

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 687

By: Sykes and Sparks of the
Senate

3

and

4

Derby of the House

5

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8 [professions and occupations - Massage Therapy
Practice Act - codification - provisional effective
9 date]

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12 AUTHORS: Add the following House Coauthors: Virgin and Sherrer

13 AUTHORS: Add the following Senate Coauthors: Pittman and Yen

14 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

15

16 "An Act relating to professions and occupations;
17 creating the Massage Therapy Practice Act; providing
short title; defining terms; prohibiting certain
18 actions without a license; prohibiting certain
operation of certain schools or instruction without
19 a license; limiting certain practices; providing for
exceptions; authorizing the State Board of
20 Cosmetology and Barbering to adopt rules for
implementing the act; granting the Board certain
21 investigation powers; creating the Advisory Board on
Massage Therapy; stating duties; providing for
22 membership; setting fees; establishing requirements
for licensure of certain persons for certain time
23 periods; allowing the Board to establish additional
licensure standards; requiring a license to practice
after a certain date; requiring posting of certain
24 license; stating certain license is not assignable

1 or transferable; prohibiting the operation of a
2 certain school without certain license; limiting the
3 scope of instruction; requiring certain examination
4 to be a standardized national massage therapy
5 examination meeting certain criteria; providing for
6 reciprocity; providing for expiration of certain
7 licenses; establishing procedure for renewal of
8 license; providing for certain inactive status and
9 procedures for restoring status; providing for
10 certain fees; setting limits of certain fees; making
11 act supersede certain local ordinances and
12 regulations; allowing certain zoning and licensing
13 by county or municipal governments; authorizing
14 Board to take certain disciplinary actions;
15 authorizing Board to take certain actions based on
16 certain unprofessional conduct; providing for the
17 institution of certain disciplinary proceedings;
18 providing for certain guidelines for the disposition
19 of disciplinary cases; providing for responsibility
20 for certain costs; prohibiting certain liability,
21 civil damages or criminal prosecution; creating
22 criminal offenses and punishments; authorizing the
23 use of certain terms by certain persons; making the
24 use of certain professional title by certain persons
subject to certain discipline; making a person
subject to disciplinary action for certain acts;
making certain advertising a violation of the act;
providing for codification; and providing an
effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 4200.1 of Title 59, unless there
21 is created a duplication in numbering, reads as follows:

22 This act shall be known and may be cited as the "Massage Therapy
23 Practice Act".
24

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4200.2 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in the Massage Therapy Practice Act:

5 1. "Board" means the State Board of Cosmetology and Barbering;

6 2. "Direct access" means the ability that the public has to
7 seek out treatment by a massage therapist without the direct
8 referral from a medical or health care professional;

9 3. "Massage therapist" means an individual who practices
10 massage or massage therapy and is licensed under the Massage Therapy
11 Practice Act. A massage therapist uses visual, kinesthetic, and
12 palpatory skills to assess the body and may evaluate a condition to
13 the extent of determining whether massage is indicated or
14 contraindicated;

15 4. "Massage therapy" means the skillful treatment of the soft
16 tissues of the human body. Massage is designed to promote general
17 relaxation, improve movement, relieve somatic and muscular pain or
18 dysfunction, stress and muscle tension, provide for general health
19 enhancement, personal growth, education and the organization,
20 balance and integration of the human body and includes, but is not
21 limited to:

22 a. the use of touch, pressure, friction, stroking,
23 gliding, percussion, kneading, movement, positioning,
24 holding, range of motion and nonspecific stretching

1 within the normal anatomical range of movement, and
2 vibration by manual or mechanical means with or
3 without the use of massage devices that mimic or
4 enhance manual measures, and

- 5 b. the external application of ice, heat and cold packs
6 for thermal therapy, water, lubricants, abrasives and
7 external application of herbal or topical preparations
8 not classified as prescription drugs; and

9 5. "Massage therapy school" means a facility providing
10 instruction in massage therapy.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 4200.3 of Title 59, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Unless a person is a licensed massage therapist, a person
15 shall not:

- 16 1. Use the title of massage therapist;
17 2. Represent himself or herself to be a massage therapist;
18 3. Use any other title, words, abbreviations, letters, figures,
19 signs or devices that indicate the person is a massage therapist; or
20 4. Utilize the terms "massage", "massage therapy" or "massage
21 therapist" when advertising or printing promotional material.

22 B. A person shall not maintain, manage or operate a massage
23 therapy school offering education, instruction or training in
24

1 message therapy unless the school is a licensed massage therapy
2 school pursuant to Section 7 of this act.

3 C. Individuals practicing massage therapy under the Massage
4 Therapy Practice Act shall not perform any of the following:

- 5 1. Diagnosis of illness or disease;
- 6 2. High-velocity, low-amplitude thrust;
- 7 3. Electrical stimulation;
- 8 4. Application of ultrasound;
- 9 5. Use of any technique that interrupts or breaks the skin; or
- 10 6. Prescribing of medicines.

11 D. Nothing in the Massage Therapy Practice Act shall be
12 construed to prevent:

13 1. Qualified members of other recognized professions who are
14 licensed or regulated under Oklahoma law from rendering services
15 within the scope of the license of the person, provided the person
16 does not represent himself or herself as a massage therapist. A
17 physician or other licensed health care provider providing health
18 care services within the scope of practice of the physician or
19 provider shall not be required to be licensed by or registered with
20 the State Board of Cosmetology and Barbering;

21 2. Students from rendering massage therapy services within the
22 course of study when enrolled at a licensed massage therapy school;

23 3. Visiting massage therapy instructors from another state or
24 territory of the United States, the District of Columbia or any

1 foreign nation from teaching massage therapy, provided the
2 instructor is duly licensed or registered, if required, and is
3 qualified in the instructor's place of residence for the practice of
4 massage therapy;

5 4. Any nonresident person holding a current license,
6 registration or certification in massage therapy from another state
7 or recognized national certification system determined as acceptable
8 by the Board when temporarily present in this state from providing
9 massage therapy services as a part of an emergency response team
10 working in conjunction with disaster relief officials or at special
11 events such as conventions, sporting events, educational field
12 trips, conferences, traveling shows or exhibitions;

13 5. Physicians or other health care professionals from
14 appropriately referring to duly licensed massage therapists or limit
15 in any way the right of direct access of the public to licensed
16 massage therapists; or

17 6. The practice of any person in this state who uses touch,
18 words and directed movement to deepen awareness of existing patterns
19 of movement in the body as well as to suggest new possibilities of
20 movement while engaged within the scope of practice of a profession
21 with established standards and ethics, provided that the services
22 are not designated or implied to be massage or massage therapy.
23 Practices shall include but are not limited to the Feldenkrais
24 Method of somatic education, Rolf Movement Integration by the Rolf

1 Institute, the Trager Approach of movement education, and Body-Mind
2 Centering. Practitioners shall be recognized by or meet the
3 established standards of either a professional organization or
4 credentialing agency that represents or certifies the respective
5 practice based on a minimal level of training, demonstration of
6 competency, and adherence to ethical standards.

7 E. A physician or other licensed health care provider providing
8 health care services within their scope of practice shall not be
9 required to be licensed or registered with the State Board of
10 Cosmetology.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 4200.4 of Title 59, unless there
13 is created a duplication in numbering, reads as follows:

14 A. The State Board of Cosmetology and Barbering is hereby
15 authorized to adopt and promulgate rules pursuant to the
16 Administrative Procedures Act that are necessary for the
17 implementation and enforcement of the Massage Therapy Practice Act,
18 including, but not limited to, qualifications for licensure,
19 renewals, reinstatements, and continuing education requirements.

20 B. The State Board of Cosmetology and Barbering is hereby
21 empowered to perform investigations, to require the production of
22 records and other documents relating to practices regulated by the
23 Massage Therapy Practice Act, and to seek injunctive relief.

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1 C. There is hereby created an Advisory Board on Massage
2 Therapy. The Advisory Board on Massage Therapy shall assist the
3 Board in carrying out the provisions of this section regarding the
4 qualifications, examination, registration, regulation, and standards
5 of professional conduct of massage therapists. The Advisory Board
6 on Massage Therapy shall consist of five (5) members to be appointed
7 by the Governor for four-year terms as follows:

8 1. Three members who shall be licensed massage therapists and
9 have practiced in Oklahoma for not less than three (3) years prior
10 to their appointment;

11 2. One member who shall be an administrator or faculty member
12 of a nationally accredited school of massage therapy; and

13 3. One who shall be a citizen member.

14 D. The fee for any license issued between the effective date of
15 this act and May 1, 2017, shall be Twenty-five Dollars (\$25.00).
16 The fee or renewal fee for any massage therapy license issued after
17 May 1, 2017, shall be Fifty Dollars (\$50.00) per year. A duplicate
18 license fee shall be Ten Dollars (\$10.00).

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 4200.5 of Title 59, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Between the effective date of this act and May 1, 2017, the
23 State Board of Cosmetology and Barbering shall issue a license to
24 practice massage therapy to any person who files a completed

1 application, accompanied by the required fees, and who submits
2 satisfactory evidence that the applicant:

3 1. Is at least eighteen (18) years of age;

4 2. Has one or more of the following:

5 a. documentation that the applicant has completed and
6 passed a nationally recognized competency examination
7 in the practice of massage therapy,

8 b. an affidavit of at least five (5) years of work
9 experience in the state, or

10 c. a certificate and transcript of completion from a
11 massage school with at least five hundred (500) hours
12 of education;

13 3. Provides proof of documentation that the applicant currently
14 maintains liability insurance for practice as a massage therapist;
15 and

16 4. Provides full disclosure to the Board of any criminal
17 proceeding taken against the applicant including, but not limited
18 to:

19 a. pleading guilty, pleading nolo contendere or receiving
20 a conviction of a felony,

21 b. pleading guilty, pleading nolo contendere or receiving
22 a conviction of a misdemeanor involving moral
23 turpitude, or

24

1 c. pleading guilty, pleading nolo contendere or receiving
2 a conviction for violation of federal or state
3 controlled dangerous substance laws.

4 B. To assist in determining the entry-level competence of an
5 applicant who makes application for a license after May 1, 2017, the
6 Board may adopt rules establishing additional standards or criteria
7 for examination acceptance and may adopt only those examinations
8 that meet the standards outlined in Section 8 of this act.

9 C. 1. After May 1, 2017, except as otherwise provided in the
10 Massage Therapy Practice Act, every person desiring to practice
11 massage therapy in this state shall be required to first obtain a
12 license from the Board.

13 2. After May 1, 2017, the Board may issue a license to an
14 applicant who:

15 a. is at least eighteen (18) years of age,

16 b. provides documentation that the applicant has
17 completed the equivalent of five hundred (500) hours
18 of formal education in massage therapy from a state-
19 licensed school,

20 c. provides documentation that the applicant has passed a
21 nationally recognized competency examination approved
22 by the Board,

1 d. provides proof that the applicant currently maintains
2 liability insurance for practice as a massage
3 therapist, and

4 e. provides full disclosure to the Board of any criminal
5 proceeding taken against the applicant including, but
6 not limited to:

7 (1) pleading guilty, pleading nolo contendere or
8 receiving a conviction of a felony,

9 (2) pleading guilty, pleading nolo contendere or
10 receiving a conviction of a misdemeanor involving
11 moral turpitude, or

12 (3) pleading guilty, pleading nolo contendere or
13 receiving a conviction for violation of federal
14 or state controlled dangerous substance laws.

15 SECTION 6. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 4200.6 of Title 59, unless there
17 is created a duplication in numbering, reads as follows:

18 A. A massage therapy license issued by the State Board of
19 Cosmetology and Barbering shall at all times be posted in a
20 conspicuous place in the principal place of business of the holder.

21 B. A license issued pursuant to the Massage Therapy Practice
22 Act is not assignable or transferable.
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1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4200.7 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A person shall not advertise, maintain, manage or operate a
5 massage therapy school unless the school is licensed by the Oklahoma
6 Board of Private Vocational Schools.

7 B. A person shall not instruct as a massage therapist unless
8 the instruction is within the scope of curriculum at a licensed
9 massage therapy school.

10 SECTION 8. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 4200.8 of Title 59, unless there
12 is created a duplication in numbering, reads as follows:

13 The required examination approved by the State Board of
14 Cosmetology and Barbering for licensure under the Massage Therapy
15 Practice Act shall be a standardized national massage therapy
16 examination that meets the following criteria:

17 1. Is statistically validated through a job analysis under
18 current standards for educational and professional testing;

19 2. Complies with pertinent state and federal equal employment
20 opportunity guidelines;

21 3. Is available to all potential licensing candidates; and

22 4. Is delivered through a professional testing company with
23 high-security test centers located nationwide.

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1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4200.9 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The State Board of Cosmetology and Barbering may license an
5 applicant, provided that the applicant possesses a valid license or
6 registration to practice massage therapy issued by the appropriate
7 examining board under the laws of any other state or territory of
8 the United States, the District of Columbia or any foreign nation
9 and has met educational and examination requirements equal to or
10 exceeding those established pursuant to the Massage Therapy Practice
11 Act.

12 B. 1. Massage therapy licenses shall expire biennially.
13 Expiration dates shall be established by the Board through adoption
14 of a rule.

15 2. A license shall be renewed by submitting a renewal
16 application on a form provided by the Board.

17 3. A thirty-day grace period shall be allowed each license
18 holder after the end of the renewal period, during which time a
19 license may be renewed upon payment of the renewal fee and a late
20 fee as prescribed by the Board.

21 C. 1. If a massage therapy license is not renewed by the end
22 of the thirty-day grace period, the license shall be placed on
23 inactive status for a period not to exceed one (1) year. At the end
24

1 of one (1) year, if the license has not been reactivated, it shall
2 automatically expire.

3 2. If within a period of one (1) year from the date the license
4 was placed on inactive status the massage therapist wishes to resume
5 practice, the massage therapist shall notify the Board in writing
6 and, upon receipt of proof of completion of all continuing education
7 requirements and payment of an amount set by the Board in lieu of
8 all lapsed renewal fees, the license shall be restored in full.

9 D. The Board shall establish a schedule of reasonable and
10 necessary administrative fees.

11 E. The Board shall fix the amount of fees so that the total
12 fees collected shall be sufficient to meet the expenses of
13 administering the provisions of the Massage Therapy Practice Act
14 without unnecessary surpluses.

15 SECTION 10. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 4200.10 of Title 59, unless
17 there is created a duplication in numbering, reads as follows:

18 A. The Massage Therapy Practice Act shall supersede all
19 ordinances or regulations regulating massage therapists in any city,
20 county, or political subdivision.

21 B. This section shall not affect the regulations of a city,
22 county or a political subdivision relating to zoning requirements or
23 occupational license fees pertaining to health care professions.

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1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4200.11 of Title 59, unless
3 there is created a duplication in numbering, reads as follows:

4 A. The State Board of Cosmetology and Barbering may take
5 disciplinary action against a person licensed pursuant to the
6 Massage Therapy Practice Act as follows:

- 7 1. Deny or refuse to renew a license;
- 8 2. Suspend or revoke a license;
- 9 3. Issue an administrative reprimand; or
- 10 4. Impose probationary conditions when the licensee or
11 applicant has engaged in unprofessional conduct that has endangered
12 or is likely to endanger the health, welfare or safety of the
13 public.

14 B. The Board shall take disciplinary action upon a finding that
15 the licensee or person has committed an act of unprofessional
16 conduct or committed a violation of rule or law.

17 C. Disciplinary proceedings may be instituted by sworn
18 complaint of any person, including members of the Board, and shall
19 conform to the provisions of the Administrative Procedures Act.

20 D. The Board shall establish the guidelines for the disposition
21 of disciplinary cases. Guidelines may include, but shall not be
22 limited to, periods of probation, conditions of probation,
23 suspension, revocation or reissuance of a license.

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1 E. A license holder who has been found culpable and sanctioned
2 by the Board shall be responsible for the payment of all costs of
3 the disciplinary proceedings and any administrative fees imposed.

4 F. The surrender of a license shall not deprive the Board of
5 jurisdiction to proceed with disciplinary action.

6 SECTION 12. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 4200.12 of Title 59, unless
8 there is created a duplication in numbering, reads as follows:

9 A. No member of the State Board of Cosmetology and Barbering
10 shall bear liability or be subject to civil damages or criminal
11 prosecution for any action undertaken or performed within the scope
12 of duty imposed pursuant to the Massage Therapy Practice Act.

13 B. No person or legal entity providing truthful and accurate
14 information to the Board, whether as a report, a complaint or
15 testimony, shall be subject to civil damages or criminal
16 prosecutions.

17 SECTION 13. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 4200.13 of Title 59, unless
19 there is created a duplication in numbering, reads as follows:

20 A. A person who does any of the following shall be guilty of a
21 misdemeanor upon conviction:

22 1. Violates a provision of the Massage Therapy Practice Act or
23 rules adopted pursuant to the Massage Therapy Practice Act;
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1 2. Renders or attempts to render massage therapy services or
2 massage therapy instruction without the required current valid
3 license issued by the State Board of Cosmetology and Barbering;

4 3. Advertises or uses a designation, diploma or certificate
5 implying that the person offers massage therapy instruction or is a
6 massage therapy school unless the person holds a current valid
7 license issued by the Oklahoma Board of Private Vocational Schools
8 or is a technology center school accredited by the Oklahoma State
9 Board of Career and Technology Education; or

10 4. Advertises or uses a designation, diploma, or certificate
11 implying that the person is a massage therapist unless the person
12 holds a current valid license issued by the State Board of
13 Cosmetology and Barbering.

14 B. 1. Therapists regulated by the Massage Therapy Practice Act
15 shall be designated as "massage therapists" and entitled to utilize
16 the term "massage" when advertising or printing promotional
17 material.

18 2. Any person who uses a professional title regulated by the
19 Massage Therapy Practice Act who is not authorized to use the
20 professional title shall be subject to disciplinary action by the
21 Board.

22 3. Any person who knowingly aids and abets one or more persons
23 not authorized to use a professional title regulated by the Massage
24 Therapy Practice Act or knowingly employs or contracts with a person

