



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2020**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2541, S.D. 1, RELATING TO MASSAGE THERAPISTS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 25, 2020      **TIME:** 12:30 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):**      **WRITTEN TESTIMONY ONLY.**

(For more information, contact Christopher J.I. Leong,  
Deputy Attorney General, at 586-3092)

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to (1) require massage therapy licensees to complete twelve hours of continuing education within the two-year period preceding each renewal date, beginning with the renewal for the licensing biennium commencing July 1, 2022 and (2) update advertising restrictions and penalties.

The portion of this bill that prohibits certain advertisements on the internet and social media platforms may be subject to challenge under the Free Speech Clauses of the United States Constitution (First Amendment) and the Constitution of the State of Hawaii (article I, section 4). Both clauses forbid the enactment of laws abridging the freedom of speech. The United States Supreme Court has established that commercial speech, such as advertising, is not stripped of First Amendment protection simply because it proposes a commercial transaction. *See Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 561-62 (1980). In the commercial speech context, although a state may prohibit misleading advertising, it may not place an absolute prohibition on potentially misleading information if the information may also be presented in a way that is not deceptive. *See In re R.M.J.*, 455 U.S. 191, 203 (1982).

Thus, we have previously opined that the complete restriction in section 452-23(a)(4), Hawaii Revised Statutes (HRS), against "pictures depicting the human form other than hands, wrists, and forearms" is broader than reasonably necessary to

remedy the perceived harm that gave rise to its enactment, because such advertising is not *per se* misleading or deceptive. See *attached* Attorney General Opinion No. 98-02, dated March 3, 1998. Because section 452-23(a)(4), HRS, may be overbroad and infringe upon commercial speech rights, the amendment to this section on page 4, lines 15-17, may similarly be subject to the same constitutional infirmity.

Thank you for the opportunity to provide comments.

## **Testimony of the Board of Massage Therapy**

**Before the  
Senate Committee on Judiciary  
Tuesday, February 25, 2020  
12:30 p.m.  
State Capitol, Conference Room 016**

**On the following measure:  
S.B. 2541, S.D. 1, RELATING TO MASSAGE THERAPISTS**

### **WRITTEN TESTIMONY ONLY**

Chair Rhoads and Members of the Committee:

My name is Risé Doi, and I am the Executive Officer of the Board of Massage Therapy (Board). The Board supports this bill with suggested amendments.

The purposes of this bill are to: (1) require massage therapy licensees to complete 12 hours of continuing education (CE) within the two-year licensing period preceding the renewal date, two hours of which shall include first aid, cardiopulmonary resuscitation, or emergency related courses, beginning with the renewal cycle for the licensing biennium commencing July 1, 2022, and every biennial renewal thereafter; and (2) update advertising restrictions and penalties.

The Board reviewed and discussed S.B. 2541 at its meeting on January 29, 2020. The Board respectfully requests amending the July 1, 2022, commencement date on page 1, line 12, and page 3, line 6 of the bill to July 1, 2024. This date will allow the Board to provide ample notice to affected licensees of the CE requirement and for licensees to meet that requirement prior to license renewal.

In addition, the Board requests language that would require a random audit of the continuing education hours for renewal, similar to language other licensing boards have regarding CE requirements, as this will help the Board enforce the CE requirements while reducing the workload in verifying CE compliance. The Board recommends adding language that would allow massage therapists licensed during the second year of the biennium to begin meeting the CE requirements in the following biennium. To that end, the Board respectfully requests adding a subsection (c) to section 2 of the bill:

(c) The board may conduct random audits of licensees to determine compliance with the continuing education requirement. The board shall provide written notice

of an audit to a licensee randomly selected for audit. Within sixty days of notification, the licensee shall provide the board with documentation verifying compliance with the continuing education requirement established by this section.”

Thank you for the opportunity to testify on this bill.



amta  
american **massage therapy** association®

**LATE**

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February 25, 2020

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary:

My name is Olivia Nagashima and I am testifying in my role as the President of the American Massage Therapy Association – Hawaii Chapter. More than 8,000 state licensed massage therapists currently practice in Hawaii.

Our chapter **supports Senate Bill 2541 SD1**, requiring state licensed massage therapists to complete twelve hours of continuing education within the two-year period preceding their renewal date. These requirements include two hours of first aid, cardiopulmonary resuscitation, or emergency related courses.

SB2541 SD1 also modernizes advertising restrictions and penalties as the original statute licensing massage therapy in Hawaii was enacted when social media platforms did not exist.

We view this bill as an effort to elevate the massage therapy profession to the highest standards of qualifications and safety. By requiring 12 hours of continuing education courses every two years, including CPR training, Hawaii residents can be assured they are being treated by a professional who has studied the most current trends and best practices of our industry.

Thank you for your consideration, we strongly urge your support of SB2541 SD1.

### **AMTA Board of Directors**

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**LATE**

**SB-2541-SD-1**

Submitted on: 2/25/2020 7:55:23 AM

Testimony for JDC on 2/25/2020 12:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lana Rose Olson	Testifying for Kauai Massage Therapy	Oppose	No

Comments:

Position: Oppose

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Judiciary Committee,

I have been a licensed massage therapist in the State of Hawaii since 2012, MAT #12742 with no violations and I must OPPOSE SB2541 SD1 on the grounds that the internet advertising requirements would prove to be an undue hardship on many small massage businesses and entrepreneurs in this State. It also would cause in some cases, a misrepresentation of certain modalities in the profession, thereby misleading the consumer.

The bill states that it would be a violation to advertise on the internet using pictures depicting the human form other than hands, wrists, or forearms. Many legitimate licensed and regulated massage modalities, including Lomi Lomi, Step Lomi Lomi, Thai Massage, Ashiatsu, and Sarga Bodywork require the therapist to use his or her entire body, including knees and feet. How can we accurately represent these modalities if we do not include a picture of the rest of the therapist while working? A picture is worth a thousand words, especially in advertising.

Furthermore, no other profession involving touch is regulated in such a way. Chiropractors, Physical Therapists, Naturopaths, Midwives, Medical Doctors, etc. are all able to post headshots and/or shots of them working with clients without regard for showing their form or face.

Today's world requires businesses to advertise in a variety of ways. Limiting representation on the "internet" would require a small business to edit and curate photos for over 10 sites and apps and consistently monitor what others may post of them. Sites including Instagram, Facebook, Yelp, TripAdvisor, YouTube, Twitter, Tumblr, other review and scheduling sites (they may not even know exist for their business). What if someone has build a brand over years?! Are they expected to go back and track down every photo on every site and edit it? In some cases, as with Instagram, it is not possible to retroactively photos, you would be asking the business to damage their brand by deleting all their carefully, and often expensively, curated

content. Some sites, such as Trip Advisor and Yelp encourage customers to post photos, what if they took a picture of the therapist after or posted a photo of the therapist working an event? How is the therapist to be expected to regulate the internet? The task would be impossible.

The scope of practice of massage therapy allows massage therapists to provide stretches and other self care tips to their clients. Many therapists and businesses have created videos on YouTube, Facebook, and Instagram for this purpose. How are they supposed to show stretching techniques for different areas of the body and edit out the body?

The other parts of this bill requiring the posting of the license number on the Internet are mostly fine, but it would need to be clarified. Does the license number needs to be on every single post and page, or just on the about page/profile? This is obviously much simpler with a print piece than it is with the internet.

I can support the 12 CE hours requirement and the 2 hours of emergence related training that goes with it, as well not writing out physical qualities of the practitioner (although certainly you would want to know that your massage therapist is strong and hygienic and those could be considered physical qualities), however, I must OPPOSE SB2541 HD1 as written with the unrealistic and unnecessary regulation of limiting practitioner photos to hands, wrists, and forearms.

Mahalo for your consideration,

Lana Olson

Owner and Principal Therapist, Kaua'i Massage Therapy

**LATE**

**SB-2541-SD-1**

Submitted on: 2/25/2020 8:43:56 AM

Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Tsukayama	Individual	Oppose	No

Comments:

Position: Oppose

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Judiciary Committee,

I am a licensed massage therapist and continuing education provider for massage therapy on the island of O'ahu (MAT #12532) and represent a massage therapy educational entity called Sarga Bodywork.

I oppose the section of SB2541 SD1 relating to internet advertising. The high cost of advertising has led many local practitioners to rely heavily on social media platforms in order to promote their massage practices. Limiting advertising images to only depict hands, wrists, or forearms would be too restrictive and would exclude and/or misrepresent massage modalities that use the feet and/or knees as primary manual therapy tools. Modalities such as Thai Massage, Shiatsu, some forms of Lomilomi (Step Lomi, Lomi A'e) and Ashiatsu would be highly affected by this restriction.

Additionally, the part of this bill requiring the posting of therapists MAT# on the internet is understandable, but it is unclear if the license number is required to be posted on every single webpage, blog, or social media post? This requirement would be easily translatable to print media, but as internet marketing is now the primary source of advertising for massage therapists, additional clarification needs to be provided for internet marketing.

As a continuing education provider I do strongly endorse the 12 CE hours requirement and seeing that Hawaii is one of the last states to require CEU requirements for LMTs, I believe this to be a long time coming, however, I must OPPOSE SB2541 HD1 that would unnecessarily limit licensed massage therapists to using only photos of hands, wrists, and forearms to promote their practices.

Sincerely,  
Daniel Tsukayama



**LATE**

**SB-2541-SD-1**

Submitted on: 2/25/2020 9:06:46 AM

Testimony for JDC on 2/25/2020 12:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marion McHenry	Individual	Oppose	No

Comments:

My name is Marion L Mchenry MAT#2550. From my MAT# you can tell that I have been a licensed massage therapist in Hawaii for over 30 years. I was also the lead therapist and trainer at th Halelea Spa at the St Regis Princeville Hotel on Kauai for over 5 years, and the lead therapist and trainer at the Princeville Hotel prior to the property name change.

I oppose this bill because the internet advertising requirements are unfair to the many massage therapists in this state that are in private practice. It is important for any private practice professional to be able to advertise using a head shot of themselves. Often we, as consumers may choose an doctor, or acccupuncturist initially by the kind look in their eyes in the photo that we saw online or on their sign.

Many massage techniques used in Hawaii incorporate full body stretching as in Thai massage, or massage strokes where the therspist uses their own arms, feet,or knees to perform the technique as in Hawaiian Lomi. How is the therapist able to accurately show, in advertising the style of massage they practice if photos can only show hands?

I in my work as massage trainer and have utilized You tube videos to show various techniques in teaching. To make posting these kinds of training videos would hurt those wanting to learn and grow their skills.

The only part of this bill that is appropriate is the requirement for CE hours.

Sincerely,

Marion McHenry LMT

Princeville, Kauai

**LATE**

**SB-2541-SD-1**

Submitted on: 2/25/2020 9:36:19 AM

Testimony for JDC on 2/25/2020 12:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tammy Davis	Individual	Oppose	No

Comments:

Aloha,

I am a registered massage therapist in Kauai since 2011 in good standing, MAT#12490 SD1 and part owner of a successful small business. I oppose SB2541 as written because of the advertising restrictions. I support the 12 hour CE requirements and the emergency training, but the restrictions on showing the body or face of the practioners is an outdated and overly inhibiting policy for today's massage therapists. The modalities we advertise must be able to show the position of the body of the therapists to educate and properly advertise for various treatments like Step Lomi, Thai, Ashiatsu, Sports, and Sarga. Thank you for your consideration.

Sincerely,

Tammy Davis

147 Royal Drive

Kapaa, HI 96746

**LATE**

**SB-2541-SD-1**

Submitted on: 2/25/2020 10:09:46 AM

Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
jenica springer	Individual	Oppose	No

Comments:

Position: Oppose

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Judiciary Committee,

I have been a licensed massage therapist in the State of Hawaii , MAT #13451 with no violations and I must OPPOSE SB2541 SD1 on the grounds that the internet advertising requirements would prove to be an undue hardship on many small massage businesses and entrepreneurs in this State. It can cause a misrepresentation of certain modalities in the profession.

The bill states that it would be a violation to advertise on the internet using pictures depicting the human form other than hands, wrists, or forearms. Many legitimate licensed and regulated massage modalities, including Lomi Lomi, Thai Massage, Bodywork require the therapist to use his or her entire body, including knees and feet. No other profession involving touch is regulated in such a way. Chiropractors, Physical Therapists, Naturopaths, Midwives, Medical Doctors, etc. are all able to post headshots and/or shots of them working with clients without regard for showing their form or face.

businesses need to advertise in a variety of ways. Limiting representation on the "internet" would require a small business to edit and curate photos for over 10 sites and apps and consistently monitor what others may post of them. Sites including Instagram, Facebook, Yelp, TripAdvisor, YouTube, Twitter, Tumblr, other review and scheduling sites.

I can support the 12 CE hours requirement and the 2 hours of emergence related training that goes with it, as well not writing out physical qualities of the practitioner.

I must OPPOSE SB2541 HD1 as written with the regulation of limiting practitioner photos to hands, wrists, and forearms.

Mahalo for your consideration,

Jenica Springer

Owner and Principal Therapist, Kauai massage

**LATE**

**SB-2541-SD-1**

Submitted on: 2/25/2020 10:28:44 AM

Testimony for JDC on 2/25/2020 12:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mark Olson	Testifying for Pacific Center for Awareness and Bodywork	Oppose	No

Comments:

As the director of a massage school on Kauai, I strongly oppose this bill. It's completely out of touch with modern reality. It may have made sense in 2000 but in 2020, with Facebook and Instagram, etc. it's absurd to suggest that one would market oneself and not have any photos of oneself amongst it all. It is completely unrealistic. It is unnecessary. People market themselves with videos that demonstrate what they have to offer, for instance. Such rules are not applies to chiropractors or physical therapists or doctors....it should be no different with massage therapists.

**LATE**

**SB-2541-SD-1**

Submitted on: 2/25/2020 10:49:27 AM

Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Diane	Individual	Oppose	No

Comments:

Aloha Chair Rohads, Vice Chair Keohokalole and members of the Senate Judiciary Committee,

I have been a licensed massage therapist in Hawaii since 2016 (MAT #15063) with no violations. I am submitting this testimony to OPPOSE SB2541 SD1 on grounds that the internet advertising requirements would prove to be a detriment to building a successful business and brand in the competitive 21st century and also prove to be an undue hardship to a small business and entrepreneurs in this State.

While I can understand the intention of the bill as a way to regulate the industry, I feel that the bill focuses on regulating the few "bad apples" in the profession instead of praising the thousands of bodyworkers and massage practitioners who respect their clients, respect their profession and respect the importance of bodywork and healing in our modern world.

In regards to #4 *by using in any mass distribution, print advertisements such as newspaper advertisements, [ef], telephone directory listings, or electronic advertisements on the internet or social media platforms, pictures depicting the human form other than hands, wrists, and forearms*, I **oppose** the restrictions because I feel they would severely limit my outreach to current clients, potential clients, and my community. The purpose of social media is to be social - to create connections that *are different* than print advertisement. People use social media to not only see pictures, but also to get educated. I believe that the restrictions of this bill would limit my ability to create informational videos on YouTube, Facebook, and Instagram and future social media platforms. For example, as a sports massage therapist, I might post a video about proper posture or self-massage after a competitive race. Or, I might talk about proper training methods and how massage benefits athletes, using pictures and/or video of specific muscles and body parts to explain the point. Content like this would violate the proposed regulation, thus limiting my success as a bodyworker and massage therapist. It's important to understand that many of my clients are tourists who enjoy my social media and internet content because it reminds them of their awesome vacation in Hawai'i and the healing they received during their vacation. They enjoy stay connected with me through social media and might make a referral for future business based on these social media connections.

Another reason that I **oppose** this bill is because no other profession involving touch or healing is regulated in this way. Physical therapists, medical doctors, Naturopaths, Midwives, Somatic Therapists, yoga instructors, and personal trainers are just some of the other professions who might touch their clients yet they do not have limitations for social media advertising. In many ways, I feel that this regulation "slut-shames" the massage therapy profession as it perpetrates the image that we are doing something wrong.

I challenge you to look at this differently - with a 21st century mindset instead of a 20th century one. *Social media exposes "bad" or illegal activity and in many ways self-regulates all professions.* Potential clients do a few things before they book an appointment: They check Yelp/Google reviews and they check Instagram/Facebook to make sure the establishment is legitimate. The majority of people want a legitimate healing massage at a respected establishment and they use social media as a way to trust businesses. With the proposed regulations to social media/internet, all massage establishments would "look" the same, making it harder for tourists and locals to discern which businesses are reputable or not. In many ways, the proposed regulations also would make it harder for the Massage Board to regulate the industry.

I can understand the intent behind the regulation, but the reality is that the internet is very difficult to regulate. Instead of creating new regulations that are deeply out-of-touch with the fast-moving technology influenced world, why don't you celebrate business that use social media properly? Instead of creating more regulations that limit small-business growth, you could promote and educate best practices for how to use social media and the internet.

The ever changing 21st century world calls for a new approach so that small businesses succeed instead of relying on the old approach of stifling businesses.

I must **OPPOSE SB2541 SD1** as written with unrealistic and unnecessary regulation of limiting practitioner photos to hands, wrists, and forearms.

Mahalo for your consideration,

Diane Sands

Owner and Principal Therapists, Kaua'i Sports Massage

**LATE**

**SB-2541-SD-1**

Submitted on: 2/25/2020 11:51:46 AM

Testimony for JDC on 2/25/2020 12:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Darci Frankel	Individual	Oppose	No

Comments:

I oppose this bill,

This bill needs more serious considration, it affects many people. To have to this puts undue expenses and pressure on hard working massage therapists to have to recreate our advertising.

This is unfair, no other profession that requires touch is being regulated in this way. Chiropractors, physical therapists, naturopathic doctors, they can have pictures showing their faces and interacting with their clients.

**Please consider a revision, such as images of therapist can show their face, but must be fully clothed torso, shoulders, and client can show their back, legs, arms, etc.**

How does this impact the teachers? What if we are teaching an online video? WOUld that be restricted.

Massage therapists use their feet and forearms, if we dont showwhat we are doing it is false advertisong.

This is unfair, what if clients take pictures on Trip advisor and Yelp then post it? We cannot have control of those images.

How are we supposed to manage all of these and run a small business?  
Twitter, instagram, Facebook, and Linked In

Please be specific if you are going to regulate the internet.

Thank you for your consideration.  
Darci Frankel

**LATE**

**SB-2541-SD-1**

Submitted on: 2/25/2020 12:11:55 PM

Testimony for JDC on 2/25/2020 12:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
William Garavito	Individual	Oppose	No

Comments:

I'm opposing this bill based on the limitations it puts on the advertising over the internet and social media platforms.

Thanks for listening.

William Garavito - MAT - 14944



**LATE**

**SB-2541-SD-1**

Submitted on: 2/25/2020 12:41:49 PM

Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
billie wright	Individual	Oppose	No

Comments:

Aloha Chair Rhoads, Vice Chair Keoholalole, and members of the Senate Judiciary Committee,

Im writing in regards to my opposition to SB2541 SD1. I must. I support continuing education, always; I support emergence related training. I intensely oppose that massage therapists are being asked to not picture their face, or any part of their body other than hands wrists and forearms. I dont understand this at all. Why? Why arent other professionals who require professional touch in their work such as Chiropractors, Physical Therapists, Naturopaths, Midwives, Medical Doctors, etc, being asked of the same? In the modern world of social media where individuals promote themselves in a wide range of ways this is a big ask and puts undue hardship on the therapists. It would require unnecessary work to detach pictures from all social media, this is a high cost in a lot of ways. As a person who loves to receive massage, I personally like to have an idea on what my therapist will look like, do they look clean, professional, strong? For me as a person who is preparing to receive therapuetic touch having an idea about how my therapist looks provides me with a sense of safety. As a dedicated, hard-working massage therapist im sad and confused by this requirement. It feels strange and unnecessary.

Thank you for considering my concerns.

Warm Regards, Billie Wright

Licensed Massage Therapist MAT#14572