



Associated Bodywork & Massage Professionals

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May 5, 2017

TO: Senators Walsh, Hansen, Sokola, Pettyjohn, Richardson, McDowell, Lavelle, Ennis, and Poore, and Representative Short

RE: ABMP Comments on HB 35

VIA EMAIL

ABMP Position: Oppose

Associated Bodywork & Massage Professionals (ABMP) is the largest professional association for massage therapists in the country. We provide professional liability insurance, business resources, professional publications, and legislative and regulatory advocacy for our more than 80,000 members nationwide; including more than 200 massage therapy and bodywork members in Delaware.

We are responding to House Bill 35 regarding amendments to the Massage and Bodywork Practice Act, specifically regarding establishment licensing. The bill as drafted does not accomplish its perceived goal. We assume the issues the bill is trying to address are human trafficking, prostitution, or other illegal activity as they exist separate from and outside of the legitimate practice of massage therapy. House Bill 35 will not do anything to address these problems.

ABMP asserts that the best way to address human trafficking and prostitution is for legislatures to strengthen their criminal codes and create, at a minimum, felony penalties for those trafficking, while providing for assistance for the women, children and men being trafficked. In addition, local communities, police and prosecutors should have the authority to inspect businesses, not just massage therapy businesses, in their jurisdictions to ensure every business is operating legally. Police need to care enough to investigate these allegations and prosecutors should do a better job of prosecuting these cases. Attempts to legislate prostitution and human trafficking through massage practice acts are not effective. They do not address the issue and ultimately serve only to burden legitimate massage therapy practitioners who have nothing to do with human trafficking and are simply trying to earn a living practicing a valued alternative health care profession.

House Bill 35 incorporates Massage Establishment Licensing in the Massage Practice Act. By law, Delaware defines a "Massage and bodywork therapist" as "a person who represents himself or herself to the public by any title or description of services incorporating the words "bodywork," "massage," "massage therapist," "massage therapy," "massage practitioner," "massagist," "masseur," "masseur," "masseur," or who engages in the practice of massage and bodywork for a fee, monetary or otherwise." §5302(3). A "Certified Massage Technician" is one who can perform specific functions within the massage therapy practice. §5302(4). HB 35 would require licensed and certified massage and bodywork professionals to get establishment licenses, while not requiring the establishment license of anyone else, including those doing illegal acts who are not licensed massage therapists.

In essence, the bill requires a place of business that offers massage and bodywork to have a license to operate. There has to be a licensed massage therapist responsible for the operation of the establishment, which includes making sure all therapists working there are licensed or certified. The Board of Massage and Bodywork would have the authority to oversee these licenses and renewals; adopt rules regarding licensure, maintenance and standards of these establishments; and authorize agents to inspect the establishments. It creates a disciplinary offence of knowingly participating in fraud to acquire an establishment license or knowingly employing working with an unlicensed person.

The bill provides that in order to obtain a license, the establishments shall submit applications with reasonable fees. The application shall identify the "professional-in-charge" and be notarized in this regard. Services can only be rendered when the establishment is open to the public. Crimes committed in the establishment shall precipitate revocation of the establishment license, and unlawful operation of an establishment constitutes a public nuisance.

Over all, ABMP is opposed to the legislation as it creates another hurdle for licensed massage therapists in Delaware, who have already had to complete 500 hours of education at an approved program, passed a national exam, passed CPR training, proved they are in good standing, and passed a state criminal background check. Similarly, certified massage technicians who have completed 300 hours of education and passed a state criminal background check are also burdened by this additional regulation. These people, overwhelmingly, are not perpetrating illegal acts. This bill would require them to also apply for, pay for and maintain a massage establishment license.

In addition to the added costs and regulations on licensed massage therapists and the fact that this bill would do little to address human trafficking, ABMP believes HB 35 would also place an unfair burden on sole practitioners. Most massage therapists in Delaware operate as sole practitioners who offer massages by appointment only. The bill would require that services could only be rendered when the office is open with free access to the public, and open to inspection. This is incompatible with the above-mentioned practices, and places an unfair burden on one-person businesses. Establishment licensing would be more palatable to licensed massage therapists if there was an exemption for sole practitioners. Delaware practitioners have been told by the head inspector for the DPR that if there was a sign on the door that said "in session" or "appointment" that the inspectors would leave a card and return later for sole practitioners. We also heard that that this bill is not intended for sole practitioners, that they would not be caught up in the inspections. The way the bill is written DOES include all licensed massage practitioners and certified massage technicians, including sole practitioners. If this bill moves forward, we urge you to include an exemption for sole practitioners.

The bill and amendments would also allow agents to enter an establishment and inspect with no notice during permissible operating hours. This clearly would not work for many individuals, including sole practitioners who may have a client they are working with and would be unavailable when an agent appeared. Timing matters. Therapists cannot interrupt a session with a client to address an inspector.

Additionally, 5319(f) was added in the amendment process, which demands that internal doors must be unlocked, and that locks are not allowed. This will have a big impact on legitimate massage therapists that work in a multi-unit facility. For example, some sole practitioners work in coffee shops or other similar venues that have a massage room in the facility that a massage therapist rents out a few times a week. If the door to the massage room in this facility were to remain unlocked, the massage client would feel unsafe about a lack of privacy. In situations like this, the door should be locked. Another example is that HIPPA files are required by law to be locked up, therefore behind a locked door. What about products or equipment that need to be locked up to prevent theft? The unlocked door amendment will have a negative impact on licensed or certified, lawful massage therapists or technicians.

5319 (i) provides that a massage establishment license shall be issued for a single, identified location and is not assignable or transferable. What happens if a massage therapist has multiple locations? If that individual is the Professional in Charge for their establishment, but have many locations, how will that work? Many massage therapists operate at different locations.

Many massage therapists have "in-home" businesses that are advertised on websites and business cards. As such, the in-home business would be open to inspection. Will the inspectors only inspect the massage rooms in the house or do they have the right to inspect the entire home? Is a business operating out of a house that has bedrooms considered a dormitory for sleeping quarters, which is prohibited in the bill? If so, the bill would prevent anyone from operating a business out of his or her home.

Essentially, ABMP is opposed to establishment licensing. It places a burden on law-abiding massage therapists in an attempt to address criminal elements. The individuals who are engaging in illegal activity, not following criminal code and other laws are not going to follow this law either. The massage practice act does not apply to them and the Board has no power to discipline them, as these individuals are not massage therapists. These individuals will say they are not practicing massage therapy and therefore do not have to have a massage therapy license or a massage establishment license. The requirement in the bill that a placard be prominently displayed if the license is revoked (§5320(a)) will have little impact on them. Likewise, restraining orders and injunctions (§5320(b)) will be ignored as these individuals usually pack up and move across the street or to the next county or municipality.

We urge the Delaware legislature to consider strengthening their criminal code and giving authority to local governments to inspect all businesses. We are opposed to increasing the burden on licensed, law-abiding massage therapists, and are therefore, opposed to House Bill 35.

Thank you for your consideration of our comments. If you have any questions or comments, please contact me at laura@abmp.com or 303 679-7645. Thank you.

Sincerely,

A handwritten signature in black ink, reading "Laura B. Embleton". The signature is written in a cursive style with a large initial "L" and "E".

Laura B. Embleton, Government Relations Director