SB687 SUBPCS1 David Derby-KB
3/30/2016 9:25:01 am

SUBCOMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB687 _____
Of the printed Bill

Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: David Derby

Adopted: _____

_____
Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

PROPOSED SUBCOMMITTEE
SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 687

By: Sykes and Sparks of the Senate

and

Derby of the House

PROPOSED SUBCOMMITTEE SUBSTITUTE

An Act relating to professions and occupations; creating the Massage Therapy Practice Act; providing short title; defining terms; prohibiting certain actions without a license; prohibiting certain operation of certain schools or instruction without a license; limiting certain practices; providing for exceptions; authorizing the State Board of Cosmetology and Barbering to adopt rules for implementing the act; granting the Board certain investigation powers; creating the Advisory Board on Message Therapy; stating duties; providing for membership; setting fees; establishing requirements for licensure of certain persons for certain time periods; allowing the Board to establish additional licensure standards; requiring a license to practice after a certain date; requiring posting of certain license; stating certain license is not assignable or transferable; prohibiting the operation of a certain school without certain license; limiting the scope of instruction; requiring certain examination to be a standardized national message therapy examination meeting certain criteria; providing for reciprocity; providing for expiration of certain licenses; establishing procedure for renewal of license; providing for certain inactive status and procedures for restoring status; providing for certain fees; setting limits of certain fees; making act supersede

certain local ordinances and regulations; allowing certain zoning and licensing by county or municipal governments; authorizing Board to take certain disciplinary actions; authorizing Board to take certain actions based on certain unprofessional conduct; providing for the institution of certain disciplinary proceedings; providing for certain guidelines for the disposition of disciplinary cases; providing for responsibility for certain costs; prohibiting certain liability, civil damages or criminal prosecution; creating criminal offenses and punishments; authorizing the use of certain terms by certain persons; making the 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.

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

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

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

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

As used in the Massage Therapy Practice Act:

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

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

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

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

a. the use of touch, pressure, friction, stroking, gliding, percussion, kneading, movement, positioning, holding, range of motion and nonspecific stretching within the normal anatomical range of movement, and vibration by manual or mechanical means with or without the use of massage devices that mimic or enhance manual measures, and

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

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

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

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

1. Use the title of massage therapist;

2. Represent himself or herself to be 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. A person shall not maintain, manage or operate a massage therapy school offering education, instruction or training in massage therapy unless the school is a licensed massage therapy school pursuant to Section 7 of this act.

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

1. Diagnosis of 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. Prescribing of medicines.

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

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

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

3. Visiting massage therapy instructors from another state or territory of the United States, the District of Columbia or any foreign nation from teaching massage therapy, provided the instructor is duly licensed or registered, if required, and is qualified in the instructor's place of residence for the practice of massage therapy;

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

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

6. The practice of any person in this state who uses touch, words and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged within the scope of practice of a profession with established standards and ethics, provided that the services are not designated or implied to be massage or massage therapy. Practices shall include but are not limited to the Feldenkrais Method of somatic education, Rolf Movement Integration by the Rolf Institute, the Trager Approach of movement education, and Body-Mind Centering. Practitioners shall be recognized by or meet the established standards of either a professional organization or credentialing agency that represents or certifies the respective

practice based on a minimal level of training, demonstration of competency, and adherence to ethical standards.

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

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

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

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

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

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

3. One who shall be a citizen member.

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

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

A. Between the effective date of this act and May 1, 2017, the State Board of Cosmetology and Barbering shall issue a license to practice massage therapy to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

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

2. Has one or more of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

c. provides documentation that the applicant has passed a nationally recognized competency examination approved by the Board;

d. provides proof that the applicant currently maintains liability insurance for practice as a massage therapist; and

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

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

ii. pleading guilty, pleading nolo contendere or receiving a conviction of a misdemeanor involving moral turpitude, or

iii. pleading guilty, pleading nolo contendere or receiving a conviction for violation of federal or state controlled dangerous substance laws.

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

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

B. A license issued pursuant to the Massage Therapy Practice Act is not assignable or transferable.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4200.7 of Title 59, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

3. Is available to all potential licensing candidates; and

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

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

A. The State Board of Cosmetology and Barbering may license an applicant, provided that the applicant possesses a valid license or registration to practice massage therapy issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation and has met educational and examination requirements equal to or

exceeding those established pursuant to the Massage Therapy Practice Act.

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

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

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

C. 1. If a massage therapy license is not renewed by the end of the thirty-day grace period, the license shall be placed on inactive status for a period not to exceed one (1) year. At the end of one (1) year, if the license has not been reactivated, it shall automatically expire.

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

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

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

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

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

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

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

A. The State Board of Cosmetology and Barbering may take disciplinary action against a person licensed pursuant to the Massage Therapy Practice Act 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 is likely to endanger the health, welfare or safety of the public.

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

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

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

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

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

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

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

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

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

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

1. Violates a provision of the Massage Therapy Practice Act or rules adopted pursuant to the Massage Therapy Practice Act;

2. Renders or attempts to render massage therapy services or massage therapy instruction without the required current valid license issued by the State Board of Cosmetology and Barbering;

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

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

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

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

3. Any person who knowingly aids and abets one or more persons not authorized to use a professional title regulated by the Massage Therapy Practice Act or knowingly employs or contracts with a person or persons not authorized to use a regulated professional title in the course of the employment, shall also be subject to disciplinary action by the Board. It shall be a violation of the Massage Therapy Practice Act for any person to advertise massage therapy services in any combination with any escort or dating service.

SECTION 14. This act shall become effective in accordance with the provisions of Section 58 of Article V of the Oklahoma Constitution.

55-2-9552 KB 03/29/16