

ASSEMBLY, No. 3913

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 7, 2018

Sponsored by:

Assemblywoman **VALERIE VAINIERI HUTTLE**

District 37 (Bergen)

Assemblywoman **SERENA DIMASO**

District 13 (Monmouth)

Co-Sponsored by:

Assemblymen **Holley and McGuckin**

SYNOPSIS

Regulates employers operating massage and bodywork therapy establishments.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/12/2019)

1 AN ACT concerning the registration of employers operating
2 massage and bodywork therapy establishments, amending
3 P.L.2007, c.337, and amending and supplementing P.L.1999,
4 c.19.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. Section 3 of P.L.1999, c.19 (C.45:11-55) is amended to read
10 as follows:

11 3. As used in P.L.1999, c.19 (C.45:11-53 et seq.) and P.L.2007,
12 c.337 (C.45:11-68 et al.):

13 "Board" means the New Jersey Board of Massage and Bodywork
14 Therapy established pursuant to section 14 of P.L.2007, c.337
15 (C.45:11-69).

16 "Director" means the Director of the Division of Consumer
17 Affairs in the Department of Law and Public Safety.

18 "Licensee" means any person who holds a license to practice
19 massage and bodywork therapies pursuant to the provisions of
20 P.L.1999, c.19 (C.45:11-53 et seq.) and P.L.2007, c.337 (C.45:11-
21 68 et al.).

22 "Massage and bodywork therapist" means a person licensed to
23 practice massage and bodywork therapies pursuant to the provisions
24 of P.L.1999, c.19 (C.45:11-53 et seq.) and P.L.2007, c.337
25 (C.45:11-68 et al.).

26 "Massage and bodywork therapies" or "massage and bodywork"
27 means systems of activity of structured touch which include, but are
28 not limited to, holding, applying pressure, positioning and
29 mobilizing soft tissue of the body by manual technique and use of
30 visual, kinesthetic, auditory and palpating skills to assess the body
31 for purposes of applying therapeutic massage and bodywork
32 principles. Such application may include, but is not limited to, the
33 use of therapies such as heliotherapy or hydrotherapy, the use of
34 moist hot and cold external applications, explaining and describing
35 myofascial movement, self-care and stress management as it relates
36 to massage and bodywork therapies. Massage and bodywork
37 therapy practices are designed to affect the soft tissue of the body
38 for the purpose of promoting and maintaining the health and well-
39 being of the client. Massage and bodywork therapies do not include
40 the diagnosis of illness, disease, impairment or disability.

41 "Massage and bodywork therapy establishment" means any place
42 of business that engages in or advertises or holds itself out as
43 offering massage and bodywork therapies on the premises of the
44 business, or that represents itself to the public by any title or
45 description of services incorporating the words "bodywork,"

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 “massage,” “massage therapy,” “massage practitioner,”
2 “massagist,” “masseur,” “masseuse,” or any other words determined
3 by the board pursuant to regulation. “Massage and bodywork
4 therapy establishment” shall not include any of the following: any
5 health care facility as defined in section 2 of P.L.1971, c.136
6 (C.26:2H-2); any offices or facilities of licensed physicians,
7 chiropractors, physical therapists, or athletic trainers licensed
8 pursuant to Title 45 of the Revised Statutes, whether or not they
9 employ, contract with, or rent to licensees; or any institutions of
10 secondary or higher education when licensees practice massage and
11 bodywork therapies in connection with employment related to
12 athletic teams.

13 “Place of business” means any office, clinic, facility, salon, spa,
14 or other location where a licensee engages in massage and
15 bodywork therapies. Any residence of a licensee or employer, or an
16 out call location which is not owned, rented, or leased by a licensee
17 or employer, shall not be considered a place of business, unless the
18 residence or out call location is advertised as the licensee’s or
19 employer’s place of business.

20 “Professional-in-charge” means a licensee who is designated as
21 the professional-in-charge by an employer on the application
22 required pursuant to section 21 of P.L.2007, c.337 (C.45:11-76).
23 (cf: P.L.2007, c.337, s.4)

24
25 2. Section 7 of P.L.1999, c.19 (C.45:11-59) is amended to read
26 as follows:

27 7. The board shall:

28 a. Review the qualifications of applicants for licensure;
29 b. Insure the proper conduct and standards of examinations;
30 c. Issue and renew licenses to massage and bodywork
31 therapists pursuant to P.L.1999, c.19 (C.45:11-53 et seq.) and
32 P.L.2007, c.337 (C.45:11-68 et al.);

33 d. Suspend, revoke or fail to renew the license of a massage
34 and bodywork therapist pursuant to the provisions of P.L.1978, c.73
35 (C.45:1-14 et seq.);

36 e. Establish any standards for the continuing education of
37 licensees as it deems necessary;

38 f. Prescribe or change the charges for examinations, licensures,
39 renewals and other services performed pursuant to P.L.1974, c.46
40 (C.45:1-3.1 et seq.); **[and]**

41 g. Maintain a record of every massage and bodywork therapist
42 licensed in this State, and the date and number of his license, and
43 publish a list of the names and addresses of all licensees annually;

44 h. Maintain a record of every massage and bodywork therapy
45 establishment registered in this State, and the date and number of
46 the registration, and publish a list of the names and addresses of all
47 registered employers and establishments annually; and

1 i. In consultation with the director, establish standards for the
2 inspection of massage and bodywork therapy establishments.

3 (cf: P.L.2007, c.337, s.5)

4
5 3. Section 21 of P.L.2007, c.337 (C.45:11-76) is amended to
6 read as follows:

7 21. a. No employer shall **engage in or advertise or hold itself**
8 **out as offering massage and bodywork therapies** operate a massage
9 and bodywork therapy establishment unless the employer is
10 registered with the board.

11 b. A written application for registration shall be made to the
12 board on the form prescribed by the board and shall contain the
13 following information:

14 (1) The name and residence of the employer who is the owner or
15 operator of the **entity providing** massage and bodywork
16 **therapies** therapy establishment;

17 (2) The municipality and location of the **owner or operator's**
18 **primary place of business and the locations of all other branches of**
19 **business** employer's massage and bodywork therapy
20 establishment; **and**

21 (3) Any other biographical information of the applicant as
22 required by the board; and

23 (4) The name and residence of the professional-in-charge and a
24 notarized acknowledgment by the person identified as the
25 professional-in-charge, if applicable and for the purposes of
26 fulfilling the requirement under subsection b. of section 5 of
27 P.L. ,c. (C.) (pending before the Legislature as this bill).

28 c. Each applicant for registration and each registrant pursuant
29 to the provisions of this section shall pay to the board a fee for the
30 issuance of a two-year registration in the amount established by the
31 board in accordance with the provisions of P.L.1974, c.46 (C.45:1-
32 3.1 et seq.).

33 d. A registration issued to an employer under this section shall
34 be issued for the operation of a single, identified massage and
35 bodywork therapy establishment and is not assignable or
36 transferable.

37 (cf: P.L.2007, c.337, s.21)

38
39 4. Section 22 of P.L.2007, c.337 (C.45:11-77) is amended to
40 read as follows:

41 22. The board may suspend or revoke the registration of an
42 employer **offering** operating a massage and bodywork
43 **therapies** therapy establishment upon proof showing by a
44 preponderance of the evidence that the employer:

45 a. Has made false or misleading statements of a material nature
46 in the application for registration; **or**

1 b. Failed to demonstrate that each employee of the employer
2 who is engaged in the performance of massage and bodywork
3 therapies is in possession of a license to practice massage and
4 bodywork therapies;

5 c. Has used any portion of a massage and bodywork therapy
6 establishment as a dormitory, or in any way permitted individuals to
7 use a massage and bodywork therapy establishment as a housing
8 unit;

9 d. Failed or refused to immediately provide access to doors
10 locked in a massage and bodywork therapy establishment pursuant
11 to section 6 of P.L. , c. (C.) (pending before the Legislature
12 as this bill) during any inspection conducted by the board or the
13 director;

14 e. Operated or rendered massage and bodywork therapies to the
15 public at a massage and bodywork therapy establishment outside of
16 the permissible operating hours established by the board pursuant to
17 section 7 of P.L. , c. (C.) (pending before the Legislature as
18 this bill);

19 f. Advertised for sexually explicit services or engaged in any
20 sexually explicit advertising; or

21 g. Authorized, permitted, or tolerated in the massage and
22 bodywork therapy establishment any activity or behavior prohibited
23 by the laws of this State, including laws regarding prostitution,
24 indecent exposure, lewdness, or obscenity.

25 (cf: P.L.2007, c.337, s.22)

26

27 5. (New section) a. An official, authorized by the board or the
28 director, may enter and inspect a massage and bodywork therapy
29 establishment during all operating hours without prior notice. If
30 conducting an inspection, the official shall inspect and copy records
31 of the massage and bodywork therapy establishment, inspect the
32 premises and pertinent equipment, and inspect any other files,
33 objects, and facilities relating to a violation of P.L.1999, c.19
34 (C.45:11-53 et seq.), P.L.2007, c.337 (C.45:11-68 et al.), or P.L. ,
35 c. (C.) (pending before the Legislature as this bill).

36 b. Every employer operating a massage and bodywork therapy
37 establishment shall either remain on premises, or provide a
38 professional-in-charge who remains on premises, during all
39 operating hours. Every employer or professional-in-charge shall
40 permit an inspection of the massage and bodywork therapy
41 establishment by any official authorized to conduct an inspection by
42 the board or the director.

43 c. If a massage and bodywork therapy establishment is located
44 within a licensee's residence, an out call location, or located within
45 an office space or facility shared with other business entities, the
46 official conducting the inspection shall have independent and
47 sufficient legal justification before inspecting areas not used for the
48 purposes of the massage and bodywork therapy establishment.

1 6. (New section) a. All internal and external doors of a
2 massage and bodywork therapy establishment shall be kept
3 unlocked during operating hours except as follows:

- 4 (1) restroom doors may be locked;
5 (2) external doors may be locked if the massage and bodywork
6 therapy establishment is a business entity owned by one person and
7 has no more than one licensee in its employ or contracted as an
8 independent contractor; and
9 (3) internal doors may be locked to protect confidential patient
10 or business entity information.

11 b. If any official, authorized by the board or the director to
12 conduct an inspection of a massage and bodywork therapy
13 establishment, requests access to doors locked pursuant to this
14 section, the doors shall be opened immediately by the employer or
15 professional-in-charge.

16
17 7. (New section) a. The board shall determine, pursuant to
18 regulation, permissible operating hours which shall apply to all
19 massage and bodywork therapy establishments. Massage and
20 bodywork therapies shall be rendered in a massage and bodywork
21 therapy establishment only during the permissible operating hours
22 established by the board.

23 b. The board shall establish a procedure whereby employers
24 may obtain a waiver to operate a massage and bodywork therapy
25 establishment outside of the permissible operating hours established
26 pursuant to subsection a. of this section.

27
28 8. (New section) a. A person is guilty of a crime of the fourth
29 degree if that person knowingly engages in the operation of a
30 massage and bodywork therapy establishment without registering
31 with the board pursuant to section 21 of P.L.2007, c.337 (C.45:11-
32 76) and:

- 33 (1) creates or reinforces a false impression that the person is
34 registered as an employer authorized to operate a massage and
35 bodywork therapy establishment;
36 (2) derives a benefit, the value of which is more than incidental;
37 or
38 (3) in fact causes injury to another person.

39 b. For the purposes of this section, the phrase “in fact”
40 indicates strict liability.

41
42 9. This act shall take effect on the 90th day next following
43 enactment, but the New Jersey Board of Massage and Bodywork
44 Therapy may take any anticipatory action in advance thereof as
45 shall be necessary for the implementation of this act.

STATEMENT

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This bill amends and supplements the “Massage and Bodywork Therapist Licensing Act,” P.L.1999, c.19 (C.45:11-53 et seq.) (hereinafter, the “act”) to strengthen the registration and regulation of employers that operate massage and bodywork therapy establishments. The act, as amended by P.L.2007, c.337 (C.45:11-68 et al.), stipulates that no employer will engage in or advertise or hold itself out as offering massage and bodywork therapies unless the employer is registered with the New Jersey Board of Massage and Bodywork Therapy. This bill provides additional requirements for the registration of employers and the operation of a massage and bodywork therapy establishment.

The bill provides that every employer who is an applicant for registration to operate a massage and bodywork therapy establishment must, in addition to current application requirements in the Act, provide the name and residence of the professional-in-charge and a notarized acknowledgment by the person identified as the professional-in-charge, if applicable. The bill also stipulates that a registration issued to an employer will be issued for the operation of a single, identified massage and bodywork therapy establishment and is not assignable or transferable.

Currently, under the act, the board may suspend or revoke the registration of an employer upon proof showing by a preponderance of the evidence that the employer has made false or misleading statements of a material nature in the application for registration, or failed to demonstrate that each employee of the employer who is engaged in the performance of massage and bodywork therapies is in possession of a license to practice. This bill further stipulates that the board may suspend or revoke the registration of an employer upon proof that the employer:

- (1) has used any portion of a massage and bodywork therapy establishment as a dormitory, or in any way permitted individuals to use a massage and bodywork therapy establishment as a housing unit;
- (2) failed or refused to immediately provide access to doors locked in a massage and bodywork therapy establishment, pursuant to the provisions of this bill, during any inspection conducted by the board or the Director of the Division of Consumer Affairs;
- (3) operated or rendered massage and bodywork therapies to the public at a massage and bodywork therapy establishment outside of the permissible operating hours established by the board pursuant to the provisions of this bill;
- (4) advertised for sexually explicit services or engaged in any sexually explicit advertising; or
- (5) authorized, permitted, or tolerated in the massage and bodywork therapy establishment any activity or behavior prohibited

1 by the laws of this State, including laws regarding prostitution,
2 indecent exposure, lewdness, or obscenity.

3 The bill also provides for an official, authorized by the board or
4 the director, to enter and inspect a massage and bodywork therapy
5 establishment during all operating hours without prior notice.
6 Every employer operating a massage and bodywork therapy
7 establishment must remain on premises, or provide a professional-
8 in-charge who remains on premises, during all operating hours.
9 Every employer or professional-in-charge must permit an inspection
10 of the massage and bodywork therapy establishment by any official
11 authorized to conduct an inspection by the board or the director.

12 The bill requires that all internal and external doors of a massage
13 and bodywork therapy establishment must remain unlocked during
14 operating hours except as follows:

- 15 (1) restroom doors may be locked;
- 16 (2) external doors may be locked if the massage and bodywork
17 therapy establishment is a business entity owned by one person and
18 has no more than one licensee in its employ or contracted as an
19 independent contractor; and
- 20 (3) internal doors may be locked to protect confidential patient
21 or business entity information.

22 If any official, authorized by the board or the director to conduct an
23 inspection of a massage and bodywork therapy establishment,
24 requests access to doors locked pursuant to the provisions of this
25 bill, the doors must be opened immediately by the employer or
26 professional-in-charge.

27 The board will determine, pursuant to regulation, permissible
28 operating hours which will apply to all massage and bodywork
29 therapy establishments. Under the bill, massage and bodywork
30 therapies will be rendered in a massage and bodywork therapy
31 establishment only during the permissible operating hours
32 established by the board. The board is also directed to establish a
33 procedure whereby employers may obtain a waiver to operate a
34 massage and bodywork therapy establishment outside of the
35 permissible operating hours established by the board.

36 Finally, the bill provides that a person is guilty of a crime of the
37 fourth degree if that person knowingly engages in the operation of a
38 massage and bodywork therapy establishment without registering
39 with the board and: creates or reinforces a false impression that the
40 person is registered as an employer authorized to operate a massage
41 and bodywork therapy establishment; derives a benefit, the value of
42 which is more than incidental; or in fact causes injury to another
43 person.