

HOUSE BILL 178

Unofficial Copy
J2

1999 Regular Session
(9r1282)

ENROLLED BILL

-- Environmental Matters/Economic and Environmental Affairs --

Introduced by **Delegate Hubbard**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Health Occupations - ~~Message Therapists~~ State Board of Chiropractic**
3 **Examiners - Regulation of Massage ~~Massage Therapists and~~**
4 **Non-Therapeutic Massage Practitioners**

5 FOR the purpose of ~~altering the definition of "practice massage therapy" to prevent~~
6 ~~the practice of massage therapy by uncertified persons~~ establishing a
7 classification of registered massage technicians practitioners; requiring an
8 individual to obtain a registration from the State Board of Chiropractic
9 Examiners before the individual may practice non-therapeutic massage
10 therapy; requiring the Board to adopt certain regulations; requiring the Board
11 to set certain fees; requiring the Massage Therapy Advisory Committee to
12 perform certain duties; requiring an applicant for registration to practice
13 non-therapeutic massage therapy to meet certain requirements; prohibiting
14 registered massage technicians practitioners from practicing in certain settings;
15 requiring an applicant applying for registration to perform certain duties;
16 providing for the issuance and renewal of a registration; providing that the
17 Board may deny a registration to an applicant, reprimand any registration

1 holder, place any registration holder on probation, or suspend or revoke a
 2 registration under certain circumstances; prohibiting certain persons from
 3 advertising under certain circumstances; expanding the scope of prohibited
 4 actions for persons practicing massage therapy without being certified;
 5 prohibiting certain health care providers from referring patients to certain
 6 individuals; prohibiting certified massage therapists from employing or
 7 contracting with certain individuals; defining certain terms; making stylistic
 8 and technical changes; and generally relating to the practice of massage therapy
 9 by uncertified persons State Board of Chiropractic Examiners and the
 10 regulation of massage.

11 BY repealing and reenacting, with amendments,
 12 Article - Health Occupations
 13 Section 3-5A-01 ~~and 3-5A-10~~ through 3-5A-11, inclusive
 14 Annotated Code of Maryland
 15 (1994 Replacement Volume and 1998 Supplement)

16 BY adding to
 17 Article - Health Occupations
 18 Section 3-5A-06 and 3-5A-12
 19 Annotated Code of Maryland
 20 (1994 Replacement Volume and 1998 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Health Occupations**

24 3-5A-01.

- 25 (a) In this subtitle the following words have the meanings indicated.
- 26 (b) "Board" means the State Board of Chiropractic Examiners.
- 27 (c) "Certificate" means, unless the context requires otherwise, a certificate
 28 issued by the Board to practice massage therapy.
- 29 (d) "Certified massage therapist" means an individual who is certified by the
 30 Board to practice massage therapy.

31 (E) "HEALTH CARE FACILITY" HAS THE MEANING STATED IN § 19-101(F) OF
 32 THE HEALTH - GENERAL ARTICLE.

33 ~~(e)~~ (F) "Massage Therapy Advisory Committee" means the Committee
 34 established under § 3-5A-04 of this subtitle.

35 ~~(f)~~ (G) (1) "Massage therapy" means the use of manual techniques on soft
 36 tissues of the human body including effleurage (stroking), petrissage (kneading),

1 tapotement (tapping), stretching, compression, vibration, and friction, with or
 2 without the aid of heat limited to hot packs and heating pads, cold water, or
 3 nonlegend topical applications, for the purpose of improving circulation, enhancing
 4 muscle relaxation, relieving muscular pain, reducing stress, or promoting health and
 5 well-being.

6 (2) "Massage therapy" does not include:

7 (i) The diagnosis or treatment of illness, disease, or injury; or

8 (ii) The adjustment, manipulation, or mobilization of any of the
 9 articulations of the osseous structures of the body or spine.

10 (3) The provisions of paragraph (2) of this subsection do not preclude the
 11 application of the modalities described in paragraph (1) of this subsection to an
 12 individual who has an injury.

13 ~~(g)~~ (H) "Practice massage therapy" means to engage professionally and for
 14 compensation in massage therapy [while representing oneself to be a certified
 15 massage therapist].

16 (I) "PRACTICE NON-THERAPEUTIC MASSAGE THERAPY" MEANS TO ENGAGE
 17 PROFESSIONALLY AND FOR COMPENSATION IN MASSAGE THERAPY IN A SETTING
 18 THAT IS NOT A HEALTH CARE FACILITY.

19 (J) "REGISTRATION" MEANS, UNLESS THE CONTEXT REQUIRES OTHERWISE, A
 20 REGISTRATION ISSUED BY THE BOARD TO PRACTICE NON-THERAPEUTIC MASSAGE
 21 THERAPY.

22 (K) "REGISTERED MASSAGE TECHNICIAN PRACTITIONER" MEANS AN
 23 INDIVIDUAL WHO IS REGISTERED BY THE BOARD TO PRACTICE NON-THERAPEUTIC
 24 MASSAGE THERAPY.

25 3-5A-02.

26 The Board shall adopt regulations for the:

27 (1) [certification] CERTIFICATION and practice of massage therapists;
 28 AND

29 (2) REGISTRATION AND PRACTICE OF MASSAGE TECHNICIANS
 30 PRACTITIONERS.

31 3-5A-03.

32 (a) (1) The Board shall set reasonable fees for the issuance and renewal of
 33 certificates AND REGISTRATIONS and the other services it provides to massage
 34 therapists.

1 (2) The fees charged shall be set so as to produce funds to approximate
2 the cost of maintaining the certification program, REGISTRATION PROGRAM, and
3 the other services provided to massage therapists.

4 (b) (1) The Board shall pay all fees collected under the provisions of this
5 subtitle to the Comptroller of the State.

6 (2) The Comptroller shall distribute all fees to the State Board of
7 Chiropractic Examiners Fund established under § 3-206 of this title.

8 (c) The fees shall be used exclusively to cover the actual documented direct
9 and indirect costs of fulfilling the statutory and regulatory duties of the Board as
10 provided by the provisions of this subtitle.

11 3-5A-04.

12 (a) (1) There is a Massage Therapy Advisory Committee within the Board.

13 (2) The Committee shall consist of six members appointed by the Board.

14 (3) Of the six members:

15 (i) Two shall be licensed chiropractors; and

16 (ii) Four shall be certified massage therapists.

17 (b) In addition to the powers and duties set forth elsewhere in this subtitle,
18 the Advisory Committee shall:

19 (1) Develop and recommend to the Board regulations to carry out the
20 provisions of this subtitle;

21 (2) Develop and recommend to the Board a code of ethics for the practice
22 of massage therapy for adoption by the Board;

23 (3) Develop and recommend to the Board the requirements for:

24 (I) [certification] CERTIFICATION as a massage therapist; AND

25 (II) REGISTRATION AS A MASSAGE ~~TECHNICIAN~~ PRACTITIONER;

26 (4) Evaluate the credentials of applicants and recommend to the Board
27 certification of applicants who fulfill the requirements for:

28 (I) [a] A certificate to practice massage therapy; OR

29 (II) A REGISTRATION TO PRACTICE NON-THERAPEUTIC MASSAGE
30 THERAPY;

1 (5) Consider complaints brought to the Board involving certified
2 massage therapists OR REGISTERED MASSAGE ~~TECHNICIANS~~ PRACTITIONERS and
3 recommend to the Board the appropriate disciplinary action;

4 (6) Evaluate education programs in massage therapy for approval by the
5 Board;

6 (7) Keep a record of its proceedings; and

7 (8) Submit an annual report to the Board.

8 3-5A-05.

9 (a) (1) Except as otherwise provided in this subtitle, an individual shall be:

10 (I) [certified] CERTIFIED by the Board before the individual may
11 practice massage therapy in this State; OR

12 (II) REGISTERED BY THE BOARD BEFORE THE INDIVIDUAL MAY
13 PRACTICE NON-THERAPEUTIC MASSAGE ~~THERAPY~~ IN THIS STATE.

14 (2) This section does not apply to:

15 (i) A student enrolled in an approved education program as
16 determined by the Board while practicing massage therapy in that program;

17 (ii) An individual permitted to practice massage therapy under
18 regulations adopted by the Board, if the individual:

19 1. Otherwise has qualified to practice massage therapy in
20 any other state or country that has substantially similar requirements for
21 authorization to practice massage therapy and the individual is in this State for no
22 more than 7 days; or

23 2. Has an application for a certificate pending before the
24 Board but has not taken the examination required under this section or has taken an
25 examination under this section, but the results of the examination are not yet known;

26 (iii) A family member practicing massage therapy on another family
27 member;

28 (iv) An athletic trainer while functioning in the course of the
29 athletic trainer's professional capacity;

30 (v) An individual employed by the federal government to practice
31 massage therapy while practicing within the scope of the individual's employment;

32 (vi) An individual who is working in a facility that provides health
33 club services for which the seller of the services has registered with the Consumer
34 Protection Division of the Office of the Attorney General as required under §
35 14-12B-02 of the Commercial Law Article; or

1 (vii) An individual working in a beauty salon for which the person
 2 who operates the beauty salon has obtained a permit from the State Board of
 3 Cosmetology as required under § 5-501 of the Business Occupations and Professions
 4 Article.

5 (b) To qualify for a certificate, an applicant shall be an individual who: [meets
 6 the requirements of this section.

7 (c) (1) [The applicant must be of] IS OF good moral [character.]
 8 CHARACTER;

9 (d) (2) [The applicant must be at] IS AT least 18 years [old.] OLD;

10 (e) (3) After January 1, 2002, [the applicant shall have] HAS satisfactorily
 11 completed at least 60 credit hours of education at an institution of higher education as
 12 defined in § 10-101 of the Education Article and as approved by the Board and the
 13 Maryland Higher Education [Commission.] COMMISSION;

14 (f) (4) [The applicant shall:

15 (1) Complete] HAS COMPLETED 500 hours of education in a Board
 16 approved program for the study of massage therapy that includes the following areas
 17 of content:

18 (i) Anatomy and physiology;

19 (ii) Massage theory, techniques, and practice;

20 (iii) Contraindications to massage therapy; and

21 (iv) Professional ethics; and

22 (2) (5) [Pass] HAS PASSED an examination approved by the Board.

23 (C) TO QUALIFY FOR REGISTRATION, AN APPLICANT SHALL BE AN
 24 INDIVIDUAL WHO:

25 (1) IS OF GOOD MORAL CHARACTER;

26 (2) IS AT LEAST 18 YEARS OLD;

27 (3) HAS COMPLETED 500 HOURS OF EDUCATION IN A BOARD APPROVED
 28 PROGRAM FOR THE STUDY OF MASSAGE THERAPY THAT INCLUDES THE FOLLOWING
 29 AREAS OF CONTENT:

30 (I) ANATOMY AND PHYSIOLOGY;

31 (II) MASSAGE THEORY, TECHNIQUES, AND PRACTICE;

32 (III) CONTRAINDICATIONS TO MASSAGE THERAPY; AND

1 (IV) PROFESSIONAL ETHICS; AND

2 (4) HAS PASSED AN EXAMINATION APPROVED BY THE BOARD.

3 [(g)] (D) (1) Subject to the provisions of paragraph (2) of this subsection, the
 4 Board may waive any of the qualifications required for a certificate under this
 5 subtitle for an applicant who:

6 (i) Pays the application fee set by the Board;

7 (ii) Provides evidence acceptable to the Board that the applicant
 8 has practiced massage therapy for at least a total of 2 years after October 1, 1994 and
 9 before October 1, 1999 and has performed at least 300 paid massage therapy sessions;
 10 and

11 (iii) 1. Completes a Board approved program in the study of
 12 massage therapy; or

13 2. Passes an examination approved by the Board.

14 (2) The authority of the Board to grant a waiver under this subsection
 15 shall terminate on January 1, 2002.

16 [(h)] (E) (1) Subject to the provisions of this subsection, the Board may
 17 wave any requirement of this subtitle for an applicant who is registered, certified, or
 18 licensed to practice massage therapy in another state.

19 (2) The Board may grant a waiver under this subsection only if the
 20 applicant:

21 (i) Pays the application fee set by the Board; and

22 (ii) Provides adequate evidence that the applicant:

23 1. Has completed educational requirements that the Board
 24 determines to be equivalent to the Board approved educational requirements in this
 25 State;

26 2. At the time the applicant became certified, registered, or
 27 licensed in the other state, passed in that state or any other state an examination that
 28 the Board determines to be equivalent to the examination required in this State; and

29 3. Is of good moral character.

30 3-5A-06.

31 AN INDIVIDUAL WHO IS REGISTERED TO PRACTICE NON-THERAPEUTIC
 32 MASSAGE THERAPY UNDER § 3-5A-05 OF THIS SUBTITLE MAY NOT PRACTICE IN A
 33 MEDICAL HEALTH CARE PROVIDER'S OFFICE, HOSPITAL, OR OTHER HEALTH CARE
 34 FACILITY FOR THE PURPOSE OF PROVIDING MASSAGE THERAPY.

1 [3-5A-06.] 3-5A-07.

2 (A) To apply for a certificate, an applicant shall:

3 (1) Submit to the Board an application on the form that the Board
4 requires;

5 (2) Submit to the Board evidence of compliance with the requirements of
6 § 3-5A-05 of this subtitle; and

7 (3) Pay the application fee set by the Board.

8 (B) TO APPLY FOR REGISTRATION, AN APPLICANT SHALL:

9 (1) SUBMIT TO THE BOARD AN APPLICATION ON THE FORM THAT THE
10 BOARD REQUIRES;

11 (2) SUBMIT TO THE BOARD EVIDENCE OF COMPLIANCE WITH THE
12 REQUIREMENTS OF § 3-5A-05 OF THIS SUBTITLE; AND

13 (3) PAY THE APPLICATION FEE SET BY THE BOARD.

14 [3-5A-07.] 3-5A-08.

15 (a) (1) A certificate OR REGISTRATION expires on the date set by the Board,
16 unless the certificate OR REGISTRATION is renewed for a 1-year term as provided in
17 this section.

18 (2) A certificate OR REGISTRATION may not BE renewed for a term of
19 longer than 2 years.

20 (b) At least 1 month before the certificate OR REGISTRATION expires, the
21 Board shall send to the certificate holder OR REGISTRATION HOLDER, by first class
22 mail to the last known address of the certificate holder OR REGISTRATION HOLDER, a
23 renewal notice that states:

24 (1) The date on which the current certificate OR REGISTRATION expires;

25 (2) The date by which the renewal application must be received by the
26 Board for the renewal to be issued and mailed before the certificate OR
27 REGISTRATION expires; and

28 (3) The amount of the renewal fee.

29 (c) Before a certificate OR REGISTRATION expires, the certificate holder OR
30 REGISTRATION HOLDER periodically may renew it for an additional term, if the
31 certificate holder OR REGISTRATION HOLDER:

32 (1) Otherwise is entitled to be certified OR REGISTERED;

1 (2) Submits to the Board a renewal application on the form that the
2 Board requires; and

3 (3) Pays to the Board a renewal fee set by the Board.

4 (d) (1) Each certificate holder OR REGISTRATION HOLDER shall notify the
5 Board in writing of any change in the name or address of the certificate holder OR
6 REGISTRATION HOLDER within 60 days after the change occurred.

7 (2) If a certificate holder OR REGISTRATION HOLDER fails to notify the
8 Board within the time required under this subsection, subject to the hearing
9 provisions of § 3-315 of this title, the Board may impose an administrative penalty of
10 \$100.

11 (e) (1) The Board shall renew the certificate of each certificate holder who
12 meets the requirements of this section.

13 (2) THE BOARD SHALL RENEW THE REGISTRATION OF EACH
14 REGISTRATION HOLDER WHO MEETS THE REQUIREMENTS OF THIS SECTION.

15 [3-5A-08.] 3-5A-09.

16 (a) Subject to the hearing provisions of § 3-315 of this title, the Board may
17 deny a certificate OR REGISTRATION to any applicant, reprimand any certificate
18 holder OR REGISTRATION HOLDER, place any certificate holder OR REGISTRATION
19 HOLDER on probation, or suspend or revoke the certificate of a certificate holder OR
20 THE REGISTRATION OF A REGISTRATION HOLDER if the applicant, [or] certificate
21 holder, OR REGISTRATION HOLDER;

22 (1) Fraudulently or deceptively obtains or attempts to obtain a
23 certificate OR REGISTRATION for the applicant or for another;

24 (2) Fraudulently or deceptively uses a certificate OR REGISTRATION;

25 (3) Is disciplined by a licensing, certifying, or disciplinary authority of
26 any other state or country or convicted or disciplined by a court of any state or country
27 for an act that would be grounds for disciplinary action under this section;

28 (4) Is convicted of or pleads guilty or nolo contendere to a felony or to a
29 crime involving moral turpitude, whether or not any appeal or other proceeding is
30 pending to have the conviction or plea set aside;

31 (5) Willfully and knowingly:

32 (i) Files a false report or record of an individual under the care of
33 the certificate holder OR REGISTRATION HOLDER; or

34 (ii) Gives any false or misleading information about a material
35 matter in an employment application;

1 (6) Knowingly does any act that has been determined by the Board, in its
2 regulations, to exceed the scope of practice authorized to the individual under this
3 subtitle;

4 (7) Provides professional services while:

5 (i) Under the influence of alcohol; or

6 (ii) Using any narcotic or controlled dangerous substance, as
7 defined in Article 27 of the Code, or other drug that is in excess of therapeutic
8 amounts or without valid medical indication;

9 (8) Does an act that is inconsistent with generally accepted professional
10 standards in the practice of massage therapy;

11 (9) Is negligent in the practice of massage therapy;

12 (10) Is professionally incompetent;

13 (11) Has violated any provision of this subtitle;

14 (12) Submits a false statement to collect a fee;

15 (13) Is physically or mentally incompetent;

16 (14) Knowingly fails to report suspected child abuse in violation of § 5-704
17 of the Family Law Article;

18 (15) Refuses, withholds from, denies, or discriminates against an
19 individual with regard to the provision of professional services for which the
20 certificate holder OR REGISTRATION HOLDER is qualified to render because the
21 individual is HIV positive;

22 (16) Except in an emergency life-threatening situation where it is not
23 feasible or practicable, fails to comply with the Centers for Disease Control's
24 guidelines on universal precautions;

25 (17) Is habitually intoxicated;

26 (18) Is addicted to, or habitually abuses, any narcotic or controlled
27 dangerous substance as defined in Article 27 of the Code;

28 (19) Fails to cooperate with a lawful investigation conducted by the
29 Board;

30 (20) Engages in conduct that violates the professional code of ethics; or

31 (21) Knowingly does an act that has been determined by the Board to be a
32 violation of the Board's regulations.

1 (b) If, after a hearing under § 3-315 of this title, the Board finds that there
 2 are grounds under subsection (a) of this section to suspend or revoke a certificate OR
 3 REGISTRATION to practice massage therapy OR REGISTRATION TO PRACTICE
 4 NON-THERAPEUTIC MASSAGE, to reprimand a certificate holder OR REGISTRATION
 5 HOLDER, or place a certificate holder OR REGISTRATION HOLDER on probation, the
 6 Board may impose a penalty not exceeding \$5,000 in lieu of or in addition to
 7 suspending or revoking the certificate OR REGISTRATION, reprimanding the
 8 certificate holder OR REGISTRATION HOLDER, or placing the certificate holder OR
 9 REGISTRATION HOLDER on probation.

10 (c) (1) An individual whose certificate OR REGISTRATION has been
 11 suspended or revoked by the Board shall return the certificate OR REGISTRATION to
 12 the Board.

13 (2) If the suspended or revoked certificate OR REGISTRATION has been
 14 lost, the individual shall file with the Board a verified statement to that effect.

15 (d) The Board shall file a notice for publication in the earliest publication of
 16 the Maryland Register of each revocation or suspension of a certificate OR
 17 REGISTRATION under this section within 24 hours of the revocation or suspension.

18 [3-5A-09.] 3-5A-10.

19 This subtitle does not limit the right of an individual to practice or advertise an
 20 occupation that the individual is otherwise authorized to practice under the Maryland
 21 Annotated Code.

22 ~~3-5A-10.~~ 3-5A-11.

23 (a) Except as otherwise provided in this subtitle, an individual may not
 24 practice, attempt to practice, or offer to practice massage therapy, MASSAGE,
 25 MYOTHERAPY, OR ANY SYNONYM OR DERIVATION OF THESE TERMS in this State
 26 unless certified by the Board.

27 (b) An individual who is not certified as a certified massage therapist OR
 28 REGISTERED AS A MASSAGE TECHNICIAN PRACTITIONER under this subtitle may not
 29 advertise or claim by title, abbreviation, sign, card, or any other representation that
 30 the individual practices massage, massage therapy, myotherapy, or any synonym or
 31 derivation of these terms.

32 (C) AN INDIVIDUAL WHO IS A REGISTERED MASSAGE TECHNICIAN
 33 PRACTITIONER UNDER THIS SUBTITLE OR A BUSINESS ENTITY THAT EMPLOYS
 34 REGISTERED MASSAGE TECHNICIANS PRACTITIONERS UNDER THIS SUBTITLE MAY
 35 NOT ADVERTISE TO THE PUBLIC THAT THE INDIVIDUAL OR BUSINESS ENTITY
 36 PROVIDES HEALTH-RELATED THERAPEUTIC MASSAGE SERVICES.

37 (e) (D) Any individual who violates a provision of this subsection is guilty of
 38 a misdemeanor and on conviction shall be subject to a fine not exceeding \$5,000 or
 39 imprisonment for not more than 1 year, or both.

1 3-5A-12.

2 ~~(A) A HEALTH CARE PROVIDER LICENSED OR CERTIFIED UNDER THIS~~
3 ~~ARTICLE MAY NOT REFER PATIENTS TO A PERSON WHO IS NOT A CERTIFIED~~
4 ~~MASSAGE THERAPIST.~~

5 ~~(B) A MASSAGE THERAPIST CERTIFIED UNDER THIS SUBTITLE MAY NOT~~
6 ~~EMPLOY OR CONTRACT WITH AN INDIVIDUAL WHO IS NOT A CERTIFIED MASSAGE~~
7 ~~THERAPIST.~~

8 ~~[3-5A-11.] 3-5A-13.~~

9 Notwithstanding the fact that these services are provided within the scope of
10 their certified practice, nothing in this subtitle requires a nonprofit health service
11 plan, insurer, health maintenance organization, or person acting as a third party
12 administrator to reimburse a certified massage therapist OR REGISTERED MASSAGE
13 TECHNICIAN PRACTITIONER for any services rendered.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 1999.