



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB2329

Introduced 1/24/2018, by Sen. Julie A. Morrison

SYNOPSIS AS INTRODUCED:

225 ILCS 57/45
225 ILCS 57/47 new

Amends the Massage Licensing Act. Defines "sexual misconduct". Provides that it is a violation if an owner or manager of a massage establishment knows or reasonably suspects that an employee has committed sexual misconduct against another person on the premises of, or on behalf of, the massage establishment and fails to report to the appropriate law enforcement agency. Provides that a person in violation of the provisions is subject to a fine of not more than \$1,500 for each unreported case or revocation of his or her massage therapy license, or both. Increases the fine in instances in which the violator is 17 years of age or older and holds a position of trust, authority, or supervision against a victim between 13 and 18 years old. Provides that it is a violation if an owner or manager of a massage establishment fails to display the policies and procedures relating to sexual misconduct in a manner visible to customers of the massage establishment. Provides injunctive relief available upon the second or subsequent violation of the provisions. Provides that nothing in the provisions requires a law enforcement officer to whom a report of sexual misconduct is made to investigate or charge an individual without the consent of the alleged victim. Provides that a violation of the provisions by a licensed massage therapist is grounds for discipline by the Department of Financial and Professional Regulation.

LRB100 16437 SMS 31566 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Massage Licensing Act is amended by changing
5 Section 45 and by adding Section 47 as follows:

6 (225 ILCS 57/45)

7 (Section scheduled to be repealed on January 1, 2022)

8 Sec. 45. Grounds for discipline.

9 (a) The Department may refuse to issue or renew, or may
10 revoke, suspend, place on probation, reprimand, or take other
11 disciplinary or non-disciplinary action, as the Department
12 considers appropriate, including the imposition of fines not to
13 exceed \$10,000 for each violation, with regard to any license
14 or licensee for any one or more of the following:

15 (1) violations of this Act or of the rules adopted
16 under this Act;

17 (2) conviction by plea of guilty or nolo contendere,
18 finding of guilt, jury verdict, or entry of judgment or by
19 sentencing of any crime, including, but not limited to,
20 convictions, preceding sentences of supervision,
21 conditional discharge, or first offender probation, under
22 the laws of any jurisdiction of the United States: (i) that
23 is a felony; or (ii) that is a misdemeanor, an essential

1 element of which is dishonesty, or that is directly related
2 to the practice of the profession;

3 (3) professional incompetence;

4 (4) advertising in a false, deceptive, or misleading
5 manner;

6 (5) aiding, abetting, assisting, procuring, advising,
7 employing, or contracting with any unlicensed person to
8 practice massage contrary to any rules or provisions of
9 this Act;

10 (6) engaging in immoral conduct in the commission of
11 any act, such as sexual abuse, sexual misconduct, or sexual
12 exploitation, related to the licensee's practice;

13 (7) engaging in dishonorable, unethical, or
14 unprofessional conduct of a character likely to deceive,
15 defraud, or harm the public;

16 (8) practicing or offering to practice beyond the scope
17 permitted by law or accepting and performing professional
18 responsibilities which the licensee knows or has reason to
19 know that he or she is not competent to perform;

20 (9) knowingly delegating professional responsibilities
21 to a person unqualified by training, experience, or
22 licensure to perform;

23 (10) failing to provide information in response to a
24 written request made by the Department within 60 days;

25 (11) having a habitual or excessive use of or addiction
26 to alcohol, narcotics, stimulants, or any other chemical

1 agent or drug which results in the inability to practice
2 with reasonable judgment, skill, or safety;

3 (12) having a pattern of practice or other behavior
4 that demonstrates incapacity or incompetence to practice
5 under this Act;

6 (13) discipline by another state, District of
7 Columbia, territory, or foreign nation, if at least one of
8 the grounds for the discipline is the same or substantially
9 equivalent to those set forth in this Section;

10 (14) a finding by the Department that the licensee,
11 after having his or her license placed on probationary
12 status, has violated the terms of probation;

13 (15) willfully making or filing false records or
14 reports in his or her practice, including, but not limited
15 to, false records filed with State agencies or departments;

16 (16) making a material misstatement in furnishing
17 information to the Department or otherwise making
18 misleading, deceptive, untrue, or fraudulent
19 representations in violation of this Act or otherwise in
20 the practice of the profession;

21 (17) fraud or misrepresentation in applying for or
22 procuring a license under this Act or in connection with
23 applying for renewal of a license under this Act;

24 (18) inability to practice the profession with
25 reasonable judgment, skill, or safety as a result of
26 physical illness, including, but not limited to,

1 deterioration through the aging process, loss of motor
2 skill, or a mental illness or disability;

3 (19) charging for professional services not rendered,
4 including filing false statements for the collection of
5 fees for which services are not rendered;

6 (20) practicing under a false or, except as provided by
7 law, an assumed name; ~~or~~

8 (21) cheating on or attempting to subvert the licensing
9 examination administered under this Act; or

10 (22) violating subsection (b) or (c) of Section 47.

11 All fines shall be paid within 60 days of the effective
12 date of the order imposing the fine.

13 (b) A person not licensed under this Act and engaged in the
14 business of offering massage therapy services through others,
15 shall not aid, abet, assist, procure, advise, employ, or
16 contract with any unlicensed person to practice massage therapy
17 contrary to any rules or provisions of this Act. A person
18 violating this subsection (b) shall be treated as a licensee
19 for the purposes of disciplinary action under this Section and
20 shall be subject to cease and desist orders as provided in
21 Section 90 of this Act.

22 (c) The Department shall revoke any license issued under
23 this Act of any person who is convicted of prostitution, rape,
24 sexual misconduct, or any crime that subjects the licensee to
25 compliance with the requirements of the Sex Offender
26 Registration Act and any such conviction shall operate as a

1 permanent bar in the State of Illinois to practice as a massage
2 therapist.

3 (d) The Department may refuse to issue or may suspend the
4 license of any person who fails to file a tax return, to pay
5 the tax, penalty, or interest shown in a filed tax return, or
6 to pay any final assessment of tax, penalty, or interest, as
7 required by any tax Act administered by the Illinois Department
8 of Revenue, until such time as the requirements of the tax Act
9 are satisfied in accordance with subsection (g) of Section
10 2105-15 of the Civil Administrative Code of Illinois.

11 (e) The Department shall deny a license or renewal
12 authorized by this Act to a person who has defaulted on an
13 educational loan or scholarship provided or guaranteed by the
14 Illinois Student Assistance Commission or any governmental
15 agency of this State in accordance with item (5) of subsection
16 (a) of Section 2105-15 of the Civil Administrative Code of
17 Illinois.

18 (f) In cases where the Department of Healthcare and Family
19 Services has previously determined that a licensee or a
20 potential licensee is more than 30 days delinquent in the
21 payment of child support and has subsequently certified the
22 delinquency to the Department, the Department may refuse to
23 issue or renew or may revoke or suspend that person's license
24 or may take other disciplinary action against that person based
25 solely upon the certification of delinquency made by the
26 Department of Healthcare and Family Services in accordance with

1 item (5) of subsection (a) of Section 2105-15 of the Civil
2 Administrative Code of Illinois.

3 (g) The determination by a circuit court that a licensee is
4 subject to involuntary admission or judicial admission, as
5 provided in the Mental Health and Developmental Disabilities
6 Code, operates as an automatic suspension. The suspension will
7 end only upon a finding by a court that the patient is no
8 longer subject to involuntary admission or judicial admission
9 and the issuance of a court order so finding and discharging
10 the patient.

11 (h) In enforcing this Act, the Department or Board, upon a
12 showing of a possible violation, may compel an individual
13 licensed to practice under this Act, or who has applied for
14 licensure under this Act, to submit to a mental or physical
15 examination, or both, as required by and at the expense of the
16 Department. The Department or Board may order the examining
17 physician to present testimony concerning the mental or
18 physical examination of the licensee or applicant. No
19 information shall be excluded by reason of any common law or
20 statutory privilege relating to communications between the
21 licensee or applicant and the examining physician. The
22 examining physicians shall be specifically designated by the
23 Board or Department. The individual to be examined may have, at
24 his or her own expense, another physician of his or her choice
25 present during all aspects of this examination. The examination
26 shall be performed by a physician licensed to practice medicine

1 in all its branches. Failure of an individual to submit to a
2 mental or physical examination, when directed, shall result in
3 an automatic suspension without hearing.

4 A person holding a license under this Act or who has
5 applied for a license under this Act who, because of a physical
6 or mental illness or disability, including, but not limited to,
7 deterioration through the aging process or loss of motor skill,
8 is unable to practice the profession with reasonable judgment,
9 skill, or safety, may be required by the Department to submit
10 to care, counseling, or treatment by physicians approved or
11 designated by the Department as a condition, term, or
12 restriction for continued, reinstated, or renewed licensure to
13 practice. Submission to care, counseling, or treatment as
14 required by the Department shall not be considered discipline
15 of a license. If the licensee refuses to enter into a care,
16 counseling, or treatment agreement or fails to abide by the
17 terms of the agreement, the Department may file a complaint to
18 revoke, suspend, or otherwise discipline the license of the
19 individual. The Secretary may order the license suspended
20 immediately, pending a hearing by the Department. Fines shall
21 not be assessed in disciplinary actions involving physical or
22 mental illness or impairment.

23 In instances in which the Secretary immediately suspends a
24 person's license under this Section, a hearing on that person's
25 license must be convened by the Department within 15 days after
26 the suspension and completed without appreciable delay. The

1 Department and Board shall have the authority to review the
2 subject individual's record of treatment and counseling
3 regarding the impairment to the extent permitted by applicable
4 federal statutes and regulations safeguarding the
5 confidentiality of medical records.

6 An individual licensed under this Act and affected under
7 this Section shall be afforded an opportunity to demonstrate to
8 the Department or Board that he or she can resume practice in
9 compliance with acceptable and prevailing standards under the
10 provisions of his or her license.

11 (Source: P.A. 97-514, eff. 8-23-11; 98-756, eff. 7-16-14.)

12 (225 ILCS 57/47 new)

13 Sec. 47. Failure of a massage establishment owner or
14 manager to report sexual misconduct.

15 (a) In this Section:

16 (1) "Massage establishment" means a business that
17 offers the services of massage therapists for
18 compensation.

19 (2) "Sexual misconduct" means:

20 (A) making sexually demeaning or sexually
21 suggestive comments about or to a client, including
22 comments about a client's body or clothing;

23 (B) unnecessarily exposing a client's body or
24 watching a client dress or undress, unless the client
25 specifically requests assistance due to disability;

1 (C) discussing or commenting on a client's
2 potential sexual performance or requesting details of
3 a client's sexual history or preferences; or

4 (D) volunteering information to a client about his
5 or her sexual problems, preferences, or fantasies.

6 (b) It is a violation of this Section if an owner or
7 manager of a massage establishment:

8 (1) knows or reasonably suspects that an employee of
9 the massage establishment committed sexual misconduct
10 against another person on the premises of, or while
11 performing services on behalf of, the massage
12 establishment; and

13 (2) fails to report such knowledge or reasonable
14 suspicion to the appropriate law enforcement agency.

15 A person in violation of this subsection (b) is subject to
16 a fine of not more than \$1,500 for each unreported case,
17 suspension or revocation of his or her massage therapy license,
18 or both.

19 A violation of this subsection (b) in which the violator is
20 17 years of age or over and holds a position of trust,
21 authority, or supervision in relation to the victim, and the
22 victim is at least 13 years of age but under 18 years of age, is
23 subject to a fine of not more than \$2,500, suspension or
24 revocation of his or her massage therapy license, or both.

25 (c) It is a violation of this Section if an owner or
26 manager of a massage establishment fails to display the

1 policies and procedures of the massage establishment relating
2 to sexual misconduct prevention and response, including the
3 policy or procedure for reporting sexual misconduct to the
4 appropriate law enforcement agency, in a manner that is visible
5 to customers of the massage establishment. A person in
6 violation of this subsection is subject to a fine of up to \$500
7 each day that proper signage is not posted.

8 (d) Upon the second or a subsequent violation of subsection
9 (b) or (c), the Department may apply to the circuit court for
10 injunctive relief in the form of:

11 (1) prohibiting the owner of owning a massage
12 establishment or the manager of managing a massage
13 establishment; or

14 (2) prohibiting the owner or manager from employing a
15 licensed massage therapist.

16 (e) Nothing in this Section requires a law enforcement
17 officer to whom a report of sexual misconduct is made to
18 investigate or charge an individual with an offense without the
19 consent of the alleged victim of the offense.