

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: April 22, 2015
Effective: July 22, 2015
Sunset Date: None
Ch. 22, Laws of Mont. Co. 2015

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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	<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 24-11B 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:

- 54 (A) the applicant meets the requirements of this Section and
 55 completes a license application on a form provided by the
 56 Director;
- 57 (B) the bodywork establishment facility meets the minimum
 58 standards set by Executive Regulation;
- 59 (C) the applicant pays an application fee and license fee; and
 60 (D) the establishment complies with all applicable zoning,
 61 health, fire prevention, and building laws and regulations.
- 62 (3) The Director must conduct a pre-licensing inspection of any
 63 bodywork establishment, and may conduct other inspections
 64 necessary to enforce this Section.
- 65 (4) A bodywork establishment must continue to meet the minimum
 66 standards set by regulation at all times.
- 67 (5) Any person who operates a bodywork establishment must permit
 68 a County police officer or the Director to enter the bodywork
 69 establishment at any time during operating hours, and at any other
 70 time in an emergency or when the establishment is occupied.
- 71 (6) Any person who operates a bodywork establishment must not
 72 allow a person to perform any sexual activity with another person
 73 in the establishment.
- 74 (7) A bodywork establishment license has a term of one year and must
 75 be renewed annually.
- 76 (8) A bodywork establishment license;
- 77 (A) must not be transferred from one person to another;
 78 (B) must not be transferred from one location to another
 79 location until a license is issued for the new location; and
 80 (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 April 22, 2015
 Isiah Leggett, County Executive Date

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

221 Linda M. Lauer 4/22/15
 Linda M. Lauer, Clerk of the Council Date