



House of Representatives

General Assembly

File No. 259

February Session, 2012

Substitute House Bill No. 5455

House of Representatives, April 4, 2012

The Committee on Planning and Development reported through REP. GENTILE of the 104th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING PENALTIES FOR AND THE INVESTIGATION OF THE OPERATION OF ILLEGAL MASSAGE ESTABLISHMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 20-206b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2012*):

3 (a) No person shall engage in, and no employer shall knowingly
4 and wilfully employ a person to engage in, the practice of massage
5 therapy unless the person has obtained a license from the department
6 pursuant to this section. Each person seeking licensure as a massage
7 therapist shall make application on forms prescribed by the
8 department, pay an application fee of three hundred seventy-five
9 dollars and present to the department satisfactory evidence that the
10 applicant: (1) Has graduated from a school of massage therapy offering
11 a course of study of not less than five hundred classroom hours, with
12 the instructor present, and, at the time of the applicant's graduation,
13 was either (A) accredited by an agency recognized by the United States

14 Department of Education or by a state board of postsecondary
15 technical trade and business schools, or (B) accredited by the
16 Commission on Massage Therapy Accreditation, and (2) has passed
17 the National Certification Examination for Therapeutic Massage and
18 Bodywork. Passing scores on the examination shall be prescribed by
19 the department.

20 (b) Licenses shall be renewed once every two years in accordance
21 with the provisions of section 19a-88. The fee for renewal shall be two
22 hundred fifty dollars. No license shall be issued under this section to
23 any applicant against whom professional disciplinary action is
24 pending or who is the subject of an unresolved complaint in this or any
25 other state or jurisdiction. Any certificate granted by the department
26 prior to June 1, 1993, shall be deemed a valid license permitting
27 continuance of profession subject to the provisions of this chapter.

28 (c) (1) Notwithstanding the provisions of subsection (a) of this
29 section, the department may issue a license to an applicant whose
30 school of massage therapy does not satisfy the requirement of
31 subparagraph (A) or (B) of subdivision (1) of said subsection (a),
32 provided the school held, at the time of the applicant's graduation, a
33 certificate issued by the Commissioner of Education pursuant to
34 section 10-7b and provided the applicant graduated within thirty-three
35 months of the date such school first offered the curriculum completed
36 by the applicant. No license shall be issued under this subsection to a
37 graduate of a school that fails to apply for and obtain accreditation by
38 (A) an accrediting agency recognized by the United States Department
39 of Education, or (B) the Commission on Massage Therapy
40 Accreditation within thirty-three months of the date such school first
41 offered the curriculum.

42 (2) Notwithstanding the provisions of subsection (a) of this section
43 and subdivision (1) of this subsection, the department may issue a
44 license to an applicant who submits evidence satisfactory to the
45 commissioner that the applicant (A) was enrolled, on or before July 1,
46 2005, in a school of massage therapy that was approved or accredited

47 by a state board of postsecondary technical trade and business schools
48 or a state agency recognized as such state's board of postsecondary
49 technical trade and business schools, (B) graduated from a school of
50 massage therapy with a course of study of not less than five hundred
51 classroom hours, with the instructor present, that at the time of the
52 applicant's graduation was approved or accredited by a state board of
53 postsecondary technical trade and business schools or a state agency
54 recognized as such state's board of postsecondary technical trade and
55 business schools, and (C) has passed the National Certification
56 Examination for Therapeutic Massage and Bodywork. Passing scores
57 on the examination shall be prescribed by the department.

58 (d) Each person licensed pursuant to this section has an affirmative
59 duty to make a written referral to a licensed healing arts practitioner,
60 as defined in section 20-1, of any client who has any physical or
61 medical condition that would constitute a contraindication for massage
62 therapy or that may require evaluation or treatment beyond the scope
63 of massage therapy.

64 (e) No person shall use the title "massage therapist", "licensed
65 massage therapist", "massage practitioner", "massagist", "masseur" or
66 "masseuse", unless the person holds a license issued in accordance
67 with this section or other applicable law.

68 (f) Notwithstanding the provisions of subsection (a) of this section,
69 the commissioner may issue a license to an out-of-state applicant who
70 submits evidence satisfactory to the commissioner of either: (1) (A) A
71 current license to practice therapeutic massage from another state or
72 jurisdiction, (B) documentation of practice for at least one year
73 immediately preceding application, and (C) successful completion of
74 the National Certification Examination for Therapeutic Massage and
75 Bodywork; or (2) (A) graduation from a school of massage therapy
76 offering a course of study of not less than five hundred classroom
77 hours, with the instructor present, and, at the time of the applicant's
78 graduation, was either (i) accredited by an agency recognized by the
79 United States Department of Education or by a state board of

80 postsecondary technical trade and business schools, or (ii) accredited
81 by the Commission on Massage Therapy Accreditation, and (B)
82 successful completion of the National Certification Examination for
83 Therapeutic Massage and Bodywork.

84 (g) Any person who violates the provisions of subsection (a) or (e) of
85 this section shall be guilty of a class C misdemeanor.

86 (h) Any person who knowingly and wilfully employs a person who
87 violates the provisions of subsection (a) or (e) of this section shall be
88 guilty of a class C misdemeanor.

89 Sec. 2. Section 20-206g of the general statutes is repealed and the
90 following is substituted in lieu thereof (*Effective October 1, 2012*):

91 (a) As used in this section, "advertise" includes, but is not limited to,
92 the issuance of any card, sign or device to any person; causing,
93 permitting or allowing any sign or marking on or in any building,
94 vehicle or structure; advertising in any newspaper or magazine, or the
95 placement of any listing or advertisement in any directory under a
96 classification or heading that includes the words "massage", "massage
97 therapist", "massage therapy", [or] "massage therapy establishment",
98 "shiatsu", "acupressure", "Thai massage", "Thai yoga massage" or "Thai
99 yoga".

100 (b) No person, firm, partnership or corporation shall advertise any
101 of the services included in the definition of massage therapy in any
102 manner using the term or title "massage", "shiatsu", "acupressure",
103 "Thai massage", "Thai yoga massage" or "Thai yoga" unless such
104 services are performed by a massage therapist.

105 (c) Each person who holds a license as a massage therapist shall
106 include his or her license number in any advertisement for such
107 person's massage therapy services that appears in a newspaper,
108 telephone directory or other advertising medium.

109 (d) It shall be a violation of this section for any person who does not
110 hold a current license as a massage therapist to advertise massage

111 therapy services by using the term "massage", "massage therapist",
112 "licensed massage therapist", "massage practitioner", "massagist",
113 "masseur" or "masseuse", "shiatsu", "acupressure", "Thai massage",
114 "Thai yoga massage" or "Thai yoga".

115 Sec. 3. Section 20-206h of the general statutes is repealed and the
116 following is substituted in lieu thereof (*Effective October 1, 2012*):

117 (a) The Commissioner of Public Health shall carry out the
118 commissioner's responsibilities with respect to enforcement of the
119 provisions of sections 20-206b, as amended by this act, 20-206d and 20-
120 206g, as amended by this act, within available appropriations.

121 (b) If the commissioner has cause to believe, based upon credible
122 information or complaint, that any person has violated the provisions
123 of section 20-206b, as amended by this act, 20-206d or 20-206g, as
124 amended by this act, the commissioner may, not later than thirty days
125 after receiving such information or complaint, begin a formal
126 investigation or cause the local health department that serves the
127 municipality in which the alleged violation occurred to begin a formal
128 investigation of the alleged violation. In the course of such formal
129 investigation, the commissioner or local health department may
130 inquire as to whether a person under investigation obtained a license
131 from the department legally by comparing the photograph on such
132 person's identification with a photograph of such person obtained
133 from the National Certification Board for Therapeutic Massage and
134 Bodywork or from a company contracted by said board to administer
135 massage exams. Photographs that do not match shall constitute prima
136 facie evidence that such person is engaging in the practice of massage
137 therapy without a license in violation of section 20-206b, as amended
138 by this act. For purposes of this subsection, "identification" means a
139 motor vehicle operator's license issued pursuant to section 14-36 or any
140 other valid form of identification issued by the federal government or
141 a state or municipal government, provided such identification includes
142 a photograph.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	20-206b
Sec. 2	<i>October 1, 2012</i>	20-206g
Sec. 3	<i>October 1, 2012</i>	20-206h

PD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Correction, Dept.; Judicial Dept. (Probation)	GF - Cost	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes it a class "C" misdemeanor for any employer to employ an unlicensed person as a massage therapist, which results in a potential minimal revenue gain to the Judicial Department and a potential minimal cost to the Department of Correction and the Judicial Department. To the extent that offenders are prosecuted criminally and subsequently convicted or plead guilty, the state could incur a cost associated with incarceration and/or probation supervision in the community. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender. Any annual revenue from criminal fines imposed under the bill is anticipated to be minimal. Since 2001, there have been no convicted offenses of engaging in massage therapy without a license.

Current statute allows the Department of Public Health (DPH) to investigate complaints related to advertisements of massage therapy. Nonetheless, it is allowed to do so within its available appropriations and, as such, DPH does not currently investigate complaints related to advertisements of massage therapy, nor does it cause local health

departments to do so.¹ Consistent with current practice, no state fiscal impact is anticipated with the inclusion of shiatsu, acupuncture, or Thai massage in the categories of massage advertisements that DPH is allowed to investigate.

Should massage advertisement complaints be investigated by DPH, cases heard and prosecuted, and disciplinary actions taken, the cost to the agency would be dependent on (1) the number of advertisements for shiatsu, acupuncture, or Thai massage by unlicensed persons that exist in Connecticut and (2) how many related complaints might be made to DPH. If implementation was assumed to begin when the bill becomes effective on 10/1/12, and if a maximum of 500 complaints annually was also assumed, a total state cost of up to \$627,000 would be incurred in FY 13. This estimate includes a cost of up to \$505,000 to DPH (including Personal Services expenses) and up to \$123,000 to the Office of the State Comptroller for associated fringe benefits expenses.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

*Sources: Department of Public Health
Judicial Department Offenses and Revenue Database*

¹ DPH does investigate complaints of unlicensed persons practicing massage under the title of "massage therapist," "licensed massage therapist," "massage practitioner," "massagist," "masseur," and "masseur." Following an investigation, a case may be heard and prosecuted, and disciplinary action taken.

OLR Bill Analysis

sHB 5455

AN ACT CONCERNING PENALTIES FOR AND THE INVESTIGATION OF THE OPERATION OF ILLEGAL MASSAGE ESTABLISHMENTS.

SUMMARY:

This bill extends regulation of the massage therapy field to cover employers, not just individual practitioners; expands the practices and services covered by advertising restrictions; and authorizes the Department of Public Health (DPH) commissioner to investigate complaints.

The bill makes employers who knowingly and willfully employ unlicensed people to practice massage therapy or violate laws regulating the massage therapy industry guilty of a class C misdemeanor, which is the penalty for individuals who violate most massage therapy provisions under existing law. A class C misdemeanor is punishable by up to three months' imprisonment, up to a \$ 500 fine, or both.

EFFECTIVE DATE: October 1, 2012

ADVERTISING

The law prohibits using the term or title "massage" when advertising massage therapy services, unless a licensed massage therapist performs the services. "Advertising" includes (1) giving a card, sign, or device to anyone; (2) causing or allowing a sign or marking on a vehicle, building, or other structure; (3) advertising in a newspaper or magazine; or (4) placing a listing or advertisement in a directory under a heading or classification that includes the words "massage," "massage therapist," "massage therapy," or "massage therapy establishment."

The bill adds "shiatsu," "acupressure," "Thai massage," "Thai yoga massage," and "Thai yoga" to this list of terms or titles that can appear in advertising for services only if performed by a licensed massage therapist.

It is unclear what penalty applies to a violation of the advertising provisions, though current law makes the use of certain titles by an unlicensed person a class C misdemeanor and authorizes the DPH commissioner to enforce the advertising provisions.

INVESTIGATIONS

Under the bill, when the DPH commissioner believes, based on credible information or a complaint, that someone has violated massage therapy license or practice requirements or advertising rules, she may, within 30 days of receiving the complaint, begin a formal investigation of the alleged violation or direct the municipality's local health department to do so. Under existing law, the commissioner must enforce laws concerning massage therapy within available appropriations.

Under the bill, in the course of the investigation, the commissioner or local health department may inquire whether a person under investigation legally obtained a DPH license by comparing the photograph on the person's government issued photo-identification with a photograph from the National Certification Board for Therapeutic Massage and Bodywork or from a company the board contracted with to administer massage exams. Photographs that do not match constitute *prima facie* evidence (i.e., a preliminary showing that can be overcome by other evidence) that the person violated the law by practicing massage therapy without a license.

BACKGROUND

Massage Therapy Defined

By law, "massage therapy" means the systematic and scientific manipulation and treatment of the body's soft tissues using pressure, friction, stroking, percussion, kneading, vibration by manual or

mechanical means, range of motion, and nonspecific stretching. It includes the use of oils, ice, and similar amenities, but does not include diagnosis or other services and procedures for which the law requires a license to practice, including medicine, chiropractic, naturopathy, physical therapy, or podiatry (CGS § 20-206a).

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/19/2012)