

SENATE No. 2599

The Commonwealth of Massachusetts

—————
In the One Hundred and Ninetieth General Court
(2017-2018)
—————

SENATE, Thursday, July 12, 2018

The committee on Rules, to whom was referred the petition (accompanied by bill, Senate, No. 907) of Mark C. Montigny, Patricia A. Haddad, Sal N. DiDomenico, Richard J. Ross and other members of the General Court for legislation to prevent human trafficking and sexual exploitation in bodyworks establishments,- reports the accompanying bill entitled "An Act to regulate bodywork therapy" (Senate, No. 2599).

For the committee,
Mark C. Montigny

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to regulate bodywork therapy.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith require the division of professional licensure to license bodywork therapists, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and health.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 98 of chapter 13 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof
3 the following subsection:-

4 (a) There shall be within the division of professional licensure a board of registration of
5 massage therapy and bodyworks. The board shall consist of 7 members who shall be appointed by
6 the governor for terms of 3 years, 3 of whom shall be licensed massage therapists who have been
7 actively engaged in the practice of massage therapy in the commonwealth for not less than 5 years
8 immediately before their appointments, 2 of whom shall be licensed bodywork therapists or
9 bodyworkers who have been actively engaged in the practice of bodyworks in the commonwealth
10 for not less than 5 years immediately before their appointments; 1 of whom shall be a law
11 enforcement representative whose area of focus is human trafficking and 1 of whom shall be a

12 consumer who is familiar with the massage therapy or bodyworks therapy fields. The members
13 shall be residents of the commonwealth and shall be subject to chapter 268A.

14 SECTION 2. Said chapter 13 is hereby further amended by striking out section 99, as so
15 appearing, and inserting in place thereof the following section:-

16 Section 99. (a) The board shall: (i) administer and enforce sections 227 to 235, inclusive,
17 of chapter 112; (ii) adopt rules and regulations governing the licensure of massage therapists and
18 bodyworks therapists, the practice of massage therapy, bodyworks and the operation of massage
19 schools and bodyworks schools to promote public health, welfare and safety; (iii) establish
20 standards of professional and ethical conduct; (iv) establish standards for continuing education
21 reflecting acceptable national standards; and (v) investigate complaints, conduct inspections,
22 review billing and treatment records and set and administer penalties as defined in sections 61 to
23 65E, inclusive, and sections 232 to 235, inclusive, of said chapter 112 for fraudulent, deceptive or
24 professionally incompetent and unsafe practices and for violations of rules and regulations
25 promulgated by the board.

26 (b) The board shall make available to the public a list of licensed massage therapists,
27 bodyworks therapists and bodyworkers. The board shall establish by regulation a code of ethics.

28 (c) The board shall adopt rules and regulations to differentiate among varying scopes of
29 practice within bodywork therapy, as defined by section 227 of chapter 112, and appropriate
30 licensure restrictions to ensure that a bodyworks therapist operates within the authorized scope of
31 practice for which the bodyworks therapist has demonstrated satisfactory competency to the board.
32 The board shall host at least 1 public session to solicit information from bodywork therapists to
33 inform the rules and regulations.

34 SECTION 3. Section 227 of chapter 112 of the General Laws, as so appearing, is hereby
35 amended by inserting after the word “therapy”, in line 4, the following words:- and bodyworks.

36 SECTION 4. Said section 227 of said chapter 112, as so appearing, is hereby further
37 amended by inserting after the definition of “Board”, the following 2 definitions:-

38 “Bodywork”, “bodyworks” or “bodywork therapy”, the practice of a person who uses
39 touch, words or directed movement to deepen awareness of patterns of movement in the body, or
40 the affectation of the human energy system or acupoints or Qi meridians of the human body while
41 engaged within the scope of practice of a profession with established standards and ethics;
42 provided, however, that such services shall not be designated or implied to be massage or massage
43 therapy; and provided further, that “bodywork”, “bodyworks” and “bodywork therapy” shall not
44 include diagnoses, the prescribing of drugs or medicines, spinal or other joint manipulations or
45 any services or procedures for which a license to practice medicine, acupuncture, chiropractic,
46 occupational therapy, physical therapy or podiatry is required by law.

47 “Bodyworker”, “bodywork therapist” or “bodyworks therapist”, a person licensed by the
48 board who instructs or administers bodyworks or bodyworks therapy for compensation.

49 SECTION 5. Said section 227 of said chapter 112, as so appearing, is hereby further
50 amended by striking out the definitions of “Licensed massage school” and “Licensed massage
51 therapy salon” and inserting in place thereof the following 2 definitions:-

52 “Licensed massage school” or “licensed bodywork school”, a facility that is licensed by
53 the office of private occupational school education pursuant to section 263 or any other state or
54 federal agency or department after meeting minimum standards for training, facilities, instructors
55 and curriculum as determined by the board in accordance with sections 228 to 235, inclusive.

56 “Licensed massage therapy facility” or “licensed bodywork therapy facility”, a place,
57 office, clinic or establishment licensed by the board to offer massage or bodywork services.

58 SECTION 6. Said chapter 112 is hereby further amended by striking out section 228, as so
59 appearing, and inserting in place thereof the following section:-

60 Section 228. (a) A person shall not hold the person’s self out to others as a massage
61 therapist, bodywork therapist or bodyworker or practice massage, massage therapy, bodyworks or
62 bodyworks therapy unless the person holds a valid license issued in accordance with this chapter.
63 A person licensed to practice massage or massage therapy or bodyworks or bodyworks therapy
64 shall not perform: (i) diagnosis of illness or disease; (ii) high velocity, low-amplitude thrust applied
65 to a joint; (iii) electrical stimulation; (iv) application of ultrasound; (v) exercise and prescription
66 of medicines.

67 (b) The following practitioners shall be exempt from the licensure requirements of this
68 section:

69 (i) a person who: (A) is otherwise licensed, certified or registered under the General
70 Laws; (B) is performing services within the person’s authorized scope of practice; and
71 (C) does not hold the person’s self out to be a massage therapist, bodywork therapist or
72 bodyworker;

73 (ii) a person who is duly licensed, registered or certified in another state, territory, the
74 District of Columbia or a foreign country when temporarily called into the
75 commonwealth to teach a course related to massage therapy or bodyworks therapy or to
76 consult with a person licensed as a massage therapist or bodywork therapist or
77 bodyworker under this chapter;

78 (iii) a student of massage therapy or bodyworks therapy who is enrolled in a licensed
79 massage or bodywork school program for massage or bodywork and is performing work
80 as a required component of his course of study at such school; provided, however, that
81 the student shall not hold the student's self out as a licensed massage therapist or
82 bodywork therapist under this chapter and shall not receive compensation for the work;

83 (iv) a person giving massage or bodywork therapy to a member of that person's
84 immediate family for which the person received no compensation;

85 (v) a person, duly licensed, registered or certified in another state, territory, the District of
86 Columbia or a foreign country who is incidentally in the commonwealth to provide
87 service as part of an emergency response team working in conjunction with disaster relief
88 officials; and

89 (vi) a person giving massage or bodywork in a sporting, health or other event, whether on
90 a single day or on consecutive days, that is non-compensatory and under the supervision
91 of a licensed massage therapist, bodywork therapist or bodyworker.

92 SECTION 7. Said chapter 112 is hereby further amended by striking out section 229, as
93 most recently amended by section 74 of chapter 6 of the acts of 2017, and inserting in place thereof
94 the following section:-

95 Section 229. (a) A person who desires to engage in the practice of massage therapy shall
96 apply on a form furnished by the board that shall be signed and sworn to by the applicant. Each
97 application shall be accompanied by payment of the fee prescribed by the executive office for
98 administration and finance pursuant to section 3B of chapter 7. Upon submission of a completed
99 application to the board and the payment of the required fee, the board may issue a license to

100 practice as a massage therapist to an applicant who: (i) has obtained a high school diploma or its
101 equivalent; (ii) is 18 years of age or older; (iii) has submitted 2 professional letters of reference,
102 with at least 1 being from an employer or professional in the massage therapy or medical field;
103 (iv) is of good moral character, as determined by the discretion of the board; (v) has successfully
104 completed a course of study consisting of not less than 500 classroom hours or an equivalent
105 number of credit hours of supervised instruction at a licensed massage school; (vi) has not been
106 convicted in any jurisdiction of sexually-related crime or a crime involving moral turpitude for the
107 10 years immediately before the date of application; (vii) provides proof of professional liability
108 coverage; and (viii) demonstrates the professional competence that may be required by the board's
109 regulations.

110 (b) A person who desires to engage in the practice of bodyworks shall apply on a form
111 furnished by the board that shall be signed and sworn to by the applicant. Each application shall
112 be accompanied by payment of the fee prescribed by the executive office for administration and
113 finance pursuant to section 3B of chapter 7. Upon submission of a completed application to the
114 board and the payment of the required fee, the board may issue a license to practice as a bodyworks
115 therapist to an applicant who: (i) has obtained a high school diploma or its equivalent; (ii) is 18
116 years of age or older; (iii) has submitted 2 professional letters of reference, with at least 1 being
117 from an employer or professional in the bodywork or medical field; (iv) is of good moral character,
118 as determined by the discretion of the board; (v) has successfully completed a course of study or
119 supervised instruction at a licensed bodyworks school that has been determined appropriate by the
120 board; (vi) has not been convicted in any jurisdiction of sexually-related crime or a crime involving
121 moral turpitude for the 10 years immediately before the date of application; (vii) provides proof of

122 professional liability coverage; and (viii) demonstrates the professional competence that may be
123 required by the board's regulations.

124 (c) The commissioner of the division of professional licensure shall determine the renewal
125 cycle and renewal period for massage therapy and bodyworks therapy licenses. Each person
126 licensed in accordance with these sections shall apply to the board for renewal of the person's
127 license not later than the expiration date, as determined by the director, unless the license was
128 revoked, suspended or canceled earlier by the board as a result of a disciplinary proceeding
129 instituted pursuant to this chapter. Applications for renewal shall be made on forms approved by
130 the board and accompanied by payment of a renewal fee, as prescribed by the executive office for
131 administration and finance pursuant to section 3B of chapter 7; provided, however, that the fee
132 shall not be less than \$100.

133 (d) As a condition of license renewal, a licensed massage therapist or licensed bodyworks
134 therapist or bodyworker shall furnish the board with satisfactory proof that the licensee: (i) has not
135 been convicted in any jurisdiction of a sexually-related crime or a crime involving moral turpitude
136 since the original application for licensure; (ii) has professional liability coverage; and (iii) has
137 completed the continuing education requirements that reflect acceptable national standards and
138 have been reviewed and approved by the board.

139 Upon satisfactory compliance with the licensing requirements for massage therapists,
140 bodyworks therapists or bodyworkers and successful completion of the continuing education
141 requirements, the board shall issue a renewal license showing that the holder is entitled to be
142 licensed for the renewal period. The board may provide for the late renewal of a license that has
143 lapsed and may require payment of a late fee. All licensing and application fees and administrative

144 fines collected pursuant to sections 227 to 235, inclusive, shall be deposited into the Division of
145 Professional Licensure Trust Fund established in section 35V of chapter 10.

146 SECTION 8. Section 230 of said chapter 112, as appearing in the 2016 Official Edition, is
147 hereby amended by inserting after the word “therapists”, in line 2, the following words:- ,
148 bodywork therapists or bodyworkers.

149 SECTION 9. Said chapter 112 is hereby further amended by striking out section 231, as so
150 appearing, and inserting in place thereof the following section:-

151 Section 231. The board may grant a license to an applicant for a bodywork therapist license
152 who: (i) (A) provides documentation, acceptable to the board, that demonstrates that the applicant
153 has provided an appropriate number of hours of bodyworks therapy, as determined by the board,
154 to members of the public for compensation; (B) has been authorized to practice bodywork by the
155 municipal board of health within the commonwealth; provided, however, that the authorization
156 shall be valid not more than 2 years after the date of application; or (C) provides proof of the
157 successful passage of a board approved examination administered by a national organizational or
158 board accredited by the National Commission of Certifying Agencies and approved by the
159 National Organization for Competency Assurance; (ii) submits a completed application and pays
160 the necessary fee prescribed by the executive office for administration and finance pursuant to
161 section 3B of chapter 7; (iii) is of good moral character, as determined by the discretion of the
162 board; and (iv) provides proof of professional liability coverage.

163 SECTION 10. Said chapter 112 is hereby further amended by striking out section 232, as
164 so appearing, and inserting in place thereof the following section:-

165 Section 232. (a) The board shall conduct inspections and investigate all complaints filed
166 that relate to the proper practice of massage therapy or bodyworks therapy, the operation of a
167 massage therapy or bodywork facility and any violation of sections 227 to 235, inclusive, or a rule
168 or regulation of the board. Such a complaint may be brought by any person or the board may, on
169 its own, initiate a complaint.

170 (b) The board shall be under the supervision of the division of professional licensure and
171 shall have all the authority conferred under sections 61 to 65E, inclusive. For the purposes of this
172 section and sections 61 to 65E, inclusive, conduct that places into question the holder's competence
173 to practice massage therapy or bodywork therapy or operate a massage or bodyworks facility shall
174 include, but not be limited to: (i) committing fraud or misrepresentation in obtaining a license; (ii)
175 criminal conduct that the board determines to be of such a nature as to render the person unfit to
176 practice as a licensed massage therapist, bodyworks therapist or bodyworker or to operate a
177 licensed massage therapy or bodywork facility, as evidenced by criminal proceedings that resulted
178 in a conviction, guilty plea or plea of nolo contendere or an admission of sufficient facts; (iii)
179 violating any rule or regulation of the board; (iv) failing to cooperate with the board or its agents
180 in the conduct of an inspection or investigation; (v) failing to fulfill any continuing education
181 requirements set out by the board; (vi) violating an ethical standard that the board determines to
182 be of such a nature as to render the person unfit to practice as a massage therapist or bodyworks
183 therapist or bodyworker or to operate a licensed massage therapy or bodywork facility, including,
184 but not limited to: (A) inappropriate conduct or touching in the practice of massage therapy or
185 bodyworks therapy; (B) offering medical opinion or diagnosis; or (C) negligence in the course of
186 professional practice.

187 The board may issue an order to a licensee directing the licensee to cease and desist from
188 unethical or unprofessional conduct if the board finds, after the opportunity for a hearing, that the
189 licensee has engaged in such conduct.

190 (c) A massage therapist, bodyworks therapist or bodyworker whose license to practice is
191 suspended for more than 1 year for professional misconduct with regard to insurance claims shall
192 not own, operate, practice in or be employed by another massage therapist, bodywork therapist or
193 a physical therapist or chiropractor, in any capacity, until the license is reinstated by the board. A
194 massage therapist or bodywork therapist whose license is suspended for a second offense with
195 regard to insurance claims shall have the license permanently revoked and may not own, operate,
196 practice in or be employed by a business that provides massage therapy, bodywork therapy,
197 physical therapy or chiropractic care.

198 (d) Nothing in this section shall limit the board's authority to impose sanctions by consent
199 agreements that are considered reasonable and appropriate by the board. A person aggrieved by a
200 disciplinary action taken by the board pursuant to this section or section 235 may, pursuant to
201 section 64, file a petition for judicial review.

202 SECTION 11. Said chapter 112 is hereby further amended by striking out section 233, as
203 most recently amended by section 75 of chapter 6 of the acts of 2017, and inserting in place thereof
204 the following section:-

205 Section 233. The board shall establish standards to be met by the massage therapy or
206 bodywork schools. The board shall approve the massage therapy or bodywork school curriculum,
207 training, facilities and instructors. A school or entity shall not teach massage therapy or bodywork

208 without prior approval by the board unless licensed by the division of professional licensure
209 pursuant section 263 or other state or federal agency or department.

210 SECTION 12. Section 234 of said chapter 112, as appearing in the 2016 Official Edition,
211 is hereby amended by inserting after the words “massage therapy”, in line 2, the following words:-
212 and bodyworks.

213 SECTION 13. Section 235 of said chapter 112, as so appearing, is hereby amended by
214 inserting after the word “means”, in line 25, the following words:- or through online advertising
215 means or forums.

216 SECTION 14. Said section 235 of said chapter 112, as so appearing, is hereby further
217 amended by striking out subsection (b) and inserting in place thereof the following 2 subsections:-

218 (b) Only a person duly licensed under this chapter shall be designated as a “bodywork
219 therapist” and entitled to use the terms “bodywork”, “bodyworks”, “bodyworker”, “bodywork
220 therapy”, “bodywork therapist” and “bodyworks therapist” when advertising or printing
221 promotional material. A person who uses such a term in the person’s professional title without
222 being authorized to do so shall be subject to discipline by the board. A person who: (i) knowingly
223 aids and abets another to use such a term when the person is not authorized to do so; or (ii)
224 knowingly employs a person not authorized to use such a term in the course of the employment,
225 shall be subject to a disciplinary proceeding before the board.

226 It shall be a violation of this chapter for a person to advertise: (i) as a bodywork therapist,
227 bodyworker or bodywork facility unless the person has an employee who holds a valid license
228 under this chapter; (ii) by combining advertising for a licensed bodywork therapy service with
229 escort or dating services; (iii) as performing bodywork in a form in which the person has not

230 received training or of a type that is not licensed or otherwise recognized by law or administrative
231 rule; or (iv) by using any term other than “bodywork”, “bodyworks”, “bodyworker”, “bodywork
232 therapy”, “bodywork therapist” or “bodyworks therapist” to refer to the service.

233 As used in this section, the term “advertise” shall include, but not be limited to: (i) the
234 issuance of a card, sign or device to another; (ii) the causing, permitting or allowing of a sign or
235 marking on or in a building, vehicle or structure; (iii) advertising in a newspaper or magazine, on
236 television or through electronic means or online advertising means or forums; (iv) a listing or
237 advertising in a directory under a classification or heading that includes the word “bodywork”,
238 “bodyworks”, “bodyworker”, “bodywork therapy”, “bodywork therapist” or “bodyworks
239 therapist”; or (v) a commercial broadcast by airwave transmission.

240 (c) A person who: (i) is otherwise licensed, certified or registered under the law; (ii) is
241 performing services within the person’s authorized scope of practice; and (iii) does not hold the
242 person’s self out to be a massage therapist or bodywork therapist, shall be exempt from this section.

243 SECTION 15. Section 51 of chapter 140 of the General Laws, as so appearing, is hereby
244 amended by inserting after the word “therapy”, in lines 1 and 8, each time it appears, the following
245 words:- or bodyworks.

246 SECTION 16. Subsection (b) of said section 51 of said chapter 140 is hereby amended by
247 striking out the last sentence and inserting in place thereof the following sentence:-

248 A massage therapist, bodyworks therapist or bodyworker, whose license to practice
249 massage therapy or bodywork therapy is revoked or suspended for more than 1 year with regard
250 to insurance claims, shall not own, operate, practice in or be employed by a massage therapy or

251 bodywork therapy office, clinic or other place designated for the practice of massage therapy,
252 bodywork therapy, physical therapy or chiropractic.

253 SECTION 17. Said chapter 140 is hereby further amended by striking out section 52, as so
254 appearing, and inserting in place thereof the following section:-

255 Section 52. A member of the police department of a town may, upon appropriate legal
256 process, enter and inspect any premises in that town used for massage, bodyworks or the giving of
257 vapor baths.

258 SECTION 18. The board of registration of massage therapy and bodyworks established
259 under section 98 of chapter 13 of the General Laws shall promulgate regulations not more than
260 180 days after a quorum of the board is appointed.

261 SECTION 19. All orders, rules and regulations duly made and all licenses and approvals
262 duly granted that are in force immediately before the effective date of this act shall continue in
263 force and shall thereafter be enforced until superseded, revised, rescinded or cancelled in
264 accordance with law by the appropriate board.

265 SECTION 20. The board of registration of massage therapy and bodyworks established
266 under section 98 of chapter 13 of the General Laws shall receive applications for licenses under
267 section 231 of chapter 112 of the General Laws not later than July 1, 2019.

268 SECTION 21. This act shall take effect upon its passage.