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Private Acts of 1979 Chapter 56

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Private Acts of 1979 Chapter 56

SECTION 1. This act shall be known and may be cited as "The Massage Registration Act of 1979".

SECTION 2. As used in this Act, unless the context otherwise requires:

- (a) "Massage" means the art of body massage, by hand or with a mechanical or vibratory device, for the purpose of massaging, reducing, or contouring the body, and may include the use of oil rubs, heat lamps, salt gloves, hot and cold packs, tub, shower or cabinet baths. The procedures involved include, but are not limited to, touching, stroking, kneading, friction, vibration, percussion, and medical gymnastics.
- (b) "Masseur" or "masseuse" means a person engaged in activity defined in subsection (a).
- (c) "Massage establishment" means a place of business wherein the practice of massage, as defined in subsection (a) is practiced.
- (d) "Board" means the Massage Registration Board.
- (e) "Compensation" means payment, loan, advance, contribution, deposit or gift of money or anything of value.
- (f) "Erogenous Area" means the pubic area, penis, scrotum, vulva, perineum or anus.

SECTION 3. There is created in each county to which this Act may apply the Massage Registration Board. The Board shall consist of the County Attorney, the County Sheriff or his designee, and the permanent members of the County Board of Health. The terms of the Board members shall be coextensive with their respective terms as County Attorney, County Sheriff, or County Board of Health member. A majority of the members to which the Board is entitled shall constitute a quorum. The Board shall serve without compensation but the members shall receive their actual expenses for attending Massage Registration Board meetings. The Board shall select a chairman from among its members and the chairman shall notify interested persons and members of Board meetings. The Board shall meet as often as required to carry out the provisions of this act.

SECTION 4. All persons or massage establishments engaged in massage for compensation in any applicable county shall be required to register with the County Massage Registration Board. It shall be unlawful for any person to engage in massage for compensation without a current valid certificate of registration from the Massage Registration Board.

SECTION 5. The Board shall establish procedures and criteria for the issuance of certificates of registration to persons and establishments engaged in massage for compensation in any applicable county. No person or establishment shall be issued a certificate of registration until the applicant and each person engaged in massage at a massage establishment has provided evidence satisfactory to the Board that:

- (a) the applicant is eighteen (18) years of age or older;
- (b) the applicant presently holds a current valid health certificate as provided in Tennessee Code Annotated, Section 52-1012;
- (c) that the certificate holder is engaged in massage as a bona fide occupation or vocation and is not utilizing the title masseuse or masseur, or Turkish bath or any other title as subterfuge to engage in unlawful activity;
- (d) has paid the required fees.

SECTION 6. In order to effectuate the provisions of this Act the Board, or its authorized representative shall be empowered to conduct investigation of persons engaged in massage or massage establishments and inspect the registration of practitioners and establishments for compliance. Refusal of a practitioner or establishment to permit inspections shall be grounds for revocation, suspension or refusal to issue certificates of registration provided by this Act.

SECTION 7. The Board shall provide applicants denied issuance of a certificate or practitioners whose certificate is revoked or not renewed a hearing on such refusal, revocation or nonrenewal, which is consistent with due process of law. All decisions of the Board on the revocation, refusal to issue or nonrenewal of certificates of registration shall be reviewable in the circuit court of the county wherein the Board is located only as to the existence of any substantial evidence upon which the Board could base its decision. Provided, however, that upon a decision of the Board to refuse to issue, revoke, or not to renew a certificate, the practitioner or establishment shall be prohibited from engaging in massage until the Board's decision is overturned.

SECTION 8. The following classes of persons shall not be required to register under this Act:

- (a) Persons authorized by the laws of this state to practice any branch of medicine, surgery,

osteopathy, chiropractic or chiropody, or persons holding a drugless practitioner's certificate.

(b) Barbers duly licensed under the laws of this state.

(c) Beauticians duly licensed under the laws of this state.

(d) Registered physical therapists under the laws of this state.

(e) Recreational facilities or their employees associated with the YWCA or YMCA religious organizations. Any exemption granted under this Act is effective only insofar as and to the extent that the bona fide practice of the profession or business of the person exempted overlaps into the field comprehended by this Act, and exemptions under this act are only for those activities which are performed in the course of the bona fide practice of the business or profession of the person exempted.

(f) Health care institutions, duly licensed under the laws of this state, and employees of such institutions, while engaged in the course of their employment at such institutions.

SECTION 9. The Board may charge a fee for each certificate or registration in massage which shall be sufficient to defer the expenses of administering this Act but in no case shall the fee for a certificate exceed ten dollars (\$10.00).

SECTION 10. If the Board ascertains that any masseur or masseuse may be in such physical condition as to jeopardize the health of those who seek massage from him or her, the Board may require an applicant or certificate holder to have a physical examination by a competent medical examiner, and if found to have had, or has, any communicable disease, shall disqualify such person from obtaining, or renewing, a certificate to practice massage in this state. The granting of renewal of such certificate shall be denied until such person furnishes due proof of being physically and mentally competent and sound to practice massage. The Board may adopt reasonable rules and regulations regarding personal cleanliness of masseurs and masseuses, and the sanitary conditions of towels, linen, creams, lotion, oils and other materials, facilities, and equipment used in the practice of massage.

SECTION 11. The certificate of registration of a masseur or masseuse may be revoked, suspended, or annulled, by the Board for any of the following reasons:

(a) The registrant is guilty of fraud in the practice of massage, or fraud or deceit in his admission to the practice of massage.

(b) The registrant has been convicted in a court of competent jurisdiction of an offense which constitutes a felony under the laws of this state.

(c) The registrant is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.

(d) The registrant is addicted to the habitual use of intoxicating liquors, drugs or stimulants to such an extent as to incapacitate such person for the performance of his or her professional duties.

(e) The registrant is guilty of fraudulent, false, misleading or deceptive advertising, or that he or she prescribes medicines or drugs, or practices any licensed profession without legal authority.

(f) The registrant is guilty of willful negligence in the practice of massage, or has been guilty of employing, allowing or permitting any unregistered person to perform massage in his or her establishment.

(g) The registrant has violated any of the provisions of this act. Charges may be preferred by any person, or the Board may, on its own motion, direct the Chairman of the Board to prefer charges. An accusation may be filed with the Chairman of the Board, charging any registered masseur or masseuse with any of the offenses herein enumerated. Such accusation shall be in writing, signed by the accuser, and duly verified under oath.

SECTION 12. (a) It is unlawful for any person or persons or massage establishment to engage in the practice of massage for compensation without a valid certificate issued pursuant to the provisions of this Act.

(b) It is unlawful for any person or persons to operate or conduct any massage establishment which does not conform to the sanitary rules and regulations adopted by the Board, or to employ any person as a massage practitioner who does not hold a certificate of registration.

(c) No masseur or masseuse shall place his or her hands upon, or touch with any part of his or her body, or fondle in any manner, or massage, an erogenous area of any other person.

(d) It shall be unlawful for any person, in a massage establishment, to expose his or her erogenous area, or any portion thereof, to any other person. It shall also be unlawful for any person in a massage establishment, to expose the erogenous area, or any portion thereof, of any other person.

(e) It shall be unlawful for any person, while in the presence of any other person in a massage establishment, to fail to conceal with a full opaque covering the erogenous area of his or her body.

(f) It shall be unlawful for any masseur or masseuse to massage any person of the opposite sex.

(g) Any person who shall violate any of the provisions of this act shall upon conviction be guilty of a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not

more than eleven months and twenty-nine days, or both, at the discretion of the trial court.
As amended by: Private Acts of 1981, Chapter 185.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

SECTION 14. This Act shall apply to any county having a population of not less than 120,000 nor more than 130,000 according to the Federal Census of 1970 or any subsequent Federal Census.

SECTION 15. This Act shall have no effect unless it is approved by a two-thirds ($\frac{2}{3}$) vote of the legislative body of any county to which it may apply before September 1, 1979. Its approval or nonapproval shall be proclaimed by the presiding officer of such legislative body and certified by him to the Secretary of State.

SECTION 16. For the purpose of approving or rejecting the provisions of this Act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 15.

Passed: March 22, 1979.

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