

ACT 208

H.B. NO. 1991-80

A Bill for an Act Relating to Massage.

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

SECTION 1. **Findings and purpose.** The practice of massage in the State of Hawaii is declared to affect the public health and safety and is subject to regulation and control in the public interest. It is further declared that as a matter of public interest and concern, the practice of massage as defined in this Act be limited to qualified persons admitted to the practice of massage in the State of Hawaii under this Act. This Act shall be liberally construed to carry out these objectives and purposes in accordance with this declaration of policy.

SECTION 2. Chapter 452, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“CHAPTER 452
MASSAGE”**

SECTION 3. Section 452-1, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 452-1 Definitions. For the purpose of this chapter, the following definitions shall be adopted:

- (1) “Board” means the board of massage created under this chapter.
- (2) “Massage” or “massaging” and “Hawaiian massage” commonly known as lomilomi, means any method of treatment or therapy of the superficial soft

parts of the body, consisting of rubbing, stroking, tapping, pressing, shaking, or kneading with the hands, feet, or elbow, and whether or not aided by any mechanical or electrical apparatus, appliances, or supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, cream, lotions, ointments, or other similar preparations commonly used in this practice.

- (3) "Massage therapist" means any person who engages in and follows the occupation or practice of massage for compensation.
- (4) "Massage establishment" means premises occupied and used for the purpose of practicing massage; provided that when any massage establishment is situated in any building used for residential or sleeping purposes, the massage establishment premises shall be set apart and shall not be used for any other purpose.
- (5) "Out-call massage service" means any business, the primary function of which is to engage in or carry on the practice of massage, not at a fixed location but at a location designated by the customer, client, or service."

SECTION 4. Section 452-2, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 452-2 License required. It is unlawful for any person in the State to engage in and to follow or to attempt to engage in and to follow the occupation or practice of massage for compensation without a current license issued pursuant to this chapter."

SECTION 5. Section 452-3, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 452-3 Massage establishments to be registered. No massage establishment or out-call massage service shall be operated unless the same has been duly licensed as provided for in this chapter."

SECTION 6. Section 452-4, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 452-4 Creation of state board. There is established within the department of regulatory agencies for administrative purposes a state board of massage consisting of five members appointed by the governor as provided in section 26-34. Three members shall have at least three years of practical experience as licensed massage therapists, and two shall be public members."

SECTION 7. Section 452-5, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 452-5 Organization of the board. The board shall have a president, secretary, and treasurer who shall be elected annually from among its members."

SECTION 8. Section 452-6, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 452-6 Powers and duties of the board. (a) The board shall adopt rules pursuant to chapter 91 for the purposes of this chapter.

(b) The board may grant, or upon proof of violation of this chapter or the rules

adopted by the board governing the practice under this chapter, revoke, suspend, or refuse to renew a license as provided in this chapter.

(c) The board may refuse to grant a license to or may refuse to renew or may revoke a license of a person: found guilty of fraud in meeting any requirement of this chapter; addicted to liquor or drugs; or failing to display a license as provided in this chapter.

(d) The secretary, under the direction of the board, shall issue subpoenas for the attendance of witnesses before the board with the same effect as if they were issued in an action in the circuit court, and shall, under the direction of the board, administer oaths in all matters pertaining to the duties of his office or connected with the administration of the affairs of the board. Disobedience of such a subpoena and false swearing before the secretary or the board shall be attended by the same consequences and be subject to the same penalties as if such disobedience or false swearing occurred in an action in the circuit court."

SECTION 9. Section 452-7, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 452-7 Compensation; expenses. Members of the board shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties."

SECTION 10. Section 452-8, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 452-8 Meetings of the board. The board shall meet at least two times each year, and at such other times and places as the board may direct. A majority of the members of the board shall constitute a quorum for the transaction of business."

SECTION 11. Section 452-9, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 452-9 Records of board. The board shall keep a record of all of its proceedings and activities including all applications, and the action taken thereon. The books and records of the board shall be prima facie evidence of matters therein contained, and shall constitute public records."

SECTION 12. Section 452-10, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 452-11, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 452-11 Assistance to board. The board may call to its aid any person or persons of established reputation and known ability in their profession, for the purpose of conducting examinations, inspection, and investigations of all persons affected by this chapter."

SECTION 14. Section 452-12, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 452-12 Application for examination. Each person who desires to practice the occupation of massage therapist shall file with the board a written application under oath, on a form prescribed and supplied by the board, and shall submit such

credentials as may be required by this chapter or the rules adopted by the board, and shall also pay the board the required fees.”

SECTION 15. Section 452-13, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 452-13 Requisites for admission to examination and licensing of massage therapists, massage establishments, and out-call massage services.** (a) Massage therapist. The secretary of the board shall determine the sufficiency of the preliminary qualifications of applicants for admission to examination and licensing.

- (1) An applicant for examination shall have good moral character, and a medical report which shall include an X-ray examination of the chest made within thirty days prior to the date of application by a duly licensed physician of the State and a statement by a licensed physician that the applicant has been examined and is free of all other communicable and contagious diseases. A non-refundable application fee of \$15 and an examination fee of \$15, which shall be refunded only if the board finds that the applicant is not qualified to take the license examination, shall be paid to the board at the time of the application.
- (2) The board shall satisfy itself as to the good moral character of the applicant, may require the submission of certification as to good moral character by reputable citizens, and, in its discretion, may independently investigate the applicant’s moral character.
- (3) The board may waive the examination of an applicant upon the payment of the application fee and the submittal of a medical report as required in paragraph (1) if the applicant is licensed in another state, territory, or the District of Columbia, wherein the license requirements are found by the board to be comparable or more stringent than the requirements in force in this State.

(b) Massage establishments and out-call massage services. An applicant desiring to license a massage 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 he has complied with all of the requirements in such manner and detail as may be required by the rules established by the board. A license fee of \$100 shall be paid to the board together with the application fee of \$15.”

SECTION 16. Section 452-14, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 452-14 Examination.** The examination of applicants for licenses to practice massage shall be conducted under rules prescribed by the board and shall include both practical demonstrations and written or oral tests and shall not be confined to any specific system or method, and such examination shall be consistent with the practical and theoretical requirements of the occupation as provided by this chapter.”

SECTION 17. Sec. 452-15, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 452-15 Licenses.** If an applicant for an examination for massage thera-

pist passes the examination to the satisfaction of the board, or the board has waived the examination under section 452-13(a)(3), and the applicant has paid a license fee of \$25, the board shall issue a license to that effect, signed by the president and secretary. The license shall be evidence that the person to whom it is issued is entitled to follow the practice stipulated therein as prescribed in this chapter. The license shall not be transferable and shall be conspicuously displayed in the place of business or employment.”

SECTION 18. Section 452-16, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 452-16 Renewal of license; fees.** Massage therapist, massage 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. A license may be renewed by filing an application therefor, accompanied, in the case of a massage therapist, by a renewal fee of \$25 and a medical report similar to that required on initial application and, in the case of an establishment or out-call massage service, by a renewal fee of \$100. The application shall be made between May 1 and June 30 of each even-numbered year. Failure to apply for renewal as herein provided 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 of \$25. Thereafter, the license shall not be restored unless the regular examination for applicants is again taken and passed.”

SECTION 19. Section 452-17, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 452-17 Fees.** The fees for application, examination, licensing, and other registrations as provided in this chapter, shall be paid in advance and deposited by the director of regulatory agencies with the director of finance to the credit of the general fund.”

SECTION 20. Section 452-19, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 452-19 Penalties.** (a) Any person who practices massage, maintains a massage 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.

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

SECTION 21. Section 452-20, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 452-20 Appeal from actions of the board.** An appeal may be taken to

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the circuit court from any action of the board refusing to grant or suspending or revoking a license. The judgment of the circuit court may be reviewed by the supreme court.”

SECTION 22. Section 452-21, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 452-21 To whom provisions in this chapter shall not apply. Nothing in this chapter shall prohibit service in case of emergency, or domestic administration, without compensation, nor services by persons holding any valid license, permit, or certificate dealing with the healing arts, nor services by barbers, hairdressers, cosmeticians, and cosmetologists lawfully carrying on their particular profession or business under any existing law of this State.”

SECTION 23. Section 452-22, Hawaii Revised Statutes, is repealed.

SECTION 24. Any person holding a current certificate as a masseur or operator as of the effective date of this Act shall be considered a licensed massage therapist as of that date with experience as a licensed massage therapist for the period the person has held a certificate as a masseur or operator. The certificate shall be effective as a license until its renewal date. Any massage parlor or salon registered under section 452-13, Hawaii Revised Statutes, as of the effective date of this Act shall be considered a licensed massage establishment or out-call massage service as of that date. The registration shall be effective as a license until its renewal date.

SECTION 25. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 26. This Act shall take effect upon its approval.

(Approved June 6, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.