

Emergency Bill No. 18-01
Concerning: Massage Businesses
Licensing
Revised: 7-19-01 Draft No. 5
Introduced: May 15, 2001
Enacted: July 24, 2001
Executive: August 1, 2001
Effective: August 1, 2001
Sunset Date: None
Ch. 18, Laws of Mont. Co. 2001

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EMERGENCY ACT to:

- (1) require certain persons who do not hold a state massage therapists' certificate or massage practitioners' registration to obtain a County massage worker's license [[under certain circumstances]];
- (2) require certain businesses [[that provide massages and do not employ only state-certified massage therapists or registered massage practitioners]] to obtain a County license for a [[(")]massage establishment[(")], and require the manager of each massage establishment to obtain a manager's license; and
- (3) generally regulate the practice of massage [[by people who are not state certified]] in the County to the extent it is not regulated by state law.

By amending

Montgomery County Code
Chapter 24, Health and Sanitation
Section 24-11

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 24-11 is amended as follows:**

2 **24-11. Massage.**

3 (a) **Definitions.** In this Section, terms that are defined in the state Health
 4 Occupations Article have the same meaning, and the following words
 5 and phrases have the following meanings [indicated]:

6 (1) Massage [means the external manipulation of the soft tissues of
 7 the human body for purposes of relaxation or stress reduction.
 8 Massage does not include any activity for which a license is
 9 required under State law, including the use of spinal or joint
 10 manipulation, mobilization, therapeutic exercise, ultrasound,
 11 radiant heat, or electrical stimulation] has the same meaning as
 12 “massage therapy” under §3-5A-01 of the Health Occupations
 13 Article.

14 (2) Massage establishment [means]: any business [[that provides,
 15 allows a person on its premises to provide, or directs or refers a
 16 person elsewhere to provide, massage for compensation either
 17 directly or indirectly:]]

18 [[(A) i. at [the] a business location in the County; or]]

19 [(B) [[ii. at any other location in the County; and]]

20 [[(B) whose employees, agents, or contractors perform massage
 21 and who are not certified massage therapists or registered
 22 massage practitioners]] where any employee, agent, or
 23 contractor who is not a certified massage therapist or
 24 registered massage practitioner under state law performs a
 25 massage.

- 26 (3) Director [means]: the Director of the Department of Health and
 27 Human Services, or the Director's designee.
- 28 (4) Board: the Maryland State Board of Chiropractic Examiners.
- 29 (5) Department: the Department of Health and Human Services.
- 30 ~~[(6) Massage establishment manager: an individual who acts as the~~
 31 ~~manager of a massage establishment.]]~~
- 32 ~~[(7) Massage establishment worker: an individual, not exempted~~
 33 ~~under subsection (b), who administers massages to other~~
 34 ~~individuals.]]~~
- 35 (b) **Scope. This Section does not apply to:**
- 36 (1) an individual with a license, registration, or other approval issued
 37 by the Board to provide massage under §3-5A-05 of the Health
 38 Occupations Article[.];
- 39 (2) an athletic trainer who:
- 40 (A) is certified by a nationally recognized athletic trainer
 41 certification agency identified by the Director and works
 42 under the supervision of a physician, while functioning in
 43 [[the course of]] the athletic trainer's professional capacity;
- 44 (B) is employed by an accredited educational institution, while
 45 performing professional duties at that institution; or
- 46 (C) is employed by a professional sports team, while treating
 47 members of that team; and[.]]
- 48 (3) a [[massage establishment]] business in which every person who
 49 performs massage is a certified massage therapist or registered
 50 massage practitioner under State law.
- 51 ~~[(b)] (c) **Massage establishment[[]].**~~

- 52 (1) (A) Any [[person who operates a]] massage establishment [in
53 the County] must [obtain an annual] have a license [from
54 the Director] issued by the Director under this Section.
55 The licensee is the owner of the establishment. If the
56 owner is not an individual, the owner must designate on
57 the application an individual as the owner's representative.
58 The owner's representative must consent on the application
59 to be so designated. The representative must accept any
60 notice sent to the owner under this Section. If the owner
61 does not pay any fine, penalty, or fee due under this
62 Section, the Director may collect the fine, penalty, or fee
63 from the owner's representative. The owner must not
64 designate an individual as its representative under this
65 subsection if the individual is not qualified to receive a
66 manager's license under subsection (d).
- 67 (B) The [[massage establishment must have the]] licensee or a
68 licensed manager must be on the premises at all times
69 while the establishment is occupied.
- 70 (C) A person must not own or operate a massage
71 establishment without obtaining a massage establishment
72 license. This requirement may be enforced by the
73 Director or the Police Department.
- 74 (D) The Director or the Police Department may close [[the
75 business operating as]] an unlicensed massage
76 establishment until the business and each person owning or
77 operating the business obtains a license under this Section.

- 78 (2) Except as otherwise provided in this Section, the Director must,
79 with the assistance of the Police Department, review each
80 application and issue a massage establishment license if:
- 81 (A) the applicant meets the requirements of this Section, is
82 qualified under standards set by Executive Regulation
83 [[under method (2)]], and completes a license application
84 form provided by the Director;
- 85 (B) the massage establishment facility meets minimum
86 standards set by Executive Regulation [[under method
87 (2)]; [and]
- 88 (C) the applicant pays [a] an application fee and license fee[.];
89 and
- 90 (D) the establishment complies with all applicable zoning,
91 health, fire prevention, and building laws and regulations.
- 92 (3) The Director must conduct a prelicensing inspection of any
93 massage establishment, and [such] may conduct other inspections
94 [as required by regulation] necessary to enforce this Section.
- 95 (4) A massage establishment must meet minimum standards set by
96 regulation at all times.
- 97 (5) Any person who operates a massage establishment [[as owner or
98 manager]] must not [compensate another person for performing]
99 perform or allow another person to perform a massage [in the
100 County] unless [[that]] the person who performs the massage:
101 [[has a valid County Massage]] [Practitioner or Technician
102 registration certificate] [[establishment worker's license]]
- 103 (A) is a certified massage therapist or registered massage
104 practitioner under state law; or

105 (B) has a valid County massage worker's license.

106 (6) Any person who operates a massage establishment [[as owner or
 107 manager]] [in the County] must permit a County police officer or

108 the Director [or Director's designee] to enter the massage
 109 establishment at any time during operating hours, and at any
 110 other time in an emergency [that endangers health or life] or
 111 when the establishment is occupied.

112 (7) Any person who operates a massage establishment [[as owner or
 113 manager]] must not allow a person of one gender to massage a
 114 person of another gender. This [[paragraph]] restriction does not
 115 apply if the person who performs the massage is a State-certified
 116 massage therapist or registered massage practitioner.

117 (8) A massage establishment license has a term of one year and
 118 must be renewed annually.

119 (9) (A) A massage establishment license must not be transferred
 120 from one person to another.

121 (B) A massage establishment license must not be transferred
 122 from a location to another location [[without the Director's
 123 prior written approval]] until a license is issued for the new
 124 location.

125 (C) A massage establishment license applies to a single
 126 location specified in the license.

127 (10) If an applicant for a massage establishment license does not own
 128 the building where the establishment would be located, the
 129 building owner must approve the use of the building as a massage
 130 establishment on a form provided by the Director.

131 (d) [[People managing massage establishments]] Massage

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establishment manager.

- (1) [[Any]] The licensee, if an individual, and any person who manages a massage establishment in the absence of the licensee, including an owner's representative designated under subsection (c)(1)(A), must obtain a massage establishment manager's license from the Director and renew the license each year.
- (2) Except as otherwise provided in this Section, the Director must, with the assistance of the Police Department, review each application and issue a license if the applicant is qualified under this Section and the standards established by regulation. Each applicant must:
- (A) complete an application form provided by the Director;
 - (B) submit proof of good health required by the Director;
 - (C) pay the application and license fee;
 - (D) be at least 18 years old;
 - (E) have not been convicted of, pled guilty or nolo contendere to, or served any term of probation as a result of being charged with:
 - (i) a felony;
 - (ii) a crime involving moral turpitude;
 - (iii) violation of a controlled dangerous substances law;
or
 - (iv) violation of any law regulating the practice of a health occupation; [[and]]
 - (F) not habitually use any drug or alcoholic beverage to an extent that impairs professional performance;

- 158 (G) provide a passport-size photograph, fingerprints, and a list
 159 of the applicant's occupation or employment for the 3 years
 160 before filing the application; and
- 161 (H) if the applicant is not a United States citizen, provide
 162 evidence of legal presence and employability in the United
 163 States.

164 [(c)] (e) **Massage [Practitioners and Technicians] worker.**

- 165 (1) Any person who performs [a] massage [for compensation in the
 166 County] for compensation and who is not a [[massage
 167 establishment worker,]] certified massage therapist[[,]] or
 168 registered massage practitioner under state law must[[:]]
 169 [[A]] obtain [an annual] a massage [[establishment]] worker's
 170 license [registration certificate] from the Director and
 171 renew the license each year[[:] and
- 172 (B) provide massage only to persons of the massage worker's
 173 same gender]]. An individual may apply for a license
 174 under this subsection only if the individual is expressly
 175 exempt under §3-5A-05(a)(2) of the Health Occupations
 176 Article from the certification and registration requirements
 177 of that section.
- 178 (2) Except as otherwise provided in this Section, the Director must,
 179 with the assistance of the Police Department, review each
 180 application and issue a license if the applicant is qualified under
 181 this Section and the standards established by regulation. Each
 182 applicant must:
- 183 (A) complete an application form provided by the Director;
 184 (B) submit proof of good health;

- 185 (C) pay the application and license fee;
- 186 (D) be at least 18 years old;
- 187 (E) have satisfactorily completed at least 60 credit hours of
 188 education at an institution of higher education as defined
 189 by State law;
- 190 (F) have successfully completed at least 500 hours of massage
 191 training provided by an organization approved by the
 192 Board; and
- 193 (G) have not been convicted of, pled guilty or nolo contendere
 194 to, or served any term of probation as a result of being
 195 charged with:
- 196 (i) a felony;
- 197 (ii) a crime involving moral turpitude;
- 198 (iii) violation of a controlled dangerous substances law; or
- 199 (iv) violation of any law regulating the practice of a health
 200 occupation;
- 201 (H) not habitually use any drug or alcoholic beverage to an
 202 extent that impairs professional performance;
- 203 (I) provide a passport size photograph, fingerprints, and a list
 204 of the applicant's occupation or employment for the 3 years
 205 before filing the application; and
- 206 (J) If the applicant is not a United States citizen, provide
 207 evidence of legal presence and legal employability in the
 208 United States.
- 209 [(2) Except as otherwise provided in this Section, the Director must
 210 issue a Massage Practitioner registration certificate if the
 211 applicant:

- 212 (A) completes a registration form provided by the Director;
 213 (B) submits proof of good health;
 214 (C) pays a registration fee;
 215 (D) has either:
 216 (i) successfully completed at least 500 hours of
 217 massage training provided by an organization
 218 approved by any state of the United States or the
 219 District of Columbia; or
 220 (ii) passed an examination of massage knowledge and
 221 skill approved by any state of the United States or
 222 the District of Columbia.]

223 [(3) Except as otherwise provided in this Section, the Director must
 224 issue a Massage Technician registration certificate if the
 225 applicant:

- 226 (A) completes a registration form provided by the Director;
 227 (B) submits proof of good health; and
 228 (C) pays a registration fee.]

229 [(4)] (3) A person who holds a license issued under this Section and
 230 who is not a certified massage therapist or registered massage
 231 practitioner [or Technician] under state law must not perform [a]
 232 massage [in the County for compensation] except as the agent or
 233 employee of a massage establishment [with] that has a valid
 234 County license.

235 (4) A massage worker licensed under this subsection must only
 236 massage persons of the worker's same gender.

237 (5) A massage [[establishment]] worker's license must not be
 238 transferred from one individual to another.

239 [(d)] (f) Fees. The County Executive must set application and license [and
 240 registration] fees by Executive Regulation under method [(2)] (3) that
 241 substantially cover the cost of administering this Section.

242 [(e)] (g) Denial or Revocation of license [or registration]. The Director may
 243 refuse to issue a license [or registration certificate] under this Section,
 244 and may suspend or revoke a license [or registration certificate] issued
 245 under this Section, after a hearing for which reasonable notice has been
 246 given, if the licensee[[, registrant,]] or applicant:

- 247 (1) violates any provision of this Section;
- 248 (2) submits fraudulent information in support of a license [or
 249 registration] application under this Section;
- 250 (3) is convicted of, or pleads guilty or nolo contendere to, or is
 251 ordered to serve a period of probation after being charged with:
 - 252 (A) a felony;
 - 253 (B) a crime involving moral turpitude;
 - 254 (C) violation of a controlled dangerous substances law; or
 - 255 (D) violation of any law regulating the practice of a health
 256 occupation;
- 257 (4) habitually uses any drug or alcoholic beverage to an extent that
 258 impairs professional performance; or
- 259 (5) is grossly negligent in the performance of massage.

260 [Any person aggrieved by the Director's order under this subsection
 261 may appeal to the County Board of Appeals within 10 days after
 262 receiving the order. The filing of an appeal does not stay the
 263 Director's order unless specifically provided in the order.]

264 (h) Notice and opportunity for hearing.

- 265 (1) Notice. After [[determining]] finding that one or more grounds
 266 for denial, suspension, or revocation of a license could exist, the
 267 Director may serve a written notice on the licensee or applicant in
 268 person or by regular mail, postage prepaid, addressed to the
 269 person's last known address as maintained in the Director's file.
 270 Service on that person by mail is effective 3 days after mailing.
 271 The Director must also post a written notice at a conspicuous
 272 place on the establishment for which the license was or would be
 273 issued. The written notice must, at a minimum[[.]]:
 274 [[i)] (A) state that the Director has found that the licensee or
 275 applicant may be subject to denial, suspension, or
 276 revocation;
 277 [[ii)] (B) identify the specific grounds for the Director's finding;
 278 and
 279 [[iii)] (C) set a date for a hearing on denial of the application or
 280 suspension or revocation of the license. The [[date of the]]
 281 hearing must be held at least 5 days after service of the
 282 Director's notice, unless the parties agree to an earlier date.
- 283 (2) Hearing. The Director or a designee may conduct the hearing.
 284 At the hearing, the licensee or applicant may present evidence
 285 and witnesses to refute the grounds cited by the Director for
 286 denying the application or suspending or revoking the license,
 287 and the County and any other person may submit relevant
 288 evidence. The relevant records of the Department are part of the
 289 hearing record. Within 3 days after the hearing closes, the person
 290 conducting the hearing must render a decision in writing, giving
 291 the reasons for the decision. That decision is final and is subject

292 to judicial review under the Maryland rules for review of
293 administrative decisions.

294 (3) Failure to appear. A licensee or applicant who after notice does
295 not appear at a hearing waives the right to a hearing and consents
296 to the action that the Director proposed in the notice. The
297 Director may deny the application or suspend or revoke the
298 license as proposed in the notice.

299 (4) Notice and Effective Date of Suspension or Revocation. The
300 Director's written decision must be posted at the office of the
301 Director and must be served on the licensee or applicant in person
302 or by regular mail, postage prepaid, addressed to [[that person's]]
303 the applicant or licensee's last known address as maintained in the
304 Department's files. The Director must also post a written notice
305 of the decision at a conspicuous place on the establishment for
306 which the license was or would be issued. A suspension or
307 revocation takes effect on the day the Director's decision is
308 delivered in person or posted, whichever occurs first [[or 3 days
309 after it is mailed]]. To facilitate enforcement of this provision,
310 the Director may require the [[person]] applicant or licensee to
311 [[come to]] appear at the Director's office at a specific time to
312 receive a copy of the decision and be prepared to surrender the
313 license. If a licensee or applicant does not appear to receive the
314 Director's decision, the Director's decision is effective on the
315 date and time the licensee or applicant was directed to appear.

316 (5) Surrender of license and security. [[Upon the suspension or
317 revocation of]] When a license is suspended or revoked, the
318 Director must take custody of the suspended or revoked license.

- 319 (i) Upon receipt of notice of a license revocation or suspension, unless
 320 otherwise directed[[,]] the licensee must, within 24 hours:
- 321 (1) place the license in the mail, postage prepaid, addressed to the
 322 Department; or
- 323 (2) physically deliver the license to the Department.
- 324 (j) If the Department does not receive [[the]] a suspended or revoked
 325 license within 48 hours after notification, excluding weekends or a legal
 326 holiday, or as otherwise directed, the holder of the license violates this
 327 Section. [[and, in]] In addition to any other penalties that may be
 328 imposed, the director or Police may:
- 329 (1) remove the revoked or suspended license from the business
 330 location; and
- 331 (2) close the place of business until the person operating the business
 332 obtains a license.
- 333 (k) **Appeals.**
- 334 (1) Any person aggrieved by the denial, suspension, or revocation of
 335 any license under this Section may seek judicial review under the
 336 Maryland [[Rules of Procedure]] rules for review of
 337 administrative decisions.
- 338 (2) The Director's decision to deny a license must not be stayed
 339 pending appeal. Final administrative action that revokes or
 340 suspends a license may be stayed pending appeal only if:
- 341 (A) the court finds that the public health, safety, or welfare will
 342 not be endangered during the appeal; and
- 343 (B) a bond of \$100,000 is posted.
- 344 [[f)] (l) **Penalty.**


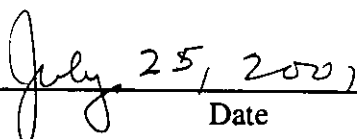
345 [(1)] A person has committed a class A violation if the person:
346 (A) violates any provision of this Section [subsection (b)]; or
347 (B) submits fraudulent information in support of a license
348 application under this Section.

349 [(2)] A person has committed a class B violation if the person:
350 (A) violates any provision of subsection (c); or
351 (B) submits fraudulent information in support of registration
352 under this Section.]

353 **Sec. 2. Emergency Effective Date.**

354 The Council declares that an emergency exists and that this legislation is
355 necessary for the immediate protection of the public health and safety. This act takes
356 effect on the date on which it becomes law.

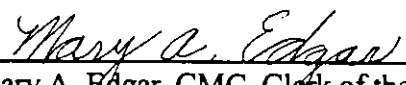
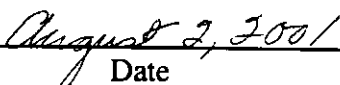
357 *Approved:*

358  
Blair G. Ewing, President, County Council Date

359 *Approved:*

360  
Douglas M. Duncan, County Executive Date

361 *This is a correct copy of Council action.*

362  
Mary A. Edgar, CMC, Clerk of the Council Date