

Amendment to HB 120-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the regulation of body art establishments and massage, reflexology,
4 structural integrator and Asian bodywork therapy establishments.

5

6 Amend the bill by replacing all after section 7 with the following:

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8 8 Regulation of Massage Establishments. Amend RSA 328-B:1 to read as follows:

9 328-B:1 Regulation of Massage Therapists and Massage Establishments. The general court, to
10 protect the health, safety, and welfare of the people of the state of New Hampshire, establishes a
11 regulatory program for massage therapists, including establishing basic qualifications for licensure
12 of massage therapists ***and massage establishments***.

13 9 New Paragraph; Massage Therapists and Massage Establishments; Definition Added. Amend
14 RSA 328-B:2 by inserting after paragraph III the following new paragraph:

15 III-a. "Establishment" means the place issued a license by the executive director where the
16 profession of massage is practiced. "Establishment" shall include any building in which 2 or more
17 massage therapists work for the same employer.

18 10 New Paragraph; Massage Therapists and Massage Establishments; Definition Added.
19 Amend RSA 328-B:2 by inserting after paragraph VIII the following new paragraph:

20 IX. "Sole proprietor" means any person who owns a business by himself or herself and does
21 not have any employees within his or her business.

22 11 New Paragraphs; Prohibited Acts; Establishment Licensure. Amend RSA 328-B:3 by
23 inserting after paragraph VI the following new paragraphs:

24 VII. Operate an establishment without an establishment license.

25 VIII. Operate an establishment unless such establishment is at all times under the direct
26 supervision and management of a professional licensed under this chapter.

27 12 New Paragraph; Powers and Duties; Establishments. Amend RSA 328-B:4 by inserting
28 after paragraph VII the following new paragraph:

29 VIII. Regulate and adopt rules on massage establishments, including:

30 (a) The issuance, suspension, revocation, renewal, and denial of massage establishment
31 licenses.

32 (b) Holding hearings and conduct investigations under paragraph II concerning
33 massage establishment licenses.

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1 (c) Conditions, requirements, and standards for operation under an establishment
2 license, including health and safety standards.

3 (d) Standards and procedures for inspections of establishments including, inspections
4 conducted as part of the initial licensure process.

5 (e) Application forms and procedures to open, close, relocate, or renew an
6 establishment.

7 (f) Requiring public display of licensure and secure recordkeeping procedures.

8 (g) Procedures for disciplinary action, including cease and desist orders, suspension,
9 limitation, or revocation of establishment licensure.

10 (h) Requiring the licensee to obtain a certificate of good standing from the secretary of
11 state.

12 (i) Qualifications for exemption of schools, health facilities, or others from massage
13 establishment license requirements in RSA 328-B:14.

14 (j) Required documentation to verify sole proprietor or independent contractor
15 designation.

16 13 Advisory Board of Massage Therapists. Amend the introductory paragraph of RSA 328-B:5
17 to read as follows:

18 The executive director shall establish the advisory board of massage therapists. The board shall
19 consist of 3 massage therapists who are licensees in the state of New Hampshire. The members
20 shall be appointed for 3 years, staggered so that the term of one member expires each year, and
21 they shall hold office until successors are appointed~~], and shall serve on the board without any~~
22 ~~compensation].~~ ***Advisory board members shall be paid mileage and a per diem of \$50 for***
23 ***each day devoted to the work of the advisory board.*** In no event shall a member serve more
24 than 2 full consecutive terms. The board shall:

25 14 New Paragraph; License Issuance. Amend RSA 328-B:6 by inserting after paragraph I the
26 following new paragraph:

27 I-a. Initial licenses shall be valid until the next succeeding expiration date in accordance
28 with 328-B:7.

29 15 License Fee; Establishment License. Amend RSA 328-B:7 to read as follows:

30 328-B:7 License Renewal. All licenses issued pursuant to this chapter shall expire on the last
31 day of the birth month of the licensee in the even-numbered year, upon approval of the executive
32 director of the renewal application and submission of the required \$110 renewal fee ***for massage***
33 ***therapists or the required fee as determined in rules adopted by the executive director for***
34 ***massage establishments.***

35 16 New Paragraph; Revocation or Suspension. Amend RSA 328-B:8 by inserting after
36 paragraph V the following new paragraph:

37 VI. Has engaged in illegal activity, including but not limited to prostitution or human

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1 trafficking.

2 17 New Paragraph; Massage; Exemptions. Amend RSA 328-B:10 by inserting after paragraph
3 III the following new paragraph:

4 IV. Nothing in this chapter shall require a residential care or health facility licensed
5 pursuant to RSA 151:2 to obtain an establishment license under this chapter.

6 18 New Sections; Massage Establishment Licensure; Inspectors. Amend RSA 328-B by
7 inserting after section 13 the following new sections:

8 328-B:14 Massage Establishment Licensure.

9 I. It shall be a misdemeanor for any person, as owner, manager, or agent to open, establish,
10 conduct or maintain an establishment without first having obtained an establishment license from
11 the board. Any New Hampshire licensed massage therapist may obtain an establishment license
12 upon application and payment of fee provided that the establishment meets all requirements
13 established in the rules of the board. Massage establishment licenses granted pursuant to this
14 chapter shall be conspicuously posted within the establishment.

15 II. In addition to licenses issued under paragraph I, the board may issue an establishment
16 license to an applicant who does not hold a personal massage therapist license provided that the
17 owner employs a licensed massage therapist as manager. This section shall not authorize such
18 owner to personally engage in massage therapy.

19 III. The requirement for establishment licensure under paragraph I shall not apply to a sole
20 proprietor of his or her business or independent contractors. If a sole proprietor or independent
21 contractor is providing services without a prior appointment, the sole proprietor or independent
22 contractor shall obtain an establishment license.

23 IV. Only establishments issued a license by the executive director shall use the terms
24 “licensed massage establishment” or “massage establishment.”

25 V. The license fees for establishments shall be determined in rules adopted by the executive
26 director under RSA 541-A. Establishments that are licensed as an establishment, shop, or facility
27 under one of the occupations or professions regulated by the office of professional licensure and
28 certification in RSA 310-A:1-a shall pay a reduced fee for a massage establishment license.

29 VI. No town or city shall adopt or enforce a bylaw or ordinance for the licensure of massage
30 establishments.

31 328-B:15 Inspectors.

32 I. The office of professional licensure and certification shall employ inspectors and
33 authorize them to enter and inspect any establishment licensed under this chapter for the purpose
34 of ascertaining whether or not the administrative rules of the board and the provisions of this
35 chapter are being observed. Each inspector shall file a report of inspection findings and results
36 with the executive director. Salaries and necessary expenses shall be charged against the office of
37 professional licensure and certification fund.

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1 II. The executive director shall adopt rules under RSA 541-A relative to the qualifications of
2 an inspector under this section.

3 19 Grandfathering of Municipal Bylaws and Ordinances. Notwithstanding RSA 328-B:14, VI, a
4 license for a massage establishment issued by a municipality in effect on the effective date of this
5 act shall remain valid for purposes of RSA 328-B:14 until the expiration of the term of the license.

6 20 New Paragraph; Definitions; Reflexology, Structural Integration, and Asian Bodywork
7 Therapy. Amend RSA 328-H:2 by inserting after paragraph II the following new paragraph:

8 II-a. "Establishment" means the place licensed by the executive director where the
9 practitioners of reflexology, structural integration, and Asian bodywork therapy practice.
10 "Establishment" shall include any building in which 2 or more licensed reflexologists, structural
11 integrators, or Asian bodywork therapists work for the same employer.

12 21 New Paragraph; Definitions; Reflexology, Structural Integration, and Asian Bodywork
13 Therapy. Amend RSA 328-H:2 by inserting after paragraph VII the following new paragraph:

14 VIII. "Sole proprietor" means any person who owns a business by himself or herself and
15 does not have any employees within his or her business.

16 22 New Paragraphs; Reflexologists, Structural Integrators, and Asian Bodywork Therapists;
17 Prohibited Acts. Amend RSA 328-H:4 by inserting after paragraph V the following new paragraphs:

18 VI. Operate a reflexology, structural integration, or Asian bodywork therapy establishment
19 without an establishment license.

20 VII. Operate a reflexology, structural integration, or Asian bodywork therapy
21 establishment unless such establishment is at all times under the direct supervision and
22 management of a practitioner licensed under this chapter.

23 23 New Subparagraph; Reflexologists, Structural Integrators, and Asian Bodywork Therapists;
24 Rulemaking. Amend RSA 328-H:5, VIII by inserting after subparagraph (l) the following new
25 subparagraph:

26 (m) Regulate establishments including:

27 (1) Issue, suspend, revoke, renew, and deny licenses in accordance with rules
28 adopted under RSA 541-A.

29 (2) Hold hearings and conduct investigations, public or confidential, and issue
30 orders relating to such hearings and investigations. The contested case provisions of RSA 541-A:31-
31 36 shall apply when a person is aggrieved by a decision of the executive director under this chapter.
32 Appeals shall be made in accordance with RSA 541.

33 (3) Conditions, requirements, and standards for operation under an establishment
34 license, including health and safety standards.

35 (4) Standards and procedures for inspections of establishments, including
36 inspections conducted as part of the initial licensure process.

37 (5) A fine schedule for violations of the administrative rules adopted by the

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1 executive director under this chapter.

2 (6) Application forms and procedures to open, close, relocate, or renew an
3 establishment.

4 (7) Requiring public display of licensure and secure recordkeeping procedures.

5 (8) Procedures for disciplinary action, including cease and desist orders, suspension,
6 limitation, or revocation of establishment licensure.

7 (9) Requiring an applicant for licensure to obtain a certificate of good standing from
8 the secretary of state.

9 (10) Establishing the fees for licensure of a reflexology, structural integration, or
10 Asian bodywork therapy establishment in rules adopted by the executive director under RSA 541-A.
11 Establishments that are licensed as an establishment, shop, or facility under one of the occupations
12 or professions regulated by the office of professional licensure and certification in RSA 310-A:1-a
13 shall pay a reduced fee for a reflexology, structural integration, or Asian bodywork therapy
14 establishment license.

15 (11) Qualifications for exemption of schools, health facilities, or others from
16 reflexology, structural integration, or Asian bodywork therapy establishment license requirements
17 in RSA 328-H:18.

18 (12) Required documentation to verify sole proprietor or independent contractor
19 designation.

20 24 New Paragraph; License Revocation or Suspension. Amend RSA 328-H:10 by inserting after
21 paragraph V the following new paragraph:

22 VI. Has engaged in illegal activity including but not limited to prostitution or human
23 trafficking.

24 25 Exemptions. Amend RSA 328-H:13 as follows:

25 328-H:13 Exemptions.

26 I. Nothing in this chapter shall prevent a person licensed by this state pursuant to any
27 other provision of law from performing the occupation for which he or she is licensed.

28 **II. Nothing in this chapter shall require a residential care or health facility**
29 **licensed pursuant to RSA 151:2 to obtain an establishment license under this chapter.**

30 26 New Sections; Establishment Licensure; Inspectors. Amend RSA 328-H by inserting after
31 section 17 the following new sections:

32 328-H:18 Establishment Licensure.

33 I. It shall be a misdemeanor for any person, as owner, manager, or agent to open, establish,
34 conduct or maintain an establishment without first having obtained an establishment license from
35 the executive director. Any New Hampshire licensed reflexologist, structural integrator, or Asian
36 bodywork therapist may obtain an establishment license upon application and fee provided that the
37 establishment meets all requirements established in the rules adopted by the executive director.

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1 Establishment licenses granted pursuant to this chapter shall be conspicuously posted within the
2 establishment.

3 II. In addition to licenses issued under paragraph I, the board may issue an establishment
4 license to an applicant who does not hold a personal reflexologist, structural integrator, or Asian
5 bodywork therapist license provided that the owner employs a licensed reflexologist, structural
6 integrator, or Asian bodywork therapist as manager. This paragraph shall not authorize such
7 owner to personally engage in massage therapy act as a practitioner under this chapter.

8 III. This section shall not apply to licensed reflexologist, structural integrator, or Asian
9 bodywork therapists who are sole proprietors of his or her business or an independent contractor. If
10 a sole proprietor or independent contractor is providing services without a prior appointment, the
11 sole proprietor or independent contractor shall obtain an establishment license.

12 IV. No town or city shall adopt or enforce a bylaw or ordinance for the licensure of
13 reflexology, structural integration, or Asian bodywork therapy establishments.

14 328-H:19 Inspectors.

15 I. The office of professional licensure and certification shall employ inspectors and
16 authorize them to enter and inspect any establishment licensed under this chapter for the purpose
17 of ascertaining whether or not the administrative rules of the executive director and the provisions
18 of this chapter are being observed. Each inspector shall file a report with the executive director of
19 inspection findings and results. Salaries and necessary expenses shall be charged against the fees
20 and other moneys collected under this chapter.

21 II. The executive director shall adopt rules relative to the qualifications of an inspector
22 under this section.

23 27 Office of Professional Licensure and Certification; New Classified Position;
24 Appropriation.

25 I. One investigative paralegal position, labor grade 22, is hereby established as a classified
26 position in the office of professional licensure and certification.

27 II. The amount necessary to pay for the position established in paragraph I, which shall be
28 in addition to any sums appropriated in 01-21-21-215010-2406 for the division of health professions,
29 is hereby appropriated to the executive director of the office of professional licensure and
30 certification. Salaries and necessary expenses shall be charged against the office of professional
31 licensure and certification fund established in RSA 310-A:1-e.

32 28 Effective Date. This act shall take effect July 1, 2019.

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2019-1034h

AMENDED ANALYSIS

This bill requires the licensure and inspection of tattooing, body piercing, or branding establishments, massage establishments, and reflexology, structural integration, or Asian bodywork therapy establishments. The bill also clarifies the regulation of body art practitioners by the office of professional licensure and certification.

This bill is a request of the office of professional licensure and certification.