STATE OF NEW YORK

6915

2017-2018 Regular Sessions

IN SENATE

October 13, 2017

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law and the education law, in relation to providing for the licensing of massage therapy businesses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 40 to read as follows:

ARTICLE 40
LICENSING OF MASSAGE THERAPY BUSINESSES
Section 900. Definitions.
901. License required.
902. Powers of the secretary.
903. Rules and regulations.
904. Massage therapy business license; requirements.
905. License application; procedure; requirements.
906. Licenses; display; renewal; duplicates.
907. Fees.
908. Administration.
909. Denial of license; complaints; notice of hearing.
910. Penalties.
911. Judicial review.
912. Official acts used as evidence.
913. Disposition of moneys.
914. Application of article.
915. Separability clause.

§ 900. Definitions. As used in this article, unless context requires otherwise:

1. "Department" means the department of state.

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

LBD13585-01-7

2. "Licensee" means a person licensed pursuant to this article to operate a massage therapy business.

3. "Massage therapy" means the practice of massage therapy, as defined in section seventy-eight hundred one of the education law.

4. "Massage therapy business" means the business of providing massage therapy to the public at a fixed location.

5. "Person" means an individual, firm, limited liability company, partnership or corporation.

6. "Secretary" means secretary of state.

§ 901. License required. No person shall own, control or operate, whether as a sole proprietor, partner, shareholder, officer, independent contractor or other person, a massage therapy business without having received a license for such business in the manner provided in this article.

§ 902. Powers of the secretary. In addition to the powers and duties elsewhere prescribed in this article, the secretary shall have power to:

1. Appoint a sufficient number of assistants, inspectors and other employees as may be necessary to carry out the provisions of this article, to prescribe their duties, and to fix their compensation within the amount appropriated therefor;

2. Examine the qualifications and fitness of applicants for licenses to operate massage therapy businesses;

3. Keep records of all licenses issued, suspended or revoked, or orders directing the cessation of unlicensed activities;

4. Assist the education department in the implementation and enforcement of the provisions of article one hundred fifty-five of the education law; and

5. Adopt such rules and regulations not inconsistent with the provisions of this article or article one hundred fifty-five of the education law, as may be necessary with respect to the form and content of applications for licenses, the reception thereof, the investigation and examination of applicants, and the other matters incidental or appropriate to the powers and duties of the secretary as prescribed by this article and for the proper administration and enforcement of the provisions of this article.

§ 903. Rules and regulations. The secretary, in consultation with the state board for massage therapy, shall promulgate rules and regulations which establish standards for practice and operation by licensees under this article in order to ensure the health, safety and welfare of the public including persons licensed or authorized to practice massage therapy pursuant to article one hundred fifty-five of the education law when they are working within a massage therapy business. Such rules and regulations shall include, but not be limited to, the sanitary conditions and procedures required to be maintained, and the provision of service by massage therapists, masseurs and masseuses at remote locations other than such professional's home provided that such practitioner holds a massage therapy business license to operate at a fixed location or is employed by the holder of a massage therapy business license.

§ 904. Massage therapy business license; requirements. 1. Any person who receives a massage therapy business license shall operate such business at the location named in the license and in accordance with the rules and regulations promulgated by the secretary pursuant to section nine hundred three of this article. Any or all of the practices regulated by article one hundred fifty-five of the education law may be provided under one massage therapy business license so long as each

practitioner is licensed pursuant to article one hundred fifty-five of the education law.

2. Each massage therapy business licensee shall file and maintain during the term of the license evidence of a bond or liability insurance.

§ 905. License application; procedure; requirements. 1. a. Any person intending to own or operate a massage therapy business, shall first make application to the secretary for a license therefor.

b. Such application shall be in a form and manner prescribed by the secretary and shall contain such information as, in the secretary's judgment, is reasonable and necessary to determine the qualifications and fitness for licensing of the applicant.

c. The application shall be subscribed by the applicant and affirmed under penalty of perjury.

d. Each application shall be accompanied by the appropriate fee as prescribed by this article.

2. a. Any person, eighteen years of age or older, or any firm, limited liability company, partnership or corporation having at least one member eighteen years of age or older may apply to the secretary for a massage therapy business license.

b. Each such application for a massage therapy business license shall be accompanied by evidence of a bond or liability insurance.

3. Notwithstanding any provision contained in this article to the contrary, if any person, eligible for any license pursuant to this article, should be called to active military service at or during the time application for any license is required to be filed and license fee paid, pursuant to the provisions of this article, the period within which said application may be filed and license fee may be paid, is extended on behalf of such person, until three months after the termination of said military service.

§ 906. Licenses; display; renewal; duplicates. 1. All licenses shall expire four years from the date of issuance.

2. No license shall be assignable or transferrable except pursuant to the provisions of this article.

3. A massage therapy business license may be assigned. When the massage therapy business licensee is a partnership or a limited liability company, or a corporation, the license may be assigned upon the consent of all members of a partnership or a majority of the voting members of a limited liability company or the majority shareholders of a corporation, respectively. The application for such transfer or assignment must be accompanied by proof satisfactory to the department that the requirements provided in this subdivision have been complied with. No assignment or transfer shall become effective unless and until the endorsement has been made on the face of the license by the department and such license, as endorsed, has been returned to the assignee or transferee. All such requests for endorsements shall be accompanied by a five dollar fee. A bona fide purchaser of a licensed massage therapy business may continue to use the license of the seller for a period of thirty days from the date of the sale, provided there is endorsed on the face thereof the name of the purchaser, the date of the sale, and the signatures of the seller and the purchaser; and provided further within five working days from the date of the sale an application, in accordance with the provisions of this article, shall be presented by the purchaser to the secretary for a massage therapy business license.

4. A massage therapy business license issued to an individual or to a partnership may be used after the death of the licensed individual or

co-partner by the next of kin or duly appointed administrator or executor in the name of the estate for a period of not more than one hundred twenty days from the date of death of such individual or co-partner provided that there is endorsed upon the face of the license certificate after the name of the decedent the word "deceased", the date of death and the name of the next of kin, administrator or executor under whose authority the license is being used; the period of one hundred twenty days aforesaid may be extended upon application to the secretary and for good cause shown for an additional period not to exceed one hundred twenty days. Any license so continued which shall expire during such period of one hundred twenty days or the extension thereof may be renewed by the next of kin, administrator or executor for the balance of such period or the extension thereof.

5. A license certificate issued pursuant to this article shall be posted in some conspicuous place in the licensed premises. At the entrance to each licensed premises or at the entrance to any place where the practice of massage therapy is conducted, a sign shall be posted which shall include the rules and regulations governing such practice and a manner in which aggrieved persons may register a complaint with the department or education department. The department shall prepare and furnish such sign to each licensee.

6. Any license, which has not been suspended or revoked, may, upon the payment of the renewal fee, be renewed for additional periods of four years from its application, upon the filing of an application for such renewal, on a form to be prescribed by the secretary.

7. Any person failing to file for renewal of a license pursuant to the provisions of this article within one year immediately following the expiration of such person's last license shall pay an additional fee of ten dollars.

8. A duplicate license certificate may be issued for one lost, destroyed or mutilated upon the application therefor on a form prescribed by the secretary and the payment of the fee prescribed therefor by this article. Each such duplicate license shall have the word "duplicate" stamped across the face thereof and shall bear the same number as the one it replaces.

9. Notice in writing shall be given to the secretary at the office of the secretary in Albany by the holder of a massage therapy business license of any change of address. The licensee shall correct the address on the license upon the filing of such notice.

10. Any licensee who fails to file any notice of change in the status of a license required by the provisions of this article shall be subject to the monetary fines set forth in section nine hundred eight of this article.

§ 907. Fees. 1. The fee for a massage therapy business license shall be sixty dollars initially and sixty dollars for each renewal thereof.

2. Fees collected pursuant to this article shall be deposited to the credit of the business and licensing services account established pursuant to the provisions of section ninety-seven-y of the state finance law.

3. The fee for issuing a duplicate license certificate, in substitution for one lost, destroyed or mutilated shall be ten dollars.

4. The fee for changing a name on a massage therapy business license shall be thirty dollars.

5. The fees set forth in this article shall be those for licenses issued for the license period of four years.

§ 908. Administration. 1. Suspension and revocation of licenses or registrations; fines; reprimands. A license issued pursuant to this article may be suspended or revoked, or a fine not exceeding five hundred dollars payable to the department may be imposed for any one or more of the following causes:

a. Fraud or bribery in securing a license.

b. The making of any false statement as to a material matter in any application or other statement or certificate required by or pursuant to this article.

c. Incompetence or untrustworthiness.

d. Failure to display the license as provided in this article.

e. Violation of any provision of this article or article one hundred fifty-five of the education law, or of any rule or regulation adopted pursuant thereto.

f. Conviction of any of the following crimes subsequent to the issuance of a license pursuant to this article: fraud pursuant to sections 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying business records pursuant to section 175.10; grand larceny pursuant to article 155; bribery pursuant to sections 180.03, 180.08, 180.15, 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50; perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article 160; homicide pursuant to sections 125.25 and 125.27; manslaughter pursuant to sections 125.15 and 125.20; kidnapping and unlawful imprisonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons possession pursuant to sections 265.02, 265.03 and 265.04; criminal use of a weapon pursuant to sections 265.08 and 265.09; criminal sale of a weapon pursuant to sections 265.11 and 265.12; compelling prostitution pursuant to section 230.33; sex trafficking pursuant to section 230.34; and sex offenses pursuant to article 130 of the penal law. Provided, however, that for the purposes of this article, none of the following shall be considered criminal convictions or reported as such: (i) a conviction for which an executive pardon has been issued pursuant to the executive law; (ii) a conviction which has been vacated and replaced by a youthful offender finding pursuant to article seven hundred twenty of the criminal procedure law, or the applicable provisions of law of any other jurisdiction; or (iii) a conviction the records of which have been expunged or sealed pursuant to the applicable provisions of the laws of this state or of any other jurisdiction; and (iv) a conviction for which other evidence of successful rehabilitation to remove the disability has been issued.

Provided, however, a fine shall not be imposed for the causes specified in paragraph f of this subdivision.

In lieu of or in conjunction with the suspension or revocation of a license, or the imposition of a fine pursuant to this section, the secretary may issue a reprimand. When a license issued pursuant to this article is revoked, such license shall not be reinstated or reissued until after the expiration of a period of one year from the date of such revocation. No license shall be issued after a second revocation.

2. Unlicensed activities. a. Notwithstanding any provision to the contrary, if the secretary finds that a person, partnership, limited liability company or business corporation, is holding himself, herself or itself out as or is acting as, temporarily or otherwise, a massage therapy business within this state without a valid license, the secretary shall provide the person, partnership, limited liability company or business corporation with a written notice of violation and complaint,

and shall afford an opportunity to be heard, either in person or by counsel, before an administrative law judge no sooner than three days from delivery of such notice of violation. If documentary proof that the deficiency has been cured is not provided to the secretary at or before such hearing, following a hearing determination that unlicensed activities have occurred, the secretary may issue an immediate order directing the cessation of any activity for which a massage therapy license is required.

b. The secretary may issue an order directing the cessation of any activity if the secretary finds that a person, including a partnership, a limited liability company or business corporation, is holding himself, herself or itself out as or is acting as, temporarily or otherwise, a massage therapy business within the state without a (i) bond or (ii) liability insurance or liability coverage which is covered through a bond. The secretary shall, before making such determination and order, afford such person, partnership, limited liability company or business corporation an opportunity to be heard in person or by counsel in reference thereto in an adjudicatory proceeding held pursuant to section nine hundred nine of this article. The enforcement of this provision shall require the department of financial services to certify in writing to the secretary that any bonds or liability insurance that is required by the department is readily available to massage therapy businesses from the market place.

c. The attorney general, acting on behalf of the secretary, may commence an action or proceeding in a court of competent jurisdiction to obtain a judgment against such person, partnership, limited liability company or business corporation in an amount equal to that assessed as a civil penalty. Said judgment shall thereafter be enforceable by any means authorized by the civil practice law and rules.

d. Where a massage therapy business operator continues to operate without a license following the issuance of an order by the secretary directing cessation, the attorney general, acting on behalf of the secretary, may commence an action or proceeding in a court of competent jurisdiction against such operator to obtain an order enjoining further operation of such business. A massage therapy business that has been ordered to cease operation shall not re-open without first obtaining a license as required by this article and paying any assessed fines.

§ 909. Denial of license; complaints; notice of hearing. 1. The department shall, before making a final determination to deny an application for a license, notify the applicant in writing of the reasons for such proposed denial and shall afford the applicant an opportunity to be heard in person or by counsel prior to denial of the application. Such notification shall be served personally or by certified mail or in any manner authorized by the civil practice law and rules for service of a summons. If a hearing is requested, such hearing shall be held at such time and place as the department shall prescribe. If the applicant fails to make a written request for a hearing within thirty days after receipt of such notification, then the notification of denial shall become the final determination of the department. The department, acting by such officer or person in the department as the secretary may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his or her deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. If, after such hearing, the application is denied, written notice of such denial shall be served upon the applicant

personally or by certified mail or in any manner authorized by the civil practice law and rules for the service of a summons.

2. The department shall, before revoking or suspending any license or imposing any fine or reprimand on the holder thereof, or before issuing any order directing the cessation of unlicensed activities, and at least ten days prior to the date set for the hearing, notify in writing the holder of such license, or the person alleged to have engaged in unlicensed activities, of any charges made and shall afford such person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the licensee or person charged, or by mailing same by certified mail to the last known business or other address provided by such person to the secretary, or by any method authorized by the civil practice law and rules for the service of a summons. The hearing on such charges shall be at such time and place as the department shall prescribe.

3. The department, acting by such officer or person in the department as the secretary may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules.

§ 910. Penalties. 1. The following violations shall be deemed separate offenses and be deemed a misdemeanor, and upon conviction, shall be punishable by imprisonment for not more than six months, or by a fine of up to two thousand five hundred dollars or by both such fine and imprisonment:

(a) the operation of a massage therapy business without a license or when such license has been suspended or revoked; or

(b) the operation of a massage therapy business in violation of an order directing the cessation of unlicensed activity issued by the secretary pursuant to section nine hundred eight of this article.

2. The operation of a massage therapy business without a (a) bond or (b) liability insurance or liability coverage which is covered through a bond shall be punishable by a civil penalty of up to two thousand five hundred dollars. The enforcement of this provision shall require the department of financial services to certify in writing to the secretary that any bonds or liability insurance that is required by the department is readily available to massage therapy businesses from the market place.

§ 911. Judicial review. The action of the secretary in suspending, revoking or refusing to issue or renew a license, or issuing an order directing the cessation of unlicensed activity or imposing a fine or reprimand may be appealed by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules.

§ 912. Official acts used as evidence. The official acts of the secretary and the department shall be prima facie evidence of the facts therein and shall be entitled to be received as evidence on all actions at law and other legal proceedings in any court or before any board, body or officer.

§ 913. Disposition of moneys. All moneys derived from the operation of this article shall be deposited to the credit of the business and licensing services account established pursuant to section ninety-seven-y of the state finance law.

§ 914. Application of article. 1. This article shall not apply to or affect the operation of any business at which the practice of massage

therapy is conducted by an exempt person as defined in section seventy-eight hundred five of the education law.

2. This article shall not apply to, affect or prevent home administration, without compensation or other consideration, of massage therapy.

§ 915. Separability clause. If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

§ 2. The education law is amended by adding a new section 7808 to read as follows:

§ 7808. Cooperation with the department of state. The department shall cooperate with and provide assistance to the department of state for the purposes of implementing article forty of the general business law, and shall accept and receive complaints from the department of state relating to the practice of massage therapy.

§ 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that effective immediately, any actions necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such effective date.