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**H. 3154**

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Summary: Massage establishments

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**VERSIONS OF THIS BILL**

[12/18/2018](file:///p:\pprever\2019-20\3154_20181218.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑30‑115 SO AS TO PROVIDE REQUIREMENTS FOR THE LICENSURE AND OPERATION OF MASSAGE ESTABLISHMENTS; BY ADDING SECTION 40‑30‑210 SO AS TO PROVIDE FOR THE QUALIFICATIONS AND AUTHORITY OF INSPECTORS OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION WHEN ENFORCING THE PROVISIONS OF THIS ACT; TO AMEND SECTION 40‑30‑20, RELATING TO THE PURPOSE OF THE MASSAGE/BODYWORK PRACTICE ACT, SO AS TO INCLUDE MASSAGE ESTABLISHMENTS; TO AMEND SECTION 40‑30‑30, RELATING TO DEFINITIONS IN THE MASSAGE/BODYWORK PRACTICE ACT, SO AS TO DEFINE NECESSARY TERMS; TO AMEND SECTION 40‑30‑50, RELATING TO DUTIES OF THE PANEL FOR MASSAGE/BODYWORK, SO AS TO INCLUDE MASSAGE ESTABLISHMENTS; TO AMEND SECTION 40‑30‑60, RELATING TO DUTIES OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION CONCERNING MASSAGE/BODYWORK THERAPY, SO AS TO INCLUDE ELIGIBILITY OF APPLICANTS FOR MASSAGE ESTABLISHMENT LICENSURE; TO AMEND SECTION 40‑30‑80, RELATING TO FEES THE DEPARTMENT MAY CHARGE FOR MASSAGE/BODYWORK THERAPIST LICENSES, SO AS TO INCLUDE FEES CONCERNING MASSAGE ESTABLISHMENT LICENSES; TO AMEND SECTION 40‑30‑100, RELATING TO THE PROHIBITION ON PRACTICING MASSAGE/BODYWORK THERAPY WITHOUT A LICENSE, SO AS TO REQUIRE LICENSURE FOR MASSAGE ESTABLISHMENTS, TO PROVIDE PEOPLE MAY NOT OFFER OR RENDER MASSAGE/BODYWORK SERVICES IN PLACES THAT ARE NOT LICENSED AS A MASSAGE ESTABLISHMENT, AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 40‑30‑110, RELATING TO THE REQUIREMENTS FOR MASSAGE/BODYWORK THERAPIST LICENSURE, SO AS TO PROVIDE REQUIREMENTS FOR MASSAGE ESTABLISHMENTS; TO AMEND SECTION 40‑30‑140, RELATING TO LICENSES, SO AS TO PROVIDE MASSAGE ESTABLISHMENTS SHALL DISPLAY THEIR LICENSES IN A CERTAIN MANNER, TO PROVIDE REQUIRED INFORMATION FOR ADVERTISEMENTS AND SOCIAL MEDIA PAGES, AMONG OTHER THINGS; TO AMEND SECTION 40‑30‑150, RELATING TO MASSAGE/BODYWORK THERAPIST LICENSES ISSUED BY OTHER STATES, SO AS TO CLARIFY THE APPLICABILITY OF THE PROVISIONS; TO AMEND SECTION 40‑30‑160, RELATING TO RECORDS AND A REGISTRY THE DEPARTMENT SHALL MAINTAIN, SO AS TO INCLUDE PROVISIONS CONCERNING MASSAGE ESTABLISHMENTS; TO AMEND SECTION 40‑30‑170, RELATING TO A ROSTER OF MASSAGE/BODYWORK THERAPIST LICENSEES THE DEPARTMENT SHALL MAINTAIN AND PUBLISH, SO AS TO INCLUDE MASSAGE ESTABLISHMENTS IN THE ROSTER; TO AMEND SECTION 40‑30‑180, RELATING TO MASSAGE/BODYWORK THERAPIST LICENSE RENEWALS, SO AS TO INCLUDE PROVISIONS CONCERNING MASSAGE ESTABLISHMENT LICENSURE RENEWALS; TO AMEND SECTION 40‑30‑190, RELATING TO THE PROMULGATION OF RELATED REGULATIONS BY THE DEPARTMENT, SO AS TO CLARIFY THE APPLICABILITY OF THE PROVISIONS; TO AMEND SECTION 40‑30‑200, RELATING TO INVESTIGATIONS OF VIOLATIONS, SO AS TO PROVIDE THE DEPARTMENT MAY INVESTIGATE VIOLATIONS CONCERNING MASSAGE ESTABLISHMENTS; TO AMEND SECTION 40‑30‑220, RELATING TO CERTAIN EQUITABLE REMEDIES CONCERNING VIOLATIONS, SO AS TO INCLUDE MASSAGE ESTABLISHMENTS; TO AMEND SECTION 40‑30‑230, RELATING TO GROUNDS FOR MISCONDUCT BY MASSAGE/BODYWORK THERAPISTS, SO AS TO INCLUDE GROUNDS FOR MISCONDUCT CONCERNING MASSAGE ESTABLISHMENTS; TO AMEND SECTION 40‑30‑260, RELATING TO VOLUNTARY SURRENDER OF LICENSES BY LICENSEES UNDER INVESTIGATION FOR MISCONDUCT, SO AS TO PROVIDE MASSAGE ESTABLISHMENTS THAT MAKE SUCH SURRENDERS MAY NOT OPERATE AS MASSAGE ESTABLISHMENTS DURING PERIODS OF VOLUNTARY SURRENDER; TO AMEND SECTION 40‑30‑270, RELATING TO APPEALS OF ACTIONS BY THE PANEL OR DEPARTMENT, SO AS TO MAKE A CONFORMING CHANGE CONCERNING MASSAGE ESTABLISHMENTS; TO AMEND SECTION 40‑30‑300, RELATING TO CERTAIN PRIVILEGED COMMUNICATIONS, SO AS TO INCLUDE MASSAGE ESTABLISHMENTS; AND TO AMEND SECTION 40‑30‑310, RELATING TO CERTAIN ILLEGAL ACTIONS RELATING TO MASSAGE/BODYWORK THERAPISTS, SO AS TO INCLUDE MASSAGE ESTABLISHMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 30, Title 40 of the 1976 Code is amended by adding:

“Section 40‑30‑115. (A) To be licensed as a massage establishment, an establishment must submit an application and application fee to the department and comply with the other provisions of this chapter.

(B) An applicant for licensure as a massage establishment shall identify a ‘licensee‑in‑charge’ of the establishment on the application. A licensee‑in‑charge:

(1) is responsible for the oversight of the massage/bodywork therapy conducted on premises of the establishment;

(2) must be licensed as a massage/bodywork therapist by the department, and his license must be in good standing at all times; and

(3) only may serve as a professional‑in‑charge of one establishment.

(C) A massage establishment shall notify the board, in writing, of any change its licensee‑in‑charge, and provide updated information required under subsection (B), within seventy‑two hours of the change.

(D) A massage establishment only may employ massage/bodywork therapists licensed under the provisions of this chapter.

(E) A massage establishment shall have one massage/bodywork therapist licensed under the provisions of this chapter on its premises at all times that it is open to the public.

(F) A massage establishment may not be used as a dormitory or place of permanent or temporary residence.

(G)(1) A massage establishment may not erect or maintain a privacy fence or privacy screen on or around any portion of the exterior of its premises or its parking lot. A fence may be erected and maintained for security purposes, provided the fence does not unduly obscure ordinary visibility of the parking lot and exterior premises of the massage establishment from public walkways and thoroughfares near the establishment.

(2) The department shall promulgate regulations to specify features and characteristics of permissible fencing, screening, and other similar structures that comply with the provisions of this section. To the extent the requirements of this section and promulgations of the department conflict with any state or local law, the provisions of this section must prevail.

(3) An establishment that violates the provisions of this section is subject to a fine established by the board through regulation, and must be required to remove the structure to the satisfaction of the department within thirty days. If the establishment fails to remove the structure to the satisfaction of the department within thirty days, its license to operate under the provisions of this chapter is automatically suspended until the establishment takes remedial action satisfactory to the department. At no time many any massage or bodywork service be provided in the establishment when the license of the establishment is suspended.

(H) A massage establishment may not allow the rendering of any massage/bodywork therapy services to the public except during the time that the establishment is open to the public. During this time, all areas of the establishment and its contents are open to inspection by the department or any law enforcement officer. The department shall promulgate regulations to establish hours during which massage establishments may operate and procedures for obtaining a waiver from this requirement.

(I) A licensee‑in‑charge may not allow, authorize, or acquiesce to the occurrence of any conduct prohibited by this State or the United States on the premises of the establishment. A licensee‑in‑charge who has reason to believe that such an act related to prostitution, human trafficking, indecent exposure, or lewdness that occurs or is attempted on the premises of the establishment has an affirmative duty to report this activity to law enforcement or be subject to one year imprisonment, a five thousand dollar fine, or both, and his license to practice massage/bodywork therapy and the license of the massage establishment are revoked and may not be reinstated.

(J) If the license of a massage establishment is revoked for the violation of any law, the department may not issue a license to allow another massage establishment to operate on the same premises for one year after the date of the revocation.

(K) A massage establishment license issued by the department only may be for a single, identifiable location and may not be transferred or reassigned.

(L) A massage establishment may not advertise, publicize, or communicate by means of social media the availability of sexually explicit services. Such advertising must be imputed to the licensee‑in‑charge and its grounds for discipline of his license and the license of the establishment.

(M) The panel may promulgate regulations to establish additional requirements and prohibitions regarding the operation of massage establishments.”

SECTION 2. Chapter 30, Title 40 of the 1976 Code is amended by adding:

“Section 40‑30‑210. (A) An investigator of the department may, while in the performance of his duties under the provisions of this chapter, have:

(1) statewide police powers;

(2) authority to carry firearms;

(3) authority to execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses;

(4) authority to make investigations to determine whether there has been unlawful dispensing of controlled substances or the removal of such substances from regulated establishments or practitioners into illicit traffic;

(5) authority to seize property; and

(6) authority to make arrests without warrants for offenses committed in their presence.

(B) An investigator must successfully be certified as a Class 1 certified law enforcement officer by the Law Enforcement Training Council.”

SECTION 3. Section 40‑30‑20 of the 1976 Code is amended to read:

“Section 40‑30‑20. The General Assembly recognizes that the practice of massage/bodywork is potentially harmful to the public in that massage/bodywork therapists must have a knowledge of anatomy, kinesiology, and physiology and an understanding of the relationship between the structure and the function of the tissues being treated and the total function of the body. Massage/bodywork is therapeutic, and regulations are necessary to protect the public from unqualified practitioners and unsafe massage establishments. It is, therefore, necessary in the interest of public health, safety, and welfare to regulate the practice of massage/bodywork in this State. However, restrictions must be imposed to the extent necessary to protect the public from significant and discernible danger to health and yet not in such a manner which will unreasonably affect the competitive market. Further, consumer protection for both health and economic matters must be afforded the public through legal remedies provided for in this chapter.”

SECTION 4. Section 40‑30‑30 of the 1976 Code is amended to read:

“Section 40‑30‑30. As used in this chapter:

(1) ‘Approved massage/bodywork school’ means a facility that meets minimum standards for training and curriculum as determined by regulation of the department.

(2) ‘Department’ means the Department of Labor, Licensing and Regulation.

(3) ‘Director’ means the Director of the Department of Labor, Licensing and Regulation.

(4) ‘Hydrotherapy’ means the use of water, vapor, or ice for treatment of superficial tissues.

(5) ‘Licensure’ means the procedure by which an individual applies to the department and is granted approval to practice massage/bodywork or a business applies to the department and is granted approval to operate a massage establishment.

(6) ‘Massage/bodywork therapy’ means the application of a system of structured touch of the superficial tissues of the human body with the hand, foot, arm, or elbow whether or not the structured touch is aided by hydrotherapy, thermal therapy, a massage device, human hands, or the application to the human body of an herbal preparation.

(7) ‘Massage/bodywork therapist’ means an individual licensed as required by this chapter, who administers massage/bodywork therapy for compensation.

(8) ‘Massage device’ means a mechanical device that mimics or enhances the actions possible by the hands by means of vibration.

(9) ‘Massage establishment’ means a place of business that offers the practice of massage and bodywork and where the practice of massage and bodywork is conducted on the premises of the business, or that represents itself to the public by a title or description of services incorporating the words ‘bodywork’, ‘massage’, ‘massage therapy’, ‘massage practitioner’, ‘massagist’, ‘masseur’, ‘masseuse’, or other words identified by the panel in regulation. A place of business includes any office, clinic, facility, salon, spa, or other location where a person engages in the practice of massage and bodywork. The residence of a therapist or an outcall location which is not owned, rented, or leased by a massage therapist or massage establishment may not be considered a massage establishment unless the location is advertised as the therapist’s or establishment’s place of business. The term ‘massage establishment’ does not include long term care facilities, hospitals, physician offices, physical therapy facilities, chiropractic offices, or athletic training facilities, whether or not they employ, contract with, or rent to massage therapists, or institutions of secondary or higher education when massage therapy is practiced in connection with employment related to athletic teams or another business establishment licensed pursuant to another chapter of this title.

(10) ‘Panel’ means the Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation.

(11) ‘Professional‑in‑charge’ means a licensee who is responsible for the operation of a massage establishment, including ensuring that all employees are licensed where required by law.

(~~10~~12) ‘Thermal therapy’ means the use of ice or a heat lamp or moist heat on superficial tissues.”

SECTION 5. Section 40‑30‑50(A)(4) of the 1976 Code is amended to read:

“(4) recommend discipline for individuals or establishments licensed pursuant to this chapter in any manner provided for in this chapter.”

SECTION 6. Section 40‑30‑60(B) of the 1976 Code is amended to read:

“(B) The director shall prescribe duties, which may include, but are not limited to:

(1) maintaining and preserving records;

(2) receiving and accounting for all monies received by the panel;

(3) issuing necessary notices to licensees;

(4) determining the eligibility of applicants for licensure as a massage establishment;

(5) determining the eligibility of applicants for examination and licensure as a massage/bodywork therapist;

(~~5~~6) examining applicants for licensure as a massage/bodywork therapist including, but not limited to:

(a) prescribing the subjects, character, and manner of licensing examinations;

(b) preparing, administering, and grading the examination or contracting for the preparation, administration, or grading of the examination. Professional testing services may be utilized to formulate and administer any examinations required by the department;

(~~6~~7) issuing and renewing licenses of qualified applicants;

(~~7~~8) evaluating and approving continuing education course hours and programs;

(~~8~~9) promulgating regulations to carry out this chapter including, but not limited to, establishing a code of ethics to govern the conduct and practices of individuals licensed pursuant to this chapter.”

SECTION 7. Section 40‑30‑80 of the 1976 Code is amended to read:

“Section 40‑30‑80. (A) The department shall charge and collect the following fees:

(1) massage/bodywork therapist application fee, not to exceed fifty dollars;

(2) massage/bodywork therapist initial licensure fee, not to exceed one hundred dollars;

(3) biennial massage/bodywork therapist licensure renewal fee, not to exceed two hundred dollars;

(4) massage/bodywork therapist reexamination fee, not to exceed two hundred fifty dollars;

(5) application and provisional massage/bodywork therapist licensure fee, not to exceed two hundred dollars;

(6) application and reactivation for inactive status of a massage/bodywork therapist license fee, not to exceed two hundred fifty dollars;

(7) renewal fee for inactive status of a massage/bodywork therapist license fee, not to exceed two hundred fifty dollars; and

(8) continuing education course provider fee, not to exceed one hundred dollars and continuing education course provider renewal fee, not to exceed fifty dollars.

(B) For massage establishment licenses, the department shall charge and collect the following fees:

(1) massage establishment license application, not to exceed one hundred dollars;

(2) massage establishment initial licensure fee, not to exceed one hundred dollars; and

(3) biennial massage establishment license renewal fee, not to exceed two hundred dollars.”

SECTION 8. Section 40‑30‑100 of the 1976 Code is amended to read:

“Section 40‑30‑100. (A) No person may practice massage/bodywork without a license issued in accordance with this chapter by the director; however, a person licensed by the State under this title or any other provision of law whose scope of practice overlaps with the practice of massage/bodywork is not also required to be licensed under this chapter unless the person holds himself out to be a practitioner of massage/bodywork.

(B) No person may offer or render a massage/bodywork service in a place that is not licensed as a massage establishment. This subsection does not apply to a duly licensed massage/bodywork therapist who practices massage or bodywork outside of a massage establishment or to a student in an approved massage/bodywork therapy training program who offers or renders a massage/bodywork service in the course of his studies while in the school building and under the supervision of an instructor licensed as a massage/bodywork therapist under the provisions of this chapter.

(C) No person, firm, corporation, partnership, or other legal entity may operate, maintain, or use the premises as a massage establishment without first having secured a massage establishment license from the department.

(D) Nothing in this chapter may be construed to authorize a massage/bodywork therapist licensed under this chapter to practice physical therapy or chiropractic or to utilize chiropractic therapeutic modalities except where the scope of practice for massage/bodywork, as provided for in this chapter, overlaps with the practice of physical therapy or chiropractic.”

SECTION 9. Section 40‑30‑110 of the 1976 Code is amended to read:

“Section 40‑30‑110. (A) To be licensed by the department as a massage/bodywork therapist an individual:

(1) must be at least eighteen years of age and have received a high school diploma or graduate equivalency diploma;

(2) shall have completed a five hundred hour course of classroom study at an approved massage/bodywork school having a curriculum that meets the standards set forth in regulation by the department; and

(3) shall have received a passing grade on the National Certification Exam for Therapeutic Massage and Bodywork (NCETMB), National Certification Examination for Therapeutic Massage (NCETM), the Massage and Bodywork Licensing Examination (MBLEx), or any other examination provided for in regulation.

(B) To be licensed by the department as a massage establishment, an applicant:

(1) must designate a professional‑in‑charge of the establishment, along with his name, address, telephone number, and the number of his massage/bodywork therapy license issued by the department; and

(2) must provide the:

(a) name, address, and telephone number of each owner of the establishment; and

(b) physical address, mailing address, and telephone number of the premises of the establishment.”

SECTION 10. Section 40‑30‑140 of the 1976 Code is amended to read:

“Section 40‑30‑140. (A) If an applicant satisfies the ~~licensure~~ requirements for a massage/bodywork therapist license or a massage establishment license and pays the applicable fees as provided for in this chapter, the department shall issue ~~a~~ the appropriate license to the applicant. A license as a massage/bodywork therapist is a personal right and not transferable and the issuance of a license is evidence that the licensee is entitled to all rights and privileges of a massage/bodywork therapist while the license remains current and unrestricted.

(B) A person licensed as a massage/bodywork therapist under this chapter shall display the license in a prominent and conspicuous place in the person’s place of business and shall include the number of the license in an advertisement of massage/bodywork services appearing in a newspaper, airwave transmission, telephone directory, or other advertising medium. A massage establishment licensed under the provisions of this chapter shall display the license in a prominent and conspicuous place in the establishment and include the number of the license in an advertisement, social media, or other advertising or publicity medium used by the establishment.

(C) Only a person licensed under this chapter may use the title of ‘massage/bodywork therapist’.

(D) Only an establishment licensed under this chapter may use the term ‘massage’ in association with its services.

(E) Under conditions established by the department in regulation the department may issue a provisional license to applicants meeting these requirements.

(~~E~~F) A duplicate license may be issued to a licensee by the department in accordance with regulations promulgated by the department and upon payment of a fee.”

SECTION 11. Section 40‑30‑150 of the 1976 Code is amended to read:

“Section 40‑30‑150. The department shall issue a license for a massage/bodywork therapist to a person who holds an active license as a massage/bodywork therapist in another state if the standards for licensure in that state are at least the substantial equivalent to the licensing standards provided for in this chapter, and the person satisfies any other requirements the department may prescribe in regulation.”

SECTION 12. Section 40‑30‑160(A) of the 1976 Code is amended to read:

“(A) The department shall keep a record of its proceedings and a registry of all applications for licensure. The register shall show:

(1) the name, age, and last known address of each applicant~~,~~;

(2) the place of business of the applicant~~,~~;

(3) the education, experience, and other qualifications of the applicant~~,~~ if the application was for a massage/bodywork therapist license;

(4) the type of examination required~~,~~;

(5) whether or not a license was granted~~,~~ if the application was for a massage/bodywork therapist license;

(6) the type of license granted and its expiration date;

(7) whether or not the applicant was denied a license~~,~~;

(8) the date of the action of the department~~,~~; and

(9) other information considered necessary by the department.”

SECTION 13. Section 40‑30‑170 of the 1976 Code is amended to read:

“Section 40‑30‑170. (A) Annually the department shall prepare and publish a roster containing:

(1) the names and places of businesses of all persons licensed under this chapter; and

(2) the names of all establishments licensed under this chapter, along with the names of its owners and the name of its professional‑in‑charge.

(B) A copy of the roster must be provided upon request and upon payment of a fee.”

SECTION 14. Section 40‑30‑180(A) of the 1976 Code is amended to read:

“(A)(1) A person licensed under this chapter biennially must satisfy these license renewal requirements in order to continue practicing massage/body work therapy:

(~~1~~a) pay a renewal fee in the amount, at the time, and in the manner as the department provides in regulation;

(~~2~~b) for massage/bodywork therapist licenses, complete continuing education requirements prescribed by the department in accordance with Section 40‑30‑190 and submit evidence of compliance; however, a massage/body work therapist who has proof of a ‘Certificate in Massage’ issued prior to January 1, 1974, is exempt from continuing education requirements.

(2) A massage/body work therapist’s license automatically reverts to inactive status if the massage/body work therapist fails to timely comply with this subsection and only may be reinstated upon application and payment of any fees and after having met any additional requirements which the department may establish in regulation including, but not limited to, continuing education requirements.

(3) A massage establishment license automatically is suspended if the establishment fails to timely comply with the requirements of subsection (A)(1), but may be reinstated in the discretion of the department once compliance occurs.”

SECTION 15. Section 40‑30‑190 of the 1976 Code is amended to read:

“Section 40‑30‑190. Concerning massage/bodywork therapist licenses, the department shall promulgate regulations establishing:

(1) continuing education requirements and compliance procedures:

(a) for license renewal not to exceed twelve classroom hours per biennium;

(b) for license reinstatement not to exceed six classroom hours for each year the license was inactive;

(2) criteria for the approval of continuing education programs or courses including, but not limited to, correspondence courses.”

SECTION 16. Section 40‑30‑200 of the 1976 Code is amended to read:

“Section 40‑30‑200. If the director has reason to believe that an individual massage/bodywork therapist licensed pursuant to this chapter has become unfit to practice massage/bodywork therapy or has violated a provision of this chapter or a regulation promulgated pursuant to this chapter, if the director has reason to believe that a massage establishment licensed pursuant to this chapter has violated a provision of this chapter or a regulation promulgated pursuant to this chapter, or if a written complaint is filed with the director charging a licensee with the violation of a provision of this chapter or a regulation, the director shall initiate an investigation in accordance with procedures established by the department in regulation. If after investigation it appears that probable cause exists for a hearing, a time and a place must be set by the panel for a hearing to determine whether disciplinary action must be taken against the licensee. Notice must be given and the hearing conducted in accordance with the Administrative Procedures Act.”

SECTION 17. Section 40‑30‑220(A) of the 1976 Code is amended to read:

“(A)(1) If the panel or the department has reason to believe that an individual or establishment is violating or intends to violate a provision of this chapter or a regulation promulgated pursuant to this chapter, in addition to all other remedies, the panel may order an individual to immediately cease and desist from engaging in the conduct. If the individual is practicing massage/bodywork or the establishment is operating a massage establishment without being licensed pursuant to this chapter the panel or the department also may apply to an administrative law judge for a temporary restraining order prohibiting the unlawful ~~practice~~ act. The administrative law judge may issue a temporary restraining order ex parte and the panel or the department is not required to:

(~~1~~a) post a bond;

(~~2~~b) establish the absence of an adequate remedy at law;

(~~3~~c) establish that irreparable damage would result from the continued violation.

(2) A panel member, the Director of the Department of Labor, Licensing or Regulation, or any other employee of the department may not be held liable for damages resulting from a wrongful temporary restraining order.”

SECTION 18. Section 40‑30‑230 of the 1976 Code is amended to read:

“Section 40‑30‑230. (A) The following constitute misconduct and are grounds for the department denying initial licensure as a massage/bodywork therapist to or the panel taking disciplinary action against an individual licensed as a massage/bodywork therapist who:

(1) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act in applying for licensure pursuant to this chapter;

(2) has had his ~~or her~~ license to practice massage/bodywork from another state or jurisdiction canceled, revoked, suspended, or otherwise restricted;

(3) has violated a provision of this chapter, a regulation promulgated pursuant to this chapter, or an order of the department or the panel;

(4) has intentionally or knowingly, directly or indirectly, aided or abetted in the violation or conspiracy to violate this chapter or a regulation promulgated pursuant to this chapter;

(5) has intentionally used a fraudulent statement in a document connected to the practice of massage/bodywork or has made false, deceptive, or misleading statements in the practice of massage/bodywork or in advertising;

(6) has obtained fees or assisted in obtaining fees under intentionally fraudulent circumstances;

(7) lacks the professional or ethical competence to practice massage/bodywork;

(8) has been convicted of or has pled guilty to or nolo contendere to a violent crime as defined in Section 16‑1‑60, during the previous five years has been convicted of or has pled guilty to or nolo contendere to a felony that directly relates to the practice or ability to practice massage/bodywork, or during the previous seven years has been convicted of or has pled guilty to or nolo contendere to a felony, an essential element of which is dishonesty, that reasonably relates to the ability to practice massage/bodywork;

(9) has practiced massage/bodywork while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render him ~~or her~~ unfit to practice massage/bodywork;

(10) has sustained a physical or mental disability, as determined by a physician that renders further practice by the licensee dangerous to the public.

(B) The following constitutes misconduct and is grounds for the department denying initial licensure as a massage establishment or to the panel taking disciplinary action against a massage establishment licensee:

(1) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act in applying for a massage establishment licensure pursuant to this chapter;

(2) has had a massage establishment license from another state or jurisdiction canceled, revoked, suspended, or otherwise restricted;

(3) has violated a provision of this chapter, a regulation promulgated pursuant to this chapter, or an order of the department or the panel;

(4) has intentionally or knowingly, directly or indirectly, aided or abetted in the violation or conspiracy to violate this chapter or a regulation promulgated pursuant to this chapter;

(5) has intentionally used a fraudulent statement in a document connected to the conduct of a massage establishment, or has made false, deceptive, or misleading statements in the conduct of a massage establishment, or in related advertising;

(6) has obtained fees or assisted in obtaining fees under intentionally fraudulent circumstances;

(7) has been convicted of or has pled guilty to or nolo contendere to a violent crime as defined in Section 16‑1‑60, during the previous five years has been convicted of or has pled guilty to or nolo contendere to a felony that directly relates to the practice or ability to practice massage/bodywork, or during the previous seven years has been convicted of or has pled guilty to or nolo contendere to a felony, an essential element of which is dishonesty, that reasonably relates to the ability to practice massage/bodywork; or

(8) has been found by the panel or department to have engaged in misconduct under subsection (A).”

SECTION 19. Section 40‑30‑260 of the 1976 Code is amended to read:

“Section 40‑30‑260. (A) A licensee who is under investigation for misconduct, as defined in Section 40‑30‑230, voluntarily may surrender ~~his or her~~ the license to the department, invalidating the license at the time it is surrendered.

(B)(1) An individual who voluntarily surrenders ~~his or her~~ a massage/bodywork therapist license may not practice as a massage/bodywork therapist until the panel reinstates the individual’s license. An individual practicing as a massage/bodywork therapist during the period of voluntary license surrender is deemed an illegal practitioner and is subject to the penalties provided in this chapter.

(2) An establishment licensed as a massage establishment may not operate as a massage establishment until the panel reinstates the establishment’s license. An establishment operating as a massage establishment during the period of voluntary license surrender is considered an illegal establishment and is subject to the penalties provided in this chapter.

(C) Surrendering a license must not be considered an admission of guilt in a proceeding held pursuant to this chapter. However, surrendering a license does not preclude the panel from imposing conditions on the acceptance of the proffered license or from taking disciplinary action against the licensee.”

SECTION 20. Section 40‑30‑270 of the 1976 Code is amended to read:

“Section 40‑30‑270. ~~An individual~~ A licensee aggrieved by an action of the panel or the department may appeal the decision to an administrative law judge in accordance with the Administrative Procedures Act. Service of a notice of appeal does not stay the panel’s or the department’s decision pending completion of the appellate process.”

SECTION 21. Section 40‑30‑300(A) of the 1976 Code is amended to read:

“(A) Every communication, whether oral or written, made by or on behalf of an individual or establishment, to the director or the panel, whether by way of complaint or testimony, is privileged, and no action or proceeding, civil or criminal, may be brought against the individual or establishment, by or on whose behalf the communication is made, except upon proof that the communication was made with malice.”

SECTION 22. Section 40‑30‑310 of the 1976 Code is amended to read:

“Section 40‑30‑310. (A) It is unlawful for an establishment to:

(1) hold itself out as a massage establishment unless licensed pursuant to this chapter;

(2) allow an individual to practice massage/bodywork on the premises of the establishment unless licensed to practice massage/bodywork pursuant to this chapter;

(3) present as his own license the license of another establishment;

(4) allow the use of his license by an unlicensed establishment;

(5) give false or forged evidence to the department in obtaining a license pursuant to this chapter;

(6) falsely impersonate another license holder;

(7) use or attempt to use a license that has been revoked; or

(8) otherwise violate a provision of this chapter or a regulation promulgated pursuant to this chapter.

(B) It is unlawful for an individual to:

(1) hold himself ~~or herself~~ out as a massage/bodywork therapist unless licensed pursuant to this chapter;

(2) allow an employed individual to practice massage/bodywork unless licensed pursuant to this chapter;

(3) present as his ~~or her~~ own the license of another;

(4) allow the use of his ~~or her~~ license by an unlicensed individual;

(5) give false or forged evidence to the department in obtaining a license pursuant to this chapter;

(6) falsely impersonate another license holder;

(7) use or attempt to use a license that has been revoked;

(8) otherwise violate a provision of this chapter or a regulation promulgated pursuant to this chapter.

(~~B~~C) The department may institute civil action in the circuit court, in the name of the State, for injunctive relief against an individual ~~violating~~ or establishment that violates a provision of this chapter or a regulation promulgated pursuant to this chapter or an order of the department or the panel. For each violation, the court may impose a fine of no more than one thousand dollars.”

SECTION 23. This act takes effect six months after approval of the Governor.

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