

South Carolina General Assembly
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R48, S214

STATUS INFORMATION

General Bill

Sponsors: Senators Fair and Ford

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Introduced in the Senate on January 10, 2013

Introduced in the House on March 19, 2013

Last Amended on March 13, 2013

Passed by the General Assembly on May 22, 2013

Governor's Action: June 7, 2013, Signed

Summary: Massage/Bodywork Practice Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/10/2013	Senate	Introduced and read first time (Senate Journal-page 37)
1/10/2013	Senate	Referred to Committee on Labor, Commerce and Industry (Senate Journal-page 37)
2/22/2013		Scrivener's error corrected
3/5/2013	Senate	Committee report: Favorable with amendment Labor, Commerce and Industry (Senate Journal-page 7)
3/6/2013	Senate	Committee Amendment Adopted (Senate Journal-page 15)
3/6/2013	Senate	Read second time (Senate Journal-page 15)
3/6/2013	Senate	Roll call Ayes-42 Nays-0 (Senate Journal-page 15)
3/13/2013	Senate	Amended (Senate Journal-page 11)
3/13/2013	Senate	Read third time and sent to House (Senate Journal-page 11)
3/13/2013	Senate	Roll call Ayes-42 Nays-2 (Senate Journal-page 11)
3/14/2013		Scrivener's error corrected
3/19/2013	House	Introduced and read first time (House Journal-page 20)
3/19/2013	House	Referred to Committee on Medical, Military, Public and Municipal Affairs (House Journal-page 20)
5/15/2013	House	Committee report: Favorable Medical, Military, Public and Municipal Affairs (House Journal-page 173)
5/21/2013	House	Read second time (House Journal-page 34)
5/21/2013	House	Roll call Yeas-89 Nays-0 (House Journal-page 35)
5/22/2013	House	Read third time and enrolled (House Journal-page 19)
6/4/2013		Ratified R 48
6/7/2013		Signed By Governor

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VERSIONS OF THIS BILL

1/10/2013
3/5/2013
3/6/2013
3/13/2013

3/14/2013
5/15/2013

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

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(R48, S214)

AN ACT TO AMEND SECTION 40-30-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING THE MASSAGE/BODYWORK PRACTICE ACT, SO AS TO ADD, REVISE, AND DELETE DEFINITIONS; TO AMEND SECTION 40-30-40, RELATING TO THE ADVISORY PANEL FOR MASSAGE/BODYWORK THERAPY UNDER THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, SO AS TO REDESIGNATE THE ADVISORY PANEL TO BE KNOWN AS THE "PANEL", TO REVISE QUALIFICATIONS AND MANNER OF APPOINTMENT OF PANEL MEMBERS, AND TO PROVIDE COMPENSATION FOR MEMBERS AND REIMBURSEMENT OF CERTAIN EXPENSES; TO AMEND SECTION 40-30-50, RELATING TO DUTIES OF THE PANEL, SO AS TO PROVIDE ADDITIONAL DUTIES AND POWERS; TO AMEND SECTION 40-30-60, RELATING TO USE OF EMPLOYEES OF THE DEPARTMENT AND PROMULGATION OF REGULATIONS BY THE BOARD, SO AS TO REMOVE OBSOLETE REFERENCES; TO AMEND SECTION 40-30-90, RELATING TO REPORTING REQUIREMENTS, SO AS TO REMOVE AN OBSOLETE REFERENCE; TO AMEND SECTION 40-30-110, RELATING TO QUALIFICATIONS FOR LICENSURE, SO AS TO REQUIRE CLASSROOM STUDY INSTEAD OF SUPERVISED STUDY, AND TO SPECIFY PROFESSIONAL EXAMINATIONS CONSIDERED ACCEPTABLE FOR LICENSURE; TO AMEND SECTION 40-30-200, RELATING TO COMPLAINTS CONCERNING THE FITNESS OF A LICENSEE TO PRACTICE, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-220, RELATING TO EQUITABLE REMEDIES AVAILABLE TO THE PANEL, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-230, RELATING TO GROUNDS OF MISCONDUCT, SO AS TO MAKE CONFORMING CHANGES AND REVISE THE GROUNDS RELATED TO CONVICTIONS FOR CERTAIN CRIMINAL CONDUCT; TO AMEND SECTION 40-30-240, RELATING TO INVESTIGATIONS OF MISCONDUCT RELATED TO SUBSTANCE ABUSE, SO AS TO MAKE CONFORMING CHANGES AND REVISE LANGUAGE CONCERNING RECORDS THE PANEL OBTAINS IN AN INVESTIGATION; TO AMEND SECTION 40-30-250, RELATING TO ACTIONS THE BOARD MAY TAKE IN RESPONSE TO A DISCIPLINARY VIOLATION, SO AS TO MAKE CONFORMING CHANGES AND ADD PROVISIONS CONCERNING A PRIVATE REPRIMAND; TO AMEND SECTION 40-30-260, RELATING TO VOLUNTARY SURRENDER OF A LICENSE, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-270, RELATING TO APPEALS FROM DISCIPLINARY PANEL DECISIONS, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-300, RELATING TO SERVICE OF PROCESS ON NONRESIDENTS, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-310, RELATING TO CIVIL PENALTIES, SO AS TO MAKE CONFORMING CHANGES; AND TO REPEAL SECTION 40-30-65 RELATING TO THE CREATION AND STRUCTURE OF THE DISCIPLINARY PANEL, SECTION 40-30-70 RELATING TO DUTIES OF THE DISCIPLINARY PANEL, AND SECTION 40-30-210 RELATING TO PROCEDURES BEFORE THE DISCIPLINARY PANEL.

Be it enacted by the General Assembly of the State of South Carolina:

Definitions revised

SECTION 1. Section 40-30-30 of the 1976 Code is amended to read:

"Section 40-30-30. As used in this chapter:

- (1) 'Approved massage/bodywork school' means a facility that meets minimum standards for training and curriculum as determined by regulation of the department.
- (2) 'Department' means the Department of Labor, Licensing and Regulation.
- (3) 'Director' means the Director of the Department of Labor, Licensing and Regulation.
- (4) 'Hydrotherapy' means the use of water, vapor, or ice for treatment of superficial tissues.
- (5) 'Licensure' means the procedure by which an individual applies to the department and is granted approval to practice massage/bodywork.
- (6) 'Massage/bodywork therapy' means the application of a system of structured touch of the superficial tissues of the human body with the hand, foot, arm, or elbow whether or not the structured touch is aided by hydrotherapy, thermal therapy, a massage device, human hands, or the application to the human body of an herbal preparation.
- (7) 'Massage/bodywork therapist' means an individual licensed as required by this chapter, who administers massage/bodywork therapy for compensation.
- (8) 'Massage device' means a mechanical device that mimics or enhances the actions possible by the hands by means of vibration.
- (9) 'Panel' means the Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation.
- (10) 'Thermal therapy' means the use of ice or a heat lamp or moist heat on superficial tissues."

Advisory panel redesignated as "panel", membership, compensation, duties, conforming changes

SECTION 2. Sections 40-30-40, 40-30-50 and 40-30-60 of the 1976 Code are amended to read:

"Section 40-30-40. (A) There is created the Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation. The panel consists of seven members appointed by the Governor. Six members must be licensed massage/bodywork therapists in good standing and must have been engaged in the practice of massage/bodywork for not fewer than three consecutive years before appointment to the panel. One member must represent the public at large and must not have a financial interest, direct or indirect, in the profession or practice of massage/bodywork therapy. A panel member must be a high school graduate or shall have received a graduate equivalency diploma and must be a citizen of the United States and a resident of this State for not fewer than five years. Nominations for appointment to the panel may be submitted to the Governor from any individual, group, or association.

(B) Members serve a term of four years and until their successors are appointed and qualify. A vacancy on the panel must be filled in the manner of the original appointment for the remainder of the unexpired term.

(C) Members of the panel must be compensated for their services at the usual rate for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions and must be reimbursed for actual and necessary expenses incurred in connection with and as a result of their service on the panel. Compensation and reimbursements paid to panel members pursuant to this subsection must be paid as an expense of the panel in the administration of this chapter.

(D) The Governor may remove a member of the panel in accordance with Section 1-3-240.

Section 40-30-50. (A) The Panel for Massage/Bodywork shall:

- (1) advise and recommend action to the department in the development of regulations, statutory revisions, and such other matters as the department may request in regard to the administration of this chapter;
- (2) conduct hearings:
 - (a) on alleged violations of this chapter and regulations promulgated pursuant to this chapter;
 - (b) on licensure determination if not appropriate to be determined at the staff level;
- (3) mediate consumer complaints if appropriate;
- (4) recommend discipline for individuals licensed pursuant to this chapter in any manner provided for in this chapter.

(B) The panel may administer oaths and upon its own motion, or upon request of a party, shall subpoena witnesses, compel their attendance, take evidence, and require the production of matter that is relevant to the investigation including, but not limited to, the existence, description, nature, custody, condition, and location of books, documents, or other tangible items and the identity and location of individuals having knowledge of relevant facts or other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the panel, the panel may apply pursuant to the Administrative Procedures Act to an administrative law judge for an order requiring the individual to appear before the panel and to produce documentary evidence and give other evidence concerning the matter under inquiry.

Section 40-30-60. (A) The Director of the Department of Labor, Licensing and Regulation may employ and establish compensation for personnel the director considers necessary and appropriate for the administration of this chapter.

(B) The director shall prescribe duties, which may include, but are not limited to:

- (1) maintaining and preserving records;
- (2) receiving and accounting for all monies received by the panel;
- (3) issuing necessary notices to licensees;
- (4) determining the eligibility of applicants for examination and licensure;
- (5) examining applicants for licensure including, but not limited to:
 - (a) prescribing the subjects, character, and manner of licensing examinations;
 - (b) preparing, administering, and grading the examination or contracting for the preparation, administration, or grading of the examination. Professional testing services may be utilized to formulate and administer any examinations required by the department;
- (6) issuing and renewing licenses of qualified applicants;
- (7) evaluating and approving continuing education course hours and programs;
- (8) promulgating regulations to carry out this chapter including, but not limited to, establishing a code

of ethics to govern the conduct and practices of individuals licensed pursuant to this chapter."

Annual report

SECTION 3. Section 40-30-90 of the 1976 Code is amended to read:

"Section 40-30-90. The department shall prepare and submit to the Governor an annual report on the administration of this chapter."

Qualifications for licensure

SECTION 4. Section 40-30-110 of the 1976 Code is amended to read:

"Section 40-30-110. To be licensed by the department as a massage/bodywork therapist an individual:

- (1) must be at least eighteen years of age and have received a high school diploma or graduate equivalency diploma;
- (2) shall have completed a five hundred hour course of classroom study at an approved massage/bodywork school having a curriculum that meets the standards set forth in regulation by the department; and
- (3) shall have received a passing grade on the National Certification Exam for Therapeutic Massage and Bodywork (NCETMB), National Certification Examination for Therapeutic Massage (NCETM), the Massage and Bodywork Licensing Examination (MBLEx), or any other examination provided for in regulation."

Complaints, conforming changes

SECTION 5. Section 40-30-200 of the 1976 Code is amended to read:

"Section 40-30-200. If the director has reason to believe that an individual licensed pursuant to this chapter has become unfit to practice massage/bodywork therapy or has violated a provision of this chapter or a regulation promulgated pursuant to this chapter or if a written complaint is filed with the director charging a licensee with the violation of a provision of this chapter or a regulation, the director shall initiate an investigation in accordance with procedures established by the department in regulation. If after investigation it appears that probable cause exists for a hearing, a time and a place must be set by the panel for a hearing to determine whether disciplinary action must be taken against the licensee. Notice must be given and the hearing conducted in accordance with the Administrative Procedures Act."

Miscellaneous provisions, substantive and conforming changes

SECTION 6. Sections 40-30-220, 40-30-230, 40-30-240, 40-30-250, 40-30-260, and 40-30-270, of the 1976 Code are amended to read:

"Section 40-30-220. (A) If the panel or the department has reason to believe that an individual is violating or intends to violate a provision of this chapter or a regulation promulgated pursuant to this chapter, in addition to all other remedies, the panel may order an individual to immediately cease and desist from engaging in the conduct. If the individual is practicing massage/bodywork without being licensed pursuant to this chapter the panel or the department also may apply to an administrative law judge for a temporary restraining order prohibiting the unlawful practice. The administrative law judge may issue a temporary restraining order ex parte and the panel or the department is not required to:

- (1) post a bond;
- (2) establish the absence of an adequate remedy at law;

(3) establish that irreparable damage would result from the continued violation.

A panel member, the Director of the Department of Labor, Licensing or Regulation, or any other employee of the department may not be held liable for damages resulting from a wrongful temporary restraining order.

(B) In accordance with the South Carolina Rules of Civil Procedure, the panel or the department also may seek from an administrative law judge other equitable relief to enjoin the violation or intended violation of this chapter or a regulation promulgated pursuant to this chapter.

Section 40-30-230. The following constitute misconduct and are grounds for the department denying initial licensure to or the panel taking disciplinary action against an individual who:

- (1) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act in applying for licensure pursuant to this chapter;
- (2) has had his or her license to practice massage/bodywork from another state or jurisdiction canceled, revoked, suspended, or otherwise restricted;
- (3) has violated a provision of this chapter, a regulation promulgated pursuant to this chapter, or an order of the department or the panel;
- (4) has intentionally or knowingly, directly or indirectly, aided or abetted in the violation or conspiracy to violate this chapter or a regulation promulgated pursuant to this chapter;
- (5) has intentionally used a fraudulent statement in a document connected to the practice of massage/bodywork or has made false, deceptive, or misleading statements in the practice of massage/bodywork or in advertising;
- (6) has obtained fees or assisted in obtaining fees under intentionally fraudulent circumstances;
- (7) lacks the professional or ethical competence to practice massage/bodywork;
- (8) has been convicted of or has pled guilty to or nolo contendere to a violent crime as defined in Section 16-1-60, during the previous five years has been convicted of or has pled guilty to or nolo contendere to a felony that directly relates to the practice or ability to practice massage/bodywork, or during the previous seven years has been convicted of or has pled guilty to or nolo contendere to a felony, an essential element of which is dishonesty, that reasonably relates to the ability to practice massage/bodywork;
- (9) has practiced massage/bodywork while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render him or her unfit to practice massage/bodywork;
- (10) has sustained a physical or mental disability, as determined by a physician that renders further practice by the licensee dangerous to the public.

Section 40-30-240. If investigating grounds for taking disciplinary action based upon an alcohol or drug addiction, as provided for in Section 40-30-230(10), or a physical or mental disability, as provided for in Section 40-30-230(11), the panel upon reasonable grounds may:

- (1) require an applicant or licensee to submit to a mental or physical examination including a drug test by physicians designated by the panel. The results of an examination are admissible in a hearing before the panel, notwithstanding a claim of privilege pursuant to a contrary rule of law. An individual who accepts the privilege of practicing massage/bodywork in this State or who files an application for a license to practice massage/bodywork in this State is deemed to have consented to submit to a mental or physical examination including a drug test and to have waived all objections to the admissibility of the

results in a hearing before the panel upon the grounds that the results constitute a privileged communication. If an applicant or licensee fails to submit to an examination when requested by the panel pursuant to this section, unless the failure was due to circumstances beyond the individual's control, the panel shall enter an order automatically denying or suspending the license pending compliance and further order of the panel. An applicant or licensee who is prohibited from practicing pursuant to this subsection must be afforded at reasonable intervals an opportunity to demonstrate to the panel the ability to resume or begin the practice of massage/bodywork with reasonable skill and safety to patients;

(2) obtain records of an examination required by item (1) specifically relating to the mental or physical condition of an applicant or licensee who is the subject of an investigation and these records are admissible in a hearing before the panel, notwithstanding any other provision of law. An individual who accepts the privilege of practicing massage/bodywork in this State or who files an application to practice massage/bodywork in this State is deemed to have consented to the panel obtaining these records and to have waived all objections to the admissibility of these records in a hearing before the panel upon the grounds that the records constitute a privileged communication. If a licensee or applicant refuses to sign a written consent for the panel to obtain these records when requested by the panel pursuant to this section, unless the failure was due to circumstances beyond the individual's control, the panel shall enter an order automatically denying or suspending the license pending compliance and further order of the panel. An applicant or licensee who is prohibited pursuant to this section from practicing massage/bodywork must be afforded at reasonable intervals an opportunity to demonstrate to the panel the ability to resume or begin the practice of massage/bodywork with reasonable skill and safety to patients.

Section 40-30-250. (A) Upon a determination by the panel that one or more of the grounds for discipline exists, as provided for in Section 40-30-230, the panel may:

- (1) issue a nondisciplinary letter of caution;
- (2) issue a private reprimand;
- (3) issue a public reprimand;
- (4) impose a fine not to exceed five hundred dollars;
- (5) place the licensee on probation, restrict the license, or suspend the license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension, respectively including, but not limited to, satisfactory completion of additional education of a supervisory period or of continuing education programs as may be specified;
- (6) permanently revoke the license.

(B) A decision by the panel to discipline a licensee as authorized pursuant to this section must be made by a majority vote of the total membership of the panel serving at the time the vote is taken.

(C) Except for a private reprimand, a final order of the department refusing to issue a license to an applicant or a final order of the panel disciplining a licensee pursuant to this section is public information.

Section 40-30-260. A licensee who is under investigation for misconduct, as defined in Section 40-30-230, voluntarily may surrender his or her license to the department, invalidating the license at the time it is surrendered. An individual who voluntarily surrenders his or her license may not practice as a massage/bodywork therapist until the panel reinstates the individual's license. An individual practicing as a massage/bodywork therapist during the period of voluntary license surrender is deemed an illegal practitioner and is subject to the penalties provided in this chapter. Surrendering a license must not be considered an admission of guilt in a proceeding held pursuant to this chapter. However, surrendering a license does not preclude the panel from imposing conditions on the acceptance of the proffered license or from taking disciplinary action against the licensee.

Section 40-30-270. An individual aggrieved by an action of the panel or the department may appeal the decision to an administrative law judge in accordance with the Administrative Procedures Act. Service of a notice of appeal does not stay the panel's or the department's decision pending completion of the appellate process."

Appeals and violations, conforming changes

SECTION 7. Sections 40-30-300 and 40-30-310 of the 1976 Code are amended to read:

"Section 40-30-300. (A) Every communication, whether oral or written, made by or on behalf of an individual, to the director or the panel, whether by way of complaint or testimony, is privileged, and no action or proceeding, civil or criminal, may be brought against the individual, by or on whose behalf the communication is made, except upon proof that the communication was made with malice.

(B) Nothing in this chapter may be construed to prohibit the respondent or his or her legal counsel from exercising the respondent's constitutional right of due process under the law, including, but not limited to, the respondent's right to have normal access to the charges and evidence filed against him or her.

Section 40-30-310. (A) It is unlawful for an individual to:

- (1) hold himself or herself out as a massage/bodywork therapist unless licensed pursuant to this chapter;
- (2) allow an employed individual to practice massage/bodywork unless licensed pursuant to this chapter;
- (3) present as his or her own the license of another;
- (4) allow the use of his or her license by an unlicensed individual;
- (5) give false or forged evidence to the department in obtaining a license pursuant to this chapter;
- (6) falsely impersonate another license holder ;
- (7) use or attempt to use a license that has been revoked;
- (8) otherwise violate a provision of this chapter or a regulation promulgated pursuant to this chapter.

(B) The department may institute civil action in the circuit court, in the name of the State, for injunctive relief against an individual violating a provision of this chapter or a regulation promulgated pursuant to this chapter or an order of the department or the panel. For each violation, the court may impose a fine of no more than one thousand dollars."

Repeal

SECTION 8. Sections 40-30-65, 40-30-70, and 40-30-210 of the 1976 Code are repealed.

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

President of the Senate

Speaker of the House of Representatives

Approved the _____ day of _____ 2013.

Governor

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