

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

**REVISED**

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 16-0818.01 Kristen Forrestal x4217

**HOUSE BILL 16-1320**

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**HOUSE SPONSORSHIP**

**Foote and Carver,**

**SENATE SPONSORSHIP**

**Cooke,**

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**House Committees**  
Judiciary

**Senate Committees**  
Judiciary

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**A BILL FOR AN ACT**  
101     **CONCERNING THE REGULATION OF MASSAGE THERAPY TO MODIFY**  
102     **PRACTICES THAT ARE LINKED TO CRIMINAL BEHAVIOR.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries.>)*

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 health care professional's scope of practice. The bill also requires a licensed massage therapist to be at least 18 years of age.

SENATE  
Amended 2nd Reading  
April 29, 2016

HOUSE  
3rd Reading Unamended  
April 8, 2016

HOUSE  
Amended 2nd Reading  
April 7, 2016

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

Current law allows the director of the division of professions and occupations within the department of regulatory agencies (director) to 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 plea of nolo contendere or a receipt of a deferred sentence as reasons the director may deny a license or take disciplinary action against a licensee. The bill also allows the director to take disciplinary action against a licensee for fraudulent, coercive, or dishonest practices; incompetence or untrustworthiness; or indecent exposure. The director is also permitted to fine a person who violates the massage therapy laws. The bill makes it a misdemeanor for a person to aid or abet the unlicensed practice of massage therapy.

The bill clarifies that a city, county, city and county, or other political subdivision may enact and enforce local ordinances to regulate businesses that offer massage therapy services as long as the local ordinance states that massage therapy is defined the same as in the "Massage Therapy Practice Act"; the persons in the business practicing massage therapy are licensed; and the local ordinance does not conflict with the "Massage Therapy Practice Act".

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1     *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1. Legislative declaration.** (1) The general assembly  
3     finds and declares that:

4           (a) Colorado has seen an increase in the number of human  
5     trafficking and prostitution offenses linked to massage therapy;

6           (b) Loopholes in existing massage law, both local and state, are  
7     manipulated by traffickers to escape detection and liability and cast  
8     aspersion on law-abiding massage therapy professionals; and

9           (c) Administrative actions should be aligned with criminal  
10    investigations and actions.

11           ==

12           (2) It is therefore the intent of the general assembly to prohibit or  
13    modify practices that contribute to criminal behavior by making changes  
14    to the "Massage Therapy Practice Act".

1                   **SECTION 2.** In Colorado Revised Statutes, 12-35.5-103, **amend**  
2                   (7) as follows:

3                   **12-35.5-103. Definitions.** As used in this article, unless the  
4                   context otherwise requires:

5                   (7) "Massage" or "massage therapy" means a system of structured  
6                   touch, palpation, or movement of the soft tissue of another person's body  
7                   in order to enhance or restore the general health and well-being of the  
8                   recipient. Such system includes, but is not limited to, techniques such as  
9                   effleurage, commonly called stroking or gliding; petrissage, commonly  
10                   called kneading; tapotement or percussion; friction; vibration;  
11                   compression; passive and active stretching within the normal anatomical  
12                   range of movement; hydromassage; and thermal massage. Such  
13                   techniques may be applied with or without the aid of lubricants, salt or  
14                   herbal preparations, water, heat, or a massage device that mimics or  
15                   enhances the actions possible by human hands. ~~"Massage" or "massage~~  
16                   ~~therapy" does not include therapeutic exercise, intentional joint~~  
17                   ~~mobilization or manipulation, or any of the methods described in section~~  
18                   ~~12-35.5-110 (1)(e)~~.

19                   **SECTION 3.** In Colorado Revised Statutes, 12-35.5-107, **amend**  
20                   (1) (d), (1) (e), and (6); and **add** (1) (f), (7), and (8) as follows:

21                   **12-35.5-107. License - reciprocity - denial of license**  
22                   **application.** (1) Every applicant for a license to practice massage therapy  
23                   shall:

24                   (d) Pay a fee in an amount determined by the director; **and**  
25                   (e) Submit to a criminal history record check in the form and  
26                   manner as described in subsection (2) of this section; **AND**  
27                   (f) DOCUMENT THAT HE OR SHE WILL BE AT LEAST EIGHTEEN

1       YEARS OF AGE AT THE TIME OF LICENSURE.

2           (6) Notwithstanding any provision of this section, the director may  
3       deny a license if the applicant has committed any act that would be  
4       grounds for disciplinary action under section 12-35.5-111 or if the  
5       director determines, subsequent to the criminal history record check, that  
6       the applicant was convicted of, or pled guilty OR NOLO CONTENDERE to,  
7       OR RECEIVED A DEFERRED SENTENCE FOR a charge of unlawful sexual  
8       behavior as defined in section 16-22-102, C.R.S., or any  
9       prostitution-related offense, OR A HUMAN TRAFFICKING-RELATED OFFENSE  
10      AS DESCRIBED IN SECTIONS 18-3-503 AND 18-3-504, C.R.S., whether or  
11      not the act was committed in Colorado.

12           (7) THE DIRECTOR MAY DENY A LICENSE IF THE DIRECTOR  
13      DETERMINES THAT THE APPLICANT IS NOT COMPETENT, TRUSTWORTHY, OR  
14      OF GOOD MORAL CHARACTER.

15           (8) PURSUANT TO SECTION 24-5-101, C.R.S., THE DIRECTOR SHALL  
16      CONSIDER WHETHER AN APPLICANT WITH A CRIMINAL RECORD HAS BEEN  
17      REHABILITATED, SPECIFICALLY CONSIDERING WHETHER THE APPLICANT  
18      HAS BEEN A VICTIM OF HUMAN TRAFFICKING AND THE LAPSE OF TIME SINCE  
19      THE OFFENSE.

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21           **SECTION 4. In Colorado Revised Statutes, 12-35.5-110, amend**

22      (1) (e); and **add (2) and (3) as follows:**

23           **12-35.5-110. Scope of article - exclusions - authority for**  
24      **clinical setting.** (1) Nothing in this article prohibits or requires a  
25      **massage therapy license for any of the following:**

26           **(e) The person provides alternative methods that employ contact**  
27      **and does not hold himself or herself out as a massage therapist. For the**

1      purposes of this paragraph (e), "alternative methods that employ contact"  
2      include, but are not limited to:

3      (I) Practices in which only the soft tissue of a person's hands, feet,  
4      or ears are manipulated USING REFLEXOLOGY, AURICULAR THERAPY, AND  
5      MERIDIAN THERAPIES THAT AFFECT THE REFLEXES OF THE BODY;

6      (II) Practices using touch, words, and directed movements to  
7      deepen a person's awareness of movement patterns in his or her body,  
8      such as the Feldenkrais method, the Trager approach, and body-mind  
9      centering;

10     (III) Practices using touch OR HEALING TOUCH to affect the human  
11     energy systems, such as reiki, shiatsu; and Asian or polarity bodywork  
12     therapy MERIDIANS;

13     (IV) Structural integration practices such as Rolfing and  
14     Hellerwork; and

15     (V) The process of muscle activation techniques.

16     (2) IF THERE IS A CONTINUED PATTERN OF CRIMINAL BEHAVIOR  
17     WITH ARRESTS, COMPLAINTS REGARDING SEXUAL MISCONDUCT, OR  
18     CRIMINAL INTENT THAT IS RELATED TO HUMAN TRAFFICKING DISGUISED AS  
19     A LEGITIMATE EXEMPTION, THE DIRECTOR MAY, AT HIS OR HER DISCRETION  
20     DETERMINE THAT A PRACTICE IS NO LONGER EXEMPT FROM LICENSING  
21     PURSUANT TO PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION.

22     (3) Nothing in this article prohibits the practice of  
23     massage therapy by a person who is licensed or registered to  
24     practice medicine, nursing, osteopathy, physiology, chiropractic,  
25     podiatry, cosmetology, or any other health care profession, as  
26     long as the practice is within the limits of each respective   
27     practice act.

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2                   **SECTION 5.** In Colorado Revised Statutes, 12-35.5-111, **amend**

3                   (1) (j) and (1) (m); and **add** (1) (p) and (1) (q) as follows:

4                   **12-35.5-111. Grounds for discipline - definitions.** (1) The  
5                   director is authorized to take disciplinary action pursuant to section  
6                   12-35.5-112 against any person who has:

7                   (j) Been convicted of, ~~or~~ pled guilty or nolo contendere to, OR  
8                   RECEIVED A DEFERRED SENTENCE FOR a felony or a crime for which the  
9                   act giving rise to the crime was related to the practice of massage therapy  
10                  or was perpetrated against a massage client during a therapeutic  
11                  relationship, as defined in subparagraph (II) of paragraph (b) of this  
12                  subsection (1); or committed any act specified in this section. A certified  
13                  copy of ~~the judgment of~~ A DOCUMENT FROM a court of competent  
14                  jurisdiction ~~of~~ DOCUMENTING a conviction or ENTRY OF A plea is  
15                  conclusive evidence of the conviction or plea. In considering the  
16                  disciplinary action, the director shall be governed by the provisions of  
17                  section 24-5-101, C.R.S.

18                   (m) Been convicted of, ~~or~~ pled guilty OR NOLO CONTENDERE to,  
19                   OR RECEIVED A DEFERRED SENTENCE FOR a charge of unlawful sexual  
20                  behavior as defined in section 16-22-102, C.R.S., ~~or~~ any  
21                  prostitution-related offense, OR ANY HUMAN TRAFFICKING-RELATED  
22                  OFFENSE AS DESCRIBED IN SECTIONS 18-3-503 AND 18-3-504, C.R.S.,  
23                  whether or not the act was committed in Colorado;

24                   (p) USED FRAUDULENT, COERCIVE, OR DISHONEST PRACTICES, OR  
25                  DEMONSTRATED INCOMPETENCE OR UNTRUSTWORTHINESS, IN THIS STATE  
26                  OR ELSEWHERE;

27                   (q) EXPOSED AN INTIMATE PART OF HIS OR HER BODY TO THE VIEW

1 OF A CLIENT OR ANY PERSON PRESENT WITH THE CLIENT, OR PERFORMED  
2 AN ACT OF MASTURBATION IN THE PRESENCE OF A CLIENT. FOR THE  
3 PURPOSES OF THIS PARAGRAPH (q):

4 (I) "INTIMATE PART" MEANS THE EXTERNAL GENITALIA, THE  
5 PERINEUM, THE ANUS, THE BUTTOCKS, THE PUBES, OR THE BREAST OF ANY  
6 PERSON.

7 (II) "MASTURBATION" MEANS THE REAL OR SIMULATED TOUCHING,  
8 RUBBING, OR OTHERWISE STIMULATING OF A PERSON'S OWN GENITALS OR  
9 PUBIC AREA, REGARDLESS OF WHETHER THE GENITALS OR PUBIC AREA IS  
10 EXPOSED OR COVERED.

11 (III) "THERAPEUTIC RELATIONSHIP" MEANS THE PERIOD OF TIME  
12 BEGINNING WITH THE INITIAL MASSAGE THERAPY SESSION AND ENDING  
13 UPON WRITTEN TERMINATION OF THE RELATIONSHIP BY EITHER PARTY.

14 **SECTION 6.** In Colorado Revised Statutes, 12-35.5-112, **amend**  
15 (2); and **add** (11) as follows:

16 **12-35.5-112. Disciplinary proceedings - injunctions -**  
17 **investigations - hearings - judicial review - fine.** (2) The director may  
18 request the attorney general to seek an injunction, in any court of  
19 competent jurisdiction, to enjoin any person from ~~committing an act~~  
20 ENGAGING IN OR AIDING AND ABETTING AN ACT OR PRACTICE prohibited  
21 by this article. When seeking ~~an~~ A TEMPORARY RESTRAINING ORDER,  
22 PRELIMINARY INJUNCTION, OR injunction under this subsection (2), the  
23 attorney general ~~shall~~ IS NOT BE REQUIRED to allege or prove the inadequacy  
24 of any remedy at law or that substantial or irreparable damage is likely to  
25 result from a continued violation of this article.

26 (11) IF A PERSON COMMITS AN ACT THAT VIOLATES THIS ARTICLE,  
27 THE DIRECTOR MAY IMPOSE A FINE NOT TO EXCEED FIVE THOUSAND

1 DOLLARS PER VIOLATION. EACH DAY OF A CONTINUING VIOLATION  
2 CONSTITUTES A SEPARATE VIOLATION.

3 **SECTION 7.** In Colorado Revised Statutes, **amend** 12-35.5-115  
4 as follows:

5 **12-35.5-115. Unauthorized practice - criminal penalties.** (1) A  
6 person who practices or offers or attempts to practice massage therapy  
7 without an active license issued under this article commits a class 2  
8 misdemeanor and shall be punished as provided in section 18-1.3-501,  
9 C.R.S., for the first offense, and for the second or any subsequent offense,  
10 the person commits a class 1 misdemeanor and shall be punished as  
11 provided in section 18-1.3-501, C.R.S.

12 (2) A PERSON WHO ~~KNOWINGLY AIDS OR ABETS THE UNLICENSED~~  
13 PRACTICE OF MASSAGE THERAPY COMMITS A CLASS 2 MISDEMEANOR FOR  
14 THE FIRST OFFENSE AND ~~A CLASS 1 MISDEMEANOR FOR~~ ANY SUBSEQUENT  
15 OFFENSE, AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501,  
16 C.R.S.

17 **SECTION 8.** In Colorado Revised Statutes, 12-35.5-118, **repeal**  
18 (1); and **add** (3) as follows:

19 **12-35.5-118. Local government - regulations - enforcement.**  
20 (1) ~~No city, county, city and county, or other political subdivision of this~~  
21 ~~state shall enact or enforce any local ordinance that regulates the practice~~  
22 ~~or the profession of massage therapy.~~

23 (3) (a) ~~A CITY, COUNTY, CITY AND COUNTY, OR OTHER POLITICAL~~  
24 SUBDIVISION MAY INSPECT MASSAGE BUSINESSES UPON COMPLAINT OF  
25 ILLEGAL ACTIVITY AND ENSURE THAT THE PEOPLE PERFORMING MASSAGE  
26 THERAPY ARE LICENSEES. A CITY, COUNTY, CITY AND COUNTY, OR OTHER  
27 POLITICAL SUBDIVISION SHALL NOT CHARGE A FEE FOR THE INSPECTION OR

1       LICENSE VERIFICATION.

2           **SECTION 9.** In Colorado Revised Statutes, 6-1-724, **amend (6)**

3       (q) as follows:

4           **6-1-724. Unlicensed alternative health care practitioners -**  
5       **deceptive trade practices - short title - legislative declaration -**  
6       **definitions.** (6) A complementary and alternative health care practitioner  
7       providing complementary and alternative health care services under this  
8       section who is not licensed, certified, or registered by the state shall not:

9           (q) Practice or represent that he or she is practicing MASSAGE OR  
10       massage therapy ~~which, for purposes of this section: AS DEFINED IN~~  
11       ARTICLE 35.5 OF TITLE 12, C.R.S., UNLESS EXEMPT PURSUANT TO SECTION  
12       12-35.5-110. C.R.S.

13           ~~(I) Includes practices where the primary purpose is to provide~~  
14       ~~deep stroking muscle tissue massage of the human body; and~~

15           ~~(II) Excludes:~~

16           ~~(A) Stroking of the hands, feet, or ears; or~~

17           ~~(B) The use of touch, words, and directed movement of a healing~~  
18       ~~art within the bodywork community, including healing touch, mind-body~~  
19       ~~centering, orthobionomy, reflexology, rolfing, reiki, qigong, muscle~~  
20       ~~activation techniques, and practices with the primary purpose of affecting~~  
21       ~~energy systems of the human body;~~

22           **SECTION 10. Safety clause.** The general assembly hereby finds,  
23       determines, and declares that this act is necessary for the immediate  
24       preservation of the public peace, health, and safety.