SENATE, No. 613

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator DECLAN J. O'SCANLON, JR.
District 13 (Monmouth)
Senator THOMAS H. KEAN, JR.
District 21 (Morris, Somerset and Union)

SYNOPSIS

Regulates employers operating massage and bodywork therapy establishments.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

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

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

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

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

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

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

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

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

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

"Massage and bodywork therapy establishment" means any place of business that engages in or advertises or holds itself out as offering massage and bodywork therapies on the premises of the business, or that represents itself to the public by any title or 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.

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

"Place of business" means any office, clinic, facility, salon, spa, or other location where a licensee engages in massage and bodywork therapies. Any residence of a licensee or employer, or an out call location which is not owned, rented, or leased by a licensee or employer, shall not be considered a place of business, unless the residence or out call location is advertised as the licensee's or employer's place of business.

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

(cf: P.L.2007, c.337, s.4)

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

7. The board shall:

a. Review the qualifications of applicants for licensure;

b. Insure the proper conduct and standards of examinations;

c. Issue and renew licenses to massage and bodywork therapists pursuant to P.L.1999, c.19 (C.45:11-53 et seq.) and P.L.2007, c.337 (C.45:11-68 et al.);

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

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

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

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

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

i. In consultation with the director, establish standards for the inspection of massage and bodywork therapy establishments.
(cf: P.L.2007, c.337, s.5)

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

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

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

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

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

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

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

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

d. A registration issued to an employer under this section shall be issued for the operation of a single, identified massage and bodywork therapy establishment and is not assignable or transferable.
(cf: P.L.2007, c.337, s.21)

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

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

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

b. 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 massage and bodywork therapies;

c. 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;

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

e. 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 section 7 of P.L. , c. (C.) (pending before the Legislature as this bill);

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

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

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

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

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

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

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

(1) restroom doors may be locked;

(2) external doors may be locked if the massage and bodywork therapy establishment is a business entity owned by one person and has no more than one licensee in its employ or contracted as an independent contractor; and

(3) internal doors may be locked to protect confidential patient or business entity information.

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

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

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

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

(1) creates or reinforces a false impression that the person is registered as an employer authorized to operate a massage and bodywork therapy establishment;

(2) derives a benefit, the value of which is more than incidental; or

(3) in fact causes injury to another person.

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

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

STATEMENT

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

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

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

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

(1) restroom doors may be locked;

(2) external doors may be locked if the massage and bodywork therapy establishment is a business entity owned by one person and has no more than one licensee in its employ or contracted as an independent contractor; and

(3) internal doors may be locked to protect confidential patient or business entity information.

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

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

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