HOUSE BILL 120-FN

AN ACT relative to the regulation of body art establishments and massage, reflexology, structural integrator and Asian bodywork therapy establishments.

SPONSORS: Rep. P. Schmidt, Straf. 19

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

This bill requires the licensure and inspection of tattooing, body piercing, or branding establishments, massage establishments, and reflexology, structural integration, or Asian bodywork therapy establishments. The bill also clarifies the regulation of body art practitioners by the office of professional licensure and certification.

This bill is a request of the office of professional licensure and certification.

Explanation: Matter added to current law appears in bold italics. Matter removed from current law appears [in brackets and struckthrough.] Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
AN ACT relative to the regulation of body art establishments and massage, reflexology, structural integrator and Asian bodywork therapy establishments.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Paragraph; Body Art; Definition; Establishment. Amend RSA 314-A:1 by inserting after paragraph II the following new paragraph:

   II-a. “Establishment” means the physical place licensed by the office of professional licensure and certification where tattooing, body piercing, or branding is practiced. A booth attached to or within an establishment that is operated independently of the establishment shall be subject to separate licensure in the same manner as an establishment. The term "establishment" shall not include temporary structures where a practitioner practices for a limited time.

2 License Fee; Renewal. Amend RSA 314-A:2, II to read as follows:

   II. The fee for an initial license and a renewal license for practitioners and apprentices shall be $110. The license shall be renewed biennially on the last day of the licensee’s birth month in odd-numbered years next succeeding the date of issuance upon payment of the $110 renewal fee. The initial license fee and renewal fee for establishments shall be as determined in rules adopted by the executive director. Establishments that are licensed as an establishment, shop, or facility under one of the occupations or professions regulated by the office of professional licensure and certification in RSA 310-A:1-a shall pay a reduced fee for a body art establishment license.

3 Body Art; Rulemaking; Establishments. RSA 314-A:6, IV is repealed and reenacted to read as follows:

   IV. Regulation of establishments, including any special rules for independently operated booths, as follows:

      (a) Procedures for issuing, renewing, and suspending, revoking, or denying licenses for establishments.

      (b) Holding hearings, conducting investigations, public or confidential, and issuing orders relating to such hearings and investigations. The contested case provisions of RSA 541-A:31-36 shall apply when a person is aggrieved by a decision of the executive director under this chapter. Appeals shall be made in accordance with RSA 541.

      (c) Conditions, requirements, and standards for operation under an establishment license including health and safety standards.

      (d) Content of application forms and procedures to open, close, relocate, change ownership, or renew an establishment.
(e) Requiring the display of establishment licensure and practitioner identification.

(f) Procedures for disciplinary action including, cease and desist orders, suspension, limitation, or revocation of establishment licensure.

(g) Inspection of establishments licensed for body piercing, branding, and tattooing.

(h) Procedures to grant or deny an establishment exemption.

4 New Paragraphs; Prohibited Acts; Establishments. Amend RSA 314-A:7 by inserting after paragraph III the following new paragraphs:

IV. Operate an establishment without an establishment license.

V. Operate an establishment unless such establishment is under the direct supervision and management of a practitioner licensed under this chapter.

5 Disciplinary Action. RSA 314-A:9 is repealed and reenacted to read as follows:

314-A:9 Disciplinary Action.

I. The executive director, in consultation with the advisory board, may undertake disciplinary proceedings:

(a) Upon his or her initiative; or

(b) Upon written complaint of any person which charges that a person or establishment licensed by the board has committed misconduct and the grounds therefor.

II. Misconduct sufficient to support disciplinary proceedings under this section shall include:

(a) The practice of fraud or deceit in procuring or attempting to procure a license to practice under this chapter;

(b) Any unprofessional conduct, or dishonorable conduct unworthy of, and affecting the practice of the profession;

(c) Unfitness or incompetence by reason of negligent habits; negligent or willful acts performed in a manner inconsistent with the health and safety of persons relying on the expertise of the licensee;

(d) Willful or repeated violation of the provisions of this chapter;

(e) Suspension or revocation of a license, similar to one issued in this chapter in another jurisdiction and not reinstated;

III. The executive director, in consultation with the advisory board, may take disciplinary action in any one or more of the following ways:

(a) By reprimand;

(b) By suspension, limitation, or restriction of a license;

(c) By revocation of a license;

(d) By requiring the person to participate in a program of continuing education in the area or areas the person has been found deficient;

(e) By imposing an administrative fine in accordance with RSA 314-A:10.

6 New Paragraph; Violations; Establishment. Amend RSA 314-A:12 by inserting after
III. Any person who operates an establishment in this state without an establishment license shall be guilty of a class A misdemeanor if a natural person or guilty of a felony if any other person.

7 New Sections; Establishment Licensure; Inspections. Amend RSA 314-A by inserting after section 14 the following new sections:

314-A:15 Establishment Licensure.

I. It shall be a misdemeanor for any person, as owner, manager, or agent to open, establish, conduct or maintain an establishment without first having obtained an establishment license from the board. Any New Hampshire licensed body art practitioner may obtain an establishment license upon application and fee provided that the establishment meets all requirements in the rules adopted by the executive director. Establishment licenses granted pursuant to this section shall be conspicuously posted within the establishment.

II. In addition to licenses issued under paragraph I, the executive director may issue an establishment license to an owner who does not hold a personal body art license provided that the owner employs a licensed body art practitioner as manager. This section shall not authorize such owner to personally engage in tattooing, body piercing, or branding.

III. The executive director shall grant or deny an establishment an exemption from licensure in accordance with the rules adopted pursuant to this chapter.

314-A:16 Inspectors.

I. The executive director shall employ inspectors and authorize them to enter and inspect any establishment licensed under this chapter for the purpose of ascertaining whether or not the provisions of this chapter and the rules adopted thereunder are being observed. Each inspector shall file a report with the executive director of his or her inspection findings and results. Salaries and necessary expenses shall be charged against the office of professional licensure and certification fund established in RSA 310-A:1-e.

II. The executive director shall adopt rules relative to the qualifications of an inspector under this section.

8 Regulation of Massage Establishments. Amend RSA 328-B:1 to read as follows:

328-B:1 Regulation of Massage Therapists and Massage Establishments. The general court, to protect the health, safety, and welfare of the people of the state of New Hampshire, establishes a regulatory program for massage therapists, including establishing basic qualifications for licensure of massage therapists and massage establishments.

9 New Paragraph; Massage Therapists and Massage Establishments; Definition Added. Amend RSA 328-B:2 by inserting after paragraph III the following new paragraph:

III-a. “Establishment” means the place issued a license by the executive director where the profession of massage is practiced. “Establishment” shall include any building in which 2 or more massage therapists work for the same employer.
10 New Paragraph; Massage Therapists and Massage Establishments; Definition Added. Amend RSA 328-B:2 by inserting after paragraph VIII the following new paragraph:

IX. “Sole proprietor” means any person who owns a business by himself or herself and does not have any employees within his or her business.

11 New Paragraphs; Prohibited Acts; Establishment Licensure. Amend RSA 328-B:3 by inserting after paragraph VI the following new paragraphs:

VII. Operate an establishment without an establishment license.

VIII. Operate an establishment unless such establishment is at all times under the direct supervision and management of a professional licensed under this chapter.

12 New Paragraph; Powers and Duties; Establishments. Amend RSA 328-B:4 by inserting after paragraph VII the following new paragraph:

VIII. Regulate and adopt rules on massage establishments, including:

(a) The issuance, suspension, revocation, renewal, and denial of massage establishment licenses.

(b) Holding hearings and conduct investigations under paragraph II concerning massage establishment licenses.

(c) Conditions, requirements, and standards for operation under an establishment license, including health and safety standards.

(d) Standards and procedures for inspections of establishments including, inspections conducted as part of the initial licensure process.

(e) Application forms and procedures to open, close, relocate, or renew an establishment.

(f) Requiring public display of licensure and secure recordkeeping procedures.

(g) Procedures for disciplinary action, including cease and desist orders, suspension, limitation, or revocation of establishment licensure.

(h) Requiring the licensee to obtain a certificate of good standing from the secretary of state.

(i) Qualifications for exemption of schools, health facilities, or others from massage establishment license requirements in RSA 328-B:14.

(j) Required documentation to verify sole proprietor or independent contractor designation.

13 Advisory Board of Massage Therapists. Amend the introductory paragraph of RSA 328-B:5 to read as follows:

The executive director shall establish the advisory board of massage therapists. The board shall consist of 3 massage therapists who are licensees in the state of New Hampshire. The members shall be appointed for 3 years, staggered so that the term of one member expires each year, and they shall hold office until successors are appointed[. and shall serve on the board without any compensation]. Advisory board members shall be paid mileage and a per diem of $50 for
each day devoted to the work of the advisory board. In no event shall a member serve more
than 2 full consecutive terms. The board shall:

14 New Paragraph; License Issuance. Amend RSA 328-B:6 by inserting after paragraph I the
following new paragraph:

I-a. Initial licenses shall be valid until the next succeeding expiration date in accordance
with 328-B:7.

15 License Fee; Establishment License. Amend RSA 328-B:7 to read as follows:

328-B:7 License Renewal. All licenses issued pursuant to this chapter shall expire on the last
day of the birth month of the licensee in the even-numbered year, upon approval of the executive
director of the renewal application and submission of the required $110 renewal fee for massage
therapists or the required fee as determined in rules adopted by the executive director for
massage establishments.

16 New Paragraph; Revocation or Suspension. Amend RSA 328-B:8 by inserting after
paragraph V the following new paragraph:

VI. Has engaged in illegal activity, including but not limited to prostitution or human
trafficking.

17 New Paragraph; Massage; Exemptions. Amend RSA 328-B:10 by inserting after paragraph
III the following new paragraph:

IV. Nothing in this chapter shall require a residential care or health facility licensed
pursuant to RSA 151:2 to obtain an establishment license under this chapter.

18 New Sections; Massage Establishment Licensure; Inspectors. Amend RSA 328-B by
inserting after section 13 the following new sections:

328-B:14 Massage Establishment Licensure.

I. It shall be a misdemeanor for any person, as owner, manager, or agent to open, establish,
conduct or maintain an establishment without first having obtained an establishment license from
the board. Any New Hampshire licensed massage therapist may obtain an establishment license
upon application and payment of fee provided that the establishment meets all requirements
established in the rules of the board. Massage establishment licenses granted pursuant to this
chapter shall be conspicuously posted within the establishment.

II. In addition to licenses issued under paragraph I, the board may issue an establishment
license to an applicant who does not hold a personal massage therapist license provided that the
owner employs a licensed massage therapist as manager. This section shall not authorize such
owner to personally engage in massage therapy.

III. The requirement for establishment licensure under paragraph I shall not apply to a sole
proprietor of his or her business or independent contractors. If a sole proprietor or independent
contractor is providing services without a prior appointment, the sole proprietor or independent
contractor shall obtain an establishment license.

IV. Only establishments issued a license by the executive director shall use the terms
“licensed massage establishment” or “massage establishment.”

V. The license fees for establishments shall be determined in rules adopted by the executive
director under RSA 541-A. Establishments that are licensed as an establishment, shop, or facility
under one of the occupations or professions regulated by the office of professional licensure and
certification in RSA 310-A:1-a shall pay a reduced fee for a massage establishment license.

VI. No town or city shall adopt or enforce a bylaw or ordinance for the licensure of massage
establishments.

328-B:15 Inspectors.

I. The office of professional licensure and certification shall employ inspectors and
authorize them to enter and inspect any establishment licensed under this chapter for the purpose
of ascertaining whether or not the administrative rules of the board and the provisions of this
chapter are being observed. Each inspector shall file a report of inspection findings and results
with the executive director. Salaries and necessary expenses shall be charged against the office of
professional licensure and certification fund.

II. The executive director shall adopt rules under RSA 541-A relative to the qualifications of
an inspector under this section.

19 Grandfathering of Municipal Bylaws and Ordinances. Notwithstanding RSA 328-B:14, VI, a
license for a massage establishment issued by a municipality in effect on the effective date of this
act shall remain valid for purposes of RSA 328-B:14 until the expiration of the term of the license.

20 New Paragraph; Definitions; Reflexology, Structural Integration, and Asian Bodywork
Therapy. Amend RSA 328-H:2 by inserting after paragraph II the following new paragraph:

II-a. “Establishment” means the place licensed by the executive director where the
practitioners of reflexology, structural integration, and Asian bodywork therapy practice.
"Establishment” shall include any building in which 2 or more licensed reflexologists, structural
integrators, or Asian bodywork therapists work for the same employer.

21 New Paragraph; Definitions; Reflexology, Structural Integration, and Asian Bodywork
Therapy. Amend RSA 328-H:2 by inserting after paragraph VII the following new paragraph:

VIII. “Sole proprietor” means any person who owns a business by himself or herself and
does not have any employees within his or her business.

22 New Paragraphs; Reflexologists, Structural Integrators, and Asian Bodywork Therapists;
Prohibited Acts. Amend RSA 328-H:4 by inserting after paragraph V the following new paragraphs:

VI. Operate a reflexology, structural integration, or Asian bodywork therapy establishment
without an establishment license.

VII. Operate a reflexology, structural integration, or Asian bodywork therapy
establishment unless such establishment is at all times under the direct supervision and
management of a practitioner licensed under this chapter.

23 New Subparagraph; Reflexologists, Structural Integrators, and Asian Bodywork Therapists;
Rulemaking. Amend RSA 328-H:5, VIII by inserting after subparagraph (l) the following new
subparagraph:

(m) Regulate establishments including:

(1) Issue, suspend, revoke, renew, and deny licenses in accordance with rules adopted under RSA 541-A.

(2) Hold hearings and conduct investigations, public or confidential, and issue orders relating to such hearings and investigations. The contested case provisions of RSA 541-A:31-36 shall apply when a person is aggrieved by a decision of the executive director under this chapter. Appeals shall be made in accordance with RSA 541.

(3) Conditions, requirements, and standards for operation under an establishment license, including health and safety standards.

(4) Standards and procedures for inspections of establishments, including inspections conducted as part of the initial licensure process.

(5) A fine schedule for violations of the administrative rules adopted by the executive director under this chapter.

(6) Application forms and procedures to open, close, relocate, or renew an establishment.

(7) Requiring public display of licensure and secure recordkeeping procedures.

(8) Procedures for disciplinary action, including cease and desist orders, suspension, limitation, or revocation of establishment licensure.

(9) Requiring an applicant for licensure to obtain a certificate of good standing from the secretary of state.

(10) Establishing the fees for licensure of a reflexology, structural integration, or Asian bodywork therapy establishment in rules adopted by the executive director under RSA 541-A. Establishments that are licensed as an establishment, shop, or facility under one of the occupations or professions regulated by the office of professional licensure and certification in RSA 310-A:1-a shall pay a reduced fee for a reflexology, structural integration, or Asian bodywork therapy establishment license.

(11) Qualifications for exemption of schools, health facilities, or others from reflexology, structural integration, or Asian bodywork therapy establishment license requirements in RSA 328-H:18.

(12) Required documentation to verify sole proprietor or independent contractor designation.

24 New Paragraph; License Revocation or Suspension. Amend RSA 328-H:10 by inserting after paragraph V the following new paragraph:

VI. Has engaged in illegal activity including but not limited to prostitution or human trafficking.

25 Exemptions. Amend RSA 328-H:13 as follows:

328-H:13 Exemptions.
I. Nothing in this chapter shall prevent a person licensed by this state pursuant to any other provision of law from performing the occupation for which he or she is licensed.

II. Nothing in this chapter shall require a residential care or health facility licensed pursuant to RSA 151:2 to obtain an establishment license under this chapter.

26 New Sections; Establishment Licensure; Inspectors. Amend RSA 328-H by inserting after section 17 the following new sections:

328-H:18 Establishment Licensure.

I. It shall be a misdemeanor for any person, as owner, manager, or agent to open, establish, conduct or maintain an establishment without first having obtained an establishment license from the executive director. Any New Hampshire licensed reflexologist, structural integrator, or Asian bodywork therapist may obtain an establishment license upon application and fee provided that the establishment meets all requirements established in the rules adopted by the executive director. Establishment licenses granted pursuant to this chapter shall be conspicuously posted within the establishment.

II. In addition to licenses issued under paragraph I, the board may issue an establishment license to an applicant who does not hold a personal reflexologist, structural integrator, or Asian bodywork therapist license provided that the owner employs a licensed reflexologist, structural integrator, or Asian bodywork therapist as manager. This paragraph shall not authorize such owner to personally engage in massage therapy act as a practitioner under this chapter.

III. This section shall not apply to licensed reflexologist, structural integrator, or Asian bodywork therapists who are sole proprietors of his or her business or an independent contractor. If a sole proprietor or independent contractor is providing services without a prior appointment, the sole proprietor or independent contractor shall obtain an establishment license.

IV. No town or city shall adopt or enforce a bylaw or ordinance for the licensure of reflexology, structural integration, or Asian bodywork therapy establishments.

328-H:19 Inspectors.

I. The office of professional licensure and certification shall employ inspectors and authorize them to enter and inspect any establishment licensed under this chapter for the purpose of ascertaining whether or not the administrative rules of the executive director and the provisions of this chapter are being observed. Each inspector shall file a report with the executive director of inspection findings and results. Salaries and necessary expenses shall be charged against the fees and other moneys collected under this chapter.

II. The executive director shall adopt rules relative to the qualifications of an inspector under this section.

27 Office of Professional Licensure and Certification; New Classified Position;

Appropriation.

I. One investigative paralegal position, labor grade 22, is hereby established as a classified position in the office of professional licensure and certification.
II. The amount necessary to pay for the position established in paragraph I, which shall be in addition to any sums appropriated in 01-21-21-215010-2406 for the division of health professions, is hereby appropriated to the executive director of the office of professional licensure and certification. Salaries and necessary expenses shall be charged against the office of professional licensure and certification fund established in RSA 310-A:1-e.

28 Effective Date. This act shall take effect July 1, 2019.
AN ACT relative to the regulation of body art establishments and massage, reflexology, structural integrator and Asian bodywork therapy establishments.

FISCAL IMPACT: [X] State [X] County [ ] Local [ ] None

<table>
<thead>
<tr>
<th>STATE:</th>
<th>Estimated Increase / (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY 2020</td>
</tr>
<tr>
<td>Appropriation</td>
<td>$103,000</td>
</tr>
<tr>
<td>Revenue</td>
<td>Indeterminable</td>
</tr>
<tr>
<td>Expenditures</td>
<td>Indeterminable</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Funding Source:</th>
</tr>
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<tbody>
<tr>
<td>[ ] General</td>
</tr>
<tr>
<td>[ ] Education</td>
</tr>
<tr>
<td>[ ] Highway</td>
</tr>
<tr>
<td>[X] Other - Office of Professional Licensure and Certification Fund (RSA 310-A:1-e, I(b))</td>
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<tr>
<th>COUNTY:</th>
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<tbody>
<tr>
<td>Revenue</td>
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<tr>
<td>Expenditures</td>
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</table>

METHODOLOGY:

This bill requires licensure and inspection of establishments for massage therapy; reflexology, structural integration and Asian bodywork therapy; tattooing, body piercing, or branding, and clarifies the licensure renewal for practitioners and apprentices. The bill establishes a new classified position of investigative paralegal, labor grade 22, in the Division of Health Professions within the Office of Professional Licensure and Certification (OPLC). The investigative paralegal would be hired to start on July 1, 2019 with total annual position costs of $103,000 in FY 2020 (includes one time expenses of $1,500 for a computer and $25,000 for a vehicle and $3,600 in annual travel costs), $80,000 in FY 2021, $84,000 in FY 2022 and $87,000 in FY 2023.

OPLC reports there are currently 1,831 licensees in the 3 classifications of licensed professions at the end of FY 2018. Assuming one third of the 1,831 licensees may require an establishment license and these establishments are not licensed pursuant to any other occupation or profession regulated by the OPLC, or that another fee amount is applicable via rules adopted by the OPLC Executive Director, then 610 (1,831 / 3 = 610) licensed establishments would be required to pay a licensing fee of $110 every other calendar year. Potential new revenue is estimated at $67,100 in every other calendar year (610 x $110). Half of this revenue, or $33,550, accrues in each fiscal year. In addition, existing excess license revenues from the three specified classifications
of licensed professions would be available to fund the investigative paralegal. The FY 2018 license revenues, expenditures and total excess revenue of these professions are as follows:

<table>
<thead>
<tr>
<th>Licensed Profession</th>
<th>FY 2018 License Revenue</th>
<th>FY 2018 Expenditures</th>
<th>Difference +/-</th>
</tr>
</thead>
<tbody>
<tr>
<td>Massage Therapy</td>
<td>$84,455</td>
<td>$26,543</td>
<td>$57,912</td>
</tr>
<tr>
<td>Body Art</td>
<td>$22,658</td>
<td>$19,707</td>
<td>$2,951</td>
</tr>
<tr>
<td>Reflex, Structural Int. &amp; Asian Bodywork</td>
<td>$1,210</td>
<td>$118</td>
<td>$1,092</td>
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<tr>
<td>TOTAL</td>
<td>$108,323</td>
<td>$46,368</td>
<td>$61,955</td>
</tr>
</tbody>
</table>

Fines may also be assessed during inspections for violations of RSA 314-A, which may increase general fund revenue by an indeterminable amount.

The Advisory Board of Massage Therapists will now receive mileage and a per diem payment of $50 of each day devoted to the work of the board. It is estimated that the 3 member board will meet quarterly and will incur the following annual costs:

1. 3 members x 4 meetings per year x $50 per day = $600
2. 3 members x 4 meetings per year x $17.40 mileage reimbursement per meeting= $209

All projected revenues and expenses accrue to the OPLC Fund pursuant to RSA 310-A:1-e, I(b).

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

<table>
<thead>
<tr>
<th>Judicial Branch</th>
<th>FY 2020</th>
<th>FY 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class B Misdemeanor</td>
<td>$53</td>
<td>$54</td>
</tr>
<tr>
<td>Class A Misdemeanor</td>
<td>$76</td>
<td>$77</td>
</tr>
<tr>
<td>Routine Criminal Felony Case</td>
<td>$481</td>
<td>$486</td>
</tr>
<tr>
<td>Appeals</td>
<td>Varies</td>
<td>Varies</td>
</tr>
</tbody>
</table>
It should be noted that average case cost estimates for FY 2020 and FY 2021 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.

<table>
<thead>
<tr>
<th>Department of Corrections</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2018 Average Cost of Incarcerating an Individual</td>
<td>$40,615</td>
</tr>
<tr>
<td>FY 2018 Annual Marginal Cost of a General Population Inmate</td>
<td>$4,620</td>
</tr>
<tr>
<td>FY 2018 Average Cost of Supervising an Individual on Parole/Probation</td>
<td>$571</td>
</tr>
<tr>
<td>NH Association of Counties</td>
<td></td>
</tr>
<tr>
<td>County Prosecution Costs</td>
<td>Indeterminable</td>
</tr>
<tr>
<td>Estimated Average Daily Cost of Incarcerating an Individual</td>
<td>$105 to $120</td>
</tr>
</tbody>
</table>

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

Violations of this statute by a person would take place within the context of that person's role as an owner, manager or agent to open, establish, conduct or maintain an establishment and it would therefore be unlikely that he or she would meet the eligibility standards for the appointment of counsel established by RSA 604-A:2-c. Based on this assumption, there will be no fiscal impact on the operations of the Judicial Council as a result of the bill.

AGENCIES CONTACTED:
Office of Professional Licensure and Certification