

CHAPTER 104
FORMERLY
HOUSE BILL NO. 35
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AS AMENDED BY HOUSE AMENDMENT NO. 1
TO HOUSE AMENDMENT NO. 1 AND HOUSE AMENDMENT NO. 2
TO HOUSE AMENDMENT NO. 1 AND SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF MASSAGE AND BODYWORK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Section 5302, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 5302. Definitions.

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them under this section, ~~except where the context clearly indicates a different meaning:~~

(4) "Massage Establishment" means any place of business that offers the practice of massage and bodywork and where the practice of massage and bodywork is conducted on the premises of the business, or that represents itself to the public by any title or description of services incorporating the words "bodywork," "massage," "massage therapy," "massage practitioner," "massagist," "masseur," "masseur," or other words identified by the Board in regulation. A place of business includes any office, clinic, facility, salon, spa, or other location where a person or persons engage in the practice of massage and bodywork. The residence of a therapist or an out call location which is not owned, rented, or leased by a massage therapist or massage establishment shall not be considered a massage establishment, unless the location is advertised as the therapist's or establishment's place of business. The term "massage establishment" shall not include any facility as defined in § 1131(4) of Title 16, any hospital as defined in § 1001(3) of Title 16, physician offices, physical therapy facilities, chiropractic offices, or athletic training facilities, whether or not they employ, contract with, or rent to massage therapists, or institutions of secondary or higher education when massage therapy is practiced in connection with employment related to athletic teams or any other business establishment licensed pursuant to another chapter of this title.

(8) "Professional-in-charge" means a licensee who is responsible for the operation of a massage establishment, including ensuring that all employees are licensed, where required by law.

Section 2. Amend Section 5305, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5305. Records.

The Division shall keep a register of all approved applications for license as massage and bodywork therapist and for certification as massage technician, all approved applications for licenses for massage establishments, and complete records relating to meetings of the Board, examinations, rosters, changes and additions

to the Board's rules and regulations, complaints, hearings and such other matters as the Board shall determine. Such records shall be prima facie evidence of the proceedings of the Board.

Section 3. Amend Section 5306, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 5306. Powers and duties.

(a) The Board of Massage and Bodywork shall have authority to:

(6) Grant licenses to, and renew licenses and certifications of, all persons who meet the qualifications for licensure and/or renewal of licenses; ~~and grant certificates to persons who meet the qualifications for massage technicians; and grant licenses to, and renew licenses for, massage establishments;~~

(15) Adopt rules and regulations setting forth the requirements pertaining to the licensure, maintenance, and standards of massage establishments;

(16) Authorize agents of the Division to inspect any massage establishment.

(b) The Department of Health and Social Services shall have the authority to adopt rules and regulations pertaining to the sanitary controls of massage establishments.

Section 4. Amend Section 5307, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5307. License; certification required.

(d) Massage establishment license; necessity. No person, firm, corporation, partnership, or other legal entity shall operate, maintain, or use premises as a massage establishment without first having secured a massage establishment license from the Board.

(e) Services rendered in unlicensed massage establishment, prohibition; exceptions. No person shall offer or render any of the services encompassed within the definition of massage and bodywork in a place that is not licensed as a massage establishment. This section shall not apply to a duly licensed massage therapist or certified massage technician who practices massage or bodywork outside of a massage establishment.

Section 5. Amend Section 5313, title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 5313. Grounds for discipline.

(a) A practitioner licensed or certified under this chapter shall be subject to disciplinary actions set forth in § 5315 of this title, if, after a hearing, the Board finds that the massage and bodywork therapist or massage technician:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a massage and bodywork therapist or certification as a massage technician; has employed or knowingly cooperated in fraud or material deception in order to acquire a massage establishment license; has impersonated another person holding a license or certification, or allowed another person to use the massage or bodywork license or massage technician certification, or aided or abetted a person not licensed as a massage or bodywork

therapist or certified as a massage technician to represent that person as a massage or bodywork therapist or massage technician;

(8) Has knowingly employed or cooperated in the hiring or contracting for the services of, or, as the professional-in-charge of a massage establishment, leased space or otherwise entered into a contractual relationship with or permitted, any unlicensed person or persons required by this chapter to hold an unrestricted license to practice any of the professions regulated by this chapter; or

Section 6. Amend Section 5314, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5314. Complaints.

(a) A practitioner or member of the public desiring to file a complaint against a practitioner or licensee, massage establishment, or certificate holder regulated by the Board shall file a written complaint with the Division of Professional Regulation. All complaints shall be received and investigated by the Division in accordance with the procedures as specified in § 8735 of Title 29. The Division shall be responsible for issuing a final written report at the conclusion of the investigation.

(b) Those complaints involving unsanitary conditions or other conditions in any massage establishment which may harm the health of any person on the premises shall be investigated by the Division of Public Health.

Section 7. Amend Section 5315, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5315. Disciplinary sanctions.

(c) In the event of a formal or informal complaint concerning the activity of a licensee, massage establishment, or certificant that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person's license or certificate, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board chair or the Board chair's designee. An order temporarily suspending a license or certificate may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license or certificate has been temporarily suspended pursuant to this section may request an expedited hearing. The Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person received notification of the decision to temporarily suspend the person's license or certificate.

Section 9. Amend Section 5317, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5317. Penalties.

(a) A person not currently licensed as a massage or bodywork therapist or certified as a massage technician under this chapter, when guilty of engaging in the practice of massage or bodywork therapy or of practicing as a massage technician, or using in connection with the practitioner's own name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the practitioner is qualified to practice massage or bodywork therapy, or to act as a massage technician, such offender shall be guilty of a misdemeanor. Upon the first offense, the practitioner shall be fined not less than \$100, nor more than \$500 for each offense. For a second or subsequent conviction, the fine shall be not less than \$500, nor no more than \$1,000 for each offense. Superior Court shall have jurisdiction over all violations of this chapter.

(b) Where a person unlawfully operates, manages, owns, or advertises for any massage establishment or place where massage and bodywork services are rendered, the person shall be guilty of a class A misdemeanor, and be imprisoned not more than one year or fined not more than \$2300, or both. Superior Court shall have jurisdiction over all violations of this chapter.

Section 10. Amend Chapter 53, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5319 Qualifications of applicants for massage establishments.

(a) All massage establishments must be licensed pursuant to this chapter. Applications for licensure shall be submitted together with the required fees set by the Division of Professional Regulation.

(b) An application for massage establishment licensure shall identify the professional-in-charge and shall include notarized acknowledgement by the person identified as the professional-in-charge. At all times, the professional-in-charge shall be licensed pursuant to this chapter and shall hold a license in good standing as defined in this title. A licensee may serve as professional-in-charge for only 1 establishment at any given time, unless the licensee has sought and received a waiver. The Board shall be notified in writing of any change in the professional-in-charge within 10 business days of such change.

(c) Massage establishments shall employ only licensed massage and bodywork therapists or certified massage technicians to practice massage and bodywork.

(d) No massage establishment shall be used as or for a dormitory nor shall any licensee under this Chapter permit any massage establishment to be so used.

(e) The Board shall establish by regulation the permissible operating hours of massage establishments, as well as the mechanisms to apply for a waiver. Services shall be rendered to the public in any massage establishment only during permissible operating hours when the establishment is open and may be inspected by any agent of the Division.

(f)(1) All internal and external doors shall be kept unlocked during operating hours except as follows:

a. Restroom doors may be locked.

b. External doors may be locked if the massage establishment is a business entity owned by 1 individual and has no more than 1 employee or independent contractor.

c. Internal doors may be locked to protect confidential patient or business information.

(2) If the inspecting official requests access to doors locked under this subsection during an inspection, the doors must be opened immediately. A person who refuses to immediately open a locked door during an inspection is unlawfully operating or managing the massage establishment under § 5317(b) of this title.

(g) No professional-in-charge of a massage establishment may allow, authorize, or tolerate in his or her massage establishment any activity or behavior prohibited by the laws of the State of Delaware including such laws proscribing acts of or promotion of prostitution, indecent exposure, lewdness or obscenity.

(h) Any conviction of any crime identified in paragraph (g) of this section occurring on or in connection with the massage establishment shall be grounds for revocation of the license of the establishment and no new license for the operation of a massage establishment on the same premises or to the same professional-in-charge thereafter shall be issued for a period of one year.

(i) A massage establishment license issued pursuant to this chapter shall be issued for a single, identified location and is not assignable or transferable.

(j) A massage establishment may not advertise for sexually explicit services or engage in any sexually explicit advertising. Any such advertising will be imputed to the professional-in-charge and is grounds for discipline of the massage establishment license and the professional-in-charge's license.

(k) The Board may establish by regulation additional requirements and prohibitions regarding the operation of massage establishments.

§ 5320. Unlicensed practice violations; penalties.

(a) A placard, as provided by the Attorney General, shall be prominently displayed at all entrances of establishments that have failed to obtain a valid license or have a license that is suspended, revoked, or expired.

(b) Whenever, in the judgment of the Division, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter or any rule, regulation or order issued thereunder, the Division may request the Attorney General to make application to the Court of Chancery for an order enjoining such acts or practices or for an order directing compliance and, upon a showing by the Division that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order or other order may be granted.

(c) The unlawful operation, management, ownership, or advertisement of any massage establishment or place where massage and bodywork services are rendered is hereby deemed a public nuisance.

§ 5321 Inspections.

(a) An agent of the Division may enter and inspect during business hours, without prior notice, any massage establishment.

(b) An agent of the Division acting pursuant to subsection (a) of this section: may inspect and copy records of the establishment; may inspect within reasonable limits and in a reasonable manner the premises and

all pertinent equipment; and may inspect other things therein, including records, files, papers, and facilities relating to violation of this chapter.

(c) If a massage establishment is located within a therapist's residence, an out call location, or is located within an office space shared with other businesses, an agent of the Division must have independent and sufficient legal justification before inspecting areas not used as a place of business for massage and bodywork by the establishment.

Section 11. Severability Clause. If any section, part, phrase, or provision of this Act or the application thereof be held invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, phrase, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Act or the application thereof.

Section 12. This Act shall be effective 180 days after enactment.

Approved July 26, 2017