STATE OF NEW YORK

8548

IN SENATE

February 13, 2024

Introduced by Sen. ADDABBO -- 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, in relation to providing for licensure of a massage therapy establishment

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 30-C to read as follows:

ARTICLE 30-C
MASSAGE THERAPY ESTABLISHMENT LICENSE

Section 646. Legislative purpose.
646-a. Definitions.
646-b. Establishment licensure required.
646-c. Initial application for licensure.
646-d. Renewal and reinstatement.
646-e. Record retention.
646-f. Establishment standards.
646-g. Inspections.
646-h. Grounds for disciplinary action.

§ 646. Legislative purpose. The purpose of this article is to establish standards for applying for licensure and operating a business offering licensed massage therapy either as a standalone establishment or within an existing business, to protect the health, safety, and welfare of the public by promoting minimum standards for massage therapy establishments throughout the state of New York.

§ 646-a. Definitions. For purposes of this article, the following terms shall have the following meanings:

1. "Adult entertainment venue" means any establishment which displays live entertainment, including but not limited to persons or entertainers appearing in a state of nudity or other live performance, distinguished by an emphasis on depicting, describing or relating to sexual conduct or sexual excitement. "Adult entertainment venue" shall include, but not be

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

LBD14453-02-4

limited to, a nightclub, bar, restaurant, tavern, dance hall, stage or other performance venue.

2. "Chair massage" means massage therapy that is performed on a clothed, seated client and shall not include massage therapy performed in a reclining or prone position.

3. "Establishment" means any location, or portion thereof, where massage therapy services are advertised and provided by a massage therapist duly licensed pursuant to article one hundred fifty-five of the education law.

4. "Operator" means an individual who, by such individual's direction or control, allows massage therapy to be offered for compensation on premises owned, leased or controlled by such individual or an entity controlled by such individual. For the purposes of subdivision five of section six hundred forty-six-b of this article, a massage therapist practicing alone shall be considered an operator.

5. "Board" means the state board for massage therapy.

§ 646-b. Establishment licensure required. 1. Massage therapy, including the provision of out of office massage therapy services, shall only be delivered or offered at any location or portion thereof covered by a valid massage therapy establishment license issued pursuant to this article or otherwise exempted from licensure pursuant to subdivision six of this section.

2. Each massage therapy establishment in the state of New York shall be licensed by the board before providing or offering to provide massage therapy and shall annually renew its license using an application provided by the board, unless there is a change in ownership or location.

3. The responsibility for obtaining a massage therapy establishment license shall rest with the operator of the location.

4. Failure to obtain a massage therapy establishment license shall be considered unlicensed practice and subject to the provisions of article one hundred thirty of the education law, unless otherwise exempted by law.

5. With regard to the number of licenses required for two or more establishments at the same address, each massage therapy establishment shall require a separate license. The board shall consider the following in determining whether two or more establishments delivering massage therapy services at the same address constitute one or more massage therapy establishments:

(a) the business structure of each establishment, including but not limited to, overlap in areas of financing, management, or ownership;

(b) the resources shared by the establishments, including, but not limited to, office space, staff, record storage and maintenance facilities; and

(c) the overall impression created by advertising, signage, stationery, and office layouts.

6. (a) A massage therapy establishment license shall not be required for the following:

(i) any facility owned by a healthcare professional duly licensed by the state of New York;

(ii) board approved continuing education programs and student clinics operated by board licensed massage schools;

(iii) locations where chair massages are exclusively done; and

(iv) locations at which massage therapy is offered for not more than twenty-four hours in a one-week period every six months at a public or charitable event with a primary purpose unrelated to massage therapy.

(b) The board may require any location at which massage therapy is provided to provide satisfactory evidence why it is eligible for an exemption pursuant to this subdivision. The burden of proving eligibility for an exemption shall rest with the entity claiming the exemption.

7. Massage therapy shall not be delivered:

(a) in adult entertainment venues offering sexual services of any kind;

(b) in bars or nightclubs; and

(c) on the streets or sidewalks.

§ 646-c. Initial application for licensure. 1. Application for a massage therapy establishment license may be made by an individual, sole proprietorship, partnership, corporation, limited liability company, or limited liability partnership. A massage therapy establishment may be owned by an individual who is not a licensed massage therapist.

2. An application for a massage therapy establishment license shall be:

(a) made on forms prescribed by, and available from the board;

(b) signed under the pains and penalties of perjury by the applicant or a person authorized to act on behalf of the applicant;

(c) accompanied by information concerning ownership and control that identifies if the property where the establishment is being proposed is owned by an individual, partnership or trust, and the name or names of the owners and percentages of ownership of such individual, partners or trustees, in the following manner:

(i) if owned by a limited partnership, such information shall be provided only for those limited partners owning five percent or more of the partnership interest and the general partner;

(ii) if owned by a for-profit corporation, the names of all stockholders who hold five percent or more of any class of the outstanding stock, and specifying the percentage of stock owned;

(iii) if owned by a not-for-profit corporation, the names of the members and directors of such not-for-profit corporation; and

(iv) if owned by an individual or individuals, the name and ownership percentage of each individual who directly or indirectly has any ownership interest of five percent or more;

(d) accompanied by any information deemed necessary by the board as part of the application, including, but not limited to, such additional information concerning ownership and control as the board may require;

(e) accompanied by the required nonrefundable fees;

(f) accompanied by a floor plan that demonstrates compliance with the specifications necessary to meet the minimum standards required to meet the public health, safety and welfare as set forth in subdivision four of section six hundred forty-six-f of this article; and

(g) accompanied by evidence of suitability of ownership required by the board as set forth in subdivision four of this section.

3. The board shall not approve an application for an original or renewal license unless the board has conducted an investigation of the proposed licensee or licensees and/or owners of five percent or more and has determined that each proposed licensee or owner is suitable and responsible to establish or maintain an establishment.

4. (a) In determining whether an applicant is responsible and suitable to be granted a massage therapy establishment license, the board shall consider all relevant information including, but not limited to, the following:

(i) the proposed licensee's history of prior compliance with federal, state and local laws governing the operation of massage therapy estab-

lishments and the practice of massage therapy. Assessment of this factor shall include, but not be limited to, the ability and willingness of the proposed licensee to take corrective action when notified by the authority having jurisdiction over any regulatory violations;

(ii) the history of criminal conduct of the proposed licensee and owners, officers and directors, as evidenced by criminal proceedings against those individuals which resulted in convictions, guilty pleas, pleas of nolo contendere, or admission of sufficient facts; and

(iii) the proposed licensee's history of statutory and regulatory compliance for massage therapy establishments in other jurisdictions or localities, including, but not limited to, proceedings in which the proposed licensee was involved which proposed or led to a limitation upon or a suspension, revocation, or refusal to grant or renew a massage therapy establishment license.

(b) If the board receives information about an applicant for a massage therapy establishment license that reasonably raises a question about whether such applicant is suitable to hold such license or lacks the responsibility to hold such license, the board shall conduct a further inquiry into the relevant facts and circumstances before making a final decision on the application.

(c) If the board determines that it is reasonably necessary, in its discretion, the board may require the applicant to appear personally before the board, and/or furnish additional written information to the extent permitted by applicable state or federal law.

(d) The burden of demonstrating that the applicant possesses the responsibility required for licensure or is suitable for licensure shall rest with the applicant.

(e) Conduct which reasonably raises a question about whether an applicant possesses the responsibility required for licensure or is suitable for licensure includes, but is not necessarily limited to, any of the following:

(i) conviction of any criminal offense, other than a minor traffic violation;

(ii) disciplinary action taken against any professional license, registration or certification held by the applicant, or denial of licensure, by the applicable governmental authority of any state, territory or political subdivision of the United States or any foreign jurisdiction; or

(iii) conduct which involves any of the following: failure to exercise proper regard for the applicant's own health, welfare or safety; failure to exercise proper regard for the health, welfare, safety or legal rights of another person; or fraud, deception or lack of honesty or truthfulness.

5. (a) The board shall not approve an application for an original massage therapy establishment license or renewal of such license unless the board has been afforded the opportunity to inspect the proposed establishment.

(b) The applicant for a massage therapy establishment license shall arrange for the inspection of the location requesting to be licensed.

(c) In order to pass such inspection, the location shall meet the minimum standards necessary to protect the public health, safety and welfare as set forth in section six hundred forty-six-f of this article.

6. The board may require and consider supplemental establishment licensure application information and materials reasonably necessary to prevent insurance fraud, protect the health, safety, or welfare of the public, or for other valid regulatory purposes, including obtaining

appropriate permits either prior to or as a condition subsequent to receiving a massage therapy establishment license.

7. The board shall not issue a massage therapy establishment license based on an incomplete submission.

8. The board may not issue a massage therapy establishment license if the board's inspection reveals any violation of this article, or any other rules and regulations.

9. The board shall consider the evidence produced and make licensing decisions accordingly.

§ 646-d. Renewal and reinstatement. 1. A massage therapy establishment shall renew its license annually on or before the anniversary of the date of issue by submitting:

(a) a massage therapy establishment renewal form as prescribed by the board;

(b) complete information as required on such form, including changes in information since the original application or last renewal; and

(c) the nonrefundable renewal fee.

2. If a massage therapy establishment's license has expired, the massage therapy establishment may request that the board reinstate its license. The authorized representatives may be required to personally appear before the board to discuss the request for reinstatement. All requests for reinstatement shall be in writing and shall include the following submissions:

(a) an application;

(b) a nonrefundable late fee; and

(c) any other pertinent information as required by the board.

§ 646-e. Record retention. 1. Required records shall be maintained in a manner that protects such records from foreseeable damage or destruction.

2. A massage therapy establishment shall maintain required records on the premises for each active client.

3. For a client who is younger than two years old when he or she receives massage therapy, records shall be maintained at least until the client reaches nine years of age.

4. For clients who receive massage therapy on or after two years of age, records shall be maintained for a minimum of seven years from the date of the last client encounter.

5. Records stored electronically shall have an established system of regular back-up. Copies of the back-up records shall be maintained safely and securely.

§ 646-f. Establishment standards. 1. Each massage therapist establishment shall designate a licensed massage therapist who is responsible for the massage therapy establishment's compliance with this article and any other laws of the state of New York. Such licensed massage therapist shall agree to be accessible to the board and shall be responsible for cooperating with inspections or investigations conducted by the board or its agents. Upon the request of the board or its agents, the designated licensed massage therapist shall provide immediate access to, and, if requested, copies of records maintained by the massage therapist establishment. Such licensed massage therapist shall be designated as the massage therapist establishment's compliance officer and shall have a full-time presence whether employed or contracted.

2. Each massage therapy establishment shall implement and maintain a business compliance plan, that shall include, but not be limited to, standards, procedures, and policies that address such massage therapy establishment's administrative protocols. The standards, procedures, and

policies in such compliance plan shall include, but not be limited to, addressing the following issues:

(a) a plan for ascertaining that all individuals providing massage therapy in the massage therapy establishment have current, valid licenses;

(b) a list of all massage therapists who practice at the establishment;

(c) the methods for training personnel regarding the massage therapy establishment's standards, procedures, and policies, including appropriate right-to-know training, standard precautions to prevent communicable disease, proper documentation, clients' rights, and proper billing, on an ongoing basis;

(d) the methods of maintaining and encouraging open lines of communication among the massage therapy establishment's personnel;

(e) the methods of maintaining and ensuring that equipment is inspected on an annual basis and is in safe operating condition;

(f) the mechanisms used to report and respond to violations or complaints in an appropriate manner;

(g) the implementation and maintenance of a schedule of the establishment's compliance audits; and

(h) in the event of the dissolution of the massage therapy establishment or the departure of a licensed massage therapist from the establishment, a process for the dissolution of the massage therapy establishment or for the departure of a practicing massage therapist, including, but not limited to, a process for the storage and retrieval of clients' records.

3. (a) All massage therapists at an establishment shall hold a current massage therapist license pursuant to article one hundred fifty-five of the education law, unless exempted by law or regulation.

(b) All licensed massage therapists at an establishment shall be deemed the responsibility of the operator of the establishment. All students who perform massage therapy at an establishment shall be supervised by a licensed massage therapist.

(c) Massage establishment licenses shall not be transferable.

(d) The use of aliases by licensed massage therapists is prohibited.

4. (a) Every establishment shall maintain a properly installed smoke detector and fire extinguisher.

(b) Massage therapy may be conducted only in rooms, which are adequately lighted and ventilated, and so constructed that they can be kept clean. Floors, walls, ceilings and windows shall be kept free of dust, soil, and other unclean substances.

(c) Massage rooms shall have at least eighty-five square feet of floor space for all establishments licensed after the date this article takes effect.

(d) Smoking shall be prohibited anywhere on the premises of an establishment.

(e) Every establishment shall have accessible restroom facilities, including at least one toilet with toilet tissue provided, a hand sink with soap, disposable towels, single use linens, or air dryers.

(f) Every establishment shall have hand-washing facilities for therapist use. Said facilities shall provide an adequate supply of hot water at a temperature that complies with the public health law.

(g) Hand washing facilities for establishments shall be accessible and located no more than fifty feet from the treatment area.

(h) Adequate waste receptacles shall be provided at all times.

(i) Toilet and hand washing facilities shall meet the requirements of the state plumbing code and shall be maintained in good repair, well-lighted and adequately ventilated, kept in a clean and sanitary condition and free of vermin.

(j) Every establishment shall provide for safe and unobstructed passage in the public and private areas of the premises.

(k) Facilities shall be provided for the storage and removal of garbage, waste and refuse.

(l) Any flammable or hazardous materials in any establishment shall be stored in a safe manner in accordance with local and state regulations.

5. (a) All equipment and supplies used in the performance of massages shall be maintained in a safe and clean manner. All tables and other cleanable surfaces that come into contact with clients shall be cleaned by the regular application of a cleanser and sanitized with an environmental protection agency registered sanitizer. For purposes of this subdivision, "regular application" means a thorough cleansing of the massage table at least one time a day or whenever oils, lotions, or other substances visibly accumulate on client contact surfaces.

(b) Each client shall receive a separate, clean covering for use on the massage table, such as sheets or towels.

(c) All reusable sheets, towels, and other cloth materials used in the performance of a massage that come in contact with a client shall be laundered after each use.

(d) Every establishment shall maintain a sufficient supply of clean linens for the purpose of draping each client while the client is being massaged. For purposes of this subdivision, "clean linens" means towels, gowns, or sheets.

(e) If any products containing latex are used, a sign shall be conspicuously posted stating such and all clients shall be advised that latex-containing products are used.

6. A change in massage therapy establishment ownership shall require application for and receipt of a new massage therapy establishment license. A change in massage therapy establishment ownership shall occur on the date that there is a transfer of a controlling interest in a massage therapy establishment. When a change in ownership occurs, the massage therapy establishment license shall expire, and the new owner shall apply for a new license within thirty days.

7. (a) A massage therapy establishment license shall be valid only for the location stated on the license and is neither transferable nor assignable.

(b) The board shall be notified in writing at least thirty days prior to a change in location of a massage therapy establishment.

(c) The license for the previous location shall be canceled and shall be invalid as of the date of relocation.

(d) The massage therapy compliance officer or establishment owner shall file a new application for a massage therapy establishment license which shall be subject to the board's approval.

(e) The massage therapy establishment shall not operate at the new location until the board has approved a massage therapy establishment license for the new location.

8. Current true copies of the following shall be conspicuously displayed for the benefit of the public at each massage therapy establishment:

(a) the massage therapy establishment's license;

(b) the license of each massage therapist licensed pursuant to article one hundred fifty-five of the education law who provides massage therapy services at the massage therapy establishment; and

(c) the most recent inspection report completed by the board or its agents.

9. (a) The board may vary the application of any provision of these rules and regulations with respect to any particular case when, in its opinion, the enforcement thereof would create a manifest injustice, which shall include practitioners who do not deliver massages at a specific location. Any variance granted by the board shall be in writing.

(b) Any variance or other modification authorized to be made pursuant to paragraph (a) of this subdivision may be subject to such qualification, revocation, suspension, or expiration as the board deems necessary. A variance or other modification authorized to be made may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard.

§ 646-g. Inspections. The board or its agent may inspect any massage therapy establishment at any time during regular business hours, and without prior notice, for the purpose of verifying that such massage therapy establishment, and its agents or employees are in compliance with all applicable requirements of all federal, state and local laws or regulations.

§ 646-h. Grounds for disciplinary action. The board may, through the processes set out in article one hundred thirty of the education law, take disciplinary action against any massage therapy establishment. Grounds for disciplinary action shall include, but shall not be limited to:

1. violation of any provision of this article by any person associated with the establishment;

2. unlicensed practice at a massage therapy establishment or arranged through the massage therapy establishment. Unlicensed practice shall include practice by an individual who has:

(a) never held a license to practice as a massage therapist;

(b) let their license to practice lapse or expire;

(c) had their license to practice suspended or revoked; or

(d) voluntarily surrendered their license; and

3. where a person having more than five percent ownership interest, company officer, principal, or any employee of, or person associated with, the massage therapy establishment:

(a) interferes with or obstructs the board or its agent in the performance of the board's duties;

(b) is sanctioned for violations of state or federal laws regarding insurance fraud; or

(c) solicits, facilitates, or otherwise permits illicit behavior.

§ 2. This act shall take effect on the ninetieth 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 are authorized to be made and completed on or before such effective date.