

ACT 205

S.B. NO. 2314

A Bill for an Act Relating to Massage.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 452-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “massage establishment” to read:
 ““Massage therapy establishment” means premises occupied and used for the purpose of practicing massage therapy or massage therapy training; provided that when any massage therapy establishment is situated in any building used for residential purposes, the massage therapy establishment premises shall be set apart and shall not be used for any other purpose.”

2. By deleting the definition of “out-call massage service”:
 [““Out-call massage service” means any business which engages in or carries on the practice of massage, not at a fixed location but at a location designated by the customer, client, or service.”]

SECTION 2. Section 452-3, Hawaii Revised Statutes, is amended to read as follows:

“§452-3 Massage therapy establishments [and out-call massage services] to be licensed. No massage therapy establishment [or out-call massage service] shall be operated unless it has been duly licensed as provided for in this chapter[; provided that a licensed massage therapist who does not operate a business employing other persons is exempt from the requirement for an out-call service license, unless that therapist is affiliated with a business providing massage as an adjunct service].”

SECTION 3. Section 452-13, Hawaii Revised Statutes, is amended to read as follows:

“§452-13 Requisites for admission to examination and licensing of massage therapists[, and massage therapy establishments[, and out-call massage services]. (a) The executive secretary of the board shall determine the sufficiency of the preliminary qualifications of applicants for admission to examination and licensing. The executive secretary shall require that:

- (1) A nonrefundable application fee shall be paid to the board at the time of the application.
- (2) The examination fee shall be refunded only if the applicant is found not qualified to take the license examination.
- (3) An applicant for examination shall have completed academic training in anatomy, physiology, structural kinesiology, and the theory and demonstration of massage, which is not confined to any specific system or method of massage therapy, spent at least six months as a massage therapist apprentice or massage therapist student in a school approved by the board, and met all other requirements set for apprentices or students by the board pursuant to section 452-6(c).

(b) An applicant desiring to license a massage therapy establishment [or an out-call massage service] shall file with the board a written application under oath, on a form prescribed and supplied by the board, and setting forth that the applicant has complied with all of the requirements in a manner and detail as

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may be required by the rules established by the board. A license fee shall be paid to the board together with the application fee.”

SECTION 4. Section 452-16, Hawaii Revised Statutes, is amended to read as follows:

“**§452-16 Renewal of license; fees.** Massage therapist[,] and massage therapy establishment[, and out-call massage service] licenses shall expire on June 30 of each even-numbered year following the date of issuance unless renewed for the next biennium. These licenses may be renewed by filing an application therefor, accompanied by a renewal fee. The application shall be made between May 1 and June 30 of each even-numbered year. Failure to apply for renewal as provided in this section shall constitute a forfeiture of the license as of the date of expiration. Any license so forfeited may be restored within one year after expiration upon the filing of an application in the same manner and payment, in addition to all delinquent fees, of a penalty fee. Thereafter, the license shall not be restored unless the regular examination and all requirements for the examination including training have been met.”

SECTION 5. Section 452-19, Hawaii Revised Statutes, is amended to read as follows:

“**§452-19 Penalties.** (a) Any person who practices massage[,] or maintains a massage therapy establishment [or out-call massage service, or both], or acts in any capacity wherein a license is required by this chapter, without a license provided for in this chapter, shall be [fined not more than \$500 or imprisoned not more than six months, or both.] guilty of a petty misdemeanor.

(b) Any owner, operator, manager, or licensee in charge of or in control of a massage therapy establishment [or out-call massage service] who knowingly employs a person who is not licensed as a massage therapist or who has not received a permit as a massage therapist apprentice as provided in this chapter, or who allows an unlicensed person to perform, operate, or practice massage is guilty of a misdemeanor[, and upon conviction the person shall be fined not more than \$1,000 or imprisoned not more than one year, or both].”

SECTION 6. Section 452-23, Hawaii Revised Statutes, is amended to read as follows:

“**§452-23 Advertising.** (a) [It is a misdemeanor for any person to advertise as a massage therapist, a massage establishment, or an out-call massage service unless the person holds a valid license under this chapter in the classification so advertised. It shall also be a misdemeanor for any person to advertise as being able to perform massage in any form unless the person has received training in the massage technique that is being advertised. “Advertise” as used in this section includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building, vehicle, or structure, or advertising in any newspaper or magazine, or advertising other than in-column listings in any directory, or commercials broadcast by airwave transmission, with or without any limiting qualifications.] It is a misdemeanor for any person, including a person who is exempt by section 452-21 from this chapter, to advertise with or without any limiting qualifications as a massage therapist unless the person holds a valid license under this chapter. Further, it shall be a violation of this chapter for any person to advertise:

- (1) As a massage therapist or a massage therapy establishment unless the person holds a valid license under this chapter in the classification so advertised;
- (2) By combining advertising for a licensed massage therapy service with escort or dating services;
- (3) As performing massage in a form in which the person has not received training, or of a type which is not licensed or otherwise recognized by statute or administrative rule;
- (4) By using in any mass distribution, print advertisements such as newspaper advertisements, or telephone directory listings, pictures depicting the human form other than hands, wrists, and forearms;
- (5) By using any term other than therapeutic massage or massage therapy to refer to the service; or
- (6) By referring to any personal physical qualities of the practitioner.

“Advertise” as used in this section includes, but is not limited to, the issuance of any card, sign, or device to any person; the causing, permitting, or allowing of any sign or marking on or in any building, vehicle or structure; advertising in any newspaper or magazine; any listing or advertising in any directory under a classification or heading that includes the word “massage therapist” or “massage therapy establishment”; or commercials broadcast by airwave transmission.

(b) A licensee may advertise in print or broadcast media as defined in subsection (a) only if the licensee includes in the advertisement the licensee’s applicable and current license number and provides proof of the number’s validity to the publisher or producer of the advertising medium. The publisher or producer of a print or broadcast advertising medium shall refuse to publish or broadcast an advertisement for a licensee who does not provide proof of current license registration and who does not include a currently valid license number in the advertisement. Nothing in this section shall impose any civil or criminal liability on any publisher or producer who publishes or broadcasts an advertisement based on a good faith reliance on documents presented or representations made by the person placing the advertisement indicating that the advertisement complies with the requirements of this section.

(c) The publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from its refusal to list or accept advertisements pursuant to subsection (b).] (b) A massage therapist or massage therapy establishment may advertise in print or broadcast medium, as defined in subsection (a) only if the massage therapist or massage therapy establishment includes in the advertisement or listing the massage therapist’s or massage therapy establishment’s applicable and current license number, and provides written evidence of the number’s validity to the publisher or producer of the advertising medium. The publisher or producer of a print or broadcast advertising medium shall refuse to publish or broadcast an advertisement or listing for a massage therapist or massage therapy establishment that does not comply with the provisions of this subsection. A publisher or producer who obtains a signed statement from the massage therapist or massage therapy establishment which states that the massage therapist or massage therapy establishment has read the text of the advertisement or listing, has an applicable and current massage therapist or massage therapy establishment license for the services advertised, has included all applicable and current license numbers in the advertisement or listing, and is aware of civil and criminal penalties for advertising as a massage therapist or massage therapy establishment without a valid license, shall be entitled to a rebuttable presumption of compliance with this subsection.

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(c) Upon entry of either a final order of the board of massage pursuant to chapter 91, or a judgment by a court of competent jurisdiction, finding that a massage therapist or massage therapy establishment has advertised in violation of section 452-2 or this section, the public utility furnishing telephone service to the massage therapist or massage therapy establishment shall disconnect the telephone number contained in the advertisement or listing.

(d) A publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from refusal to list or accept advertisements pursuant to subsection (b). Good faith compliance by a public utility with subsection (c) is a complete defense to any civil or criminal action brought against it arising from the termination of telephone service.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 19, 1990.)