

OPR REVISED DRAFT

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; registration

Statement of purpose of bill as introduced: In order to safeguard the health, safety,
and welfare of the public, this bill requires individuals and establishments offering massage
therapy to be registered 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:

* * *

(49) Massage therapists

Sec. 2. 26 V.S.A. chapter 105 is added to read:

CHAPTER 105. MASSAGE THERAPY

Subchapter 1. General Provisions

§ 5401. DEFINITIONS

As used in this chapter:

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

(2) “Establishment” means any place of business

(a) that offers the practice of massage or the practice of bodywork, and where the practice of massage or the practice bodywork is conducted on the premises of the business; or

(b) that represents itself to the public by any title or description of services incorporating the words “bodywork,” “massage,” “massage therapy,” “massage practitioner,” “massagist,” “masseur,” “masseuse,” “energy work” or other words identified by the Director in the Rules.

A “place of business” includes any office, clinic, facility, salon, spa, or other location not otherwise exempted from this Chapter under subsection 5404, herein, where a person or persons engage in the practice of massage or the practice of bodywork in exchange for consideration.

(3) “Massage Therapist” and “Bodywork Therapist” and “Massage and Bodywork Therapist” mean a person who holds a registration from the Office to practice massage and bodywork.

(4) “Practice of massage” and “practice of bodywork” mean offering or engaging in massage or bodywork in exchange for consideration.

(5) “Massage” and “Bodywork” mean

(a) systems of structured touch applied to the superficial, soft or deep tissue, muscle, or

connective tissue of another person by manual means, including, but not limited to,

friction, gliding, rocking, tapping, kneading, and nonspecific stretching; or

- (b) systems of structured touch designed to affect the energy fields of the body for the purpose of promoting and maintaining health and well-being.

Massage and bodywork may include the use of therapies such as heliotherapy or hydrotherapy, the use of moist, hot, and cold external applications, and the use of oils or other lubricants.

Neither massage nor bodywork include the diagnosis of illness, disease, impairment, or disability.

§ 5402. PROHIBITIONS

- (a) No person or establishment may engage in or offer the practice of massage or the practice of bodywork unless the person or establishment is registered with the Office.
- (b) It shall be a violation of this chapter for any person or establishment to engage in the practice of massage or the practice of bodywork, or to offer to engage in the practice of massage or the practice of bodywork if the person or establishment's registration has been suspended or revoked.
- (c) Neither a person nor an establishment shall use in connection with the person's or establishment's name any letters, words, titles or insignia indicating or implying that the person or establishment is offering or engaging in the practice of massage or the practice of bodywork, including the terms "massage therapist" or "bodywork therapist", unless the person or establishment holds a registration in accordance with this chapter.

§ 5403. UNAUTHORIZED PRACTICE

The provisions of 3 V.S.A. § 127, relating to unauthorized practice, shall apply to any person or establishment who engages in the practice of massage or the practice of bodywork without a registration from the Office. Any person violating this section shall be subject to the penalties provided in 3 V.S.A. § 127.

§ 5404. EXEMPTIONS

- (a) The following shall not require a registration under this chapter:
 - (1) the practice of massage or the practice of bodywork by a student as part of a professional massage or bodywork education program; or
 - (2) the practice of massage or the practice of bodywork by an apprentice as part of a massage or bodywork apprenticeship.
- (b) The provisions of this chapter shall not apply to persons who engage in or offer the practice of massage or the practice of bodywork in the course of their customary duties as physicians, podiatrists, physician assistants, nurses, osteopaths, acupuncturists, athletic trainers, barbers, cosmetologists, estheticians, electrologists, chiropractors, midwives, naturopathic physicians, occupational therapists, physical therapists, or respiratory care practitioners.
- (c) The provisions of this chapter shall not apply to health care facilities and ambulatory surgery centers, as those terms are defined in 18 V.S.A. § 9432, or to the businesses and offices of those licensees listed in subsection 5405(b), herein, regardless of whether such facilities or businesses employ, contract with, or rent to massage therapists or bodywork therapists.
- (d) A massage therapist or a bodywork therapist who is the sole person engaging in the practice of massage or the practice of bodywork in an establishment shall not be required

to obtain an additional registration for that establishment. The massage therapist or bodywork therapist, however, shall be responsible for ensuring that this establishment is in compliance with the requirements for establishments under this chapter.

- (e) Nothing in this chapter shall prohibit a massage therapist or bodywork therapist from engaging in or offering the practice of massage or the practice of bodywork at a location that is not an establishment. Prior to engaging in the practice of massage or the practice of bodywork at such a location, however, the massage therapist or bodywork therapist and his or her client must agree that the location is acceptable.

Subchapter 2. Administration

§ 5411. DUTIES OF THE DIRECTOR

- (a) Generally. The Director shall:
- (1) provide general information to applicants for registration as a massage therapist, a bodywork therapist, or an establishment;
 - (2) receive applications for registration and provide licenses to applicants qualified under this chapter; administer fees as established by law;
 - (3) refer all disciplinary matters to an administrative law officer;
 - (4) explain appeal procedures to applicants, registered massage therapists, bodywork therapists, establishments, and designees of registered establishments; and
 - (5) explain complaint procedures to the public.
- (b) Rules
- (1) The Director shall adopt rules requiring massage therapists and bodywork therapists to disclose to each new client before the first treatment the following information:

- a. the professional qualifications and experience of the massage therapist or the bodywork therapist;
 - b. actions that constitute unprofessional conduct;
 - c. the method for filing a complaint against a massage therapist, bodywork therapist and an establishment; and
 - d. the method for making a consumer inquiry with the Office.
- (2) The rules described in this subdivision (1) shall include provisions relating to the manner in which the information disclosed shall be distributed or displayed, and a requirement that the massage therapist or bodywork therapist and the client sign an acknowledgement that the information was disclosed.
- (3) The Director shall adopt rules regarding the display of
- a. an establishment's registration
 - b. the registrations of employed or contracted massage therapists and bodywork therapists, and
 - c. information regarding unprofessional conduct and filing complaints with the Office.
- (4) The Director may adopt other rules as necessary to perform his or her duties under this chapter.

§ 5412. ADVISOR APPOINTEES

- (a) The Secretary of State shall appoint three advisors of suitable qualifications, as described in this section, to advise the Director on matters relating to the practice of

massage and the practice of bodywork.

- (b) The Secretary appoint the advisors to serve, at the Secretary's pleasure, for five-year staggered terms. To stagger the advisors' terms, the Secretary may initially appoint two of the advisors for less than a five-year term.
- (c) Two of the three advisors shall be massage therapists or bodywork therapists registered under this chapter who have been actively engaged in the practice of massage or the practice of bodywork, or both, for the three-year period immediately preceding appointment. These two advisors must maintain their massage and bodywork therapist registrations in this state, and actively engaged in the practice of massage or the practice of bodywork or both during their incumbency.
- (d) The Director shall seek the advice of the massage therapy advisors in carrying out the provisions of this chapter.

Subchapter 3. Licenses

§ 5421. APPLICATION.

An individual who desires to be registered under this chapter shall apply for a registration in the manner specified by the Director, accompanied by payment of the required fee.

§ 5422. MASSAGE THERAPISTS; LICENSURE BY ENDORSEMENT

The Director may issue a registration to an individual under this chapter if the individual holds a license, registration, certification or other authorization to practice massage therapy or bodywork from a U.S. or Canadian jurisdiction.

§ 5423. ESTABLISHMENTS; REGISTRATION AND INSPECTION

- (a) An establishment shall designate a massage and bodywork therapist who is registered

under this chapter to be responsible for ensuring the establishment complies with the requirements of this chapter and the rules issued by the Director.

- (b) A person authorized by the Director may enter, for the purpose of inspection, all establishments registered under this chapter or that appear to be offering massage or bodywork in exchange for consideration. A fee shall not be charged for an initial inspection under this subsection.

§ 5424. REGISTRATION RENEWAL

- (a) A registration under this chapter shall be renewed every two years by submission of a new, completed application, and shall be accompanied by payment of a specified fee.
- (b) A registration that has lapsed shall be renewed upon payment of the biennial renewal fee and the late renewal penalty.

§ 5426. FEES

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

§ 5427. DISPLAY OF REGISTRATION

- (a) The registration of a massage and bodywork therapist shall be conspicuously displayed in any location where the massage and bodywork therapist is engaged in the practice of massage therapy or bodywork therapy.
- (b) The registration of an establishment shall be conspicuously displayed in the establishment in a location that can be easily viewed by consumers.

§ 5428. UNPROFESSIONAL CONDUCT

- (a) Unprofessional conduct means the conduct set forth in 3 V.S.A. § 129a and the

- (1) Engaging in activities in violation of 13 V.S.A. §2605;
- (2) Engaging in a sexual act with a client;
- (3) Conviction of a crime committed while engaged in the practice of massage therapy or bodywork therapy;
- (4) Performing massage or bodywork therapy that the massage and bodywork therapist knows or has reason to know has not been authorized by a client or the client's legal representative;
- (5) engaging in conduct of a character likely to deceive, defraud, or harm the public.

Sec. 4. Transitional Provisions: Advisors

Notwithstanding the provisions of 26 V.S.A. § 5412 that require a massage and bodywork therapist advisor to be registered under this chapter, the Secretary of State may initially appoint three advisors who are not registered under this chapter because the law has yet to take effect, provided those advisors otherwise meet the requirements of 26 V.S.A. § 5412.

Sec. 5. Effective Dates

- (a) This Act shall take effect on November 1, 2020.

Sec. 6. CREATION OF POSITIONS WITHIN THE OFFICE OF PROFESSIONAL REGULATION; LICENSING.

(a) There are created within the Secretary of State's Office of Professional Regulation one new position in the licensing division and one new position in the enforcement division.

(b) Any funding necessary to support the positions created in subsection (a) of this section and

the implementation of 26 V.S.A. chapter 105 created in Sec. 1 of this act shall be derived from the Office's Professional Regulatory Fee Fund and not from the General Fund.