

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 244

FINAL READING

Introduced by Erdman, 47; Clements, 2.

Read first time January 14, 2019

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to the Massage Therapy Practice Act; to amend
- 2 sections 38-1701, 38-1702, 38-1707, and 38-1715, Reissue Revised
- 3 Statutes of Nebraska; to provide for mobile massage therapy
- 4 establishments; to define and redefine terms; to provide for
- 5 licensure; to change powers and duties; to harmonize provisions; to
- 6 repeal the original sections; and to declare an emergency.
- 7 Be it enacted by the people of the State of Nebraska,

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

3 38-1701 Sections 38-1701 to ~~38-1715~~ 38-1714 and sections 4 to 14 of
4 this act shall be known and may be cited as the Massage Therapy Practice
5 Act.

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

8 38-1702 For purposes of the Massage Therapy Practice Act and
9 elsewhere in the Uniform Credentialing Act, unless the context otherwise
10 requires, the definitions found in sections 38-1703 to 38-1707 and
11 section 4 of this act apply.

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

14 38-1707 Massage therapy establishment means any duly licensed place
15 in which a massage therapist practices his or her profession of massage
16 therapy. Massage therapy establishment includes a mobile massage therapy
17 establishment.

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

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

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

1 requirements:

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

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

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

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

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

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

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

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

27 Sec. 8. Each application for a license to operate a mobile massage
28 therapy establishment shall be reviewed by the department for compliance
29 with the requirements of the Massage Therapy Practice Act and the rules
30 and regulations adopted and promulgated by the department under the act.
31 If an application is denied, the applicant shall be informed in writing

1 of the grounds for denial, and such denial shall not prejudice future
2 applications by the applicant. If an application is approved, the
3 department shall issue the applicant a certificate of consideration to
4 operate a mobile massage therapy establishment. The department shall
5 conduct an operation inspection of each establishment issued a
6 certificate of consideration within six months after the issuance of such
7 certificate. An establishment which passes the inspection shall be issued
8 a permanent license. An establishment which fails the inspection shall
9 submit within fifteen days evidence of corrective action taken to improve
10 those aspects of operation found deficient. If evidence is not submitted
11 within fifteen days or if after a second inspection the establishment
12 does not receive a satisfactory rating, it shall immediately relinquish
13 its certificate of consideration and cease operation.

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

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

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

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

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

29 (5) The establishment shall permit any duly authorized agent of the
30 department to conduct an operation inspection or investigation at any
31 time during the normal operating hours of the establishment, without

1 prior notice, and the owner and manager shall assist the inspector by
2 providing access to all areas of the establishment, all personnel, and
3 all records requested by the inspector;

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

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

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

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

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

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

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

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

31 Sec. 10. The procedure for renewing a mobile massage therapy

1 establishment license shall be in accordance with section 38-143, except
2 that in addition to all other requirements, the establishment shall
3 submit evidence of minimal property damage, bodily injury, and liability
4 insurance coverage for the establishment and evidence of coverage which
5 meets the requirements of the Motor Vehicle Registration Act for the
6 establishment.

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

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

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

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

23 ~~38-1715~~ The department may shall adopt and promulgate rules and
24 regulations as it may deem necessary with reference to the conditions
25 under which the practice of massage therapy shall be carried on and the
26 precautions necessary to be employed to prevent the spread of infectious
27 and contagious diseases, other than the practice of massage in mobile
28 massage therapy establishments. The department may, if it deems
29 necessary, adopt and promulgate rules and regulations related to mobile
30 massage therapy establishments. The department shall have the power to
31 enforce the Massage Therapy Practice Act and all necessary inspections in

1 connection therewith.

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

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