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# OHIO LEGISLATIVE SERVICE COMMISSION

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133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Plummer and Manchester

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### SUMMARY

- Standardizes, for purposes of regulation by the State Medical Board, townships, and municipal corporations, terminology regarding massage therapy and individuals authorized to perform massage therapy.
- As part of that standardization:
  - Eliminates a township's authority to issue licenses to individuals who perform massage therapy;
  - Requires that if a township opts to regulate massage establishments, the regulations must require all massage therapy to be performed only by specified state-licensed professionals or massage therapy students;
  - Purports to require a municipal corporation that opts to regulate massage establishments to require all massage therapy to be performed by a state-licensed professional or a student, similar to township regulation.
- Regarding a township's authority to regulate massage establishments, eliminates a permit requirement and otherwise modifies permit application procedures.

### DETAILED ANALYSIS

#### Regulation of massage therapy

The bill makes changes to the laws governing massage therapy as they relate to (1) professions regulated by the State Medical Board and (2) the authority of townships and municipal corporations to regulate massage establishments and their employees.

#### Standardization of terminology

As discussed in greater detail below, under current law, the Medical Board regulates "massage therapy" as a limited branch of medicine. Separately, townships have the authority to regulate "massage establishments" and "masseurs" and "masseuses" performing "massages" at

those establishments. Municipal corporations may regulate massaging. The bill modifies the definition of “massage therapy” in the context of regulation by the Medical Board<sup>1</sup> and applies that definition to township<sup>2</sup> and municipal corporation<sup>3</sup> regulatory authority. It also standardizes criminal law terminology regarding advertising massage services.<sup>4</sup>

Under the bill, “massage therapy” is no longer limited to the treatment of disorders of the human body, and means the manipulation of soft tissue through the systemic external application of massage techniques including touch, stroking, friction, vibration, percussion, kneading, stretching, compression, and joint movements within the normal physiologic range of motion. It also includes the external application of water, heat, cold, topical preparations, and mechanical devices, as used adjunctive to the manipulation of soft tissue and joint movements.

The bill specifically excludes from the definition of massage therapy the manipulation of the reproductive organs, perineum, rectum, or anus unless performed pursuant to a prescription issued by a physician or under the supervision of a physician.<sup>5</sup>

### **Regulation of massage therapy by the Medical Board**

Under the bill, the Medical Board continues to regulate massage therapy as a limited branch of medicine. The bill clarifies, however, that the following are not required to hold a certificate to practice massage therapy:

- A person authorized to practice any of the following regulated professions, so long as the person’s scope of practice authorizes the person to use massage techniques: barbers, cosmetologists, nurses, physician assistants, chiropractors, occupational therapists, physical therapists, athletic trainers, acupuncturists, and oriental medicine practitioners;
- An enrolled student practicing massage therapy as part of a program of study that is in good standing as determined by the Board;
- A person holding a certificate issued by the Board to practice cosmetic therapy and whose practice may include massage techniques.<sup>6</sup>

### **Authority of townships to regulate massage therapy**

Under current law, a township may regulate massage establishments within the unincorporated territory of the township. In order for a township to do so, it must require the establishment to obtain a permit from the township and any individual wishing to perform

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<sup>1</sup> R.C. 4731.04(D).

<sup>2</sup> R.C. 503.40(A).

<sup>3</sup> R.C. 715.61.

<sup>4</sup> R.C. 2927.17.

<sup>5</sup> R.C. 4731.04(D).

<sup>6</sup> R.C. 4731.15(F) and 4731.41(A).

massage to obtain a township-issued license. The bill makes the obligation to require a permit optional<sup>7</sup> and eliminates the ability of a township to issue licenses to persons performing massage therapy.<sup>8</sup>

### **Mandatory regulation of individuals performing massage therapy**

Instead of township-issued licenses, the bill provides that if a board of township trustees has adopted a resolution to regulate massage establishments, the regulations must require that all massage therapy be performed by a person who is licensed by one or more of the following boards, and who provides massage therapy as a portion of, or incidental to, services authorized by the licensing board: (1) the State Cosmetology and Barber Board, regarding barber services or cosmetology services, (2) the Board of Nursing, regarding nursing services, (3) the Medical Board, regarding medical services by physician assistants or physicians, and regarding acupuncture and oriental medicine, (4) the State Chiropractic Board, regarding chiropractic services, (5) the Medical Board, regarding massage therapists, and (6) the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, regarding services of occupational therapists, physical therapists, and athletic trainers.<sup>9</sup> Additionally, the regulations must permit a massage therapy student to perform massage therapy if the student is enrolled and actively participating in a massage therapy educational program in good standing as determined by the Medical Board.<sup>10</sup> The regulations cannot exclude any of the persons identified above from performing massage therapy.<sup>11</sup>

The bill provides that no person shall knowingly act as a massage therapist in a massage establishment in an unincorporated area of a township without first having obtained a state-issued license or being a student, as described above.<sup>12</sup> An individual who violates this prohibition is guilty of a third degree misdemeanor.<sup>13</sup>

The bill also removes from current law a provision allowing a township to require persons performing massage to undergo periodic physical exams to determine if the person has a communicable disease.<sup>14</sup>

### **Permissive regulations**

The bill clarifies existing law, which authorizes a board of township trustees to regulate and require the registration of massage establishments and their employees. In doing so, the

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<sup>7</sup> R.C. 503.41 and 503.43.

<sup>8</sup> R.C. 503.45 and 503.46, repealed.

<sup>9</sup> R.C. 503.411(A)(1) through (6).

<sup>10</sup> R.C. 503.411(A)(7).

<sup>11</sup> R.C. 503.411(A).

<sup>12</sup> R.C. 503.411(B).

<sup>13</sup> R.C. 503.50(B).

<sup>14</sup> R.C. 503.47(D).

bill refers to establishment regulations and registration requirements. The bill defines “registration” as providing information to the board to indicate the location of the establishment, the names of individuals employed there, and evidence of current licensure or student status, as described above, for anyone providing massage therapy.<sup>15</sup> So, while a township that has adopted a resolution to regulate massage establishments must require massage therapy to be performed by licensed persons or students, as discussed above, enforcement in the form of registering the establishment and employees is technically permissive.

Regarding massage establishment regulations, the bill specifically permits any of the following:

- A requirement to comply with zoning resolutions and amendments;
- Prohibited hours of operation;
- Prohibitions, as specified below;
- Other regulations the board considers necessary for the health, safety, and welfare of township residents, except for the licensure of massage therapists and the regulation of medicine or licensed health professionals.<sup>16</sup>

### **Prohibitions**

Current law lists several prohibitions that apply when a board of township trustees has adopted a resolution to regulate massage establishments. In addition to modifying the prohibitions to account for the bill’s (1) standardization terminology and (2) elimination of township-issued licenses for persons performing massage therapy, the bill otherwise modifies the prohibitions as follows:

- Specifies that the prohibitions apply only when the township has included a permit requirement to operate a massage establishment;
- Eliminates the criminal offense for employees of massage establishments performing certain sexual activities during a massage in a massage establishment in the unincorporated area of a township.<sup>17</sup>

The bill generally maintains provisions prohibiting an owner or operator of a massage establishment from knowingly (1) refusing to allow appropriate local authorities to access the establishment for health and safety inspections, operating during hours designated as prohibited, or (2) employing any person under 18.<sup>18</sup>

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<sup>15</sup> R.C. 503.41.

<sup>16</sup> R.C. 503.411(C).

<sup>17</sup> R.C. 503.42.

<sup>18</sup> R.C. 503.42(B).

## Permit applications

The bill removes a current requirement that an applicant for a permit to operate a massage establishment provide the applicant's Social Security number. It requires a permit applicant to provide proof that the applicant complies with the township's zoning regulations. In addition, the bill modifies the requirement for including the name and address of any stockholder holding more than 2% of the stock of a corporate applicant by limiting the requirement to a corporate applicant having less than 50 employees or any stockholder holding more than 25% of the stock of a corporate applicant having more than 50 employees.<sup>19</sup>

## Jurisdiction for appeals

Current law and the bill give the right to appeal to any person adversely affected by an order of the board of township trustees denying or revoking a permit to operate a massage establishment. The bill narrows the jurisdiction where the appeal may be filed to only the court of common pleas in the county where the township is located. Under current law, an appeal can also be filed in the county where the permit holder's place of business is located or where the person is a resident.<sup>20</sup>

## Authority of municipal corporations to regulate massage therapy

Under current law, municipal corporations generally may regulate all persons engaged in the trade, business, or profession of massaging. The bill instead authorizes a municipal corporation to regulate and license massage establishments within its jurisdiction and permits the registration of persons performing massage therapy at a massage establishment. It further provides that if a municipal corporation regulates massage establishments, it must require all massage therapy to be performed by a person in an otherwise licensed profession or a student, as described above<sup>21</sup> (see "**Mandatory regulation of individuals performing massage therapy**").

The effect of this provision, however, is unclear. Municipal corporations have authority under the Home Rule Amendment to the Ohio Constitution to adopt police, sanitary, and similar regulations that are not in conflict with general laws.<sup>22</sup> A court could determine this authority includes regulating a massage establishment to the extent it does not conflict with the state's general laws.

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<sup>19</sup> R.C. 503.43.

<sup>20</sup> R.C. 503.48.

<sup>21</sup> R.C. 715.61.

<sup>22</sup> Ohio Constitution, Article XVIII, Section 3.

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## HISTORY

Action	Date
Introduced	10-22-19

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