

## **BILL SUMMARY**

- MEASURE:**        **HB 3199 (Proposed Committee Substitute)**
- AUTHOR:**        Representative Denney
- SUBJECT:**        An act relating to professions and occupations; creating Massage Therapy Practice Act; requiring certain license; codification; emergency.
- PROVISIONS:**    Section 1. NEW LAW        Creating the “Massage Therapy Practice Act”.
- Section 2. NEW LAW        Providing definitions for the Massage Therapy Practice Act, as follows:
1. Asian Bodywork Therapy or ABT –diverse Asian modalities which use Chinese Medicine, Asian techniques and treatment, for the restoration of health;
  2. Board – State Board of Health;
  3. Committee – Oklahoma Massage Therapy Advisory Committee;
  4. Direct access – the public accessing massage therapy without medical referral;
  5. Feldenkrais Method – a system of somatic education in which touch and words are used to introduce learning and improvement of functional movement patterns;
  6. Massage Therapist – a person who practices massage and massage therapy and is simultaneously licensed under the Massage Therapy Practice Act;
  7. Massage therapy – the treatment of the soft tissues of the human body. Massage and bodywork are designed to help the body in a plethora of ways including balance and integration of the body and a number of other benefits;
  8. Massage therapy school – a facility with an educational massage program that is licensed by the Board;
  9. Polarity therapy – diverse applications affecting the human energy system; and
  10. Trager approach – a type of movement education which uses touch and the movement of a skilled practitioner and leads to a client’s self-awareness and experience a new way of moving his/her body.
- Section 3. NEW LAW        A. Outlines what persons are not allowed to do unless he/she is a licensed massage therapist:
1. Use the title of massage therapist;
  2. Represent himself/herself as a massage therapist;

3. Use any other title, words, abbreviations, letters, figures, signs or devices that indicate the person is a massage therapist; or
4. Utilize the terms “massage”, “massage therapy”, or “massage therapist”, when advertising or printing promotional material.

B. No one shall maintain, manager or operate a massage therapy school offering education, instruction, or training in massage therapy unless the school is a licensed massage therapy school, outlined in Section 7.

C. Individuals practicing massage therapy are not allowed to perform:

1. Diagnose illness or disease;
2. High velocity, low-amplitude thrust;
3. Electrical stimulation;
4. Application of ultrasound;
5. Use of any technique that interrupts or breaks the skin; or
6. Prescribe medicine.

D. Nothing in this act shall be construed to prevent:

1. Qualified members of other professions licensed to render services within the massage therapists scope, as long as they do not represent themselves as a massage therapist;
2. Students from rendering massage services within the course of study of an approved massage therapy school;
3. Visiting massage therapy instructors from out of state, provided he/she is duly licensed or registered, and is qualified in the instructor’s place of residence for the practice of massage therapy;
4. Any nonresident holding a current license, registration, or certificate in massage therapy from another state determined as acceptable by the Board when temporarily present from providing massage therapy services in conjunction with an emergency response team, disaster relief officials, or special events;
5. Individuals whose practices are limited to certain areas of the body and do not represent themselves as a massage therapist practicing those skills. Those who use these practices and apply for a license shall comply with all requirements of this act;
- 6.-7. Other professions performing practices resembling massage therapy but are not massage therapy and are not licensed as such, as long as the practices are not implied to be massage therapy;
8. The practice of any person in this state engaged in the practice of structural integration, provided the individual is training for or is a member of the International Association of Structural Integrators and is not implied to be a massage therapist or using massage therapy;
9. The ability of health care professionals from appropriately referring to licensed massage therapists or limit the right of direct public access to licensed massage therapists.

Section 4. NEW LAW A. The State Board of Health is authorized to promulgate rules that it deems necessary for the implementation and enforcement of the Massage Therapy Practice Act, including, but not limited to, qualifications for licensure, renewals, reinstatements, continuing education requirements and fees.

B. The Board has the power to perform investigations, require the production of records and other documents relating to practices regulated by the Act and to seek injunctive relief.

Section 5. NEW LAW A. Creating the Oklahoma Massage Therapy Advisory Committee.

B. The Committee shall consist of 7 members, as follows:

1. 2 members shall be licensed massage therapists with at least 3 years of massage therapy practice and are actively engaged in massage therapy during the members' tenure, to be appointed by the Speaker of the House for 4 years. For the initial term, one member must serve until June 30, 2010, and one member shall serve until June 30, 2011;

2. 2 members shall be licensed massage therapists with at least 3 years of massage therapy practice and are actively engaged in massage therapy during the members' tenure, to be appointed by the President Pro Tempore of the Senate for 4 years. For the initial term, one member must serve until June 30, 2012, and one member shall serve until June 30, 2013;

3. 3 members appointed by the Governor for terms of 4 years as follows:

a. 1 member shall be a medical doctor or doctor of osteopathy with no financial interest in the profession of massage therapy, whose initial term shall expire June 30, 2010,

b. 1 member shall be a licensed massage therapy school instructor, whose initial term will expire June 30, 2011, and

c. 1 member shall be a member of the public who has not been licensed and has no financial interest in the profession, whose initial term shall expire June 30, 2012.

C. Each member shall hold office until a successor is appointed; provided that no member shall serve more than 8 consecutive years or two full terms, whichever is greater.

D. The Committee shall elect a chair and vice-chair from among the members required to be licensed, each year. The chair or vice-chair and 3 other members constitute a quorum. The Committee shall meet no less than four times a year and as often as necessary.

E. The Committee will not be compensated but shall be reimbursed for actual and necessary expenses incurred from their duties, according to the State Travel Reimbursement Act.

F. 1. The Committee shall advise the Board on matters pertaining to the

Massage Therapy Practice Act, including:

- a. scope and standards of practice,
  - b. requirements for licenses, exams, any exceptions, renewals, temporary licenses and endorsements or reciprocity agreements,
  - c. methods and requirements for ensuring the continued competence of licensed persons,
  - d. grounds for probation, revocation or suspension of license and reinstatement provisions,
  - e. fees, and
  - f. all other matters pertaining to massage.
2. The Committee shall assist and advise the Board in all hearings related to the enforcement of the Massage Therapy Practice Act.

Section 6. NEW LAW      A. Beginning October 1, 2008, the State Board of Health shall issue a license to practice massage therapy to any person who files completed application, with fees and submits evidence that he/she:

1. Has reached the age of majority;
2. Has passed an exam before issuance of a license to assist in determining the applicant's competence.
  - a. The Board may adopt rules for exams accepted.
  - b. For license purposes the Board may adopt only those exams that meet standards outlined in Section 9.
3. Provides proof of documentation that the applicant currently maintains liability insurance for practice as a massage therapist.

- B. 1. After October 1, 2008, any person wanting to practice massage therapy shall obtain a license pursuant to this Act.
2. For 18 months after the effective date of this act, the Board may grant a license to an applicant who:
- a. has completed 250 hours of formal education in massage therapy from a state-licensed school and provides evidence he/she has been a massage therapist in this state for no less than 1 year; or
  - b. provides evidence he/she has been practicing for no less than 3 years in this state; or
  - c. has 500 hours of formal education in massage therapy from a state-licensed school.

Section 7. NEW LAW      A. The State Board of Health shall promulgate rules for the license of massage therapy schools and shall license such schools that qualify under this Act.

- B. Massage therapy schools will provide a list of instructors to the Board, their qualifications, and proof they are certified or licensed in their field of expertise and have 3 consecutive years of experience.

C. Massage therapy schools shall provide an educational program with a minimum of 500 hours of training to be determined by the Board.

D. The Board may establish continuing educational requirements as a condition of the renewal of massage therapy licenses.

Section 8. NEW LAW      A. A massage therapy license shall be posted in an obvious and apparent place at the holder's principal place of business.

B. Licenses are not assignable or transferable.

Section 9. NEW LAW      The required exam referred to in the Act is a national massage therapy exam that meets the following and is approved by the Board:

1. The exam is validated through a job analysis under current standards for educational and professional testing;
2. The exam standards comply with pertinent state and federal equal employment opportunity guidelines;
3. The exam is available to all potential licensing candidates; and
4. The exam is delivered through a professional testing company with high-security test centers located nationwide.

Section 10. NEW LAW      A. The Board may license an applicant if the individual already has a license from another state or country and the standards to attain that license were equal or greater than those established in this act.

- B. 1. Massage therapy licenses expire every 2 years. School licenses expire every year. Expiration dates will be established by the Board.
2. A license shall be renewed by submitting the Board's renewal application.
3. A 30-day grace period shall be allowed each license holder after the renewal period, during which time a license may be renewed upon payment of renewal fee and late fee as set by the Board.

- C. 1. Licenses not renewed after the grace period, will be placed on inactive status for no more than 2 years. After 2 years, if the license has not been reactivated, it will automatically expire.
2. If within 2 years from the date inactive status began for the license and the massage therapist wishes to resume practice, the Board shall be notified in writing, and upon proof of completion of continuing education and required payment in lieu of lapsed fees, the license shall be restored in full.

D. The Board will establish a schedule of administrative fees upon recommendations of the Advisory Committee.

1. The Board shall set the fees so that the amount collected will be sufficient to meet the expenses of administering the Massage Therapy Practice Act and that there is no unnecessary surplus.
2. The Board shall not fix a license fee greater than \$300 and a renewal fee greater than \$200 annually.
3. a. The fee to replace a lost license shall be \$25.
- b. The fee shall accompany the application for a replacement license.

E. The Board shall make rules with a schedule of fees for massage therapy school applications, licenses, inspections, renewals, reactivations and necessary administrative fees, based on a sliding scale to reflect the number of students within a school's program per year.

Section 11. NEW LAW A. This Act shall supersede all ordinances or regulations regulating massage therapists in any city, county or political subdivision.

B. This section of law does not affect any regulations relating to zoning requirements or occupational license fees pertaining to health care professions.

Section 12. NEW LAW A. The Board may take disciplinary action against a licensed person as follows:

1. Deny or refuse to renew a license;
2. Suspend or revoke a license;
3. Issue an administrative reprimand; or
4. Impose probationary conditions when the licensee or applicant has engaged in unprofessional conduct that has endangered or may endanger the health, welfare or safety of the public.

B. The Board has authority to take action upon a finding by the Board that the licensee or applicant is guilty of:

1. Obtaining or attempting to obtain a license by fraud, misrepresentation, concealment of material facts or making a false statement;
2. Being convicted of a felony;
3. Having sexual contact with a client;
4. Violating any law or rule promulgated by the Board;
5. Engaging in fraud in delivering services, including reimbursement, or advertising services in a false or misleading manner;
6. Being grossly negligent or incompetent in the practice of massage therapy; or
7. Being guilty of diagnosis, treatment, or prescription of drugs or medicines for which a license to practice medicine is required by law.

C. Disciplinary proceedings may begin upon complaint of any person, conforming to APA.

D. The Board shall establish guidelines for handling disciplinary actions. Guidelines may include, minimum and maximum fines, periods of probation, conditions of probation or reissuance of a license.

E. Licensees who have been sanctioned shall be responsible for the payments of all proceeding costs.

F. The surrender of a license shall not keep the Board from further disciplinary action.

Section 13. NEW LAW A. No Board member or Advisory Committee member shall bear liability to civil damages or criminal prosecution for any action taken within the scope of duty.

B. No person providing truthful and accurate information shall be subject to civil damages or criminal prosecutions.

Section 14. NEW LAW A. A person who does any of the following is guilty of a misdemeanor:

1. Violates a provision of this Act or rules adopted per the act;
2. Renders massage therapy services or instruction at a school without the required current valid license; or
3. Advertises or uses a certificate implying the person is a licensed therapist, without holding a valid license.

- B. 1. Therapists regulated by this act are designated as “massage therapists” and are entitled to use the term “massage” when advertising.
2. Anyone not authorized to use such title regulated by the act and does, is subject to disciplinary action by the Board.
  3. Anyone who helps someone not authorized to use a title regulated by this act or knowingly employs or contracts persons not authorized, shall also be subject to disciplinary action. It is a violation of this act for any person to advertised licensed services in connection with any escort or dating service.

**EFFECTIVE**

**DATE:** Emergency Clause

**PREPARED BY:** Arnella Karges

**DATE:** February 11, 2008