

SB 212-FN - AS INTRODUCED

2023 SESSION

23-1033

09/10

SENATE BILL ***212-FN***

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

SPONSORS: Sen. Altschiller, Dist 24

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill requires massage establishments to be licensed, regulated, and inspected by the office of professional licensure and certification. The bill also adds compensation to members of the advisory board of massage therapists.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

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

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

- 1 1 Regulation of Massage Establishments. Amend RSA 328-B:1 to read as follows:
- 2 328-B:1 Regulation of Massage Therapists and Massage Establishments. The general court, to
- 3 protect the health, safety, and welfare of the people of the state of New Hampshire, establishes a
- 4 regulatory program for massage therapists, including establishing basic qualifications for licensure
- 5 of massage therapists ***and massage establishments***.
- 6 2 New Paragraph; Massage Therapists and Massage Establishments; Definition Added. Amend
- 7 RSA 328-B:2 by inserting after paragraph III the following new paragraph:
- 8 III-a. "Establishment" means a place where massage therapy services are offered by more
- 9 than one person.
- 10 3 New Paragraph; Massage Therapists and Massage Establishments; Definition Added. Amend
- 11 RSA 328-B:2 by inserting after paragraph VIII the following new paragraph:
- 12 IX. "Sole proprietor" means any person who owns a business by himself or herself and does
- 13 not have any employees within his or her business.
- 14 4 New Paragraphs; Prohibited Acts; Establishment Licensure. Amend RSA 328-B:3 by inserting
- 15 after paragraph VI the following new paragraphs:
- 16 VII. Operate an establishment without an establishment license.
- 17 VIII. Operate an establishment unless such establishment is at all times under the direct
- 18 supervision and management of a professional licensed under this chapter.
- 19 5 New Paragraph; Powers and Duties; Establishments. Amend RSA 328-B:4 by inserting after
- 20 paragraph VII the following new paragraph:
- 21 VIII. Regulate and adopt rules on massage establishments, including:
- 22 (a) The issuance, suspension, revocation, renewal, and denial of massage establishment
- 23 licenses.
- 24 (b) Holding hearings and conduct investigations under paragraph II concerning massage
- 25 establishment licenses.
- 26 (c) Conditions, requirements, and standards for operation under an establishment
- 27 license, including health and safety standards.
- 28 (d) Standards and procedures for inspections of establishments including, inspections
- 29 conducted as part of the initial licensure process.
- 30 (e) Application forms and procedures to open, close, relocate, or renew an establishment.

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(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.

6 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]~~. In no event shall a member serve more than 2 full consecutive terms. The board shall:

7 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.

8 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 *in accordance with RSA 310-A:1-h*, upon approval of the executive director of the renewal application and submission of the required renewal fee *for massage therapists or the required fee as determined in rules adopted by the executive director for massage establishments*.

9 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.

10 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.

11 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.

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

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

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

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

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

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

23 328-B:15 Inspectors.

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

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

32 12 Grandfathering of Municipal Bylaws and Ordinances. Notwithstanding RSA 328-B:14, VI, a
33 license for a massage establishment issued by a municipality in effect on the effective date of this act
34 shall remain valid for purposes of RSA 328-B:14 until the expiration of the term of the license.

35 13 New Paragraph; Definitions; Reflexology, Structural Integration, and Asian Bodywork
36 Therapy. Amend RSA 328-H:2 by inserting after paragraph II the following new paragraph:

1 II-a. "Establishment" means a place where massage therapy services are offered by more
2 than one person.

3 14 New Paragraph; Definitions; Reflexology, Structural Integration, and Asian Bodywork
4 Therapy. Amend RSA 328-H:2 by inserting after paragraph VII the following new paragraph:

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

7 15 New Paragraphs; Reflexologists, Structural Integrators, and Asian Bodywork Therapists;
8 Prohibited Acts. Amend RSA 328-H:4 by inserting after paragraph V the following new paragraphs:

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

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

14 16 New Subparagraph; Reflexologists, Structural Integrators, and Asian Bodywork Therapists;
15 Rulemaking. Amend RSA 328-H:5, VIII by inserting after subparagraph (l) the following new
16 subparagraph:

17 (m) Regulate establishments including:

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

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

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

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

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

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

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

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

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

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(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.

17 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.

18 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.

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

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1 328-H:19 Inspectors.

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

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

10 20 Office of Professional Licensure and Certification; New Classified Position; Appropriation.

11 I. One investigative paralegal position, labor grade 22, is hereby established as a classified
12 position in the office of professional licensure and certification.

13 II. The amount necessary to pay for the position established in paragraph I, which shall be
14 in addition to any sums appropriated in 01-21-21-215010-2406 for the division of health professions,
15 is hereby appropriated to the executive director of the office of professional licensure and
16 certification. Salaries and necessary expenses shall be charged against the office of professional
17 licensure and certification fund established in RSA 310-A:1-e.

18 21 Effective Date. This act shall take effect July 1, 2023.

SB 212-FN- FISCAL NOTE
AS INTRODUCED

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

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

| STATE: | Estimated Increase / (Decrease) | | | |
|------------------------|--|-----------|----------|-----------|
| | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
| Appropriation | \$0 | \$83,515 | \$86,054 | \$88,713 |
| Revenue | \$0 | \$150,000 | \$7,500 | \$165,300 |
| Expenditures | \$0 | \$83,515 | \$86,054 | \$88,713 |
| Funding Source: | <input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Office of Professional Licensure and Certification Fund | | | |

METHODOLOGY:

This bill requires licensure and inspection of establishments for massage therapy, reflexology, structural integration and Asian bodywork therapy. 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. The investigative paralegal would be hired to start on July 1, 2023 with total annual position costs of \$83,515 in FY 2024 , \$86,054 in FY 2025, and \$88,713 in FY 2026.

The Office of Professional Licensure and Certification (OPLC) states currently there are nearly 2,000 licensed massage therapists in New Hampshire. OPLC assumes, based on other, comparable licensing structures, that there would be an increase in licensure of around 25%, or approximately 500 establishment licenses, with around 5% of growth thereafter.

Based on the assumptions above, OPLC estimates this bill will produce an additional 500 license in FY 24, 25 new licenses in FY 25 and 551 licenses including renewals in FY 26. Additionally, there are currently 33 licensees under Reflexology, Structural Integration, and Asian Bodywork Therapy, and OPLC assumes a similar 25% establishment operating rate.

OPLC assumes the fee for massage establishments would be \$300 for two years. This fee would be set in rules pursuant to RSA 310-A.

FY23: 500 licensees X \$300 = \$150,000 for biennium

FY24: 25 (new licenses) X \$300= \$7,500

FY25: 551 (new plus renewal) X \$300 = \$165,300 for biennium

The creation of a license for Reflexology, Structural Integration, and Asian Bodywork Therapy would create an estimated 8 establishments, also at \$300 for two years, a de minimis amount also attributable to the rules.

AGENCIES CONTACTED:

Office of Professional Licensure and Certification