

STATE OF NEW YORK

3231

2019-2020 Regular Sessions

IN SENATE

February 4, 2019

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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:

1 Section 1. The general business law is amended by adding a new article
2 40 to read as follows:

3 ARTICLE 40

4 LICENSING OF MASSAGE THERAPY

5 BUSINESSES

6 Section 900. Definitions.

7 901. License required.

8 902. Powers of the secretary.

9 903. Rules and regulations.

10 904. Massage therapy business license; requirements.

11 905. License application; procedure; requirements.

12 906. Licenses; display; renewal; duplicates.

13 907. Fees.

14 908. Administration.

15 909. Denial of license; complaints; notice of hearing.

16 910. Penalties.

17 911. Judicial review.

18 912. Official acts used as evidence.

19 913. Disposition of moneys.

20 914. Application of article.

21 915. Separability clause.

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

24 1. "Department" means the department of state.

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

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

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

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

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

9 6. "Secretary" means secretary of state.

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

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

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

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

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

25 4. Assist the education department in the implementation and enforce-
26 ment of the provisions of article one hundred fifty-five of the educa-
27 tion law; and

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

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

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

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

3 2. Each massage therapy business licensee shall file and maintain
4 during the term of the license evidence of a bond or liability insur-
5 ance.

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

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

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

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

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

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

23 3. Notwithstanding any provision contained in this article to the
24 contrary, if any person, eligible for any license pursuant to this arti-
25 cle, should be called to active military service at or during the time
26 application for any license is required to be filed and license fee
27 paid, pursuant to the provisions of this article, the period within
28 which said application may be filed and license fee may be paid, is
29 extended on behalf of such person, until three months after the termi-
30 nation of said military service.

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

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

35 3. A massage therapy business license may be assigned. When the
36 massage therapy business licensee is a partnership or a limited liabil-
37 ity company, or a corporation, the license may be assigned upon the
38 consent of all members of a partnership or a majority of the voting
39 members of a limited liability company or the majority shareholders of a
40 corporation, respectively. The application for such transfer or assign-
41 ment must be accompanied by proof satisfactory to the department that
42 the requirements provided in this subdivision have been complied with.
43 No assignment or transfer shall become effective unless and until the
44 endorsement has been made on the face of the license by the department
45 and such license, as endorsed, has been returned to the assignee or
46 transferee. All such requests for endorsements shall be accompanied by a
47 five dollar fee. A bona fide purchaser of a licensed massage therapy
48 business may continue to use the license of the seller for a period of
49 thirty days from the date of the sale, provided there is endorsed on the
50 face thereof the name of the purchaser, the date of the sale, and the
51 signatures of the seller and the purchaser; and provided further within
52 five working days from the date of the sale an application, in accord-
53 ance with the provisions of this article, shall be presented by the
54 purchaser to the secretary for a massage therapy business license.

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

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

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

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

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

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

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

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

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

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

50 3. The fee for issuing a duplicate license certificate, in substi-
51 tution for one lost, destroyed or mutilated shall be ten dollars.

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

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

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

6 a. Fraud or bribery in securing a license.

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

10 c. Incompetence or untrustworthiness.

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

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

15 f. Conviction of any of the following crimes subsequent to the issu-
16 ance of a license pursuant to this article: fraud pursuant to sections
17 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying
18 business records pursuant to section 175.10; grand larceny pursuant to
19 article 155; bribery pursuant to sections 180.03, 180.08, 180.15,
20 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50;
21 perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to
22 sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article
23 160; homicide pursuant to sections 125.25 and 125.27; manslaughter
24 pursuant to sections 125.15 and 125.20; kidnapping and unlawful impri-
25 sonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons
26 possession pursuant to sections 265.02, 265.03 and 265.04; criminal use
27 of a weapon pursuant to sections 265.08 and 265.09; criminal sale of a
28 weapon pursuant to sections 265.11 and 265.12; compelling prostitution
29 pursuant to section 230.33; sex trafficking pursuant to section 230.34;
30 and sex offenses pursuant to article 130 of the penal law. Provided,
31 however, that for the purposes of this article, none of the following
32 shall be considered criminal convictions or reported as such: (i) a
33 conviction for which an executive pardon has been issued pursuant to the
34 executive law; (ii) a conviction which has been vacated and replaced by
35 a youthful offender finding pursuant to article seven hundred twenty of
36 the criminal procedure law, or the applicable provisions of law of any
37 other jurisdiction; or (iii) a conviction the records of which have been
38 expunged or sealed pursuant to the applicable provisions of the laws of
39 this state or of any other jurisdiction; and (iv) a conviction for which
40 other evidence of successful rehabilitation to remove the disability has
41 been issued.

42 Provided, however, a fine shall not be imposed for the causes speci-
43 fied in paragraph f of this subdivision.

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

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

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

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

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

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

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

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

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

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

22 § 910. Penalties. 1. The following violations shall be deemed sepa-
23 rate offenses and be deemed a misdemeanor, and upon conviction, shall be
24 punishable by imprisonment for not more than six months, or by a fine of
25 up to two thousand five hundred dollars or by both such fine and impri-
26 sonment:

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

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

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

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

45 § 912. Official acts used as evidence. The official acts of the secre-
46 tary and the department shall be prima facie evidence of the facts ther-
47 ein and shall be entitled to be received as evidence on all actions at
48 law and other legal proceedings in any court or before any board, body
49 or officer.

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

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

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

3 2. This article shall not apply to, affect or prevent home adminis-
4 tration, without compensation or other consideration, of massage thera-
5 py.

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

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

18 § 7808. Cooperation with the department of state. The department shall
19 cooperate with and provide assistance to the department of state for the
20 purposes of implementing article forty of the general business law, and
21 shall accept and receive complaints from the department of state relat-
22 ing to the practice of massage therapy.

23 § 3. This act shall take effect on the first of January next succeed-
24 ing the date on which it shall have become a law. Effective immediately,
25 the addition, amendment and/or repeal of any rule or regulation neces-
26 sary for the implementation of this act on its effective date are
27 authorized to be made and completed on or before such effective date.