S T A T E O F N E W Y O R K

6072--B

I N S E N A T E

(PREFILED)

January 4, 2012

Introduced by Sens. ADDABBO, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law and the general municipal law, in relation to the practice of massage therapy

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 2 of section 6512 of the education law, as added by chapter 689 of the laws of 1976, is amended to read as follows:

2. Anyone who knowingly aids or abets [three] ONE or more unlicensed persons to practice a profession or employs or holds such unlicensed persons out as being able to practice in any profession in which a license is a prerequisite to the practice of the acts, or who knowingly aids or abets [three] ONE or more persons to practice any profession as exempt persons during the time when the professional licenses of such persons are suspended, revoked or annulled, shall be guilty of a class E felony.

S 2. Subdivision 2 of section 6513 of the education law, as added by chapter 687 of the laws of 1976, is amended to read as follows:

2. Anyone who knowingly aids or abets [three] ONE or more persons not authorized to use a professional title regulated by this title, to use such professional title, or knowingly employs [three] ONE or more persons not authorized to use a professional title regulated by this title, who use such professional title in the course of such employment, shall be guilty of a class E felony.

S 3. Section 7802 of the education law, as amended by chapter 230 of the laws of 1997, is amended to read as follows:

S 7802. Practice of massage therapy and use of title "masseur", "masseuse" or "massage therapist" or the term "massage" or "massage therapy". 1. Only a person licensed or authorized pursuant to this chap-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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ter shall practice massage therapy and only a person licensed under this article shall use the title "masseur", "masseuse" or "massage therapist". ANY PERSON WHO IS CERTIFIED, BUT NOT LICENSED PURSUANT TO THIS CHAPTER TO PRACTICE MASSAGE THERAPY SHALL NOT BE AUTHORIZED TO PRACTICE MASSAGE THERAPY NOR USE THE TITLE "MASSEUR", "MASSEUSE" OR "MASSAGE THERAPIST". ANY PERSON PERFORMING THE SERVICES DEFINED IN SECTION SEVENTY-EIGHT HUNDRED ONE OF THIS ARTICLE WITHOUT A LICENSE PURSUANT TO THIS ARTICLE SHALL BE GUILTY OF A CLASS E FELONY, REGARDLESS OF WHAT SUCH SERVICES ARE BEING CALLED.

2. (A) No person, firm, partnership or corporation claiming to be engaged in the practice of massage or massage therapy shall in any manner describe, advertise, or place any advertisement for services as defined in section seventy-eight hundred one of this article unless such services are performed by a person licensed or authorized pursuant to this chapter.

(B) SUCH A PERSON, FIRM, PARTNERSHIP OR CORPORATION ADVERTISING SERVICES DEFINED IN SECTION SEVENTY-EIGHT HUNDRED ONE OF THIS ARTICLE SHALL HIRE A PERSON LICENSED OR AUTHORIZED UNDER THIS ARTICLE TO PRACTICE MASSAGE THERAPY.

3. (A) ANY PERSON, FIRM, PARTNERSHIP OR CORPORATION THAT HIRES OR CONTRACTS A NON-LICENSED INDIVIDUAL TO PROVIDE ANY SERVICES DEFINED IN SECTION SEVENTY-EIGHT HUNDRED ONE OF THIS ARTICLE SHALL BE GUILTY OF A CLASS E FELONY AND SHALL BE SUBJECT TO AN IMMEDIATE AUDIT BY THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE AND BY THE LOCAL TAXING AUTHORITY.

(B) ANYONE WHO KNOWINGLY AIDS OR ABETS ONE OR MORE UNLICENSED PERSONS TO PRACTICE MASSAGE THERAPY OR HOLDS SUCH UNLICENSED PERSONS OUT AS BEING ABLE TO PRACTICE MASSAGE THERAPY, OR WHO KNOWINGLY AIDS OR ABETS ONE OR MORE PERSONS TO PRACTICE MASSAGE THERAPY AS EXEMPT PERSONS DURING THE TIME WHEN THE LICENSES OF SUCH PERSONS ARE SUSPENDED, REVOKED OR ANNULLED, SHALL BE GUILTY OF A CLASS E FELONY.

4. ENFORCEMENT OF THIS SECTION SHALL BE UNDERTAKEN BY THE LOCAL LAW ENFORCEMENT AUTHORITY, THE DEPARTMENT OF HEALTH, BUILDING AND CODE ENFORCEMENT AGENCIES, TRAFFIC POLICE AND/OR SPECIAL POLICE.

S 4. Section 7804 of the education law, as amended by chapter 230 of the laws of 1997, is amended to read as follows:

S 7804. Requirements for a professional license. (A) To qualify for a license as a massage therapist, masseur or masseuse, an applicant shall fulfill the following requirements:

(1) Application: file an application with the department;

(2) Education: have received an education, including high school graduation and graduation from a school or institute of massage therapy with a program registered by the department, or its substantial equivalent in both subject matter and extent of training, provided that the program in such school or institute shall consist of classroom instruction of a total of not less than five hundred hours in subjects satisfactory to the department;

(3) Examination: pass [an examination satisfactory to the board and in accordance with the commissioner's regulations] THE NEW YORK STATE MASSAGE THERAPY EXAMINATION;

(4) Age: be at least eighteen years of age;

(5) Citizenship or immigration status: be a United States citizen or an alien lawfully admitted for permanent residence in the United States;

(6) Character: be of good moral character as determined by the department; [and]

(7) Fees: pay a fee of one hundred fifteen dollars to the department for admission to a department conducted examination and for an initial license, a fee of forty-five dollars for each reexamination, a fee of fifty dollars for an initial license for persons not requiring admission to a department conducted examination, and a fee of fifty dollars for each triennial registration period. ANY PERSON WHO HOLDS A LICENSE AS A MASSAGE THERAPIST, MASSEUR OR MASSEUSE WHO FAILS TO PAY FEES AS SET FORTH IN THIS PARAGRAPH IN A TIMELY MANNER SHALL HAVE HIS OR HER LICENSE REVOKED UNTIL THE TIME WHEN SUCH FEES ARE PAID; AND

(8) CONTINUING EDUCATION. COMPLETE COURSES IN CONTINUING EDUCATION PURSUANT TO SECTION SEVENTY-EIGHT HUNDRED SEVEN OF THIS ARTICLE.

(B) A LICENSE AS A MASSAGE THERAPIST, MASSEUR OR MASSEUSE ISSUED TO QUALIFIED APPLICANTS PURSUANT TO THIS SECTION SHALL BE DISPLAYED AT ALL TIMES AT THE PLACE OF BUSINESS OF SUCH MASSAGE THERAPIST, MASSEUR OR MASSEUSE AND SHALL HAVE A PHOTOGRAPH OF SUCH MASSAGE THERAPIST, MASSEUR OR MASSEUSE AFFIXED THERETO.

S 5. The general municipal law is amended by adding a new section 86-b to read as follows:

S 86-B. STREET FAIR AND PUBLIC PARK MASSAGE THERAPY AUTHORIZED. 1. THE GOVERNING BOARD OF A MUNICIPAL CORPORATION MAY AUTHORIZE AND PERMIT THE SALE OF LICENSED MASSAGE THERAPY, AS SUCH TERM IS DEFINED PURSUANT TO SECTION SEVENTY-EIGHT HUNDRED ONE OF THE EDUCATION LAW, AT STREET FAIRS AND PUBLIC PARKS WITH THE PERMITTING FEES TO BE ESTABLISHED AND COLLECTED BY SUCH MUNICIPAL CORPORATION.

2. ANY ORGANIZATION THAT ALLOWS, PERMITS, LEASES OR RENTS SPACE AT A STREET FAIR OR PUBLIC PARK, PURSUANT TO THIS SECTION, SHALL BE RESPONSIBLE FOR ENSURING THAT ANY VENDOR PROPOSING TO PERFORM ANY MASSAGE THERAPY SERVICES, AS SUCH TERM IS DEFINED PURSUANT TO SECTION SEVENTY-EIGHT HUNDRED ONE OF THE EDUCATION LAW, IS TO PROVIDE A VALID AND INSURED PROOF OF LICENSE PRIOR TO THE EVENT AND PRESENT SUCH PROOF ON THE DAY OF THE EVENT AS ALSO REQUIRED FOR TAX AND VENDOR IDENTIFICATIONS.

3. ANY ORGANIZATION FOUND IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION SHALL BE SUBJECT TO FINES, PENALTIES AND MAY BE SUBJECTED TO AN AUDIT BY THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE AND THE LOCAL TAXING AUTHORITY. SUCH FINES AND PENALTIES SHALL BE DETERMINED BY THE MUNICIPAL CORPORATION THAT AUTHORIZES SUCH STREET FAIR AND PUBLIC PARK MASSAGE THERAPY.

S 6. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such date.