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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. K. Miller and Ghanbari

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SUMMARY

- Regulates the performance of nontherapeutic massage (i.e., massage performed for reasons other than the treatment of disorders of the human body) by requiring individuals performing it to register with the Department of Public Safety.
- Provides exemptions from that registration for various licensed professionals who may perform nontherapeutic massage incident to their licensed practice.
- Modifies a township's authority to regulate massage by:
 - Limiting the regulation to only "massage therapy" (i.e., massage for the treatment of disorders of the human body), as opposed to any massage;
 - Eliminating the authority for township-issued licenses for individuals who perform massage;
 - Making it optional for a township to require massage establishments to obtain permits.

DETAILED ANALYSIS

As discussed in greater detail below, the bill regulates massage in two distinct ways. First, it regulates nontherapeutic massage by requiring individuals performing it to register with the Department of Public Safety. Second, it makes changes to the authorization of townships to regulate massage, by specifying that townships may regulate "massage therapy," which is the treatment of disorders of the human body by the manipulation of soft tissue through the systematic external application of various massage techniques that are identified in existing

law.¹ The practice of massage therapy is a limited branch of medicine under existing law, and it is otherwise regulated by the State Medical Board.² That regulation is not changed by the bill.

Nontherapeutic massage registration

The bill generally requires individuals who perform nontherapeutic massage to register with the Department of Public Safety.³ Nontherapeutic massage is defined as massage techniques that are performed for reasons other than treatment of disorders of the human body;⁴ it specifically does not include “massage therapy,” which is a limited branch of medicine regulated by the State Medical Board.⁵

A violation of the bill’s registration requirement is a third degree misdemeanor.⁶

Exemptions

The bill’s nontherapeutic massage registration requirement does not apply to the following:

- Licensees of the State Cosmetology and Barber Board who provide massage related to barber or cosmetology services;
- Licensees of the Board of Nursing who provide massage related to nursing services;
- Licensees of the State Medical Board who provide massage related to medical services or acupuncture;
- Licensees of the State Chiropractic Board who provide massage related to chiropractic services;
- Licensees of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board who provide massage related to occupational therapy, physical therapy, or athletic training;
- Students in training programs related to obtaining a massage therapist license, so long as the program of study is in good standing as determined by the Medical Board.

The bill also expressly states that the Medical Board Law should not be construed to require an individual who holds a license to practice massage therapy under that law to register with the Department of Public Safety, regardless of whether the individual performs both nontherapeutic massage and massage therapy. Additionally, the Medical Board Law does not

¹ R.C. 4731.04(C).

² R.C. 4731.15.

³ R.C. 5502.75.

⁴ R.C. 5502.75(A)(2).

⁵ R.C. 4731.15.

⁶ R.C. 5502.75(K).

require an individual who performs only nontherapeutic massage to be licensed by the Medical Board.⁷ In the latter case, only the Department of Public Safety registration is required.

Application for registration

The bill requires an individual seeking a nontherapeutic massage registration to file an application with the Department in the form and manner prescribed by the Department. The application must include evidence satisfactory to the Department that the applicant is at least 18. It must include all information the Department considers necessary, as well as the following information:⁸

- The individual's name and home address;
- The individual's telephone number and email address;
- The individual's date of birth;
- The address and telephone number of the place of business where the individual will provide nontherapeutic massage;
- An indication of any occupational license, certificate, or registration to provide massage services issued by another jurisdiction that the individual holds;
- An indication of whether the individual has ever had an occupational license, certificate, or registration to provide massage services suspended, revoked, or denied by another jurisdiction.

Once a registration is issued, the registration holder must notify the Department in writing if any of the information provided in the application changes. The notification must be provided within 30 days of any change.⁹

Denying and revoking registrations

The bill authorizes the Department to deny or revoke a nontherapeutic massage registration if it determines, through the application process or otherwise, that any of the following apply:

- The individual has had an occupational license, certificate, or registration to provide massage services suspended, revoked, or denied by another jurisdiction;
- The individual has violated any provision of the bill's nontherapeutic massage registration provisions;
- The individual has engaged in other conduct that the Department specifies as cause for denial or revocation in rules.

⁷ R.C. 4731.15(F) and 4731.41(A).

⁸ R.C. 5502.75(E).

⁹ R.C. 5502.75(G).

Safety and sanitation requirements

The bill requires a place of business where nontherapeutic massage is performed to comply with the same safety and sanitation requirements that apply to massage establishments that are regulated by townships,¹⁰ discussed below.

Investigating violations

The bill requires the Department to investigate evidence appearing to show that a person has violated the bill's nontherapeutic massage registration provisions.¹¹

Rulemaking

The bill authorizes the Department to adopt rules to implement its provisions related to nontherapeutic massage registration. The rules must be adopted in accordance with the Administrative Procedure Act. The rules are exempt from regulatory restriction reduction requirements under Ohio law.¹²

Township regulation of massage therapy

The bill modifies the authority of townships to regulate massage. Under current law, townships have the authority to regulate “massage establishments” and “masseurs” and “masseuses” performing “massages” at those establishments that are within the unincorporated territory of the township. “Massage” is defined as any method of exerting pressure on, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external soft tissue of the body with the hands, or with a mechanical or electrical apparatus.¹³ In order for the township to do so, it must require the establishment to obtain a permit from the township, and any individual wishing to perform massage to obtain a township-issued license.

The bill makes several key changes. First, it authorizes townships to regulate “massage therapy,” which the bill defines to have the same meaning as in the Medical Board Law (i.e., the treatment of disorders of the human body by the manipulation of soft tissue through the systematic external application of various massage techniques).¹⁴ Thus, it appears the bill eliminates the authority for townships to regulate other massage, such as nontherapeutic massage.

¹⁰ R.C. 5502.75(H).

¹¹ R.C. 5502.75(J) and 5502.01(N).

¹² R.C. 5502.75(I); R.C. 121.95 through 121.953, not in the bill.

¹³ R.C. 503.40(A).

¹⁴ R.C. 503.40(A).

Second, as discussed in greater detail below, the bill makes it optional for a township to require an establishment permit¹⁵ and eliminates the ability of a township to issue licenses to individuals performing massage.¹⁶

Massage establishment permits

The bill eliminates a requirement that if a township has adopted a resolution to regulate massage establishments, no person can operate a massage establishment without having obtained a permit. Under the bill, townships may choose to include a permit requirement in massage establishment regulations, but it is not mandatory for townships to require permits.¹⁷

Also related to permits, the bill eliminates a requirement that a permit applicant provide the applicant's Social Security number. It requires a permit applicant to provide proof that the applicant complies with the township's zoning regulations. In addition, the bill modifies the requirement for including the name and address of any stockholder holding more than 2% of the stock of a corporate applicant by limiting the requirement to a corporate applicant having less than 50 employees or any stockholder holding more than 25% of the stock of a corporate applicant having more than 50 employees.¹⁸

Regulation of individuals performing massage therapy

Instead of township-issued licenses, the bill authorizes boards of township trustees to require the registration of persons performing massage therapy at massage establishments.¹⁹ The bill defines registration as providing information to the board of township trustees to indicate the location of the establishment, the names of individuals employed there, and evidence of their licensure or student status, discussed in greater detail below.²⁰

If a board of township trustees adopts a resolution to regulate massage establishments, the bill authorizes the regulations to require that all massage therapy performed in a massage establishment be performed by a person who is licensed by one or more of the following boards, and who provides massage therapy as a portion of, or incidental to, services authorized by the licensing board: (1) the State Cosmetology and Barber Board, regarding barber services or cosmetology services, (2) the Board of Nursing, regarding nursing services, (3) the Medical Board, regarding medical services by physician assistants or physicians, and regarding acupuncture and oriental medicine, (4) the State Chiropractic Board, regarding chiropractic services, (5) the Medical Board, regarding massage therapists, and (6) the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, regarding services of occupational

¹⁵ R.C. 503.41 and 503.43.

¹⁶ R.C. 503.45 and 503.46, repealed.

¹⁷ R.C. 503.42.

¹⁸ R.C. 503.43.

¹⁹ R.C. 503.41(A).

²⁰ R.C. 503.40(D).

therapists, physical therapists, and athletic trainers.²¹ Additionally, the regulations must permit a massage therapy student to perform massage therapy if the student is enrolled and actively participating in a massage therapy education program in good standing as determined by the Medical Board.²² The regulations cannot exclude any of the persons identified above from performing massage therapy.²³

If such a requirement is adopted, no person can knowingly act as a massage therapist for a massage establishment located in the unincorporated area of the township without having obtained one of the licenses, or being a student, as described above.²⁴ An individual who violates this prohibition is guilty of a third degree misdemeanor.²⁵

The bill eliminates a current law provision allowing a township to require persons performing massage to undergo periodic physical exams to determine if the person has a communicable disease.²⁶

Other massage therapy regulations

The bill also permits massage establishment regulations to do any of the following:

- Require compliance with zoning resolutions and amendments;
- Prohibit certain hours of operation;
- Impose additional prohibitions, discussed below;
- Specify other regulations considered necessary for the health, safety, and welfare of township residents, except that the regulations cannot impose a township license on massage therapists or regulate the practice of medicine or licensed health professionals.²⁷

Prohibitions

Current law lists several prohibitions that apply when a board of township trustees has adopted a resolution to regulate massage establishments. In addition to modifying the prohibitions to account for the bill's elimination of township-issued licenses for individuals performing massage therapy, the bill otherwise modifies the prohibitions as follows:

- Specifies that the prohibitions apply only when the township has included a permit requirement to operate a massage establishment;

²¹ R.C. 503.411(A)(1) through (6).

²² R.C. 503.411(A)(7).

²³ R.C. 503.411(A).

²⁴ R.C. 503.411(B).

²⁵ R.C. 503.50(B).

²⁶ R.C. 503.47(D).

²⁷ R.C. 503.411(C) and 503.41(E).

- Eliminates the criminal offense for employees of massage establishments performing certain sexual activities during a massage in a massage establishment in the unincorporated area of a township.²⁸

The bill generally maintains provisions prohibiting an owner or operator of a massage establishment from knowingly (1) refusing to allow appropriate local authorities to access the establishment for health and safety inspections, operating during hours designated as prohibited, or (2) employing any person under 18.²⁹

Jurisdiction for appeals

Current law and the bill give the right to appeal to any person adversely affected by an order of the board of township trustees denying or revoking a permit to operate a massage establishment. The bill narrows the jurisdiction where the appeal may be filed to only the court of common pleas in the county where the township is located. Under current law, an appeal can also be filed in the county where the permit holder's place of business is located or where the person is a resident.³⁰

HISTORY

Action	Date
Introduced	08-16-23

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²⁸ R.C. 503.42.

²⁹ R.C. 503.42(B).

³⁰ R.C. 503.48.