

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 08-1060	Date: April 15, 2008
Prime Sponsor(s): Sen. Romer	Bill Status: Senate Business, Labor and Technology
Rep. McFadyen;	Fiscal Analyst: Clare Pramuk (303-866-2677)
Rep. Rice	

TITLE: CONCERNING LICENSURE OF MASSAGE THERAPISTS.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue		
<u>Cash Funds - Total*</u>	<u>\$791,985</u>	<u>\$388,795</u>
Division of Registrations Cash Fund	621,530	288,650
Background Check Fees	169,455	99,145
Fines Collection Cash Fund	<1,000	<1,000
State Expenditures		
<u>Cash Funds - Total</u>	<u>\$420,313</u>	<u>\$302,509</u>
Division of Registrations Cash Fund	259,948	211,170
Background Check Fees	86,362	48,041
Background Check Pass-through to FBI	74,003	43,298
FTE Position Change	4.1 FTE	3.8 FTE
Effective Date: September 1, 2008 unless a referendum petition is filed.		
Appropriation Summary for FY 2008-2009: See State Appropriations section of fiscal note.		
Local Government Impact: See Local Government Impact section of the fiscal note.		

* Fees are set to cover both the direct and indirect costs of a program's implementation. Pursuant to JBC policy, the fiscal note does not include all costs incurred under the bill. See **Expenditures Not Included** section of the fiscal note for these costs. Revenue collected in the Division of Registrations Cash Fund will be accrued over 3 years.

Summary of Legislation

This bill repeals the Massage Parlor Code and creates the Massage Therapy Practice Act which requires the licensure of massage therapists by the Division of Registrations in the Department of Regulatory Agencies. The bill provides the director of the division the authority to regulate the profession, and specifies the requirements for licensure which include:

- ▶ successful completion of an approved massage program;
- ▶ passage of a national entry-level competency exam;
- ▶ submission of an application and payment of a fee; and
- ▶ submission of fingerprints and payment for a criminal history background check.

For a period of 1 year after the date that applications for licenses are made available, the director may issue a license to a person practicing massage therapy who submits an application and fee, possesses certain qualifications, but does not meet all the requirements for licensure.

The bill creates a massage therapist advisory committee to be appointed by the director, and defines the requirements for membership. Committee members are to be compensated for their service and reimbursed for actual and necessary expenses. The director is required to consult with the committee in promulgating rules.

The director has the authority to deny, refuse to renew or revoke a license, investigate complaints, and take enforcement action on violations including the issuance of cease and desist orders, civil and criminal penalties including a class 2 misdemeanor and a class 6 felony.

The bill authorizes the director to set fees to cover the direct and indirect program costs. The bill includes a sunset date of September 1, 2018.

State Revenue

State cash funds revenue is expected to increase by \$791,985 in FY 2008-09 and \$388,795 in FY 2009-10 from license and criminal background history check fees as shown in Table 1, and penalties as explained in the penalties section. The fiscal note assumes 6,500 massage therapists are currently practicing in Colorado and 300 additional massage therapists will apply for licensure in FY 2009-10.

Department of Regulatory Agencies, Division of Registrations — revenue to the Division of Registrations Cash Fund is expected to increase \$621,530 in FY 2008-09 and \$288,650 in FY 2009-10. The fiscal note assumes that 4,290 massage therapists will qualify for 2-year licenses and 2,210 will qualify for 1-year licenses in FY 2008-09. In FY 2009-10, 2,210 massage therapists plus 300 new applicants are expected to apply for 2-year licenses.

Department of Public Safety, Colorado Bureau of Investigations (CBI) — criminal background history check fees are expected to increase by \$169,455 in FY 2008-09 and \$99,145 in FY 2009-10. The 4,290 applicants for 2-year licenses are assumed to have their background checks performed in FY 2008-09. The other 2,510 applicants are expected to complete background checks in FY 2009-10.

Fee Impact on Massage Therapists. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 identifies the fee impact of this bill. The 2-year license fee and background check fees are shown combined.

Table 1. Fee Impact on Massage Therapists Under SB08-219								
Fiscal Year	1-Year License*	Number Affected	Fee Impact	2-Year License	Criminal History Background Check	Number Affected	Combined Fee Impact	Total Fee Impact
2008-09	\$58	2,210	\$128,180	\$115	\$39.50	4,290	\$662,805	\$790,985
2009-10	0	0	0	\$115	\$39.50	2,510	\$387,795	\$387,795

* 1-year licence is only available for massage therapists who meet requirements other than passing a national exam. They are not subject to the criminal history background check.

Penalties. Per Section 18-1.3-501, C.R.S., the penalty for a class 2 misdemeanor is 3 to 12 months imprisonment in a county jail, a fine of \$250 to \$1,000, or both. Per Section 18-1.3-401, C.R.S., the penalty for a class 6 felony is 1 to 2 years imprisonment in a state correctional facility, a fine of \$1,000 to \$100,000, or both. Fine revenue not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration or imposing a fine, the impact to state revenue cannot be determined. However, a minimal amount of fine revenue (< \$1,000 per year) is assumed under the bill.

State Expenditures

This bill is expected to increase expenditures by \$420,313 and 4.1 FTE for FY 2008-09 and \$302,509 and 3.8 FTE for FY 2009-10. Costs are incurred in the Departments of Regulatory Agencies, Public Safety, and Law as described below and shown in Table 2 on page 4.

Department of Regulatory Agencies, Division of Registrations — will license massage therapists beginning April 1, 2009, including the following activities:

- ▶ hiring and training staff;
- ▶ promulgating rules;
- ▶ developing the licensure process;
- ▶ responding to inquiries;
- ▶ coordinating criminal background checks with the CBI;
- ▶ coordinating outreach efforts;
- ▶ supporting advisory committee;
- ▶ investigating complaints; and
- ▶ taking enforcement actions for violations.

Applicants are expected to take a national exam from a vendor and pay the exam fee directly to the vendor. Applicants will pay fees for criminal background checks directly to the CBI. Expenditures for the Department of Regulatory Agencies are expected to increase by \$259,948 and 3.3 FTE for FY 2008-09 and \$211,170 and 3.3 FTE for FY 2009-10.

Department of Public Safety, CBI — will perform fingerprint-based background checks which will include notification if a submitted fingerprint is a match for a criminal arrest. Of the \$39.50 fee collected per applicant, \$17.25 will be passed through to the FBI for the national background check. The CBI will require additional staff and equipment to match and analyze fingerprint cards, update criminal histories, submit cards to the FBI and provide responses to the Division of Registrations. Expenditures for the Department of Public Safety are expected to increase by \$160,365 and 0.8 FTE for FY 2008-09 and \$91,338 and 0.5 FTE for FY 2009-10.

Department of Law — will provide general counsel advice for rulemaking in FY 2008-09 and FY 2009-10. In FY 2009-10, the fiscal note expects that the department will issue 4 injunctions and handle 5 adjudications. Expenditures for legal services are shown in Table 2 in the Department of Regulatory Agencies.

Table 2. Expenditures Under SB08-219 by Department		
Cost Components	FY 2008-09	FY 2009-10
Department of Regulatory Agencies		
Personal Services	\$202,082	\$161,418
FTE	3.3	3.3
Operating Expenses	24,760	23,062
Capital Outlay (one-time cost)	11,798	0
Board Meetings	3,300	2,200
Legal Services	18,008	24,490
Subtotal	\$259,948	\$211,170
Department of Public Safety		
Personal Services	\$36,615	\$22,701
FTE	0.8	0.5
Operating Expenses	6,623	4,540
Capital Outlay (one-time cost)	7,764	0
FBI Background Checks	74,003	43,298
Automated Fingerprint Identification System Lease and Maintenance	35,360	20,800
Subtotal	\$160,365	\$91,339
TOTAL	\$420,313	\$302,509

Department of Corrections, Felony Offense. Second offenses by massage therapists for violations of SB08-219 are class 6 felonies. Per Section 18-1.3-401, the penalty for a class 6 felony may include a fine between \$1,000 and \$100,000 or 12 to 24 months imprisonment at a state correctional facility, or both. Information from the Judicial Branch indicates that no second offenses have been filed as either misdemeanors or felonies related to professions and occupations in the last

five years. Thus, the number of cases filed against massage therapists is expected to be small, and convictions extremely infrequent. The fiscal note assumes that this bill will not create the need for additional prison space.

Judicial Branch — the bill will affect the courts either as part of the administrative disciplinary process or upon filing of criminal charges for violation of its provisions. The fiscal note assumes that these will be minimal and can be addressed within existing appropriations.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, funding for the items noted below will not be included in fiscal note expenditure estimates. However, indirect costs are calculated for the purpose of identifying the "per applicant" cost of a new or revised fee to reflect the total direct and indirect costs required to support a particular program. These total \$75,703 for FY 2008-09.

- group health, life and dental insurance (\$25,826)
- short-term disability (\$231)
- amortization equalization disbursements (\$2,839)
- indirect costs (\$44,867)
- supplemental amortization equalization disbursements (\$887)
- workers compensation (\$611)
- risk management (\$442)

Local Government Impact

The bill allows but does not require local law enforcement to inspect massage therapy licenses. A first offense violation of SB08-219 is a class 2 misdemeanor. A second offense is a class 6 felony. The penalty for a class 2 misdemeanor is 3 to 12 months imprisonment in a county jail, a fine of \$250 to \$1,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$49.69 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

State Appropriations

To implement this bill, the following appropriations are required for FY 2008-09:

- ▶ The Department of Regulatory Agencies - \$259,946 and 3.3 FTE from the Division of Registrations Cash Fund;
- ▶ Department of Law - \$18,008 (reappropriated funds) and 0.2 FTE; and
- ▶ The Department of Public Safety - \$160,365 and 0.8 FTE from background check fees. Of the total, \$74,003 is a pass through to the FBI.

Departmental Differences

Due to the new class 6 felony, the Department of Corrections (DOC) anticipates a fiscal impact of \$149,034 General Fund over the next five years for one felony conviction during that period. Rather than defaulting to a general assumption of one in every five years for this new felony offense, this analysis relies on historical rates of convictions for the regulation of professions and occupations. Please refer to the State Expenditures section of the fiscal note for more detail.

Departments Contacted

Corrections
Judicial

Public Safety
Law

Regulatory Agencies
Personnel and Administration