

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0818.01 Kristen Forrestal x4217

HOUSE BILL 16-1320

HOUSE SPONSORSHIP

Foote,

SENATE SPONSORSHIP

Cooke,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF MASSAGE THERAPY TO MODIFY
102 PRACTICES THAT ARE LINKED TO CRIMINAL BEHAVIOR.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill removes specific exemptions from the practice of massage therapy and clarifies that other licensed health care professionals may practice massage therapy without a massage therapist license as long as the therapy is within the health care professional's scope of practice. The bill also requires a licensed massage therapist to be at least 18 years of age.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Current law allows the director of the division of professions and occupations within the department of regulatory agencies (director) to deny a license to an applicant or discipline a licensee if the person has been convicted of or pled guilty to a charge of sexual misconduct or a prostitution-related offense. The bill adds the crime of human trafficking to the list of existing offenses and includes a plea of nolo contendere or a receipt of a deferred sentence as reasons the director may deny a license or take disciplinary action against a licensee. The bill also allows the director to take disciplinary action against a licensee for fraudulent, coercive, or dishonest practices; incompetence or untrustworthiness; or indecent exposure. The director is also permitted to fine a person who violates the massage therapy laws. The bill makes it a misdemeanor for a person to aid or abet the unlicensed practice of massage therapy.

The bill clarifies that a city, county, city and county, or other political subdivision may enact and enforce local ordinances to regulate businesses that offer massage therapy services as long as the local ordinance states that massage therapy is defined the same as in the "Massage Therapy Practice Act"; the persons in the business practicing massage therapy are licensed; and the local ordinance does not conflict with the "Massage Therapy Practice Act".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Colorado has seen an increase in the number of human
5 trafficking and prostitution offenses linked to massage therapy;

6 (b) Loopholes in existing massage law, both local and state, are
7 manipulated by traffickers to escape detection and liability;

8 (c) Administrative actions should be aligned with criminal
9 investigations and actions; and

10 (d) It is in the interest of the public health, safety, and welfare to
11 ensure that state licenses are not used as a cover for criminal behavior.

12 (2) It is therefore the intent of the general assembly to prohibit or
13 modify practices that contribute to criminal behavior by making changes
14 to the "Massage Therapy Practice Act".

1 **SECTION 2.** In Colorado Revised Statutes, 12-35.5-103, **amend**
2 (7) as follows:

3 **12-35.5-103. Definitions.** As used in this article, unless the
4 context otherwise requires:

5 (7) "Massage" or "massage therapy" means a system of structured
6 touch, palpation, or movement of the soft tissue of another person's body
7 in order to enhance or restore the general health and well-being of the
8 recipient. Such system includes, but is not limited to, techniques such as
9 effleurage, commonly called stroking or gliding; petrissage, commonly
10 called kneading; tapotement or percussion; friction; vibration;
11 compression; passive and active stretching within the normal anatomical
12 range of movement; hydromassage; and thermal massage. Such
13 techniques may be applied with or without the aid of lubricants, salt or
14 herbal preparations, water, heat, or a massage device that mimics or
15 enhances the actions possible by human hands. ~~"Massage" or "massage~~
16 ~~therapy" does not include therapeutic exercise, intentional joint~~
17 ~~mobilization or manipulation, or any of the methods described in section~~
18 ~~12-35.5-110 (1) (e).~~

19 **SECTION 3.** In Colorado Revised Statutes, 12-35.5-107, **amend**
20 (1) (d), (1) (e), and (6); and **add** (1) (f) and (7) as follows:

21 **12-35.5-107. License - reciprocity - denial of license**
22 **application.** (1) Every applicant for a license to practice massage therapy
23 shall:

- 24 (d) Pay a fee in an amount determined by the director; ~~and~~
25 (e) Submit to a criminal history record check in the form and
26 manner as described in subsection (2) of this section; AND
27 (f) DOCUMENT THAT HE OR SHE IS AT LEAST EIGHTEEN YEARS OF

1 AGE.

2 (6) Notwithstanding any provision of this section, the director may
3 deny a license if the applicant has committed any act that would be
4 grounds for disciplinary action under section 12-35.5-111 or if the
5 director determines, subsequent to the criminal history record check, that
6 the applicant was convicted of, ~~or~~ pled guilty OR NOLO CONTENDERE to,
7 OR RECEIVED A DEFERRED SENTENCE FOR a charge of unlawful sexual
8 behavior as defined in section 16-22-102, C.R.S., ~~or~~ any
9 prostitution-related offense, OR A HUMAN TRAFFICKING-RELATED OFFENSE
10 AS DESCRIBED IN SECTIONS 18-3-503 AND 18-3-504, C.R.S., whether or
11 not the act was committed in Colorado.

12 (7) THE DIRECTOR MAY DENY A LICENSE IF THE DIRECTOR
13 DETERMINES THAT THE APPLICANT IS NOT COMPETENT, TRUSTWORTHY, OR
14 OF GOOD MORAL CHARACTER.

15 **SECTION 4.** In Colorado Revised Statutes, 12-35.5-110, **repeal**
16 (1) (e); and **add** (2) as follows:

17 **12-35.5-110. Scope of article - exclusions - authority for**
18 **clinical setting.** (1) Nothing in this article prohibits, or requires a
19 massage therapy license for, any of the following:

20 (e) ~~The person provides alternative methods that employ contact~~
21 ~~and does not hold himself or herself out as a massage therapist. For the~~
22 ~~purposes of this paragraph (e), "alternative methods that employ contact"~~
23 ~~include, but are not limited to:~~

24 (I) ~~Practices in which only the soft tissue of a person's hands, feet,~~
25 ~~or ears are manipulated;~~

26 (II) ~~Practices using touch, words, and directed movements to~~
27 ~~deepen a person's awareness of movement patterns in his or her body,~~

1 such as the Feldenkrais method, the Trager approach, and body-mind
2 centering;

3 ~~(III) Practices using touch to affect the human energy systems,~~
4 ~~such as reiki, shiatsu, and Asian or polarity bodywork therapy;~~

5 ~~(IV) Structural integration practices such as Rolfing and~~
6 ~~Hellerwork; and~~

7 ~~(V) The process of muscle activation techniques.~~

8 (2) (a) NOTHING IN THIS ARTICLE PROHIBITS THE PRACTICE OF
9 MASSAGE THERAPY BY A PERSON WHO IS LICENSED OR REGISTERED TO
10 PRACTICE MEDICINE, NURSING, OSTEOPATHY, PHYSIOLOGY, CHIROPRACTIC,
11 PODIATRY, COSMETOLOGY, OR ANY OTHER HEALTH CARE PROFESSION, AS
12 LONG AS THE PRACTICE IS WITHIN THE LIMITS OF EACH RESPECTIVE
13 HEALTH CARE PROFESSIONAL'S PRACTICE ACT.

14 (b) THE DIRECTOR SHALL PROMULGATE RULES EXEMPTING
15 TREATMENT MODALITIES THAT ARE ALTERNATIVE TO THE PRACTICE OF
16 MASSAGE THERAPY FROM THIS ARTICLE.

17 **SECTION 5.** In Colorado Revised Statutes, 12-35.5-111, **amend**
18 (1) (j) and (1) (m); and **add** (1) (p) and (1) (q) as follows:

19 **12-35.5-111. Grounds for discipline - definitions.** (1) The
20 director is authorized to take disciplinary action pursuant to section
21 12-35.5-112 against any person who has:

22 (j) Been convicted of, ~~or~~ pled guilty or nolo contendere to, OR
23 RECEIVED A DEFERRED SENTENCE FOR a felony or a crime for which the
24 act giving rise to the crime was related to the practice of massage therapy
25 or was perpetrated against a massage client during a therapeutic
26 relationship, as defined in subparagraph (II) of paragraph (b) of this
27 subsection (1); or committed any act specified in this section. A certified

1 copy of ~~the judgment of~~ A DOCUMENT FROM a court of competent
2 jurisdiction ~~of~~ DOCUMENTING a conviction or ENTRY OF A plea is
3 conclusive evidence of the conviction or plea. In considering the
4 disciplinary action, the director shall be governed by the provisions of
5 section 24-5-101, C.R.S.

6 (m) Been convicted of, ~~or~~ pled guilty OR NOLO CONTENDERE to,
7 OR RECEIVED A DEFERRED SENTENCE FOR a charge of unlawful sexual
8 behavior as defined in section 16-22-102, C.R.S., ~~or~~ any
9 prostitution-related offense, OR ANY HUMAN TRAFFICKING-RELATED
10 OFFENSE AS DESCRIBED IN SECTIONS 18-3-503 AND 18-3-504, C.R.S.,
11 whether or not the act was committed in Colorado;

12 (p) USED FRAUDULENT, COERCIVE, OR DISHONEST PRACTICES, OR
13 DEMONSTRATED INCOMPETENCE OR UNTRUSTWORTHINESS, IN THIS STATE
14 OR ELSEWHERE;

15 (q) ENGAGED IN AN ACT OF INDECENT EXPOSURE WHILE A
16 THERAPEUTIC RELATIONSHIP EXISTS. FOR THE PURPOSE OF THIS
17 PARAGRAPH (q):

18 (I) "INDECENT EXPOSURE" MEANS EXPOSING ONE'S GENITALS OR
19 BREASTS TO THE VIEW OF A CLIENT OR PERFORMING AN ACT OF
20 MASTURBATION AS DEFINED IN SECTION 18-7-302 (5), C.R.S.

21 (II) "THERAPEUTIC RELATIONSHIP" MEANS THE PERIOD OF TIME
22 BEGINNING WITH THE INITIAL MASSAGE THERAPY SESSION AND ENDING
23 UPON WRITTEN TERMINATION OF THE RELATIONSHIP BY EITHER PARTY.

24 **SECTION 6.** In Colorado Revised Statutes, 12-35.5-112, **amend**
25 (2); and **add** (11) as follows:

26 **12-35.5-112. Disciplinary proceedings - injunctions -**
27 **investigations - hearings - judicial review - fine.** (2) The director may

1 request the attorney general to seek an injunction, in any court of
2 competent jurisdiction, to enjoin any person from ~~committing an act~~
3 ENGAGING IN OR AIDING AND ABETTING AN ACT OR PRACTICE prohibited
4 by this article. When seeking ~~an~~ A TEMPORARY RESTRAINING ORDER,
5 PRELIMINARY INJUNCTION, OR injunction under this subsection (2), the
6 attorney general ~~shall~~ IS not ~~be~~ required to allege or prove the inadequacy
7 of any remedy at law or that substantial or irreparable damage is likely to
8 result from a continued violation of this article.

9 (11) IF A PERSON COMMITS AN ACT THAT VIOLATES THIS ARTICLE,
10 THE DIRECTOR MAY IMPOSE A FINE NOT TO EXCEED FIVE THOUSAND
11 DOLLARS PER VIOLATION. EACH DAY OF A CONTINUING VIOLATION
12 CONSTITUTES A SEPARATE VIOLATION.

13 **SECTION 7.** In Colorado Revised Statutes, **amend** 12-35.5-115
14 as follows:

15 **12-35.5-115. Unauthorized practice - criminal penalties.** (1) A
16 person who practices or offers or attempts to practice massage therapy
17 without an active license issued under this article commits a class 2
18 misdemeanor and shall be punished as provided in section 18-1.3-501,
19 C.R.S., for the first offense, and for the second or any subsequent offense,
20 the person commits a class 1 misdemeanor and shall be punished as
21 provided in section 18-1.3-501, C.R.S.

22 (2) A PERSON WHO AIDS OR ABETS THE UNLICENSED PRACTICE OF
23 MASSAGE THERAPY COMMITS A CLASS 2 MISDEMEANOR FOR THE FIRST
24 OFFENSE AND ANY SUBSEQUENT OFFENSE, AND SHALL BE PUNISHED AS
25 PROVIDED IN SECTION 18-1.3-501, C.R.S.

26 **SECTION 8.** In Colorado Revised Statutes, 12-35.5-118, **repeal**
27 (1); and **add** (3) as follows:

1 **12-35.5-118. Local government - regulations - enforcement.**

2 (1) ~~No city, county, city and county, or other political subdivision of this~~
3 ~~state shall enact or enforce any local ordinance that regulates the practice~~
4 ~~or the profession of massage therapy.~~

5 (3) NOTHING IN THIS ARTICLE PROHIBITS A CITY, COUNTY, CITY
6 AND COUNTY, OR OTHER POLITICAL SUBDIVISION FROM ENACTING OR
7 ENFORCING A LOCAL ORDINANCE THAT REGULATES A BUSINESS THAT
8 OFFERS MASSAGE THERAPY, SUCH AS A MASSAGE PARLOR, AS LONG AS:

9 (a) THE CITY, COUNTY, CITY AND COUNTY, OR OTHER POLITICAL
10 SUBDIVISION DEFINES MASSAGE THERAPY AS IT IS DEFINED IN SECTION
11 12-35.5-103 (7);

12 (b) THE CITY, COUNTY, CITY AND COUNTY, OR OTHER POLITICAL
13 SUBDIVISION ENSURES THAT A PERSON PROVIDING MASSAGE THERAPY
14 SERVICES WITHIN THE BUSINESS IS A LICENSEE; AND

15 (c) THE LOCAL ORDINANCE THAT REGULATES BUSINESSES THAT
16 OFFER MASSAGE THERAPY SERVICES DOES NOT CONFLICT WITH THIS
17 ARTICLE.

18 **SECTION 9. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.