



Associated Bodywork & Massage Professionals

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January 23, 2022

TO: Representatives Jaci Grote, Kate Murray, and Peter Schmidt; and Senators David Watters and Debra Altschiller

RE: ABMP Comments on House Bill 341-FN

VIA EMAIL

Associated Bodywork & Massage Professionals (ABMP) provides professional liability insurance, business resources, professional publications, and legislative and regulatory advocacy for more than 80,000 members nationwide, including over 500 members in New Hampshire.

ABMP is responding to House Bill 341-FN (HB 341) regarding massage therapy establishment licensing. We are opposed to this bill in its current form.

While we appreciate that HB 341 limits an establishment license requirement to “buildings in which 2 or more massage therapists work for the same employer” and applaud the exclusion of sole proprietors, the exemption becomes confusing at 328-B:14, III:

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

ABMP recommends clarification. The way the bill is currently written, independent contractors may not know whether to obtain an establishment license. Consider this scenario: An independent contractor maintains regularly scheduled hours but has an unscheduled client walk in. Would they have to obtain an establishment license on the spot for that one unscheduled appointment? ABMP is opposed to HB 341 in its current form. If the bill moves forward, however, we recommend retaining language that sole practitioners or independent contractors are exempt, regardless of their scheduling practices.

ABMP believes this bill has been introduced to address issues associated with illicit businesses. Case in point, a suggested amendment to RSA 328-B:8, IV directly calls out human trafficking:

“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**.” (Emphasis added.)

When discussing illicit sex businesses and human trafficking, licensed massage therapists (LMTs) are overwhelmingly not the problem. LMTs in New Hampshire are required to complete 750 educational training hours to qualify for licensure, which includes first aid and CPR certification, notification of convictions, and passing a national examination. New Hampshire LMTs are law-abiding practitioners who are educated, vetted, and provide therapeutic services to the public. It is unfair to single them out to solve the problem of human trafficking. Forcing massage therapists to pay for inspections and disciplinary actions of illicit operations through expensive establishment licensing is wholly unreasonable. For context, in many states across the country, the disciplined portion of the licensed population is around 1 percent. Sexual misconduct consists of approximately 0.5 percent of the disciplined licensed population. Illicit businesses are not commonly included in this calculation, because licensing agencies and/or boards

typically have no authority over them. As such, ABMP does not believe it should be the responsibility of the licensed population alone to pay for the costs of fighting human trafficking.

Furthermore, HB 341 would target LMTs who are not contributing to the illegal activities the legislation is seeking to combat. It is ABMP's opinion that each state should focus on strengthening criminal codes and regulatory fines when tackling human trafficking, as it is a criminal act. Right now, code enforcement and law enforcement can walk into a massage establishment and request to see the licenses of all those working. The Massage Practice Act should be amended to allow for a summary suspension with due process if the establishment does not have the licenses. In addition, adding increased fines would hamper illicit sex businesses. For example, Montana is working on passing a bill that would issue the owners or managers of the business a fine of \$1,000 per day for allowing unlicensed activity, and make it a felony for violating a district court cease-and-desist order. This is something other states, including New Hampshire, should consider. ABMP applauds making it a felony to allow unlicensed individuals to practice "massage."

A final consideration regarding HB 341 is understanding that massage therapists earn a minimal living. An average practitioner earns \$26,000 per year; most can't work as full-time massage therapists due to the physical demands of the job. In addition to having to pay for and obtain local business permits out of their limited earnings, practitioners must also pay a professional licensing fee. Licensing fees increase regularly and can include, the cost of investigations and legal fees of illicit businesses. Practitioners sometimes also have costly continuing education requirements as a provision of license renewal. ABMP believes HB 341 will add yet another licensing fee for individuals who do not earn a high income. In addition, increasing licensing requirements, such as introducing new fees, may become a barrier to entry into the profession.

In conclusion, it is ABMP's position that the misplaced motive for this bill is to fund the Board's efforts to combat human trafficking by using the required licensing fees from lawfully practicing massage therapists. lawfully practicing licensed massage therapists. Human trafficking is bigger than this profession alone and should not be done solely through the Massage Practice Act. ABMP opposes HB 341.

ABMP works on bills and ordinances regarding establishment licensing across the country at the state and local level. As such, we have seen best practices and have identified tactics to combat the illicit sex business. We would be happy to be a resource for you in drafting this bill. Thank you for considering our opinions.

Please contact me at laura@abmp.com or by phone at 303-679-7645 if you have comments or questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura B. Embleton". The signature is fluid and cursive, with the first name "Laura" being the most prominent.

Laura B. Embleton, Government Relations Director
Associated Bodywork & Massage Professionals