

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 16-0818.01 Kristen Forrestal x4217

HOUSE BILL 16-1320

HOUSE SPONSORSHIP

Foote and Carver,

SENATE SPONSORSHIP

Cooke,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF MASSAGE THERAPY TO MODIFY**
102 **PRACTICES THAT ARE LINKED TO CRIMINAL BEHAVIOR.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill removes specific exemptions from the practice of massage therapy and clarifies that other licensed health care professionals may practice massage therapy without a massage therapist license as long as the therapy is within the health care professional's scope of practice. The bill also requires a licensed massage therapist to be at least 18 years of age.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 7, 2016

Current law allows the director of the division of professions and occupations within the department of regulatory agencies (director) to deny a license to an applicant or discipline a licensee if the person has been convicted of or pled guilty to a charge of sexual misconduct or a prostitution-related offense. The bill adds the crime of human trafficking to the list of existing offenses and includes a plea of nolo contendere or a receipt of a deferred sentence as reasons the director may deny a license or take disciplinary action against a licensee. The bill also allows the director to take disciplinary action against a licensee for fraudulent, coercive, or dishonest practices; incompetence or untrustworthiness; or indecent exposure. The director is also permitted to fine a person who violates the massage therapy laws. The bill makes it a misdemeanor for a person to aid or abet the unlicensed practice of massage therapy.

The bill clarifies that a city, county, city and county, or other political subdivision may enact and enforce local ordinances to regulate businesses that offer massage therapy services as long as the local ordinance states that massage therapy is defined the same as in the "Massage Therapy Practice Act"; the persons in the business practicing massage therapy are licensed; and the local ordinance does not conflict with the "Massage Therapy Practice Act".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Colorado has seen an increase in the number of human
5 trafficking and prostitution offenses linked to massage therapy;

6 (b) Loopholes in existing massage law, both local and state, are
7 manipulated by traffickers to escape detection and liability and cast
8 aspersion on law-abiding massage therapy professionals;

9 (c) Administrative actions should be aligned with criminal
10 investigations and actions; and

11 (d) It is in the interest of the public health, safety, and welfare to
12 ensure that state licenses are not used as a cover for criminal behavior.

13 (2) It is therefore the intent of the general assembly to prohibit or
14 modify practices that contribute to criminal behavior by making changes

1 to the "Massage Therapy Practice Act".

2 **SECTION 2.** In Colorado Revised Statutes, 12-35.5-103, **amend**
3 (7) as follows:

4 **12-35.5-103. Definitions.** As used in this article, unless the
5 context otherwise requires:

6 (7) "Massage" or "massage therapy" means a system of structured
7 touch, palpation, or movement of the soft tissue of another person's body
8 in order to enhance or restore the general health and well-being of the
9 recipient. Such system includes, but is not limited to, techniques such as
10 effleurage, commonly called stroking or gliding; petrissage, commonly
11 called kneading; tapotement or percussion; friction; vibration;
12 compression; passive and active stretching within the normal anatomical
13 range of movement; hydromassage; and thermal massage. Such
14 techniques may be applied with or without the aid of lubricants, salt or
15 herbal preparations, water, heat, or a massage device that mimics or
16 enhances the actions possible by human hands. ~~"Massage" or "massage~~
17 ~~therapy" does not include therapeutic exercise, intentional joint~~
18 ~~mobilization or manipulation, or any of the methods described in section~~
19 ~~12-35.5-110 (1) (e).~~

20 **SECTION 3.** In Colorado Revised Statutes, 12-35.5-107, **amend**
21 (1) (d), (1) (e), and (6); and **add** (1) (f), (7), and (8) as follows:

22 **12-35.5-107. License - reciprocity - denial of license**
23 **application.** (1) Every applicant for a license to practice massage therapy
24 shall:

25 (d) Pay a fee in an amount determined by the director; ~~and~~

26 (e) Submit to a criminal history record check in the form and
27 manner as described in subsection (2) of this section; AND

1 (f) DOCUMENT THAT HE OR SHE IS AT LEAST EIGHTEEN YEARS OF
2 AGE.

3 (6) Notwithstanding any provision of this section, the director may
4 deny a license if the applicant has committed any act that would be
5 grounds for disciplinary action under section 12-35.5-111 or if the
6 director determines, subsequent to the criminal history record check, that
7 the applicant was convicted of, ~~or~~ pled guilty OR NOLO CONTENDERE to,
8 OR RECEIVED A DEFERRED SENTENCE FOR a charge of unlawful sexual
9 behavior as defined in section 16-22-102, C.R.S., ~~or~~ any
10 prostitution-related offense, OR A HUMAN TRAFFICKING-RELATED OFFENSE
11 AS DESCRIBED IN SECTIONS 18-3-503 AND 18-3-504, C.R.S., whether or
12 not the act was committed in Colorado.

13 (7) THE DIRECTOR MAY DENY A LICENSE IF THE DIRECTOR
14 DETERMINES THAT THE APPLICANT IS NOT COMPETENT, TRUSTWORTHY, OR
15 OF GOOD MORAL CHARACTER.

16 (8) PURSUANT TO SECTION 24-5-101, C.R.S., THE DIRECTOR SHALL
17 CONSIDER WHETHER AN APPLICANT WITH A CRIMINAL RECORD HAS BEEN
18 REHABILITATED, SPECIFICALLY CONSIDERING WHETHER THE APPLICANT
19 HAS BEEN A VICTIM OF HUMAN TRAFFICKING AND THE LAPSE OF TIME SINCE
20 THE OFFENSE.

21 **SECTION 4.** In Colorado Revised Statutes, 12-35.5-110, **repeal**
22 (1) (e); and **add** (2) as follows:

23 **12-35.5-110. Scope of article - exclusions - authority for**
24 **clinical setting.** (1) Nothing in this article prohibits, or requires a
25 massage therapy license for, any of the following:

26 (e) ~~The person provides alternative methods that employ contact~~
27 ~~and does not hold himself or herself out as a massage therapist. For the~~

1 purposes of this paragraph (c), "alternative methods that employ contact"
2 include, but are not limited to:

3 (I) Practices in which only the soft tissue of a person's hands, feet,
4 or ears are manipulated;

5 (II) Practices using touch, words, and directed movements to
6 deepen a person's awareness of movement patterns in his or her body,
7 such as the Feldenkrais method, the Trager approach, and body-mind
8 centering;

9 (III) Practices using touch to affect the human energy systems,
10 such as reiki, shiatsu, and Asian or polarity bodywork therapy;

11 (IV) Structural integration practices such as Rolfing and
12 Hellerwork; and

13 (V) The process of muscle activation techniques.

14 (2) (a) NOTHING IN THIS ARTICLE PROHIBITS THE PRACTICE OF
15 MASSAGE THERAPY BY A PERSON WHO IS LICENSED OR REGISTERED TO
16 PRACTICE MEDICINE, NURSING, OSTEOPATHY, PHYSIOLOGY, CHIROPRACTIC,
17 PODIATRY, COSMETOLOGY, OR ANY OTHER HEALTH CARE PROFESSION, AS
18 LONG AS THE PRACTICE IS WITHIN THE LIMITS OF EACH RESPECTIVE
19 PRACTICE ACT.

20 (b) THE DIRECTOR SHALL PROMULGATE RULES EXEMPTING
21 PRACTICES THAT ARE ALTERNATIVE TO THE PRACTICE OF MASSAGE
22 THERAPY FROM THIS ARTICLE, INCLUDING PRACTICES USING TOUCH,
23 WORDS, OR DIRECTED MOVEMENTS AND CREDENTIALLED BY A NATIONAL OR
24 INTERNATIONAL PROFESSIONAL ORGANIZATION OR CREDENTIALING
25 AGENCY THAT:

26 (I) REQUIRES A MINIMUM LEVEL OF TRAINING SPECIFIC TO THE
27 DISCIPLINE, DEMONSTRATION OF COMPETENCE, AND ADHERENCE TO AN

- 1 APPROVED SCOPE OF PRACTICE AND ETHICAL STANDARDS;
- 2 (II) MAINTAINS DISCIPLINARY PROCEDURES TO ENSURE
- 3 ADHERENCE TO THE REQUIREMENTS OF THE ORGANIZATION OR AGENCY;
- 4 AND
- 5 (III) REQUIRES PRACTITIONERS TO PROVIDE CONSUMERS WITH
- 6 CONTACT INFORMATION FOR THE ORGANIZATION OR AGENCY IN THE
- 7 PRACTITIONER'S PLACE OF BUSINESS.

8 **SECTION 5.** In Colorado Revised Statutes, 12-35.5-111, **amend**

9 (1) (j) and (1) (m); and **add** (1) (p) and (1) (q) as follows:

10 **12-35.5-111. Grounds for discipline - definitions.** (1) The

11 director is authorized to take disciplinary action pursuant to section

12 12-35.5-112 against any person who has:

13 (j) Been convicted of, ~~or~~ pled guilty or nolo contendere to, OR

14 RECEIVED A DEFERRED SENTENCE FOR a felony or a crime for which the

15 act giving rise to the crime was related to the practice of massage therapy

16 or was perpetrated against a massage client during a therapeutic

17 relationship, as defined in subparagraph (II) of paragraph (b) of this

18 subsection (1); or committed any act specified in this section. A certified

19 copy of ~~the judgment of~~ A DOCUMENT FROM a court of competent

20 jurisdiction ~~of~~ DOCUMENTING a conviction or ENTRY OF A plea is

21 conclusive evidence of the conviction or plea. In considering the

22 disciplinary action, the director shall be governed by the provisions of

23 section 24-5-101, C.R.S.

24 (m) Been convicted of, ~~or~~ pled guilty OR NOLO CONTENDERE to,

25 OR RECEIVED A DEFERRED SENTENCE FOR a charge of unlawful sexual

26 behavior as defined in section 16-22-102, C.R.S., ~~or~~ any

27 prostitution-related offense, OR ANY HUMAN TRAFFICKING-RELATED

1 OFFENSE AS DESCRIBED IN SECTIONS 18-3-503 AND 18-3-504, C.R.S.,
2 whether or not the act was committed in Colorado;

3 (p) USED FRAUDULENT, COERCIVE, OR DISHONEST PRACTICES, OR
4 DEMONSTRATED INCOMPETENCE OR UNTRUSTWORTHINESS, IN THIS STATE
5 OR ELSEWHERE;

6 (q) EXPOSED AN INTIMATE PART OF HIS OR HER BODY TO THE VIEW
7 OF A CLIENT OR ANY PERSON PRESENT WITH THE CLIENT, OR PERFORMED
8 AN ACT OF MASTURBATION IN THE PRESENCE OF A CLIENT. FOR THE
9 PURPOSES OF THIS PARAGRAPH (q):

10 (I) "INTIMATE PART" MEANS THE EXTERNAL GENITALIA, THE
11 PERINEUM, THE ANUS, THE BUTTOCKS, THE PUBES, OR THE BREAST OF ANY
12 PERSON.

13 (II) "MASTURBATION" MEANS THE REAL OR SIMULATED TOUCHING,
14 RUBBING, OR OTHERWISE STIMULATING OF A PERSON'S OWN GENITALS OR
15 PUBIC AREA, REGARDLESS OF WHETHER THE GENITALS OR PUBIC AREA IS
16 EXPOSED OR COVERED.

17 (III) "THERAPEUTIC RELATIONSHIP" MEANS THE PERIOD OF TIME
18 BEGINNING WITH THE INITIAL MASSAGE THERAPY SESSION AND ENDING
19 UPON WRITTEN TERMINATION OF THE RELATIONSHIP BY EITHER PARTY.

20 **SECTION 6.** In Colorado Revised Statutes, 12-35.5-112, **amend**
21 (2); and **add** (11) as follows:

22 **12-35.5-112. Disciplinary proceedings - injunctions -**
23 **investigations - hearings - judicial review - fine.** (2) The director may
24 request the attorney general to seek an injunction, in any court of
25 competent jurisdiction, to enjoin any person from ~~committing an act~~
26 ENGAGING IN OR AIDING AND ABETTING AN ACT OR PRACTICE prohibited
27 by this article. When seeking ~~an~~ A TEMPORARY RESTRAINING ORDER,

1 PRELIMINARY INJUNCTION, OR injunction under this subsection (2), the
2 attorney general ~~shall~~ IS not be required to allege or prove the inadequacy
3 of any remedy at law or that substantial or irreparable damage is likely to
4 result from a continued violation of this article.

5 (11) IF A PERSON COMMITS AN ACT THAT VIOLATES THIS ARTICLE,
6 THE DIRECTOR MAY IMPOSE A FINE NOT TO EXCEED FIVE THOUSAND
7 DOLLARS PER VIOLATION. EACH DAY OF A CONTINUING VIOLATION
8 CONSTITUTES A SEPARATE VIOLATION.

9 **SECTION 7.** In Colorado Revised Statutes, **amend** 12-35.5-115
10 as follows:

11 **12-35.5-115. Unauthorized practice - criminal penalties.** (1) A
12 person who practices or offers or attempts to practice massage therapy
13 without an active license issued under this article commits a class 2
14 misdemeanor and shall be punished as provided in section 18-1.3-501,
15 C.R.S., for the first offense, and for the second or any subsequent offense,
16 the person commits a class 1 misdemeanor and shall be punished as
17 provided in section 18-1.3-501, C.R.S.

18 (2) A PERSON WHO ~~KNOWINGLY~~ AIDS OR ABETS THE UNLICENSED
19 PRACTICE OF MASSAGE THERAPY COMMITS A CLASS 2 MISDEMEANOR FOR
20 THE FIRST OFFENSE AND A ~~CLASS 1 MISDEMEANOR FOR ANY SUBSEQUENT~~
21 OFFENSE, AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501,
22 C.R.S.

23 **SECTION 8.** In Colorado Revised Statutes, 12-35.5-118, **repeal**
24 (1); and **add** (3) as follows:

25 **12-35.5-118. Local government - regulations - enforcement.**
26 (1) ~~No city, county, city and county, or other political subdivision of this~~
27 ~~state shall enact or enforce any local ordinance that regulates the practice~~

1 or the profession of massage therapy.

2 (3) (a) A CITY, COUNTY, CITY AND COUNTY, OR OTHER POLITICAL
3 SUBDIVISION MAY ENACT AND ENFORCE A LOCAL ORDINANCE THAT
4 REGULATES MASSAGE PARLORS AS LONG AS:

5 (I) THE CITY, COUNTY, CITY AND COUNTY, OR OTHER POLITICAL
6 SUBDIVISION DEFINES MASSAGE OR MASSAGE THERAPY AS IT IS DEFINED
7 IN SECTION 12-35.5-103 (7);

8 (II) THE CITY, COUNTY, CITY AND COUNTY, OR OTHER POLITICAL
9 SUBDIVISION ENSURES THAT A PERSON PROVIDING MASSAGE OR MASSAGE
10 THERAPY SERVICES WITHIN THE BUSINESS IS A LICENSEE; AND

11 (III) A LOCAL ORDINANCE THAT REGULATES MASSAGE PARLORS
12 DOES NOT CONFLICT WITH THIS ARTICLE.

13 (b) THE DIRECTOR SHALL DEFINE "MASSAGE PARLOR" BY RULE FOR
14 THE PURPOSES OF THIS SUBSECTION (3).

15 **SECTION 9.** In Colorado Revised Statutes, 6-1-724, **amend** (6)
16 (q) as follows:

17 **6-1-724. Unlicensed alternative health care practitioners -**
18 **deceptive trade practices - short title - legislative declaration -**
19 **definitions.** (6) A complementary and alternative health care practitioner
20 providing complementary and alternative health care services under this
21 section who is not licensed, certified, or registered by the state shall not:

22 (q) Practice or represent that he or she is practicing MASSAGE OR
23 massage therapy ~~which, for purposes of this section:~~ AS DEFINED IN
24 ARTICLE 35.5 OF TITLE 12, C.R.S., UNLESS EXEMPT PURSUANT TO SECTION
25 12-35.5-110. C.R.S.

26 ~~(f) Includes practices where the primary purpose is to provide~~
27 ~~deep stroking muscle tissue massage of the human body; and~~

- 1 ~~(H) Excludes:~~
- 2 ~~(A) Stroking of the hands, feet, or ears; or~~
- 3 ~~(B) The use of touch, words, and directed movement of a healing~~
- 4 ~~art within the bodywork community, including healing touch, mind-body~~
- 5 ~~centering, orthobionomy, reflexology, rolfing, reiki, qigong, muscle~~
- 6 ~~activation techniques, and practices with the primary purpose of affecting~~
- 7 ~~energy systems of the human body;~~

8 **SECTION 10. Safety clause.** The general assembly hereby finds,

9 determines, and declares that this act is necessary for the immediate

10 preservation of the public peace, health, and safety.