

STATE OF NEW YORK

1112

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. GONZALEZ-ROJAS, KIM, MAMDANI, SIMON, MITAYNES, EPSTEIN, JACKSON, FORREST, DICKENS, GALLAGHER, SEAWRIGHT, KELLES -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to the unauthorized or unlicensed practice of massage therapy

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

1 Section 1. Subdivision 1 of section 6512 of the education law, as
2 amended by chapter 644 of the laws of 1979, is amended and a new subdi-
3 vision 3 is added to read as follows:

4 1. Anyone not authorized to practice under this title who practices or
5 offers to practice or holds [~~himself~~] themselves out as being able to
6 practice in any profession in which a license is a prerequisite to the
7 practice of the acts, or who practices any profession as an exempt
8 person during the time when [~~his~~] their professional license is
9 suspended, revoked or annulled, or who aids or abets an unlicensed
10 person to practice a profession, or who fraudulently sells, files,
11 furnishes, obtains, or who attempts fraudulently to sell, file, furnish
12 or obtain any diploma, license, record or permit purporting to authorize
13 the practice of a profession, shall be guilty of a class E felony.

14 3. Neither the unauthorized or unlicensed practice of massage therapy
15 under article one hundred fifty-five of this title, nor the aiding or
16 abetting of unauthorized or unlicensed practice of massage therapy under
17 article one hundred fifty-five of this title, shall be a violation of
18 this section.

19 § 2. Section 6513 of the education law is amended by adding a new
20 subdivision 3 to read as follows:

21 3. Neither the unauthorized or unlicensed practice of massage therapy
22 under article one hundred fifty-five of this title, nor the aiding or
23 abetting of unauthorized or unlicensed practice of massage therapy under
24 article one hundred fifty-five of this title, shall be a violation of

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

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1 this section. Neither the unauthorized or unlicensed use of the titles
2 "masseur," "masseuse," or "massage therapist" prohibited in section
3 seventy-eight hundred two of this title, nor the description, advertise-
4 ment, or placement of an advertisement of services defined in section
5 seventy-eight hundred one of this title where the services are performed
6 by someone unauthorized or unlicensed to practice such services, prohib-
7 ited by section seventy-eight hundred two of this title, shall be a
8 violation of this section.

9 § 3. Subdivision 2 of section 6514 of the education law, as amended by
10 chapter 257 of the laws of 1996, is amended to read as follows:

11 2. The attorney general shall prosecute such alleged offenses in the
12 name of the state~~[, provided, however, in the event of alleged~~
13 ~~violations of article one hundred fifty five of this title, a district~~
14 ~~attorney may prosecute such alleged offenses in the name of the state~~
15 ~~provided, however, that any district attorney may prosecute such~~
16 ~~offenses where they are incidental to a criminal prosecution instituted~~
17 ~~by him under other statutes]~~.

18 § 4. Section 6515 of the education law, as amended by chapter 615 of
19 the laws of 2003, is amended to read as follows:

20 § 6515. Restraint of unlawful acts. Where a violation of this title is
21 alleged to have occurred, the attorney general~~[, or the department [or,~~
22 ~~in the event of alleged violations of article one hundred fifty five of~~
23 ~~this title occurring in cities having a population of one million or~~
24 ~~more, the corporation counsel]~~ may apply to the supreme court within the
25 judicial district in which such violation is alleged to have occurred
26 for an order enjoining or restraining commission or continuance of the
27 unlawful acts complained of. The remedy provided in this section shall
28 be in addition to any other remedy provided by law or to the proceedings
29 commenced against a licensee under this title.

30 § 5. Subdivision 3 of section 6516 of the education law, as added by
31 chapter 615 of the laws of 2003, is amended to read as follows:

32 3. Civil penalties. Civil penalties up to five thousand dollars may be
33 imposed for each violation of section sixty-five hundred twelve or
34 sixty-five hundred thirteen of this article and the respondent may be
35 ordered to make restitution to any person who has an interest in any
36 money or property, either real or personal, acquired by the respondent
37 as a result of a violation. Whenever the department concludes that civil
38 penalties and/or restitution may be warranted because of the egregious-
39 ness of the unlawful activity, it may serve, along with the cease and
40 desist order, a notice of a hearing on the allegations of unlawful
41 activity and the department's intention to order the respondent to make
42 restitution and/or impose a civil penalty. The notice should specify the
43 civil penalty sought for each violation.

44 § 6. This act shall take effect immediately.