

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.

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

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

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

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

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

17 § 646-b. Establishment licensure required. 1. Massage therapy, includ-
18 ing the provision of out of office massage therapy services, shall only
19 be delivered or offered at any location or portion thereof covered by a
20 valid massage therapy establishment license issued pursuant to this
21 article or otherwise exempted from licensure pursuant to subdivision six
22 of this section.

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

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

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

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

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

42 (b) the resources shared by the establishments, including, but not
43 limited to, office space, staff, record storage and maintenance facili-
44 ties; and

45 (c) the overall impression created by advertising, signage, station-
46 ery, and office layouts.

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

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

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

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

54 (iv) locations at which massage therapy is offered for not more than
55 twenty-four hours in a one-week period every six months at a public or
56 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-

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

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

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

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

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

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

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

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

34 (ii) disciplinary action taken against any professional license,
35 registration or certification held by the applicant, or denial of licen-
36 sure, by the applicable governmental authority of any state, territory
37 or political subdivision of the United States or any foreign jurisdic-
38 tion; or

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

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

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

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

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

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

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

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

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

10 § 646-d. Renewal and reinstatement. 1. A massage therapy establishment
11 shall renew its license annually on or before the anniversary of the
12 date of issue by submitting:

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

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

17 (c) the nonrefundable renewal fee.

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

24 (a) an application;

25 (b) a nonrefundable late fee; and

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

27 § 646-e. Record retention. 1. Required records shall be maintained in
28 a manner that protects such records from foreseeable damage or
29 destruction.

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

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

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

38 5. Records stored electronically shall have an established system of
39 regular back-up. Copies of the back-up records shall be maintained safe-
40 ly and securely.

41 § 646-f. Establishment standards. 1. Each massage therapist establish-
42 ment shall designate a licensed massage therapist who is responsible for
43 the massage therapy establishment's compliance with this article and any
44 other laws of the state of New York. Such licensed massage therapist
45 shall agree to be accessible to the board and shall be responsible for
46 cooperating with inspections or investigations conducted by the board or
47 its agents. Upon the request of the board or its agents, the designated
48 licensed massage therapist shall provide immediate access to, and, if
49 requested, copies of records maintained by the massage therapist estab-
50 lishment. Such licensed massage therapist shall be designated as the
51 massage therapist establishment's compliance officer and shall have a
52 full-time presence whether employed or contracted.

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

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

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

6 (b) a list of all massage therapists who practice at the establish-
7 ment;

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

13 (d) the methods of maintaining and encouraging open lines of communi-
14 cation among the massage therapy establishment's personnel;

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

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

19 (g) the implementation and maintenance of a schedule of the establish-
20 ment's compliance audits; and

21 (h) in the event of the dissolution of the massage therapy establish-
22 ment or the departure of a licensed massage therapist from the estab-
23 lishment, a process for the dissolution of the massage therapy estab-
24 lishment or for the departure of a practicing massage therapist,
25 including, but not limited to, a process for the storage and retrieval
26 of clients' records.

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

30 (b) All licensed massage therapists at an establishment shall be
31 deemed the responsibility of the operator of the establishment. All
32 students who perform massage therapy at an establishment shall be super-
33 vised by a licensed massage therapist.

34 (c) Massage establishment licenses shall not be transferable.

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

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

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

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

45 (d) Smoking shall be prohibited anywhere on the premises of an estab-
46 lishment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 8. Current true copies of the following shall be conspicuously
52 displayed for the benefit of the public at each massage therapy estab-
53 lishment:

54 (a) the massage therapy establishment's license;

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

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

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

12 (b) Any variance or other modification authorized to be made pursuant
13 to paragraph (a) of this subdivision may be subject to such qualifica-
14 tion, revocation, suspension, or expiration as the board deems neces-
15 sary. A variance or other modification authorized to be made may other-
16 wise be revoked, modified, or suspended, in whole or in part, only after
17 the holder thereof has been notified in writing and has been given an
18 opportunity to be heard.

19 § 646-g. Inspections. The board or its agent may inspect any massage
20 therapy establishment at any time during regular business hours, and
21 without prior notice, for the purpose of verifying that such massage
22 therapy establishment, and its agents or employees are in compliance
23 with all applicable requirements of all federal, state and local laws or
24 regulations.

25 § 646-h. Grounds for disciplinary action. The board may, through the
26 processes set out in article one hundred thirty of the education law,
27 take disciplinary action against any massage therapy establishment.
28 Grounds for disciplinary action shall include, but shall not be limited
29 to:

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

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

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

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

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

38 (d) voluntarily surrendered their license; and

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

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

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

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

47 § 2. This act shall take effect on the ninetieth day after it shall
48 have become a law. Effective immediately, the addition, amendment and/or
49 repeal of any rule or regulation necessary for the implementation of
50 this act on its effective date are authorized to be made and completed
51 on or before such effective date.