

Bill No. 9-15  
Concerning: Health and Sanitation -  
Bodywork Establishment - License  
Revised: March 26, 2015 Draft No. 6  
Introduced: March 3, 2015  
Expires: September 3, 2016  
Enacted: April 14, 2015  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the request of the County Executive and Councilmembers Hucker, Katz,  
Rice, and Navarro

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**AN ACT to:**

- (1) require a license to operate a bodywork establishment in the County;
- (2) define bodywork;
- (3) authorize the Department of Health and Human Services to issue a license to operate a bodywork establishment;
- (4) authorize the Police Department to enforce the law; and
- (5) generally regulate the operation of a bodywork establishment in the County.

By adding

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

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

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

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

2    **24-11B. Bodywork Establishments.**

3           (a) Definitions. As used in this Section, the following words and phrases  
 4           have the following meanings:

5           Bodywork means the practice of using one's hands or another part of the  
 6           body to apply pressure on an individual's fully clothed body or bare feet  
 7           to affect the electromagnetic energy, energetic field, or energy meridians  
 8           of the human body. Bodywork includes the practice of reflexology or  
 9           acupressure.

10           Bodywork establishment means any business that advertises bodywork  
 11           services or where any employee, agent, or contractor performs bodywork  
 12           on an individual.

13           Chief means the Chief of Police or the Chief's designee.

14           Director means the Director of the Department of Health and Human  
 15           Services or the Director's designee.

16           Licensee means an individual owner of a bodywork establishment or an  
 17           individual designated by the owner if the owner is not an individual.

18           Sexual activity means any direct or indirect physical contact between  
 19           persons intended to erotically stimulate either person or both persons or  
 20           is likely to cause such stimulation. Sexual activity includes sexual  
 21           intercourse, fellatio, cunnilingus, anal intercourse, masturbation, or  
 22           manual stimulation.

23           (b) Scope. This Section does not apply to:

- 24           (1) an individual with a license, registration, or other approval issued  
 25           by the Maryland State Board of Chiropractic and Massage Therapy  
 26           Examiners to provide massage under § 3-5A-05 of the Health  
 27           Occupations Article;

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(2) an athletic trainer who:

(A) is certified by a nationally recognized athletic trainer certification agency identified by the Director and works under the supervision of a physician, while functioning in the athletic trainer's professional capacity;

(B) is employed by an accredited educational institution, while performing professional duties at that institution; or

(C) is employed by a professional sports team, while treating members of that team; or

(3) a business in which every person who provides services is a certified massage therapist or registered massage practitioner under State law.

(c) Bodywork establishment.

(1) License required. A bodywork establishment must have a license issued by the Director under this Section. The licensee must be the owner of the establishment. If the owner is not an individual, the owner must designate on the application an individual as the owner's representative. The owner's representative must consent on the application to be so designated. The representative must accept any notice sent to the owner under this Section. If the owner does not pay any fine, penalty, or fee due under this Section, the Director may collect the fine, penalty, or fee from the owner's representative.

(2) Except as otherwise provided in this Section, the Director must, with the assistance of the Police Department, review each application and issue a bodywork establishment license if:

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- (A) the applicant meets the requirements of this Section and completes a license application on a form provided by the Director;
  - (B) the bodywork establishment facility meets the minimum standards set by Executive Regulation;
  - (C) the applicant pays an application fee and license fee; and
  - (D) the establishment complies with all applicable zoning, health, fire prevention, and building laws and regulations.
- (3) The Director must conduct a pre-licensing inspection of any bodywork establishment, and may conduct other inspections necessary to enforce this Section.
  - (4) A bodywork establishment must continue to meet the minimum standards set by regulation at all times.
  - (5) Any person who operates a bodywork establishment must permit a County police officer or the Director to enter the bodywork establishment at any time during operating hours, and at any other time in an emergency or when the establishment is occupied.
  - (6) Any person who operates a bodywork establishment must not allow a person to perform any sexual activity with another person in the establishment.
  - (7) A bodywork establishment license has a term of one year and must be renewed annually.
  - (8) A bodywork establishment license;
    - (A) must not be transferred from one person to another;
    - (B) must not be transferred from one location to another location until a license is issued for the new location; and
    - (C) applies to a single location specified in the license.

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(9) If an applicant for a bodywork establishment license does not own the building where the establishment would be located, the building owner must approve the use of the building as a bodywork establishment on a form provided by the Director.

(d) Bodywork establishment licensee.

(1) The licensee, if an individual, or an owner's representative designated under subsection (c)(1) [(A)], must

(A) submit proof of good health required by the Director;

(B) be at least 18 years old;

(C) have not been convicted of, pled guilty or nolo contendere to, or served any term of probation as a result of being charged with a:

(i) felony;

(ii) crime involving moral turpitude, including solicitation, prostitution, and related crimes;

(iii) violation of a controlled dangerous substances law;  
or

(iv) violation of any law regulating the practice of a health occupation;

(D) not permit an individual to perform bodywork services in the establishment while under the influence of a non-prescribed drug or alcoholic beverage;

(E) provide a passport-size photograph, fingerprints, and a list of the individual's occupation or employment for the 3 years before filing the application; and

106 (F) if the applicant is not a United States citizen, provide  
 107 evidence of legal presence and employability in the United  
 108 States.

109 (e) Executive Regulations. The Executive must adopt an Executive  
 110 Regulation under Method (2) establishing the minimum standards for a  
 111 bodywork establishment and the application process. The Executive  
 112 must set application and license fees by Executive Regulation under  
 113 Method (3) that substantially cover the cost of administering this Section.

114 (f) Denial or Revocation of license. The Director may refuse to issue a  
 115 license under this Section, and may suspend or revoke a license issued  
 116 under this Section, after a hearing for which reasonable notice has been  
 117 given, if the licensee or applicant:

- 118 (1) violates any provision of this Section;
- 119 (2) submits fraudulent information in support of a license application  
 120 under this Section;
- 121 (3) is convicted of, or pleads guilty or nolo contendere to, or is ordered  
 122 to serve a period of probation after being charged with:
  - 123 (A) a felony;
  - 124 (B) a crime involving moral turpitude, including solicitation,  
 125 prostitution, and related crimes;
  - 126 (C) violation of a controlled dangerous substance law; or
  - 127 (D) violation of any law regulating the practice of a health  
 128 occupation;
- 129 (4) permits an individual to perform bodywork services in the  
 130 establishment while under the influence of a non-prescribed drug  
 131 or alcoholic beverage; or
- 132 (5) is grossly negligent in the performance of bodywork.

133 (g) Notice and opportunity for hearing.

134 (1) Notice. After finding that one or more grounds for denial,  
135 suspension, or revocation of a license could exist, the Director may  
136 serve a written notice on the licensee or applicant in person or by  
137 regular mail, postage prepaid, addressed to the person's last known  
138 address as maintained in the Director's file. Service on that person  
139 by mail is effective 3 days after mailing. The Director must also  
140 post a written notice at a conspicuous place on the establishment  
141 for which the license was or would be issued. The written notice  
142 must, at a minimum:

143 (A) state that the Director has found that the licensee or  
144 applicant may be subject to denial, suspension, or  
145 revocation;

146 (B) identify the specific grounds for the Director's findings; and

147 (C) set a date for a hearing on denial of the application or  
148 suspension or revocation of the license. The hearing must  
149 be held at least 5 days after service of the Director's notice,  
150 unless the parties agree to an earlier date.

151 (2) Hearing. The Director or a designee may conduct the hearing. At  
152 the hearing, the licensee or applicant may present evidence and  
153 witnesses to refute the grounds cited by the Director for denying  
154 the application or suspending or revoking the license, and the  
155 County and any other person may submit relevant evidence. The  
156 relevant records of the Department are part of the hearing record.  
157 Within 3 days after the hearing closes, the person conducting the  
158 hearing must render a decision in writing, giving the reasons for  
159 the decision. That decision is final, subject to judicial review under

160 the Maryland Rules for review of administrative decisions in the  
161 Circuit Court and the Court of Special Appeals.

162 (3) Failure to appear. A licensee or applicant who after notice does  
163 not appear at a hearing waives the right to a hearing and consents  
164 to the action that the Director proposed in the notice. The Director  
165 may deny the application or suspend or revoke the license as  
166 proposed in the notice.

167 (4) Notice and Effective Date of Suspension or Revocation. The  
168 Director's written decision must be posted at the office of the  
169 Director and must be served on the licensee or applicant in person  
170 or by regular mail, postage prepaid, addressed to the applicant or  
171 licensee's last known address as maintained in the Department's  
172 files. The Director must also post a written notice of the decision  
173 at a conspicuous place on the establishment for which the license  
174 was or would be issued. A suspension or revocation takes effect  
175 on the day the Director's decision is delivered in person or posted,  
176 whichever occurs first. To facilitate enforcement of this provision,  
177 the Director may require the applicant or licensee to appear at the  
178 Director's office at a specific time to receive a copy of the decision  
179 and be prepared to surrender the license. If a licensee or applicant  
180 does not appear to receive the Director's decision, the Director's  
181 decision is effective on the date and time the licensee or applicant  
182 was directed to appear.

183 (5) Surrender of license and security. When a license is suspended or  
184 revoked, the Director must take custody of the suspended or  
185 revoked license.

- 186           (h) Upon receipt of notice of a license revocation or suspension, unless  
 187                   otherwise directed, the licensee must, within 24 hours:
- 188                   (1) place the license in the mail, postage prepaid, addressed to the  
 189                               Department; or
- 190                   (2) physically deliver the license to the Department.
- 191           (i) If the Department does not receive a suspended or revoked license within  
 192                   48 hours after notification, excluding weekends or a legal holiday, or as  
 193                   otherwise directed, the holder of the license violates this Section. In  
 194                   addition to any other penalties that may be imposed, the Director or the  
 195                   Chief may:
- 196                   (1) remove the revoked or suspended license from the business  
 197                               location; and
- 198                   (2) close the place of business until the person operating the business  
 199                               obtains a license.
- 200           (j) Appeals.
- 201                   (1) Any person aggrieved by the denial, suspension, or revocation of  
 202                               any license under this Section may seek judicial review under the  
 203                               Maryland Rules for review of administrative decisions in the  
 204                               Circuit Court and the Court of Special Appeals.
- 205                   (2) Except as provided in subsection (3), the Director's decision to  
 206                               deny a license must not be stayed pending appeal.
- 207                   (3) Final administrative action that revokes or suspends a license may  
 208                               be stayed pending appeal only if:
- 209                               (A) the Court finds that the public health, safety, or welfare will  
 210                                       not be endangered during the appeal; and
- 211                               (B) an appropriate bond is posted.
- 212           (k) Penalty. A person has committed a class A violation if the person:

- 213 (1) violates any provision of this Section; or  
214 (2) submits fraudulent information in support of a license application  
215 under this Section.

216 *Approved:*

217 George Leventhal 4/16/15  
George Leventhal, President, County Council Date

218 *Approved:*

219 \_\_\_\_\_  
Isiah Leggett, County Executive Date

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

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Linda M. Lauer, Clerk of the Council Date