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:

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

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

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

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

3. Neither the unauthorized or unlicensed practice of massage therapy under article one hundred fifty-five of this title, nor the aiding or abetting of unauthorized or unlicensed practice of massage therapy under 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.

LBD02290-01-3

this section. Neither the unauthorized or unlicensed use of the titles "masseur," "masseuse," or "massage therapist" prohibited in section seventy-eight hundred two of this title, nor the description, advertisement, or placement of an advertisement of services defined in section seventy-eight hundred one of this title where the services are performed by someone unauthorized or unlicensed to practice such services, prohibited by section seventy-eight hundred two of this title, shall be a violation of this section.

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

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

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

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

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

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

§ 6. This act shall take effect immediately.