

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 16-0818.01 Kristen Forrestal x4217

HOUSE BILL 16-1320

HOUSE SPONSORSHIP

Foote and Carver,

SENATE SPONSORSHIP

Cooke,

House Committees
Judiciary

Senate Committees
Judiciary

SENATE
Amended 3rd Reading
May 2, 2016

A BILL FOR AN ACT

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

SENATE
Amended 2nd Reading
April 29, 2016

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>.)

HOUSE
3rd Reading Unamended
April 8, 2016

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.

HOUSE
Amended 2nd Reading
April 7, 2016

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 and cast
8 aspersion on law-abiding massage therapy professionals; and

9 (c) Administrative actions should be aligned with criminal
10 investigations and actions.

11

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), (7), and (8) 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 WILL BE AT LEAST EIGHTEEN

1 YEARS OF AGE AT THE TIME OF LICENSURE.

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 (8) PURSUANT TO SECTION 24-5-101, C.R.S., THE DIRECTOR SHALL
16 CONSIDER WHETHER AN APPLICANT WITH A CRIMINAL RECORD HAS BEEN
17 REHABILITATED, SPECIFICALLY CONSIDERING WHETHER THE APPLICANT
18 HAS BEEN A VICTIM OF HUMAN TRAFFICKING AND THE LAPSE OF TIME SINCE
19 THE OFFENSE.

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21 SECTION 4. In Colorado Revised Statutes, 12-35.5-110, amend
22 (1) (e); and add (2) and (3) as follows:

23 12-35.5-110. Scope of article - exclusions - authority for
24 clinical setting. (1) Nothing in this article prohibits or requires a
25 massage therapy license for any of the following:

26 (e) The person provides alternative methods that employ contact
27 and does not hold himself or herself out as a massage therapist. For the

1 purposes of this paragraph (e), "alternative methods that employ contact"
2 include, but are not limited to:

3 (I) Practices in which only the soft tissue of a person's hands, feet,
4 or ears are manipulated USING REFLEXOLOGY, AURICULAR THERAPY, AND
5 MERIDIAN THERAPIES THAT AFFECT THE REFLEXES OF THE BODY;

6 (II) Practices using touch, words, and directed movements to
7 deepen a person's awareness of movement patterns in his or her body,
8 such as the Feldenkrais method, the Trager approach, and body-mind
9 centering;

10 (III) Practices using touch OR HEALING TOUCH to affect the human
11 energy systems, such as reiki, shiatsu; and Asian or polarity bodywork
12 therapy MERIDIANS; ___

13 (IV) Structural integration practices such as Rolfing and
14 Hellerwork; and

15 (V) The process of muscle activation techniques.

16 (2) IF THERE IS A CONTINUED PATTERN OF CRIMINAL BEHAVIOR
17 WITH ARRESTS, COMPLAINTS REGARDING SEXUAL MISCONDUCT, OR
18 CRIMINAL INTENT THAT IS RELATED TO HUMAN TRAFFICKING DISGUISED AS
19 A LEGITIMATE EXEMPTION, THE DIRECTOR MAY, AT HIS OR HER DISCRETION
20 DETERMINE THAT A ___ PRACTICE IS NO LONGER EXEMPT FROM LICENSING
21 PURSUANT TO PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION.

22 (3) ___ NOTHING IN THIS ARTICLE PROHIBITS THE PRACTICE OF
23 MASSAGE THERAPY BY A PERSON WHO IS LICENSED OR REGISTERED TO
24 PRACTICE MEDICINE, NURSING, OSTEOPATHY, PHYSIOLOGY, CHIROPRACTIC,
25 PODIATRY, COSMETOLOGY, OR ANY OTHER HEALTH CARE PROFESSION, AS
26 LONG AS THE PRACTICE IS WITHIN THE LIMITS OF EACH RESPECTIVE ■
27 PRACTICE ACT.

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

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

(j) Been convicted of, ~~or~~ pled guilty or nolo contendere to, OR RECEIVED A DEFERRED SENTENCE FOR a felony or a crime for which the act giving rise to the crime was related to the practice of massage therapy or was perpetrated against a massage client during a therapeutic relationship, as defined in subparagraph (II) of paragraph (b) of this subsection (1); or committed any act specified in this section. A certified copy of ~~the judgment of~~ A DOCUMENT FROM a court of competent jurisdiction ~~of~~ DOCUMENTING a conviction or ENTRY OF A plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by the provisions of section 24-5-101, C.R.S.

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

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

(q) EXPOSED AN INTIMATE PART OF HIS OR HER BODY TO THE VIEW

1 OF A CLIENT OR ANY PERSON PRESENT WITH THE CLIENT, OR PERFORMED
2 AN ACT OF MASTURBATION IN THE PRESENCE OF A CLIENT. FOR THE
3 PURPOSES OF THIS PARAGRAPH (q):

4 (I) "INTIMATE PART" MEANS THE EXTERNAL GENITALIA, THE
5 PERINEUM, THE ANUS, THE BUTTOCKS, THE PUBES, OR THE BREAST OF ANY
6 PERSON.

7 (II) "MASTURBATION" MEANS THE REAL OR SIMULATED TOUCHING,
8 RUBBING, OR OTHERWISE STIMULATING OF A PERSON'S OWN GENITALS OR
9 PUBIC AREA, REGARDLESS OF WHETHER THE GENITALS OR PUBIC AREA IS
10 EXPOSED OR COVERED.

11 (III) "THERAPEUTIC RELATIONSHIP" MEANS THE PERIOD OF TIME
12 BEGINNING WITH THE INITIAL MASSAGE THERAPY SESSION AND ENDING
13 UPON WRITTEN TERMINATION OF THE RELATIONSHIP BY EITHER PARTY.

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

16 **12-35.5-112. Disciplinary proceedings - injunctions -**
17 **investigations - hearings - judicial review - fine.** (2) The director may
18 request the attorney general to seek an injunction, in any court of
19 competent jurisdiction, to enjoin any person from ~~committing an act~~
20 ENGAGING IN OR AIDING AND ABETTING AN ACT OR PRACTICE prohibited
21 by this article. When seeking ~~an~~ A TEMPORARY RESTRAINING ORDER,
22 PRELIMINARY INJUNCTION, OR injunction under this subsection (2), the
23 attorney general ~~shall~~ IS not ~~be~~ required to allege or prove the inadequacy
24 of any remedy at law or that substantial or irreparable damage is likely to
25 result from a continued violation of this article.

26 (11) IF A PERSON COMMITS AN ACT THAT VIOLATES THIS ARTICLE,
27 THE DIRECTOR MAY IMPOSE A FINE NOT TO EXCEED FIVE THOUSAND

1 DOLLARS PER VIOLATION. EACH DAY OF A CONTINUING VIOLATION
2 CONSTITUTES A SEPARATE VIOLATION.

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

5 **12-35.5-115. Unauthorized practice - criminal penalties.** (1) A
6 person who practices or offers or attempts to practice massage therapy
7 without an active license issued under this article commits a class 2
8 misdemeanor and shall be punished as provided in section 18-1.3-501,
9 C.R.S., for the first offense, and for the second or any subsequent offense,
10 the person commits a class 1 misdemeanor and shall be punished as
11 provided in section 18-1.3-501, C.R.S.

12 (2) A PERSON WHO KNOWINGLY AIDS OR ABETS THE UNLICENSED
13 PRACTICE OF MASSAGE THERAPY COMMITS A CLASS 2 MISDEMEANOR FOR
14 THE FIRST OFFENSE AND A CLASS 1 MISDEMEANOR FOR ANY SUBSEQUENT
15 OFFENSE, AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501,
16 C.R.S.

17 **SECTION 8.** In Colorado Revised Statutes, 12-35.5-118,
18 **add** (3) as follows:

19 **12-35.5-118. Local government - regulations - enforcement.**

20 (3) (a) A CITY, COUNTY, CITY AND COUNTY, OR OTHER POLITICAL
21 SUBDIVISION MAY INSPECT MASSAGE BUSINESSES, EXCEPT FOR A SOLE
22 PROPRIETORSHIP WITH A PERSON'S RESIDENCE, UPON COMPLAINT OF
23 ILLEGAL ACTIVITY AND ENSURE THAT THE PEOPLE PERFORMING MASSAGE
24 THERAPY ARE LICENSEES. A CITY, COUNTY, CITY AND COUNTY, OR OTHER
25 POLITICAL SUBDIVISION SHALL NOT CHARGE A FEE FOR THE INSPECTION OR
26 LICENSE VERIFICATION.

27 **SECTION 9.** In Colorado Revised Statutes, 6-1-724, **amend** (6)

1 (q) as follows:

2 **6-1-724. Unlicensed alternative health care practitioners -**
3 **deceptive trade practices - short title - legislative declaration -**
4 **definitions.** (6) A complementary and alternative health care practitioner

5 providing complementary and alternative health care services under this
6 section who is not licensed, certified, or registered by the state shall not:

7 (q) Practice or represent that he or she is practicing MASSAGE OR
8 massage therapy which, for purposes of this section: AS DEFINED IN
9 ARTICLE 35.3 OF TITLE 12, C.R.S.

10 (I) Includes practices where the primary purpose is to provide
11 deep stroking muscle tissue massage of the human body; and

12 (H) Excludes:

13 (A) Stroking of the hands, feet, or ears; or

14 (B) The use of touch, words, and directed movement of a healing
15 art within the bodywork community, including healing touch, mind-body
16 centering, orthobionomy, reflexology, rolfing, reiki, qigong, muscle
17 activation techniques, and practices with the primary purpose of affecting
18 energy systems of the human body;

19 **SECTION 10. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.