

HB 1429-FN-A - AS INTRODUCED

2022 SESSION

22-2236

11/08

HOUSE BILL ***1429-FN-A***

AN ACT establishing licensure for massage establishments.

SPONSORS: Rep. Grote, Rock. 24; Rep. K. Murray, Rock. 24; Rep. Bartlett, Merr. 19; Rep. Wolf, Merr. 5; Rep. Marsh, Carr. 8; Rep. Simpson, Rock. 36

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill establishes licensure for massage establishments.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT establishing licensure for massage establishments.

Be it Enacted by the Senate and House of Representatives in General Court convened:

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

3 328-B:1 Regulation of Massage Therapists and Massage Establishments. The general court, to
4 protect the health, safety, and welfare of the people of the state of New Hampshire, establishes a
5 regulatory program for massage therapists, including establishing basic qualifications for licensure
6 of massage therapists ***and massage establishments***.

7 2 New Paragraph; Massage Therapy and Massage Establishments; Definitions; Establishment.
8 Amend RSA 328-B:2 by inserting after paragraph III the following new paragraph:

9 III-a. "Establishment" means the place where the profession of massage is practiced.
10 "Establishment" shall include any building in which 2 or more massage therapists work for the same
11 employer.

12 3 New Paragraph; Massage Therapy and Establishments; Definitions; Sole Proprietor. Amend
13 RSA 328-B:2 by inserting after paragraph VIII the following new paragraph:

14 IX. "Sole proprietor" means any person who owns a business by himself or herself, and who
15 does not employ any additional employees.

16 4 New Paragraphs; Massage Therapists and Massage Establishments; Prohibited Acts. Amend
17 RSA 328-B:3 by inserting after paragraph VI the following new paragraphs:

18 VII. Operate an establishment without an establishment license.

19 VIII. Operate an establishment unless such establishment is, at all times, under the direct
20 supervision and management of a professional licensed pursuant to this chapter.

21 5 New Paragraph; Massage Therapists and Massage Establishments; Rulemaking. Amend RSA
22 328-B:4 by inserting after paragraph VII the following new paragraph:

23 VIII. Pursuant to RSA 541-A, adopt rules relative to massage establishments, including:

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

26 (b) Procedures for holding hearings and conducting investigations pursuant to
27 paragraph II concerning massage establishments.

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

30 (d) Standards and procedures for inspections of establishments, including inspections
31 conducted as part of the initial licensing process.

HB 1429-FN-A - AS INTRODUCED

- Page 2 -

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

(f) Requiring public display of licensure, and secure record keeping procedures.

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

(h) Requiring massage establishments to obtain certificates of good standing from the secretary of state.

(i) Qualifications for exemption of schools, health facilities, or others from massage establishment license requirements in RSA 329-B:14.

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

6 New Paragraph; Massage Therapists and Massage Establishments; License Issuance. Amend RSA 328-B:6 by inserting after paragraph I the following new paragraph:

I-a. Initial licenses shall be valid until the next succeeding expiration date pursuant to RSA 328-B:7.

7 Massage Therapists and Massage Establishments; License Renewal. Amend RSA 328-B:6 and 328-B:7 to read as follows:

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

8 Massage Establishments; License Revocation. Amend RSA 328-B:8, IV to read as follows:

IV. Is convicted of any crime involving violence inflicted on a person or threatened against a person, or any sexually-related crime, ***including prostitution***, or a crime involving moral turpitude, ***or human trafficking.***

9 New Paragraph; Massage Therapists and Massage Establishments; Exemptions. Amend RSA 328-B:10 by inserting after paragraph III the following new paragraph:

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

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

328-B:14 Massage Establishment Licensure.

I. It shall be a misdemeanor for any person, as owner, manager, or agent, to open, establish, conduct, or maintain an establishment without first having obtained an establishment license from the board. Any New Hampshire licensed massage therapist may obtain an establishment license upon application and payment of the initial licensure fee provided that the establishment meets all

HB 1429-FN-A - AS INTRODUCED

- Page 3 -

1 requirements established in the rules of the board. Massage establishment licenses granted
2 pursuant to this chapter shall be conspicuously posted within the 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 massage therapist license provided that the
5 owner employs a licensed massage therapist as manager. Nothing in this paragraph shall authorize
6 such an owner to personally engage in massage therapy.

7 III. This section shall not apply to a sole proprietor or to independent contractors. If a sole
8 proprietor or independent contractor is providing services without a prior appointment, the sole
9 proprietor or independent contractor shall obtain an establishment license.

10 IV. Only establishments issued a license by the executive director shall use the terms
11 "licensed massage establishment" or "massage establishment."

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

16 VI. No town or city shall adopt or enforce a bylaw or ordinance for the licensure of massage
17 establishments, provided that any license issued by a municipality prior to the effective date of this
18 section shall remain valid until the stated expiration of such license.

19 328-B:15 Inspectors.

20 I. The office of professional licensure and certification shall employ inspectors and authorize
21 them to enter and inspect any establishment licensed pursuant to this chapter for the purpose of
22 ascertaining compliance with this chapter and any administrative rules adopted pursuant to RSA
23 328-B:4. Each inspector shall file a report of inspection findings and results with the executive
24 director after each inspection conducted. Salaries and necessary expenses shall be charged against
25 the office of professional licensure and certification fund.

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

28 11 Office of Professional Licensure and Certification; New Classified Position; Appropriation.

29 I. One program inspector, labor grade 21, is hereby established as a classified position in the
30 office of professional licensure and certification.

31 II. The amount necessary to pay for the position established in paragraph I, which shall be
32 in addition to any sums appropriated in 2021, 90:1, 01-21-21-216010-3302, for the division of
33 enforcement, is hereby appropriated to the executive director of the office of professional licensure
34 and certification. Salaries and necessary expenses shall be a charge against the office of professional
35 licensure and certification fund established in RSA 310-A:1-e.

36 12 Effective Date. This act shall take effect 60 days after its passage.

**HB 1429-FN-A- FISCAL NOTE
AS INTRODUCED**

AN ACT establishing licensure for massage establishments.

FISCAL IMPACT: ☒ **State** ☒ **County** ☐ **Local** ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$150,000	\$7,500	\$165,300	\$8,400
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	☒ General ☐ Education ☐ Highway ☒ Other - Office of Professional Licensure and Certification Agency Budget			

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill establishes licensure for massage establishments and establishes a classified position in the office of professional licensure and certification for the purpose of inspecting massage establishments. It also establishes penalties for unlicensed massage establishments.

The Office of Professional Licensure and Certification (OPLC) assumes the license fee for massage establishments would be \$300 for two years. The OPLC assumes 500 massage establishments would need to be licensed in year 1 and that this number would increase by 5% each year thereafter. Based on these assumption OPLC assumes the increase in revenue will be as follows:

- FY 2022: \$150,000 (500 licensees X \$300) for biennium
- FY 2023: \$7,500 (25 (new licenses) X \$300)
- FY 2024: \$165,300 (551 (new plus renewal) X \$300) for biennium
- FY 2025: \$8,400 (28 (new licenses) X \$300)

OPLC estimates the cost for the new program inspector, Labor Grade 21, step one, position with a start date of 7/1/2022 would be \$74,000 in FY 2023, \$74,000 in FY 2024 and \$81,000 in FY 2025.

This bill contains penalties that may have an impact on the New Hampshire judicial system. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

It is assumed the State and County expenditures would not occur until FY 2023 and forward.

AGENCIES CONTACTED:

Office of Professional Licensure and Certification, Judicial Branch, Department of Justice,
Judicial Council, and New Hampshire Association of Counties