantially equivalent to those
6 under this chapter.

7 § 5423. ESTABLISHMENTS; LICENSURE AND INSPECTION

8 (a)(1) Each establishment that employs or contracts with more than one
9 massage therapist shall be licensed under this chapter.

10 (2) An individual who is the sole person that practices massage therapy
11 in an establishment shall not be required to obtain a license for that
12 establishment, but that massage therapist shall otherwise be professionally
13 responsible for complying with the requirements for establishments under this
14 chapter.

15 (b) An applicant for licensure as an establishment shall meet standards
16 adopted by the Director by rule.

17 (c) An establishment shall have a designated massage therapist licensed
18 under this chapter who shall be professionally responsible for the overall
19 cleanliness and sanitation of the establishment and for legal requirements
20 relating to the operation of the establishment and who shall ensure that the
21 establishment's license, if applicable, is conspicuously displayed for clients.

1 (d) The Director may inspect establishments, and a fee shall not be charged
2 for an initial inspection under this subsection. However, if the Director
3 determines that it is necessary to inspect the same premises under the same
4 ownership more than once in any one-year period, the Director may charge the
5 establishment a reinspection fee of \$100.00. The Director may waive all or a
6 part of the reinspection fee in accordance with criteria adopted by the Director
7 by rule.

8 § 5424. LICENSE RENEWAL

9 (a) The Director shall adopt by rule the continuing competence
10 requirements that shall be required of applicants for massage therapist
11 licensure renewal.

12 (b) A license shall be renewed every two years upon application and
13 payment of the required fee. Failure to comply with the provisions of this
14 section shall result in suspension of all privileges granted to the licensee,
15 beginning on the expiration date of the license.

16 (c) A license that has lapsed shall be renewed upon payment of the biennial
17 renewal fee and the late renewal penalty.

18 § 5425. APPLICATIONS

19 Applications for licensure and license renewal shall be on forms provided
20 by the Director. Each application shall contain a statement under oath showing

1 the applicant's education, experience, and other pertinent information and shall
2 be accompanied by the required fee.

3 § 5426. FEES

4 Applicants and persons regulated under this chapter shall pay those fees set
5 forth in 3 V.S.A. § 125(b).

6 § 5427. LICENSURE GENERALLY; DISPLAY OF LICENSE

7 (a) The Director shall issue a license or renew a license, upon payment of
8 the fees required under this chapter, to an applicant or licensee who has
9 satisfactorily met all the requirements of this chapter.

10 (b)(1) An individual granted a massage therapy license shall conspicuously
11 display the license for clients in his or her principal office, place of business, or
12 place of employment.

13 (2) Each establishment's license shall be conspicuously displayed for
14 clients in the establishment.

15 § 5428. UNPROFESSIONAL CONDUCT

16 (a) Unprofessional conduct means the following conduct and the conduct
17 set forth in 3 V.S.A. § 129a committed by a licensee, an applicant, or a person
18 who later becomes an applicant:

19 (1) violating a client's reasonable expectation of privacy;

20 (2) sexual harassment of a client;

21 (3) engaging in a sexual act as defined in 13 V.S.A. § 3251 with a client;

1 (4) conviction of a crime against a client;

2 (5) performing massage therapy responsibilities that the licensee knows
3 or has reason to know that he or she is not competent to perform or that have
4 not been authorized by a client or the client's legal representative;

5 (6) being unable to practice massage therapy competently by reason of
6 any cause;

7 (7) willfully or repeatedly violating any of the provisions of this chapter
8 or rules adopted under the provisions of this chapter;

9 (8) being habitually intemperate or is addicted to the use of habit-
10 forming drugs; or

11 (9) engaging in conduct of a character likely to deceive, defraud, or
12 harm the public.

13 (b) A person shall not be liable in a civil action for damages resulting from
14 the good faith reporting of information to the Director or the Office of
15 Professional Regulation about alleged incompetent, unprofessional, or
16 unlawful conduct of a massage therapist or establishment.

17 Sec. 4. TRANSITIONAL PROVISIONS

18 (a) Initial licensure of current massage therapists and establishments.

19 (1) Generally. Prior to the effective date of Sec. 3 of this act, the
20 Director of the Office of Professional Regulation shall establish a procedure so
21 that individuals who have been engaged in the practice of massage therapy in

1 Vermont and Vermont massage therapy establishments may become licensed
2 on the effective date of and in accordance with the provisions of Sec. 3 of this
3 act.

4 (2) Waiver of initial license requirements. In addition to the provisions
5 of subdivision (1) of this subsection, prior to the effective date of Sec. 3 of this
6 act, the Director shall establish a procedure so that an individual who has been
7 engaged in the practice of massage therapy may become licensed on the
8 effective date of Sec. 3 without meeting the education or apprenticeship and
9 the examination requirements for licensure set forth in 26 V.S.A. § 5421(a)(2)
10 and (3) of Sec. 3 if the Director, after due consultation with the massage
11 therapy advisor appointees, determines that the individual demonstrates
12 through a peer-review process and production of such documentation as the
13 Director may require that he or she possesses both significant experience and
14 massage therapy competencies substantially equivalent to those of an
15 individual eligible for licensure pursuant to 26 V.S.A. § 5421(a)(2) and (3).

16 (3) Any person licensed under this subsection shall thereafter be eligible
17 for license renewal pursuant to 26 V.S.A. § 5424.

18 (4) The ability of a person to become licensed under this subsection
19 shall expire on January 1, 2022.

1 (b) Advisor appointees.

2 (1) Notwithstanding the provisions of 26 V.S.A. § 5412(a)(2) (advisor
3 appointees; qualifications) in Sec. 3 of this act that require a massage therapist
4 advisor appointee to be licensed, the Secretary of State shall appoint the initial
5 advisor appointees prior to the effective date of Sec. 3 of this act who are
6 therefore not yet licensed, provided those appointees otherwise meet the
7 requirements of 26 V.S.A. § 5412(a)(2).

8 (2) In order to stagger the terms of the advisor appointees as set forth in
9 26 V.S.A. § 5412(a)(1) in Sec. 3 of this act, two of the initial appointments
10 shall be for less than a five-year term.

11 (c) Rules. Notwithstanding the effective date of Sec. 3 of this act, prior to
12 that effective date, the Director shall adopt any rules necessary to perform his
13 or her duties under that section.

14 Sec. 5. EFFECTIVE DATES

15 (a) This section and Sec. 4 (transitional provisions) shall take effect on
16 passage.

17 (b) The remaining sections shall take effect on July 1, 2021.