

HOUSE BILL REPORT

SHB 1252

As Passed Legislature

Title: An act relating to penalties for allowing or permitting unlicensed practice of massage therapy or reflexology.

Brief Description: Prescribing penalties for allowing or permitting unlicensed practice of massage therapy or reflexology.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Wylie, Harris, Moeller, Jinkins, Vick and S. Hunt).

Brief History:

Committee Activity:

Public Safety: 1/28/15, 1/30/15 [DPS];

General Government & Information Technology: 2/13/15, 2/17/15 [DPS(PS)].

Floor Activity:

Passed House: 3/2/15, 97-0.

Passed Senate: 4/9/15, 46-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Makes it a misdemeanor offense for a business owner to allow or permit the unlicensed practice of massage therapy or reflexology.
- Makes subsequent convictions a gross misdemeanor offense.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

Staff: Yvonne Walker (786-7841).

HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill by Committee on Public Safety be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Hudgins, Chair; Senn, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; McCabe, Morris and Takko.

Staff: Meghan Bunch (786-7119).

Background:

Reflexology. Generally, reflexology is a health care service involving the application of pressure with fingers to the lower one-third of the extremities, feet, hands, and outer ears. It does not include the diagnosis of or treatment for, specific diseases or joint manipulations.

Massage. Generally massage and massage therapy are healthcare services involving the external manipulation or pressure of soft tissue for therapeutic purposes. Massage therapy includes techniques such as tapping, compressions, friction, reflexology, Swedish gymnastics or movements, gliding, kneading, shaking, and facial or connective tissue stretching, with or without the aids of superficial heat, cold, water, lubricants, or salts. Massage therapy does not include diagnosis or attempts to adjust or manipulate any articulations of the body, spine, or mobilization of these articulations by the use of a thrusting force, nor does it include genital manipulation.

Practice of Reflexology and Massage. The practice of reflexology and massage are regulated within the statute licensing massage practitioners. A person practicing reflexology or massage or representing himself or herself as a reflexologist or massage practitioner is required either to be certified as a reflexologist or licensed as a massage practitioner by the Department of Health (DOH). In order to be certified, the person must be at least 18 years of age, have successfully completed a course of study, and have passed an examination administered or approved by the DOH.

An applicant may be certified without examination in limited situations. In addition, there are exemptions from the certification requirement provided for:

- individuals giving massage or reflexology to members of his or her immediate family;
- licensed massage practitioners and other credentialed providers performing services within their scope of practice;
- individuals practicing massage or reflexology at an athletic department of: (1) any institution that is maintained with public funds, including educational institutions; (2) a school or college approved by the DOH; or (3) a nonprofit organization holding a specified liquor license;
- students enrolled in an approved reflexology or massage school, program, or apprentice program providing uncompensated, supervised services incidental to the school or program; and
- individuals who have completed an approved somatic education training program.

Reflexologists and massage practitioners are subject to the Uniform Disciplinary Act for health professions, and the Secretary of the DOH is the disciplining authority.

Misdemeanor and Gross Misdemeanor Offenses. A misdemeanor offense is punishable by a sentence of up to 90 days in jail, or a maximum fine of \$1,000, or both imprisonment and a fine. A gross misdemeanor offense is punishable by a sentence of up to 364 days in jail or a maximum fine of \$5,000, or both imprisonment and a fine.

Summary of Substitute Bill:

It is a misdemeanor offense for an owner of a massage business or reflexology business, where massage therapy or reflexology takes place, to allow the unlicensed practice of massage therapy or reflexology. Such offense is a misdemeanor offense when the owner knowingly or with criminal negligence allows or permits the unlicensed practice of massage therapy or reflexology to be committed within his or her place of business. A subsequent offense is a gross misdemeanor offense.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Public Safety):

(In support) This bill is intended to solve the problem of massage parlors that are a cover for trafficking and prostitution. In the Vancouver area many of these illegal businesses have moved to the area from Oregon and it has caused much frustration for the local neighborhoods. These types of businesses can close and move to another location quickly, so it is hard to catch and prosecute some of these entities. This type of illegal activity is a frustration to many neighborhoods. This bill will provide law enforcement with the tools needed to crack down on any illegal activities in massage businesses.

Last year, there was a bill enacted that allowed the DOH to go in and check foot spas to look for what they perceive to be illegal practices. The DOH currently has authority over massage businesses, however, there is not much they can do to someone who owns a massage business and oversees those who practice massage. It is supposed to be the law that to own a massage health care business you must be a licensed health care provider, but it is not normally enforced.

(In support with amendment) An amendment is requested to remove the intent language in the bill to make it a strict liability on the person that owns the business.

The potential for exploitation in the massage field is rampant and it puts work and customers at risk. This bill is intended to protect legitimate businesses and is targeted to punish the person who owns the business. The State of Oregon has enacted a similar measure to this.

(Opposed) None.

Staff Summary of Public Testimony (General Government & Information Technology):

(In support) This bill solves a problem and is another tool in the toolbox to fight trafficking and prostitution. Over the last few years, there has been a trend of foot massage parlors covering as prostitution and sex trafficking businesses. Currently, the normal regulation tools are not working. Oregon has recently implemented a new regulatory regime, resulting in an overflow of "foot spa" businesses in Vancouver and Clark County. This bill was originally crafted by the Attorney General in Vancouver.

House Bill 1234 will supplement resources already spent to address sex trafficking. Law enforcement can currently take action against the workers, but cannot take action against the business owners who knowingly employ these people. Often the workers are already victims of sex trafficking.

Illegitimate massage is not massage therapy. The Department of Health (DOH) does not have to announce an inspection and have found many illegitimate businesses. Massage and reflexology enjoy title protection, so when people are not practicing legally, they violate customers and the title protection.

The citizens will benefit from this bill. A lot of business owners are using coercion and manipulation with their employees. If the DOH cannot enforce standards, the laws look weak. This bill protects agencies, consumers and therapists who have taken time to go to school and not be exploited.

(Opposed) None.

Persons Testifying (Public Safety): (In support) Representative Wylie, prime sponsor; Melanie Stewart, America Massage Therapy Association, Washington Chapter; Lavon Watson, America Massage Therapy Association and Washington Engage; Jackie Clewis, Justice and Mercy Foundation; Lisa Ghormley; and Anne McEnerny-Oale.

(In support with amendment) Rose Gunderson, Washington Engage.

Persons Testifying (General Government & Information Technology): Representative Wylie, prime sponsor; Mark Brown, City of Vancouver; Melanie Stewart, American Massage Therapy Association; and Jackie Clewis, Justice and Mercy Foundation.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (General Government & Information Technology): None.