

ASSEMBLY BILL NO. 126—ASSEMBLYWOMAN CARLTON

FEBRUARY 6, 2015

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing massage therapy.
(BDR 54-207)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to massage therapy; exempting a nail technologist from the requirement to be licensed as a massage therapist when performing certain activities; revising certain testing requirements for applicants for a license to practice massage therapy; limiting the period during which an inactive or expired license may be restored or renewed; revising provisions establishing certain grounds for refusal to issue a license or initiate disciplinary action against licensees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law exempts certain persons from the requirement to be licensed as a massage therapist. (NRS 640C.100) **Section 1** of this bill adds licensed nail technologists to this list of exempt persons if the nail technologist is massaging the hands, feet, forearms or lower legs of a person within the permissible scope of practice for a nail technologist.

Existing law requires an applicant for a license to practice massage therapy to pass a written examination administered by a board that is accredited by the National Commission for Certifying Agencies (NCCA) or certain other examinations. (NRS 640C.400) **Section 2** of this bill deletes the requirement that the written examination be administered by a board accredited by the NCCA, and instead requires that the examination be a nationally recognized competency examination that is approved by the Board of Massage Therapists.

Existing law allows a massage therapist whose license has expired or been placed on inactive status to restore or renew his or her license by paying certain fees and meeting certain requirements. (NRS 640C.500, 640C.510) **Sections 3 and 4** of this bill limit to 2 years the period during which an expired or inactive license may be restored or renewed.



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Existing law authorizes the Board of Massage Therapists to refuse to issue a license to an applicant or initiate disciplinary action against the holder of a license for certain reasons, including a conviction for any crime involving moral turpitude within the immediately preceding 10 years. (NRS 640C.700) **Section 5** of this bill removes the 10-year limitation, allowing the Board to take such action based on a conviction for any crime involving moral turpitude regardless of when the conviction occurred. **Section 5** also adds the failure to report to the Board any unethical or unprofessional conduct of the holder of a license or other person relating to massage therapy as grounds for such disciplinary action or denial of a license.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 640C.100 is hereby amended to read as follows:

640C.100 1. The provisions of this chapter do not apply to:

(a) A person licensed pursuant to chapter 630, 630A, 631, 632, 633, 634, 634A, 635, 640, 640A or 640B of NRS if the massage therapy is performed in the course of the practice for which the person is licensed.

(b) A person licensed as a barber or apprentice pursuant to chapter 643 of NRS if the person is massaging, cleansing or stimulating the scalp, face, neck or skin within the permissible scope of practice for a barber or apprentice pursuant to that chapter.

(c) A person licensed or registered as an aesthetician, hair designer, hair braider, cosmetologist or cosmetologist's apprentice pursuant to chapter 644 of NRS if the person is massaging, cleansing or stimulating the scalp, face, neck or skin within the permissible scope of practice for an aesthetician, hair designer, hair braider, cosmetologist or cosmetologist's apprentice pursuant to that chapter.

(d) *A person licensed as a nail technologist pursuant to NRS 644.205 if the person is massaging, cleansing or stimulating the hands, forearms, feet or lower legs within the permissible scope of practice for a nail technologist.*

(e) A person who is an employee of an athletic department of any high school, college or university in this State and who, within the scope of that employment, practices massage therapy on athletes.

~~(e)~~ (f) Students enrolled in a school of massage therapy recognized by the Board.

~~(f)~~ (g) A person who practices massage therapy solely on members of his or her immediate family.

~~(g)~~ (h) A person who performs any activity in a licensed brothel.



2. Except as otherwise provided in subsection 3, the provisions of this chapter preempt the licensure and regulation of a massage therapist by a county, city or town, including, without limitation, conducting a criminal background investigation and examination of a massage therapist or applicant for a license to practice massage therapy.

3. The provisions of this chapter do not prohibit a county, city or town from requiring a massage therapist to obtain a license or permit to transact business within the jurisdiction of the county, city or town, if the license or permit is required of other persons, regardless of occupation or profession, who transact business within the jurisdiction of the county, city or town.

4. As used in this section, "immediate family" means persons who are related by blood, adoption or marriage, within the second degree of consanguinity or affinity.

Sec. 2. NRS 640C.400 is hereby amended to read as follows:
640C.400 1. The Board may issue a license to practice massage therapy.

2. An applicant for a license must:

(a) Be at least 18 years of age;

(b) Submit to the Board:

(1) A completed application on a form prescribed by the Board;

(2) The fees prescribed by the Board pursuant to NRS 640C.520;

(3) Proof that the applicant has successfully completed a program of massage therapy recognized by the Board;

(4) A certified statement issued by the licensing authority in each state, territory or possession of the United States or the District of Columbia in which the applicant is or has been licensed to practice massage therapy verifying that:

(I) The applicant has not been involved in any disciplinary action relating to his or her license to practice massage therapy; and

(II) Disciplinary proceedings relating to his or her license to practice massage therapy are not pending;

(5) Except as otherwise provided in NRS 640C.440, a complete set of fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

(6) The names and addresses of five natural persons not related to the applicant and not business associates of the applicant who are willing to serve as character references;



(7) A statement authorizing the Board or its designee to conduct an investigation to determine the accuracy of any statements set forth in the application; and

(8) If required by the Board, a financial questionnaire; and

(c) In addition to any examination required pursuant to NRS 640C.320:

(1) Except as otherwise provided in subsection 3, pass a ~~written~~ **nationally recognized** examination ~~administered by any board that is accredited by the National Commission for Certifying Agencies, or its successor organization, to examine massage therapists;~~ **for testing the education and professional competency of massage therapists that is approved by the Board;** or

(2) At the applicant's discretion and in lieu of a written examination, pass an oral examination prescribed by the Board.

3. If the Board determines that the examinations being administered pursuant to subparagraph (1) of paragraph (c) of subsection 2 are inadequately testing the knowledge and competency of applicants, the Board shall prepare or cause to be prepared its own written examination to test the knowledge and competency of applicants. Such an examination must be offered not less than four times each year. The location of the examination must alternate between Clark County and Washoe County. Upon request, the Board must provide a list of approved interpreters at the location of the examination to interpret the examination for an applicant who, as determined by the Board, requires an interpreter for the examination.

4. The Board shall recognize a program of massage therapy that is:

(a) Approved by the Commission on Postsecondary Education; or

(b) Offered by a public college in this State or any other state.

↳ The Board may recognize other programs of massage therapy.

5. The Board or its designee shall:

(a) Conduct an investigation to determine:

(1) The reputation and character of the applicant;

(2) The existence and contents of any record of arrests or convictions of the applicant;

(3) The existence and nature of any pending litigation involving the applicant that would affect his or her suitability for licensure; and

(4) The accuracy and completeness of any information submitted to the Board by the applicant;

(b) If the Board determines that it is unable to conduct a complete investigation, require the applicant to submit a financial



questionnaire and investigate the financial background and each source of funding of the applicant;

(c) Report the results of the investigation of the applicant within the period the Board establishes by regulation pursuant to NRS 640C.320; and

(d) Except as otherwise provided in NRS 239.0115, maintain the results of the investigation in a confidential manner for use by the Board and its members and employees in carrying out their duties pursuant to this chapter. The provisions of this paragraph do not prohibit the Board or its members or employees from communicating or cooperating with or providing any documents or other information to any other licensing board or any other federal, state or local agency that is investigating a person, including, without limitation, a law enforcement agency.

Sec. 3. NRS 640C.500 is hereby amended to read as follows:

640C.500 1. Each license expires on the last day of the month in which it was issued in the next succeeding calendar year and may be renewed if, before the license expires, the holder of the license submits to the Board:

(a) A completed application for renewal on a form prescribed by the Board;

(b) Proof of completion of the requirements for continuing education prescribed by the Board pursuant to the regulations adopted by the Board under NRS 640C.320; and

(c) The fee for renewal of the license prescribed by the Board pursuant to NRS 640C.520.

2. A license that expires pursuant to this section may be restored if , *within 2 years after the expiration of the license*, the applicant:

(a) Complies with the provisions of subsection 1; and

(b) Submits to the Board the fees prescribed by the Board pursuant to NRS 640C.520:

(1) For the restoration of an expired license; and

(2) For each year that the license was expired, for the renewal of a license.

3. The Board shall send a notice of renewal to each holder of a license not later than 60 days before the license expires. The notice must include a statement setting forth the provisions of this section and the amount of the fee for renewal of the license.

Sec. 4. NRS 640C.510 is hereby amended to read as follows:

640C.510 1. Upon written request to the Board, a holder of a license in good standing may cause his or her name and license to be transferred to an inactive list. The holder of the license may not practice massage therapy during the time the license is inactive, and no renewal fee accrues.



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2. If an inactive holder of a license desires to resume the practice of massage therapy ~~and~~ *within 2 years after the license was made inactive*, the Board shall renew the license upon:

- (a) Demonstration, if deemed necessary by the Board, that the holder of the license is then qualified and competent to practice;
- (b) Completion and submission of an application; and
- (c) Payment of the current fee for renewal of the license.

Sec. 5. NRS 640C.700 is hereby amended to read as follows:

640C.700 The Board may refuse to issue a license to an applicant, or may initiate disciplinary action against a holder of a license, if the applicant or holder of the license:

1. Has submitted false, fraudulent or misleading information to the Board or any agency of this State, any other state, a territory or possession of the United States, the District of Columbia or the Federal Government;

2. Has violated any provision of this chapter or any regulation adopted pursuant thereto;

3. Has been convicted of a crime involving violence, prostitution or any other sexual offense, a crime involving any type of larceny, a crime relating to a controlled substance, a crime involving any federal or state law or regulation relating to massage therapy or a substantially similar business, or a crime involving moral turpitude ; ~~{within the immediately preceding 10 years;}~~

4. Has engaged in or solicited sexual activity during the course of practicing massage on a person, with or without the consent of the person, including, without limitation, if the applicant or holder of the license:

(a) Made sexual advances toward the person;

(b) Requested sexual favors from the person; or

(c) Massaged, touched or applied any instrument to the breasts of the person, unless the person has signed a written consent form provided by the Board;

5. Has habitually abused alcohol or is addicted to a controlled substance;

6. Is, in the judgment of the Board, guilty of gross negligence in the practice of massage therapy;

7. Is determined by the Board to be professionally incompetent to engage in the practice of massage therapy;

8. Has failed to provide information requested by the Board within 60 days after receiving the request;

9. Has, in the judgment of the Board, engaged in unethical or unprofessional conduct as it relates to the practice of massage therapy;

10. *Has knowingly failed to report to the Board that the holder of a license or other person has engaged in unethical or*



unprofessional conduct as it relates to the practice of massage therapy within 30 days after becoming aware of that conduct;

~~11.1~~ 11. Has been disciplined in another state, a territory or possession of the United States or the District of Columbia for conduct that would be a violation of the provisions of this chapter or any regulations adopted pursuant thereto if the conduct were committed in this State;

~~11.1~~ 12. Has solicited or received compensation for services relating to the practice of massage therapy that he or she did not provide;

~~11.2~~ 13. If the holder of the license is on probation, has violated the terms of the probation;

~~11.3~~ 14. Has engaged in false, deceptive or misleading advertising, including, without limitation, falsely, deceptively or misleadingly advertising that he or she has received training in a specialty technique of massage for which he or she has not received training, practicing massage therapy under an assumed name and impersonating a licensed massage therapist;

~~11.4~~ 15. Has operated a medical facility, as defined in NRS 449.0151, at any time during which:

(a) The license of the facility was suspended or revoked; or

(b) An act or omission occurred which resulted in the suspension or revocation of the license pursuant to NRS 449.160.

➤ This subsection applies to an owner or other principal responsible for the operation of the facility.

~~11.5~~ 16. Has failed to comply with a written administrative citation issued pursuant to NRS 640C.755 within the time permitted for compliance set forth in the citation or, if a hearing is held pursuant to NRS 640C.757, within 15 business days after the hearing; or

~~11.6~~ 17. Except as otherwise provided in subsection ~~11.5~~ 16, has failed to pay or make arrangements to pay, as approved by the Board, an administrative fine imposed pursuant to this chapter within 60 days after:

(a) Receiving notice of the imposition of the fine; or

(b) The final administrative or judicial decision affirming the imposition of the fine,

➤ whichever occurs later.

