

LEGISLATIVE BILL 244

Approved by the Governor May 29, 2019

Introduced by Erdman, 47; Clements, 2.

A BILL FOR AN ACT relating to the Massage Therapy Practice Act; to amend sections 38-1701, 38-1702, 38-1707, and 38-1715, Reissue Revised Statutes of Nebraska; to provide for mobile massage therapy establishments; to define and redefine terms; to provide for licensure; to change powers and duties; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 38-1701, Reissue Revised Statutes of Nebraska, is amended to read:

38-1701 Sections 38-1701 to ~~38-1715~~ 38-1714 and sections 4 to 14 of this act shall be known and may be cited as the Massage Therapy Practice Act.

Sec. 2. Section 38-1702, Reissue Revised Statutes of Nebraska, is amended to read:

38-1702 For purposes of the Massage Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1703 to 38-1707 and section 4 of this act apply.

Sec. 3. Section 38-1707, Reissue Revised Statutes of Nebraska, is amended to read:

38-1707 Massage therapy establishment means any duly licensed place in which a massage therapist practices his or her profession of massage therapy. Massage therapy establishment includes a mobile massage therapy establishment.

Sec. 4. Mobile massage therapy establishment means a self-contained, self-supporting, enclosed mobile unit licensed under the Massage Therapy Practice Act as a mobile site for the performance of the practices of massage therapy by persons licensed under the act.

Sec. 5. No person shall operate or profess or attempt to operate a massage therapy establishment unless such establishment is licensed by the department under the Massage Therapy Practice Act. The department shall not issue or renew a license for a massage therapy establishment until all requirements of the act have been complied with. No person shall engage in any of the practices of massage therapy in any location or premises other than a licensed massage therapy establishment except as specifically permitted in the act.

Sec. 6. In order to be licensed as a mobile massage therapy establishment by the department, an applicant shall meet the following requirements:

(1) The proposed establishment is a self-contained, self-supporting, enclosed mobile unit;

(2) The establishment has an automobile insurance liability policy which meets the requirements of the department for the mobile unit;

(3) The establishment is clearly identified as such to the public by a sign placed on the outside of the establishment which includes the establishment's license number;

(4) The establishment complies with the sanitary requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act;

(5) The entrance into the proposed establishment used by the general public provides safe access by the public;

(6) The proposed establishment has at least forty-four square feet of floor space. If more than one practitioner is to be employed in the establishment at the same time, the establishment shall contain an additional space of at least fifty square feet for each additional practitioner; and

(7) The proposed establishment includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Sec. 7. Any person seeking a license to operate a mobile massage therapy establishment shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the proposed establishment sufficient to demonstrate compliance with the requirements of section 6 of this act.

Sec. 8. Each application for a license to operate a mobile massage therapy establishment shall be reviewed by the department for compliance with the requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a mobile massage therapy establishment. The department shall conduct an operation inspection of each establishment issued a certificate of consideration within six months after the issuance of such certificate. An establishment which passes the inspection shall be issued a permanent license. An establishment which fails the

inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the establishment does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Sec. 9. In order to maintain its license in good standing, each mobile massage therapy establishment shall operate in accordance with the following requirements:

(1) The establishment shall at all times comply with all applicable provisions of the Massage Therapy Practice Act and all rules and regulations adopted and promulgated under the act;

(2) The establishment owner or his or her agent shall notify the department of any change of ownership, name, or office address and if an establishment is permanently closed;

(3) No establishment shall permit any unlicensed person to perform any of the practices of massage therapy within its confines or employment;

(4) The establishment shall display a name upon, over, or near the entrance door distinguishing it as a mobile massage therapy establishment;

(5) The establishment shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the establishment, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the establishment, all personnel, and all records requested by the inspector;

(6) The establishment shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate an establishment;

(b) The current licenses of all persons licensed under the act who are employed by or working in the establishment; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall an establishment employ more employees than permitted by the square footage requirements of the Massage Therapy Practice Act;

(8) No massage therapy services may be performed in an establishment while the establishment is moving. The establishment must be safely and legally parked in a legal parking space at all times while clients are present inside the establishment. An establishment shall not park or conduct business within three hundred feet of another brick and mortar licensed massage therapy establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the establishment shall maintain a permanent business address at which correspondence from the department may be received and records of appointments, license numbers, and vehicle identification numbers shall be kept for each establishment being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The establishment shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Sec. 10. The procedure for renewing a mobile massage therapy establishment license shall be in accordance with section 38-143, except that in addition to all other requirements, the establishment shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the establishment and evidence of coverage which meets the requirements of the Motor Vehicle Registration Act for the establishment.

Sec. 11. The license of a mobile massage therapy establishment that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Sec. 12. Each mobile massage therapy establishment license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Sec. 13. The owner of each mobile massage therapy establishment shall have full responsibility for ensuring that the establishment is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the establishment.

Sec. 14. Section 38-1715, Reissue Revised Statutes of Nebraska, is amended to read:

~~38-1715~~ The department ~~may~~ shall adopt and promulgate rules and regulations as it may deem necessary with reference to the conditions under which the practice of massage therapy shall be carried on and the precautions necessary to be employed to prevent the spread of infectious and contagious diseases, other than the practice of massage in mobile massage therapy establishments. The department may, if it deems necessary, adopt and promulgate rules and regulations related to mobile massage therapy establishments. The department shall have the power to enforce the Massage Therapy Practice Act and all necessary inspections in connection therewith.

Sec. 15. Original sections 38-1701, 38-1702, 38-1707, and 38-1715, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 16. Since an emergency exists, this act takes effect when passed and approved according to law.