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BILL ANALYSIS

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House Bill 5651 (Substitute H-3 as passed by the House)
Sponsor: Representative Paul Condino
House Committee: Regulatory Reform
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 9-23-08

CONTENT

The bill would add Part 179A (Massage Therapy) to the Public Health Code to require the licensure of massage therapists beginning January 1, 2009, and would amend the Code to establish application and licensing fees for massage therapists. The bill would do all of the following:

- **Identify titles that could not be used by a person unless he or she was licensed under Part 179A.**
- **Create the Michigan Board of Massage Therapy within the Department of Community Health (DCH).**
- **Specify practices for which a massage therapy license would not be required.**
- **Require the DCH to issue licenses on a three-year cycle.**
- **Establish age, education, experience, and moral character requirements for licensure.**
- **Require the Board to provide that applicants pass an examination, and establish requirements for the Board's adoption of an examination.**
- **Require massage therapists to make referrals to health professionals under certain circumstances.**
- **Establish continuing education requirements for license renewal.**
- **Allow the DCH to authorize a local health department to enforce Part 179A under certain circumstances, but prohibit a local unit of government from establishing or maintaining licensing requirements for massage therapists.**

Use of Titles

Beginning January 1, 2009, a person could not use any of the following titles or similar words or initials indicating that he or she was a massage therapist, unless licensed under Article 15 (Occupations) as a massage therapist:

- "Licensed massage therapist", "massage therapist", "certified massage therapist", or "board certified massage therapist".
- "Masseur", "masseuse", or "massagist".
- "Clinical massage therapist" or "medical massage therapist".
- "Manual massage therapist", "massage technician", or "myomassologist".
- "L.M.T.", "M.M.T.", or "C.M.T.".

This restriction would not prevent the use of a name, title, or initials that were registered or otherwise protected under law and used by a person certified or otherwise approved by a private organization.

Board of Massage Therapy

The bill would create the Michigan Board of Massage Therapy within the Department of Community Health. The board would consist of the following nine members, appointed by the Governor, who met the requirements of Part 161 of the Code:

- Five individuals who met the requirements of Section 16135(2) of the Code.
- Four public members.

(Part 161 governs the membership of boards, committees, and task forces. Under Section 16135, members of a board must be currently licensed or registered in this State if licensure or registration in a health profession is required for membership. Section 16135(2) provides that the Governor may appoint as board members who must be licensed or registered under that requirement, individuals who meet either or both of the following requirements:

- Are certified or otherwise approved by a national organization that certifies or otherwise approves individuals in the profession to be licensed or registered by the board.
- Have actively practiced the profession licensed or registered by the board or taught in an educational institution that prepares applicants for licensure or registration in that profession, or a combination of both, for at least the two years immediately preceding the appointment.)

Board members would serve staggered, four-year terms. The term of office of an individual appointed to fill a vacancy would expire at the end of the term of the vacancy.

Licensure Requirement

Beginning January 1, 2009, an individual could not engage in the practice of massage therapy unless licensed under Part 179a. "Practice of massage therapy" would mean the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the human body in which the primary intent is to enhance or restore the health and well-being of the client. It would include complementary methods, including the external application of water, heat, cold, lubrication, salt scrubs, body wraps, or other topical preparations; and electromechanical devices that mimic or enhance the actions possible by the hands. It would not include medical diagnosis; practice of physical therapy; high-velocity, low-amplitude thrust to a joint; electrical stimulation; application of ultrasound; or prescription of medicines.

The practices for which a license would not be required under the bill include the use of touch, words, or directed movement to deepen awareness of patterns of movement in the body as long as those services are not

designated or implied to be massage or massage therapy, including all of the following:

- The Feldenkrais method.
- The Trager approach.
- Structural integration.
- Reflexology.

("Feldenkrais method" would mean a system of somatic education in which touch and words are used to eliminate faulty habits, learn new patterns of self-organization and action, and improve a person's own functional movement patterns, based on principles of physics, biomechanics, and an understanding of, or learning about, human development.

"Trager approach" would mean a form of movement education that uses subtle directed movements and the skilled touch of a practitioner, combining physical movement with sensory awareness and internal imagery designed to increase the client's self-awareness and generate physiological changes in the body tissues so as to allow the client to experience a new way of moving his or her body.)

A license also would not be required for the affectation of the human energy system, acupoints, or QI meridians of the human body while engaged within the scope of practice of a profession with established standards and ethics, as long as those services were not designated or implied to be massage or massage therapy. These practices would include all of the following:

- Polarity or polarity therapy.
- Asian bodywork therapy.
- Reiki.
- Shiatsu.

The prohibition against engaging in the practice of massage therapy unless licensed as a massage therapist would not prevent any of the following:

- An individual licensed under any other part or act from performing activities that were considered massage therapy services, if those activities were within the licensee's scope of practice and he or she did not use the protected titles, words, or initials.
- The practice of massage therapy that was an integral part of a program of study by

students enrolled in a school, if they were identified as students and provided massage therapy services only while under the supervision of a licensed massage therapist.

- Self-care by a patient or uncompensated care by a friend or family member who did not represent or hold himself or herself out to be a licensed massage therapist.

Licensure Issuance; Criteria

The DCH would have to provide for a three-year license cycle. Upon submission of a completed application and payment of the appropriate application processing and license fee, the DCH would have to issue a renewable license under Part 179A to an individual who fulfilled all of the following requirements:

- Had a high school diploma or its equivalent as determined by the Board.
- Was of "good moral character", as defined in Public Act 381 of 1974 (MCL 338.41).
- Was at least 18 years old.
- Had successfully passed an examination meeting the requirements of Part 179A, which could have occurred before the bill's effective date.
- Has successfully completed either a supervised curriculum in a school that had at least 500 hours of classroom instruction or at least 500 hours of course and clinical massage education in a substantially equivalent program in another state, country, jurisdiction, territory, or province that, on a case-by-case review, was found by the Board to be sufficient.

(Under MCL 338.41, "good moral character", when used as a requirement for an occupational or professional license, means the "propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner".)

The DCH would have to issue a renewable license to an applicant who met the high school, moral character, and age requirements and was currently licensed as a massage therapist in another state, country, jurisdiction, territory, or province that required standards for licensure that were substantially equivalent to the

requirements of Part 179A, as determined by the Board.

Until two years after the bill's effective date, the Board could issue a renewable license to an applicant who met the high school, moral character, and age requirements and presented proof acceptable to the Board that he or she had fulfilled one of the following requirements:

- For at least one year before the bill's effective date, had been an active member, as a massage therapist, of a national professional massage therapy association that was established before the year 2000, that offered professional liability insurance as a membership benefit, and that had an established code of professional ethics.
- Had practiced massage therapy for an average of at least 10 hours per week for five or more years, as established by the applicant's affidavit.
- Had practiced massage therapy for an average of at least 10 hours per week for at least three years, as established by the applicant's affidavit, and had successfully completed at least 300 hours of formal training in massage therapy acceptable to the Board, as established by evidence from the school or schools attended.
- Had successfully passed an examination meeting the requirements of Part 179A, which could have occurred before the bill's effective date.
- Had fulfilled the bill's education requirements for licensure (described above).

Examination

The bill would require the Board to provide that applicants pass an examination that measured entry level competence before it issued a license under Part 179A. The Board could adopt only exams that met all of the following requirements:

- Were statistically validated through a job analysis under current standards for educational and professional testing.
- Had examination standards that complied with pertinent State and Federal equal employment opportunity guidelines.
- Were available to all potential candidates for licensure.

Continuing Education

By rule, the Board would have to require as a condition of license renewal the furnishing of evidence of at least six hours, or the equivalent acceptable to the Board, of continuing education for each year of the license cycle. The courses would have to be approved by the Board and include subjects related to the practice of massage therapy.

Fees

The fees for an individual licensed or seeking licensure as a massage therapist would be \$20 for an application processing fee, and \$75 per year for a license fee.

Local Enforcement; Preemption

Upon the request of a local governing entity and pursuant to Section 2235 of the Code, the DCH could authorize a local health department to enforce Part 179A and any rules promulgated under it. (Section 2235 allows the DCH to authorize a local health department to exercise a power or function of the Department where not otherwise prohibited by law or rule, unless the DCH Director determines that one of the following exists:

- The local health department does not have and is unable or unwilling to obtain qualified personnel or the administrative capacity or programmatic mechanisms to perform a specific function.
- The services or programs are so specialized in nature and of such technical complexity that cost benefit or cost effectiveness does not justify administration through the local health department.
- Legal constraints preclude the assignment of the responsibility.)

A local health department authorized to enforce Part 179A would have to do so pursuant to Sections 2461(2) and 2462 of the Code. (Those sections deal with issuing citations, holding administrative hearings, and assessing civil penalties for violations of the Code or a rule promulgated, regulation adopted, or order issued under it.)

In addition to the penalties and remedies under Part 179A, a local health department could enforce Part 179A and its rules through an action commenced pursuant to

Section 2465 of the Code or any other appropriate action authorized by law. (Under Section 2465, a local health officer may maintain an injunctive action to restrain, prevent, or correct a violation of a law, rule, or order that he or she has the duty to enforce, or an activity or condition that he or she believes adversely affects the public health.)

Beginning on the effective date of Part 179A, a local unit of government could not establish or maintain licensing requirements for a massage therapist licensed under that part.

Other Provisions

In addition to any other enforcement action authorized by law, a person alleging a violation of Part 179A could bring a civil action in a court of competent jurisdiction for appropriate injunctive relief.

The Board would have to promulgate rules to adopt a code of professional ethics.

A licensee under Part 179A would have to make a written referral of a client to an appropriate health professional if the client's physical or medical condition appeared to constitute a contraindication for massage therapy.

Neither the Board nor the DCH, by rule or otherwise, could restrict the right of a licensee to participate in and become a member of any national recognized trade or professional association.

The bill specifies that Part 179a would not require new or additional third-party reimbursement or mandated workers' compensation benefits for services rendered by an person licensed as a massage therapist.

Proposed MCL 333.16334 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would require the State to incur costs associated with the establishment of the Michigan Board of Massage Therapy and an increased administrative burden due to the introduction of licensure standards for massage therapists. These costs, however,

would be partially offset by the establishment of license fees for massage therapists. The bill would establish an initial processing fee of \$20 and an annual license fee of \$75 for individuals wishing to practice massage therapy. Various estimates suggest that approximately 3,000 to 4,000 massage therapists in Michigan would meet the licensing requirements outlined in the bill. Accordingly, the State could expect to collect approximately \$225,000 or more per year from the proposed annual license fee.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.