

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. _____

COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 687, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Sykes

Sykes-AM-FS-Req#3196
3/7/2016 3:18 PM

(Floor Amendments Only) Date and Time Filed: _____

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 687

6 By: Sykes and Sparks of the
7 Senate

8 and

9 Derby of the House

10 FLOOR SUBSTITUTE

11 [professions and occupations - Massage Therapy
12 Practice Act - codification - provisional effective
13 date]

14
15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

24 As used in the Massage Therapy Practice Act:

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

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

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

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

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

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

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

7 6. "OBPVS" means the Oklahoma Board of Private Vocational
8 Schools.

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

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

14 1. Use the title of massage therapist;

15 2. Represent himself or herself to be a massage therapist;

16 3. Use any other title, words, abbreviations, letters, figures,
17 signs or devices that indicate the person is a massage therapist; or

18 4. Utilize the terms "massage", "massage therapy" or "massage
19 therapist" when advertising or printing promotional material.

20 B. A person shall not maintain, manage or operate a massage
21 therapy school offering education, instruction or training in
22 massage therapy unless the school is a licensed massage therapy
23 school pursuant to Section 7 of this act.

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

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

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

11 1. Qualified members of other recognized professions that are
12 licensed or regulated under Oklahoma law from rendering services
13 within the scope of the license, provided the person does not
14 represent himself or herself as a massage therapist;

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

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

23 4. Any nonresident person holding a current license,
24 registration, or certification in massage therapy from another state

1 or recognized national certification system determined as acceptable
2 by the Board when temporarily present in this state from providing
3 massage therapy services as a part of an emergency response team
4 working in conjunction with disaster relief officials or at special
5 events such as conventions, sporting events, educational field
6 trips, conferences, traveling shows or exhibitions; or

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

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.

24

1 C. Effective May 1, 2017, the fee or renewal fee for any
2 massage therapy license shall be Fifty Dollars (\$50.00) per year. A
3 temporary license authorized between the effective date of this act
4 and May 1, 2017, as provided in Section 5 of this act, and any
5 license issued between the effective date of this act and May 1,
6 2017, shall be Twenty-five Dollars (\$25.00). A duplicate license
7 fee shall be Ten Dollars (\$10.00).

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

11 A. Upon the effective date of this act, the State Board of
12 Cosmetology and Barbering shall issue a license to practice massage
13 therapy to any person who files a completed application, accompanied
14 by the required fees, and who submits satisfactory evidence that the
15 applicant:

- 16 1. Is at least eighteen (18) years of age;
- 17 2. Has passed the adopted examination to practice massage
18 therapy;
- 19 3. Provides proof of documentation that the applicant currently
20 maintains liability insurance for practice as a massage therapist;
21 and
- 22 4. Provides full disclosure to the Board of any criminal
23 proceeding taken against the applicant including, but not limited
24 to:

- 1 a. pleading guilty, pleading nolo contendere or receiving
- 2 a conviction of a felony,
- 3 b. pleading guilty, pleading nolo contendere or receiving
- 4 a conviction of a misdemeanor involving moral
- 5 turpitude, or
- 6 c. pleading guilty, pleading nolo contendere or receiving
- 7 a conviction for violation of federal or state
- 8 controlled dangerous substance laws.

9 Before issuance of a license and to assist in determining the
10 applicant's entry-level competence, the Board may adopt rules
11 establishing additional standards or criteria for exam acceptance
12 and may adopt only those examinations that meet the standards
13 outlined in Section 8 of this act.

14 B. 1. Except as provided in the Massage Therapy Practice Act,
15 every person desiring to practice massage therapy in this state
16 shall be required to first obtain a license from the State Board of
17 Cosmetology and Barbering.

18 2. Beginning on the effective date of this act, until May 1,
19 2017, the Board may grant a temporary license to an applicant who:

- 20 a. has completed the equivalent of five hundred (500)
- 21 hours of formal education in massage therapy from a
- 22 state-licensed school and proof stating that he or she
- 23 has been a massage therapist in this state for no less
- 24 than one (1) year,

1 b. has proof that he or she has been practicing massage
2 therapy for no less than three (3) years in this
3 state, or

4 c. has equivalent of seven hundred fifty (750) hours of
5 formal education in massage therapy from a state-
6 licensed school.

7 3. All temporary licenses shall expire May 1, 2017, at which
8 time the person must have qualified for full licensure to continue
9 practice.

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

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

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

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

21 A. A person shall not advertise, maintain, manage or operate a
22 massage therapy school unless the school is licensed by the OBPVS.

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

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

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

11 1. The exam must be statistically validated through a job
12 analysis under current standards for educational and professional
13 testing;

14 2. The exam standards must comply with pertinent state and
15 federal equal employment opportunity guidelines;

16 3. The exam must be available to all potential licensing
17 candidates;

18 4. The exam must be delivered through a professional testing
19 company with high-security test centers located nationwide; and

20 5. The exam must require not less than the equivalent of seven
21 hundred fifty (750) hours of formal massage education.

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

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

9 B. 1. Massage therapy licenses shall expire biennially.
10 Expiration dates shall be established by rule of the Board.

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

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

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

21 2. If within a period of one (1) year from the date the license
22 was placed on inactive status the massage therapist wishes to resume
23 practice, the Board shall be notified in writing and, upon proof of
24 completion of all continuing education requirements and payment of

1 an amount set by the Board in lieu of all lapsed renewal fees, the
2 license shall be restored in full.

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

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

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

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

15 B. This section shall not affect city, county or a political
16 subdivision's regulations relating to zoning requirements or
17 occupational license fees pertaining to health care professions.

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

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

24 1. Deny or refuse to renew a license;

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

7 B. The Board shall take disciplinary action upon a finding that

8 the licensee or person has committed an act of unprofessional

9 conduct or committed a violation of rule or law.

10 C. Disciplinary proceedings may be instituted by sworn

11 complaint of any person, including members of the Board, and shall

12 conform to the provisions of the Administrative Procedures Act.

13 D. The Board shall establish the guidelines for the disposition

14 of disciplinary cases. Guidelines may include, but shall not be

15 limited to, periods of probation, conditions of probation,

16 suspension, revocation or reissuance of a license.

17 E. License holders who have been found culpable and sanctioned

18 by the Board shall be responsible for the payments of all costs of

19 the disciplinary proceedings and any administrative fees imposed.

20 F. The surrender of a license shall not deprive the Board of

21 jurisdiction to proceed with disciplinary action.

22 SECTION 12. NEW LAW A new section of law to be codified

23 in the Oklahoma Statutes as Section 4200.12 of Title 59, unless

24 there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

19 3. Advertises or uses a designation, diploma or certificate
20 implying that the person offers massage therapy instruction or is a
21 massage therapy school unless the person holds a current valid
22 license issued by the Oklahoma Board of Private Vocational Schools;
23 or
24

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

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

9 2. Anyone not authorized to use a professional title regulated
10 by the Massage Therapy Practice Act, and who uses such professional
11 title, shall be subject to disciplinary action by the Board.

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

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

23

24 55-2-3196 AM 3/7/2016 3:18:00 PM