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I N S E N A T E

(PREFILED)

January 4, 2012

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Introduced by Sen. ADDABBO -- read twice and ordered printed, and  
when printed to be committed to the Committee on Higher Education  
AN ACT to amend the education law and the general municipal law,  
in relation to the practice of massage therapy

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

1 Section 1. Subdivision 2 of section 6512 of the education law,  
as  
2 added by chapter 689 of the laws of 1976, is amended to read as  
follows:

3 2. Anyone who knowingly aids or abets [three] ONE or more  
unlicensed  
4 persons to practice a profession or employs or holds such  
unlicensed  
5 persons out as being able to practice in any profession in which  
a  
6 license is a prerequisite to the practice of the acts, or who  
knowingly  
7 aids or abets [three] ONE or more persons to practice any profession  
as  
8 exempt persons during the time when the professional licenses of  
such  
9 persons are suspended, revoked or annulled, shall be guilty of a class  
E  
10 felony.

11 S 2. Subdivision 2 of section 6513 of the education law, as added  
by  
12 chapter 687 of the laws of 1976, is amended to read as follows:

13 2. Anyone who knowingly aids or abets [three] ONE or more persons  
not  
14 authorized to use a professional title regulated by this title, to  
use  
15 such professional title, or knowingly employs [three] ONE or  
more  
16 persons not authorized to use a professional title regulated by  
this  
17 title, who use such professional title in the course of such  
employment,

18 shall be guilty of a class E felony.  
19 S 3. Section 7801 of the education law, as amended by chapter 230  
of  
20 the laws of 1997, is amended to read as follows:  
21 S 7801. Definition of practice of massage therapy. The practice of  
the  
22 profession of massage therapy is defined as engaging in applying  
a  
23 scientific system of activity OR MANIPULATION to the muscular  
structure,  
24 INCLUDING, BUT NOT LIMITED TO THE FASCIA, TISSUE OR ENERGY SYSTEM of  
the  
25 human body by means of stroking, kneading, tapping and vibrating  
with  
26 the hands or vibrators for the purpose of improving muscle tone  
and  
27 circulation. THE PRACTICE OF THE PROFESSION OF MASSAGE THERAPY  
SHALL

EXPLANATION--Matter in ITALICS (underscored) is new; matter in  
brackets

[ ] is old law to be omitted.

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1 ALSO INCLUDE MASSAGE THERAPY MODALITIES, SYSTEMS OR OTHER METHODS  
THAT  
2 INCLUDE, BUT ARE NOT LIMITED TO BODY WORK, BODY RUB, FOOT WORK,  
FOOT  
3 MASSAGE, FOOT RUB, NECK RUB, NECK MASSAGE, SWEDISH, DEEP TISSUE, TUI  
NA,  
4 SHIATSU, REFLEXOLOGY, MYOFASCIAL RELEASE, MANUAL LYMPHATIC  
DRAINAGE,  
5 SPORTS MASSAGE, CRANIAL SACRAL THERAPY AND POLARITY THERAPY.

6 S 4. Section 7802 of the education law, as amended by chapter 230  
of

7 the laws of 1997, is amended to read as follows:

8 S 7802. Practice of massage therapy and use of title  
"masseur",

9 "masseuse" or "massage therapist" or the term "massage" or  
"massage

10 therapy". 1. Only a person licensed or authorized pursuant to this  
chap-

11 ter shall practice massage therapy and only a person licensed under  
this

12 article shall use the title "masseur", "masseuse" or "massage  
thera-

13 pist". ANY PERSON WHO IS CERTIFIED, BUT NOT LICENSED PURSUANT TO  
THIS

14 CHAPTER TO PRACTICE MASSAGE THERAPY SHALL NOT BE AUTHORIZED TO  
PRACTICE

15 MASSAGE THERAPY NOR USE THE TITLE "MASSEUR", "MASSEUSE" OR  
"MESSAGE

16 THERAPIST". ANY PERSON PERFORMING THE SERVICES DEFINED IN SECTION  
SEVEN-

17 TY-EIGHT HUNDRED ONE OF THIS ARTICLE WITHOUT A LICENSE PURSUANT TO  
THIS  
18 ARTICLE SHALL BE GUILTY OF A CLASS E FELONY, REGARDLESS OF WHAT  
SUCH  
19 SERVICES ARE BEING CALLED.

20 2. (A) No person, firm, partnership or corporation claiming to  
be  
21 engaged in the practice of massage or massage therapy shall in  
any  
22 manner describe, advertise, or place any advertisement for services  
as  
23 defined in section seventy-eight hundred one of this article unless  
such  
24 services are performed by a person licensed or authorized pursuant  
to  
25 this chapter.

26 (B) SUCH A PERSON, FIRM, PARTNERSHIP OR CORPORATION  
ADVERTISING  
27 SERVICES DEFINED IN SECTION SEVENTY-EIGHT HUNDRED ONE OF THIS  
ARTICLE

28 SHALL HIRE A PERSON LICENSED OR AUTHORIZED UNDER THIS ARTICLE TO  
PRAC-  
29 TICE MASSAGE THERAPY.

30 3. (A) ANY PERSON, FIRM, PARTNERSHIP OR CORPORATION THAT HIRES  
OR  
31 CONTRACTS A NON-LICENSED INDIVIDUAL TO PROVIDE ANY SERVICES DEFINED  
IN  
32 SECTION SEVENTY-EIGHT HUNDRED ONE OF THIS ARTICLE SHALL BE GUILTY OF  
A  
33 CLASS E FELONY AND SHALL BE SUBJECT TO AN IMMEDIATE AUDIT BY THE  
NEW  
34 YORK STATE DEPARTMENT OF TAXATION AND FINANCE AND BY THE LOCAL  
TAXING  
35 AUTHORITY.

36 (B) ANYONE WHO KNOWINGLY AIDS OR ABETS ONE OR MORE UNLICENSED  
PERSONS  
37 TO PRACTICE MASSAGE THERAPY OR HOLDS SUCH UNLICENSED PERSONS OUT  
AS  
38 BEING ABLE TO PRACTICE MASSAGE THERAPY, OR WHO KNOWINGLY AIDS OR  
ABETS  
39 ONE OR MORE PERSONS TO PRACTICE MASSAGE THERAPY AS EXEMPT PERSONS  
DURING  
40 THE TIME WHEN THE LICENSES OF SUCH PERSONS ARE SUSPENDED, REVOKED  
OR  
41 ANNULLED, SHALL BE GUILTY OF A CLASS E FELONY.

42 4. ENFORCEMENT OF THIS SECTION SHALL BE UNDERTAKEN BY THE LOCAL  
LAW  
43 ENFORCEMENT AUTHORITY, THE DEPARTMENT OF HEALTH, BUILDING AND  
CODE  
44 ENFORCEMENT AGENCIES, TRAFFIC POLICE AND/OR SPECIAL POLICE.

45 S 5. The general municipal law is amended by adding a new section  
86-b  
46 to read as follows:

47 S 86-B. STREET FAIR AND PUBLIC PARK MASSAGE THERAPY AUTHORIZED.  
1.

48 THE GOVERNING BOARD OF A MUNICIPAL CORPORATION MAY AUTHORIZE AND  
PERMIT

49 THE SALE OF LICENSED MASSAGE THERAPY, AS SUCH TERM IS DEFINED  
PURSUANT  
50 TO SECTION SEVENTY-EIGHT HUNDRED ONE OF THE EDUCATION LAW, AT  
STREET  
51 FAIRS AND PUBLIC PARKS WITH THE PERMITTING FEES TO BE ESTABLISHED  
AND  
52 COLLECTED BY SUCH MUNICIPAL CORPORATION.  
53 2. ANY ORGANIZATION THAT ALLOWS, PERMITS, LEASES OR RENTS SPACE AT  
A  
54 STREET FAIR OR PUBLIC PARK, PURSUANT TO THIS SECTION, SHALL BE  
RESPONSI-  
55 BLE FOR ENSURING THAT ANY VENDOR PROPOSING TO PERFORM ANY MASSAGE  
THERA-  
56 PY SERVICES, AS SUCH TERM IS DEFINED PURSUANT TO SECTION SEVENTY-  
EIGHT

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1 HUNDRED ONE OF THE EDUCATION LAW, IS TO PROVIDE A VALID AND  
INSURED  
2 PROOF OF LICENSE PRIOR TO THE EVENT AND PRESENT SUCH PROOF ON THE DAY  
OF  
3 THE EVENT AS ALSO REQUIRED FOR TAX AND VENDOR IDENTIFICATIONS.  
4 3. ANY ORGANIZATION FOUND IN VIOLATION OF SUBDIVISION TWO OF  
THIS  
5 SECTION SHALL BE SUBJECT TO FINES, PENALTIES AND MAY BE SUBJECTED TO  
AN  
6 AUDIT BY THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE AND  
THE  
7 LOCAL TAXING AUTHORITY. SUCH FINES AND PENALTIES SHALL BE DETERMINED  
BY  
8 THE MUNICIPAL CORPORATION THAT AUTHORIZES SUCH STREET FAIR AND  
PUBLIC  
9 PARK MASSAGE THERAPY.  
10 S 6. This act shall take effect on the one hundred twentieth day  
after  
11 it shall have become a law. Effective immediately, the addition,  
amend-  
12 ment and/or repeal of any rule or regulation necessary for the  
implemen-  
13 tation of this act on its effective date is authorized to be made on  
or  
14 before such date.