



SPONSOR: Rep. Kowalko & Sen. Hall-Long;  
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HOUSE OF REPRESENTATIVES  
145th GENERAL ASSEMBLY

HOUSE BILL NO. 463

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 5302(4), Title 24 of the Delaware Code by inserting two new sentences at the end of said  
2 subsection, reading as follows:

3 “Effective upon the date of enactment of this statute, the Board shall no longer accept or grant  
4 applications for certification as a massage technician. Effective 3 years after the date of enactment of this statute,  
5 all massage technician certifications shall expire, and any person who has not obtained licensure as a massage and  
6 bodywork therapist, and who continues to practice as a massage technician, shall be engaging in unlicensed  
7 practice.”.

8 Section 2. Amend § 5302(6), Title 24 of the Delaware Code by striking the second paragraph of said subsection in its  
9 entirety.

10 Section 3. Amend § 5303(b), Title 24 of the Delaware Code by inserting a new sentence between the word and  
11 punctuation “public.” and the words “The public” as follows:

12 “Effective 3 years after the date of enactment of this statute, the Board shall consist of 4 members who  
13 shall be massage and bodywork therapists licensed under this Chapter and 3 members of the public.”.

14 Section 4. Amend § 5303(e), Title 24 of the Delaware Code by striking said subsection in its entirety.

15 Section 5. Amend § 5303, Title 24 of the Delaware Code by re-designating subsections “(f)” through “(k)” as  
16 subsections “(e)” through “(j)”, respectively.

17 Section 6. Amend § 5304(c), Title 24 of the Delaware Code by striking the second sentence of said subsection in its  
18 entirety and substituting in lieu thereof the following:

19 “The affirmative vote of at least 4 members of the Board is required to certify and license applicants or to  
20 suspend or revoke a license.”.

21 Section 7. Amend § 5306(a)(3), Title 24 of the Delaware Code by striking in its entirety the text appearing after the  
22 phrase “Director of the Division;”.

23 Section 8. Amend § 5306(a)(5), Title 24 of the Delaware Code by striking in their entirety the phrases “and of all  
24 persons applying for certification as massage technicians,” and “or certification”.

25 Section 9. Amend § 5306(a)(6), Title 24 of the Delaware Code by inserting the punctuation “;” after the phrase “and/or  
26 renewal” and by striking in its entirety the remaining language in said paragraph.

27 Section 10. Amend § 5306(a)(8), Title 24 of the Delaware Code by striking the phrase “or certification” where it  
28 appears in said paragraph.

29 Section 11. Amend § 5306(a)(10), Title 24 of the Delaware Code by striking the word “and” at the end of said  
30 paragraph.

31 Section 12. Amend § 5306(a)(11), Title 24 of the Delaware Code by striking the punctuation “.” at the end of said  
32 paragraph and substituting in lieu thereof the punctuation “;”.

33 Section 13. Amend § 5306(a), Title 24 of the Delaware Code by inserting new paragraphs “(12)” through “(14)”,  
34 reading as follows:

35 “(12) Adopt rules and regulations concerning advertising by massage and bodywork therapists;

36 (13) Adopt rules and regulations setting forth unprofessional conduct by massage and  
37 bodywork therapists and massage technicians; and

38 (14) Adopt, pursuant to the Board’s rules and regulations, a Client Disclosure form, which  
39 shall be used by all certified massage technicians. The Disclosure shall include, at the  
40 minimum, a statement that the person providing services is a certified massage technician,  
41 and not a licensed massage and bodywork therapist, and, by law, is not authorized to treat  
42 medically diagnosed conditions. The Disclosure shall be provided to the client at the first  
43 treatment session.”.

44 Section 14. Amend the heading “Subchapter II. License and Registration” where it appears in Chapter 53, Title 24 of  
45 the Delaware Code, by striking the words “and Registration”.

46 Section 15. Amend § 5307(a), Title 24 of the Delaware Code by inserting the phrase “or prescription” between the  
47 word “referral” and the word “from” in both the second and third sentences, by striking the words “by prescription” in the  
48 second sentence and by inserting the words “and from treating medically diagnosed conditions” at the end of the third  
49 sentence.

50 Section 16. Amend § 5307(b), Title 24 of the Delaware Code by inserting the words “or certificate” between the words  
51 “license” and “to practice” and by striking the words “as a massage and bodywork therapist”.

52 Section 17. Amend § 5307, Title 24 of the Delaware Code by inserting a new subsection “(d)” reading as follows:

53           “(d) This Chapter shall not apply to:

54                   (1) Actions by any person, who is certified or licensed in this State by any other law, and who  
55                   is engaged in and acting within the scope of the profession or occupation for which that  
56                   person is certified or licensed;

57                   (2) Actions by any person engaged in an occupation which does not require a certificate or  
58                   certification, including, but not limited to, physical education teachers, athletic coaches,  
59                   health or recreation directors, instructors at health clubs or spas, martial arts, water safety  
60                   and dance instructors, or coaches, who is acting within the scope of activity for which  
61                   such person is trained; and

62                   (3) Any student of massage who is practicing within the scope of his or her course of study.”.

63           Section 18. Amend § 5308(a), Title 24 of the Delaware Code by striking paragraphs “(4)” “(5)” and “(6)” in their  
64           entirety.

65           Section 19. Further amend § 5308(a), Title 24 of the Delaware Code by inserting a new subsection “(1)” as reading  
66           follows:

67                   “(1) Is at least 18 years of age;”.

68           Section 20. Amend § 5308(a), Title 24 of the Delaware Code by re-designating subsections “(1)” through “(3)” as  
69           subsections “(2)” through “(4)”, respectively.

70           Section 21. Amend the newly designated § 5308(a)(2)c., Title 24 of the Delaware Code by striking the phrase “100  
71           hours” where it appears in said subparagraph, and inserting in lieu thereof the phrase “75 hours”.

72           Section 22. Amend the newly designated § 5308(a)(2), Title 24 of the Delaware Code by adding a new subparagraph  
73           “d.” reading as follows:

74                   “d. 25 hours of ethics, law and contraindications.”.

75           Section 23. Amend § 5308(a), Title 24 of the Delaware Code by inserting new paragraphs “(5)” through “(9)”,  
76           reading as follows:

77                   “(5) Has not engaged in any of the acts or offenses that would be grounds for disciplinary  
78                   action under this chapter;

79                   (6) Has no disciplinary proceedings or unresolved complaints pending against that person in  
80                   any jurisdiction where the applicant has previously been or currently is licensed to  
81                   practice massage and/or bodywork therapy;

- 82 (7) Has not been the recipient of any administrative penalties regarding that person's practice  
83 of massage and bodywork therapy, including but not limited to fines, formal reprimands,  
84 license suspensions or revocation (except for license revocations for nonpayment of  
85 license renewal fees), probationary limitations and/or has not entered into any 'consent  
86 agreements' which contain conditions placed by a Board on that person's professional  
87 conduct and practice, including any voluntary surrender of a license. The Board may  
88 determine, after a hearing, whether such administrative penalty is grounds to deny  
89 licensure;
- 90 (8) Shall not have any impairment related to drugs or alcohol or a finding of mental  
91 incompetence by a physician that would limit the applicant's ability to undertake that  
92 applicant's practice in a manner consistent with the safety of the public;
- 93 (9) Has not been convicted of a crime that is substantially related to the practice of massage  
94 and bodywork. However, after a hearing or review of documentation demonstrating that  
95 the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of  
96 a majority of the quorum, may waive this paragraph (a)(5), if it finds all of the following:
- 97 a. More than 5 years have elapsed since the applicant has fully discharged all  
98 imposed sentences. As used herein, the term "sentence" includes, but is not limited  
99 to, all periods of modification of a sentence, probation, parole or suspension.  
100 However, "sentence" does not include fines, restitution or community service, as  
101 long as the applicant is in substantial compliance with such fines, restitution and  
102 community service.
- 103 b. The applicant is capable of practicing massage and bodywork in a competent and  
104 professional manner.
- 105 c. The granting of the waiver will not endanger the public health, safety or welfare."

106 Section 24. Amend § 5308(b), Title 24 of the Delaware Code by striking the word "application" and inserting in lieu  
107 thereof the word "applicant".

108 Section 25. Amend § 5308, Title 24 of the Delaware Code by inserting new subsections "(e)" through "(g)" reading as  
109 follows:

110 "(e) An applicant shall submit fingerprints and other necessary information in order to obtain a report  
111 of the individual's entire criminal history record from the State Bureau of Identification and from the Federal

112 Bureau of Investigation pursuant to Federal Bureau of Investigation appropriation of Title II of Public Law 92-544  
113 (28 U.S.C § 534). If the applicant does not have a criminal history record, the applicant shall cause to be  
114 submitted a statement from each agency that the agency has no record of criminal history information relating to  
115 the applicant. The State Bureau of Identification shall be the intermediary for the purpose of this subsection and  
116 the Board, or its designee, shall be the screening point for the receipt of the federal criminal history record. The  
117 applicant is responsible for the required fee, if any, for obtaining the records.

118 (f) Foreign-trained applicants must provide evidence of training and supervision essentially  
119 comparable to that cited in § 5308(a)(2) of this Chapter.

120 (g) All certified massage technicians shall become licensed as massage and bodywork therapists no  
121 later than 3 years after the date of enactment of this act. If any certified massage technician does not achieve  
122 licensure by that date, and continues to practice, he or she shall be engaged in unlicensed practice. For a 3 year  
123 period beginning with the date of enactment, a massage technician with current, active certification, who is  
124 applying for licensure as a massage and bodywork therapist, shall be exempt from the education and examination  
125 requirements set forth in §§ 5308(a)(1) and (2) of this Chapter if the certified massage technician presents proof  
126 that he or she has achieved the passing score on either a certification examination or the National Examination for  
127 State Licensing, both of which are offered by the NCBTMB. Successful achievement of the passing score shall  
128 result in waiver of certain continuing education requirements, as set forth in the Board's rules and regulations.”.

129 Section 26. Amend Title 24 of the Delaware Code by inserting the following at the end of the heading entitled “§ 5309  
130 Qualifications of applicants for certification as massage technicians”.

131 “[Effective upon the date of enactment, the Board shall no longer accept or grant applications for  
132 certification as a massage technician. Effective 3 years after the date of enactment, all massage technician  
133 certifications shall expire.]”.

134 Section 27. Amend § 5310, Title 24 of the Delaware Code by striking both paragraphs of the existing section in their  
135 entirety and inserting the following in lieu thereof:

136 “Upon payment of the appropriate fee and submission and acceptance of a written application on forms  
137 provided by the Board, the Board shall grant a license to each applicant who shall present proof of current  
138 licensure, in good standing, in another State, the District of Columbia or territory of the United States, and who, in  
139 addition:

140 (a) Meets the criteria for current licensure in good standing as defined in § 5308(a)(5)-(9) of this Title  
141 and has complied with § 5308(e);

142 (b) Has achieved the passing score on a written, standardized nationally-prepared and administered  
143 examination in massage or bodywork therapy; the passing score shall be as established by the testing agency. If  
144 the testing agency has not established a passing score, the Board in conjunction with the Division shall establish  
145 the passing score;

146 (c) Has practiced massage and bodywork continually for 2 years immediately prior to making  
147 application; and

148 (d) Possesses current CPR certification.”.

149 Section 28. Amend § 5312(a), Title 24 of the Delaware Code by (i) striking the phrases “or certificate” and “or  
150 certification as a massage technician”; and (ii) striking the word “or” where it appears between the words “massage” and  
151 “bodywork” and inserting in lieu thereof the word “and”.

152 Section 29. Amend § 5312(b), Title 24 of the Delaware Code by striking the phrases “or certificate”, and “or  
153 certificant”, where each phrase appears in said subsection.

154 Section 30. Amend § 5312(c), Title 24 of the Delaware Code by (i) striking the word “or” where it appears between  
155 the words “massage” and “bodywork” and inserting in lieu thereof the word “and” and (ii) by striking the phrases “or  
156 certified massage technician”, “or certificate”, and “or certificant”, where each phrase appears in said subsection.

157 Section 31. Amend § 5312(d), Title 24 of the Delaware Code by striking the phrases “or certificate holder”, and “or  
158 certificate”, where each phrase appears in said subsection.

159 Section 32. Amend § 5313, Title 24 of the Delaware Code, by striking the existing heading in its entirety and inserting  
160 the following in lieu thereof: “§ 5312. Grounds for discipline.”

161 Section 33. Amend § 5313(a), Title 24 of the Delaware Code by striking the word “or” between the words “massage”  
162 and “bodywork” and inserting in lieu thereof the word “and”.

163 Section 34. Amend § 5313(a)(1), Title 24 of the Delaware Code by striking the word “or” between the words  
164 “massage” and “bodywork” and inserting in lieu thereof the word “and”.

165 Section 35. Amend § 5313(a)(2), Title 24 of the Delaware Code by striking said paragraph in its entirety, including  
166 subparagraphs a. b. and c. thereof, and inserting the following in lieu thereof:

167 “(2) Has been convicted of a crime that is substantially related to the practice of massage and  
168 bodywork, as set forth in the Board's rules and regulations; a copy of the record of  
169 conviction certified by the clerk of the court entering the conviction shall be conclusive  
170 evidence thereof;”.

171 Section 36. Further amend § 5313(a), Title 24 of the Delaware Code by striking the existing paragraph (3) in its  
172 entirety and inserting the following in lieu thereof:

173 “(3) Has an impairment related to drugs or alcohol or a finding of mental incompetence by a  
174 physician that would limit the practitioner's ability to undertake his or her practice in a  
175 manner consistent with the safety of the public;”.

176 Section 37. Amend § 5313(a)(5), Title 24 of the Delaware Code by striking the word “or” between the words  
177 “massage” and “bodywork” each time they appear in said paragraph and inserting in lieu thereof the word “and”.

178 Section 38. Amend § 5313(a)(6), Title 24 of the Delaware Code by striking the word “or” between the words  
179 “massage” and “bodywork” and inserting in lieu thereof the word “and”, and by striking the word “or” at the end of said  
180 paragraph.

181 Section 39. Amend § 5313(a)(7), Title 24 of the Delaware Code by striking the punctuation “.” at the end of the  
182 subsection and inserting in lieu thereof the punctuation and word “; or”, and by inserting a new paragraph “(8)” reading as  
183 follows:

184 “(8) Has been guilty of unprofessional conduct as adopted in the rules and regulations.  
185 Unprofessional conduct shall include departure from or the failure to conform to the  
186 national code of professional ethics and standards of acceptable massage and bodywork  
187 practices.”

188 Section 40. Amend § 5313(c), Title 24 of the Delaware Code by inserting the phrase “disciplined,” between the words  
189 “be” and “restricted”.

190 Section 41. Amend § 5315(a), Title 24 of the Delaware Code by striking the existing paragraph “(2)” in its entirety  
191 and by re-designating the paragraphs “(3)” through “(5)” as paragraphs “(2)” through “(4)”, respectively.

192 Section 42. Amend § 5315(a), Title 24 of the Delaware Code by inserting a new paragraph “(5)” reading as follows:

193 “(5) Impose a monetary penalty not to exceed \$500 for each violation.”.

194 Section 43. Amend § 5315(c), Title 24 of the Delaware Code by inserting the word “or” between the word and  
195 punctuation “adjudication,” and the word “during” and by inserting the words and punctuation “with 24 hours written  
196 notice to the practitioner,” between the word and punctuation “process,” and the word “but”.

197 Section 44. Amend § 5316(c), Chapter 53, Title 24 of the Delaware Code by striking the words “of service, or of the  
198 postmarked date of the copy of the decision mailed to the practitioner” and inserting in lieu thereof the words “after the date  
199 of mailing of the decision”.

200 Section 45. As stated in the statutory language, Section 1, pertaining to expiration of massage technician certificates,  
201 and Section 3, pertaining to Board composition, shall go into effect three years after the date of enactment of this Act. In  
202 addition, Sections 21 and 22, pertaining to the education requirements for massage and bodywork therapists, shall go into  
203 effect three years after the date of enactment. The remaining Sections of this Act shall take effect immediately upon  
204 enactment.

#### SYNOPSIS

This bill is a result of recommendations made by the Joint Sunset Committee. This bill phases out the two tier licensure structure in Delaware. Currently, the Board of Massage and Bodywork issues licenses to massage and bodywork therapists and certificates to massage technicians. Licensed therapists are required to complete at least 500 hours of education and pass a certification examination. Massage technicians are required to complete 300 hours of education and are not required to take an examination. Delaware is the only state to have this two tier system. The intent of this bill is to ultimately eliminate the massage technician category and require all practitioners to become licensed therapists. The higher educational requirements and the examination requirement will serve to improve practitioner training and competence and thus will benefit the recipients of massage services. Upon enactment, the Board will no longer accept applications for or issue massage technician certificates. However, technicians who maintain current, active certificates will have a three year window of opportunity to upgrade to licensure as therapists. To achieve licensure, massage technicians will be required to successfully complete an examination. No further education will be required.

Pursuant to this bill, three years after enactment, the Board composition will be modified to reflect the elimination of the massage technician category. The Board will consist of four licensed massage and bodywork therapists and three public members.

This bill expands the powers of the Board to include adoption of rules pertaining to advertising and unprofessional conduct by licensees and the adoption of a Client Disclosure Form, to be used by certified massage technicians. The form will require technicians to disclose to the public that they are not licensed therapists.

This bill also amends the requirements for licensure to enable the Board to take into account the applicant's professional disciplinary and criminal history. Further, all applicants will be required to undergo a criminal background check.

This bill expands the grounds for discipline to include unprofessional conduct, which shall be specified further in the Board's rules and regulations. Further, where a licensee is found guilty of a violation of the Board's law or rules, this bill gives the Board the discretion to impose a monetary penalty not to exceed \$500 for each violation.

Finally, this bill clarifies and corrects certain statutory language.