



**Colorado
Legislative
Council
Staff**

HB16-1320

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 22, 2016)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0818
Prime Sponsor(s): Rep. Foote; Carver
Sen. Cooke

Date: April 12, 2016
Bill Status: Senate Judiciary
Fiscal Analyst: Erin Reynolds (303-866-4146)

BILL TOPIC: REGULATION OF MASSAGE THERAPY

Fiscal Impact Summary	FY 2015-2016 (current year)	FY 2016-2017	FY 2017-2018
State Revenue General Fund Cash Funds		<u>at least \$10,000</u> at least 5,000 at least 5,000	<u>at least \$10,000</u> at least 5,000 at least 5,000
State Expenditures	Minimal workload increase.		
TABOR Impact		at least \$10,000	at least \$10,000
Appropriation Required:	None.		
Future Year Impacts:	Ongoing revenue and minimal workload increases.		

Summary of Legislation

The **reengrossed** bill makes several modifications to the Massage Therapy Practice Act regulated by the Division of Professions and Occupations (DPO) in the Department of Regulatory Agencies (DORA).

The bill removes specific exemptions from the practice of massage therapy and clarifies that other licensed health care professionals may practice massage therapy without a massage therapist license as long as the therapy is within the limits of their practice act. The bill also requires a licensed massage therapist to be at least 18 years of age. The DPO director is required to promulgate rules to exempt certain practices that are alternatives to massage from state regulation.

Under current law, the DPO director may deny a license to an applicant or discipline a licensee if the person has been convicted of or pled guilty to a charge of sexual misconduct or a prostitution-related offense. The bill adds the crime of human trafficking to the list of existing offenses and includes a no contest plea or a deferred sentence as reasons the DPO director may deny a license or take disciplinary action against a licensee. The DPO director may also deny a license if he or she determines that the applicant is not competent, trustworthy, or of good moral character. The DPO director must consider whether an applicant with a criminal record has been rehabilitated, specifically considering whether the applicant has been a victim of human trafficking and the lapse of time since the offense.

The bill also allows the DPO director to take disciplinary action against a massage therapy licensee for fraudulent, coercive, or dishonest practices; incompetence or untrustworthiness; or indecent exposure. The DPO director may impose a fine of up to \$5,000 per violation per day. The bill makes it a class 2 misdemeanor for a person to knowingly aid or abet the unlicensed practice of massage therapy for the first offense and a class 1 misdemeanor for any subsequent offense.

The bill clarifies that a local government may enact and enforce ordinances to regulate businesses that offer massage therapy services as long as the ordinance defines massage or massage therapy in the same way as the "Massage Therapy Practice Act"; the persons in the business are licensed; and the local ordinance does not conflict with state law. The DPO director must define "massage parlor" by rule for this purpose.

Finally, the bill harmonizes the statute on unlicensed alternative health care practitioners with the bill.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. In the past three years, there were 10 criminal convictions for violating the Massage Therapy Practice Act. Of these convictions, all 10 involved females, and the minority status of the criminals was 1 Caucasian, 8 Asian, and 1 unknown.

State Revenue

Beginning in FY 2016-17, this bill is anticipated to increase state fine revenue by at least \$10,000 per year in the Judicial Department and DORA.

Judicial Department. Fines levied by the courts are expected to be less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 2 misdemeanor is a fine of \$250 to \$1,000, 3 to 12 months in jail, or both. The fine penalty for a class 1 misdemeanor is \$500 to \$5,000, between 6 to 18 months in jail, or both. Because the courts have the discretion of imposing a fine, imposing a jail sentence, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed in 2015 and assumed compliance with the law, any revenue generated is likely to be less than \$5,000. Probation revenue from misdemeanor convictions may also increase by \$50 per month, per person sentenced to probation.

Department of Regulatory Agencies. Disciplinary fines levied by DORA for a violation of the Massage Therapy Practice Act are expected to be at least \$5,000 per year, credited to the General Fund. The DPO may assess a fine of \$5,000 per violation, with each day counting as a new violation, on any person who knowingly aids or abets a prohibited act or practice.

TABOR Impact

This bill increases state revenue from fines, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

State Expenditures

Beginning in the current FY 2015-16, the bill will increase workload in the Judicial Department and DORA. These workload impacts are discussed below and expected to be accomplished within the existing appropriations for each department.

Judicial Department. The bill may impact the trial court in a number of ways. The creation of new misdemeanor offenses is expected to increase criminal filings, while the expansion of when a court injunction may be sought is expected to increase the number of injunction requests. Probation services in the Judicial Department may also experience a minimal increase in workload to supervise convicted offenders. The fiscal note assumes these workload increases are minimal and will not require an increase in appropriations for any agency within the Judicial Department.

Department of Regulatory Agencies. The DPO will conduct rulemaking as well as licensee outreach. While enforcement costs will increase, the bill is also expected to alleviate current issues that have led to protracted litigation. Overall, the impact on enforcement resources is not expected to be significant in either direction.

Local Government Impact

This bill will affect local governments and statutory public entities in several ways, as discussed below.

Local regulation of massage therapy. Local governments that enact and enforce local ordinances regulating business that offer massage therapy services will be required to update these ordinances. This workload impact is expected to be minimal.

Misdemeanor offenses in county courts. First, the bill may increase workload for district attorneys to prosecute any new offenses. Second, to the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. Under current law, a court may sentence an offender to jail for a class 2 misdemeanor for a period of between 3 and 12 months and for a class 1 misdemeanor for a period between 6 to 18 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact on county courts will be minimal.

Denver County Court. The bill results in a minimal increase in workload and revenue for the Denver County Court, managed and funded by the City and County of Denver. The court will try misdemeanor cases where a person violates the Massage Therapy Practice Act. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise convicted persons.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Counties
Municipalities

Judicial
Regulatory Agencies

Law
Special Districts