

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SENATE BILL 1309

By: Bergstrom

AS INTRODUCED

An Act relating to massage therapy; amending 59 O.S. 2021, Section 4200.2, which relates to definitions; modifying definitions; amending 59 O.S. 2021, Section 4200.3, which relates to licensed massage therapist; modifying prohibited acts; updating statutory reference; prohibiting certain acts without license; amending 59 O.S. 2021, Section 4200.4, which relates to the authority of the State Board of Cosmetology and Barbering; providing additional authority; updating statutory language; updating statutory reference; setting forth requirements for establishment license; authorizing Board to deny establishment license or place probationary conditions on establishment license under certain conditions; defining terms; providing for Board inspection authority; requiring compliance with certain laws and rules; providing license renewal procedures and requirements; amending 59 O.S. 2021, Section 4200.10, which relates to preemption; allowing municipalities, counties, and political subdivisions to enact certain regulations; prohibiting regulation during certain hours; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2021, Section 4200.2, is amended to read as follows:

Section 4200.2. 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, provide for general health
15 enhancement, personal growth, education and the organization,
16 balance and integration of the human body and includes, but is not
17 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

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 establishment" means any fixed business location, address, building, or property, other than a licensed cosmetology or barbering establishment, where a person engages in, conducts, carries on, or permits to be engaged in the practice of massage therapy; and

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

SECTION 2. AMENDATORY 59 O.S. 2021, Section 4200.3, is amended to read as follows:

Section 4200.3. A. Unless a person is a licensed massage therapist, a person shall not:

1. Practice massage therapy in this state for remuneration;

2. Use the title of massage therapist;

~~2.~~ 3. Represent himself or herself to be a massage therapist;

~~3.~~ 4. Use any other title, words, abbreviations, letters, figures, signs or devices that indicate the person is a massage therapist; or

~~4.~~ 5. Utilize the terms "massage", "massage therapy" or "massage therapist" when advertising or printing promotional material.

1 B. A person shall not maintain, manage or operate a massage
2 therapy school offering education, instruction or training in
3 massage therapy unless the school is a licensed massage therapy
4 school pursuant to Section ~~7 of this act~~ 4200.7 of this title.

5 C. Individuals practicing massage therapy ~~under~~ pursuant to the
6 Massage Therapy Practice Act shall not perform any of the following:

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

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

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

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

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

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

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

19 6. The practice of any person in this state who uses touch,
20 words and directed movement to deepen awareness of existing patterns
21 of movement in the body as well as to suggest new possibilities of
22 movement while engaged within the scope of practice of a profession
23 with established standards and ethics, provided that the services
24 are not designated or implied to be massage or massage therapy.

1 Practices shall include but are not limited to the Feldenkrais
2 Method of somatic education, Rolf Movement Integration by the Rolf
3 Institute, the Trager Approach of movement education, and Body-Mind
4 Centering. Practitioners shall be recognized by or meet the
5 established standards of either a professional organization or
6 credentialing agency that represents or certifies the respective
7 practice based on a minimal level of training, demonstration of
8 competency, and adherence to ethical standards.

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

13 F. No person shall operate, maintain, or manage a massage
14 therapy establishment without first obtaining an establishment
15 license from the Board.

16 SECTION 3. AMENDATORY 59 O.S. 2021, Section 4200.4, is
17 amended to read as follows:

18 Section 4200.4. A. The State Board of Cosmetology and
19 Barbering is hereby authorized to adopt and promulgate rules
20 pursuant to the Administrative Procedures Act that are necessary for
21 the implementation and enforcement of the Massage Therapy Practice
22 Act, including, but not limited to, qualifications for licensure,
23 renewals, reinstatements, and continuing education requirements.
24

1 B. The State Board of Cosmetology and Barbering is hereby
2 empowered to perform investigations, to conduct inspections on
3 licensed premises, to require the production of records and other
4 documents relating to practices regulated by the Massage Therapy
5 Practice Act, and to seek injunctive relief.

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

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

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

18 3. One who shall be a citizen member.

19 D. The fee for any license issued between ~~the effective date of~~
20 ~~this act~~ August 26, 2016, and May 1, 2017, shall be Twenty-five
21 Dollars (\$25.00). The fee or renewal fee for any massage therapy
22 license issued after May 1, 2017, shall be Fifty Dollars (\$50.00)
23 per year. A duplicate license fee shall be Ten Dollars (\$10.00).
24

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4200.5.1 of Title 59, unless
3 there is created a duplication in numbering, reads as follows:

4 A. No person shall own, operate, or manage a massage therapy
5 establishment without obtaining an establishment license from the
6 State Board of Cosmetology and Barbering.

7 B. The Board may issue a license to an applicant who:

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

9 2. Provides proof that the establishment maintains general
10 liability insurance;

11 3. Discloses whether the applicant has been denied a massage
12 establishment license in another jurisdiction;

13 4. Discloses whether the applicant holds or has held a massage
14 establishment license in another jurisdiction and whether
15 disciplinary action has ever been taken against the applicant
16 including but not limited to suspension or revocation of the
17 license; and

18 5. Submits to a national criminal history record check as
19 defined in Section 150.9 of Title 74 of the Oklahoma Statutes. The
20 costs associated with the national criminal history record check
21 shall be paid by the applicant.

22 C. The Board may deny a license or place probationary
23 conditions on a license if the applicant has had a license denied or
24 has been the subject of disciplinary action in another jurisdiction

1 and if the grounds for the denial or disciplinary action would
2 constitute cause for denial or disciplinary action pursuant to the
3 Massage Therapy Practice Act or the Board's rules.

4 D. The Board may deny a license or place probationary
5 conditions on a license if the applicant has pleaded guilty, nolo
6 contendere, or been convicted of a crime that substantially relates
7 to the ownership, operation, or management of a massage
8 establishment or poses a reasonable threat to public health or
9 safety.

10 For purposes of this subsection:

11 1. "Poses a reasonable threat" means the nature of criminal
12 conduct for which the person was convicted involved an act or threat
13 of harm against another and has a bearing on the fitness or ability
14 to serve the public or work with others in the occupation; and

15 2. "Substantially relates" means the nature of criminal conduct
16 for which the person was convicted has a direct bearing on the
17 fitness or ability to perform one or more of the duties or
18 responsibilities necessarily related to the occupation.

19 E. All massage establishments shall be subject to inspection by
20 the Board and shall comply with all provisions of the Massage
21 Therapy Practice Act and rules of the Board.

22 F. 1. An establishment license shall be renewed annually. The
23 renewal date shall be established by the Board through adoption of a
24 rule.

1 2. A licensee may renew a license by:

- 2 a. submitting a completed renewal application on a form
3 prepared by the Board,
4 b. tendering the required renewal fee,
5 c. providing proof of liability insurance,
6 d. disclosing any plea of guilty or nolo contendere or
7 conviction of any crime other than minor traffic
8 violations, and
9 e. disclosing any administrative or legal action taken
10 against the licensee in any other jurisdiction
11 governing massage therapy.

12 3. A sixty (60) calendar day grace period shall be allowed for
13 each license holder after the end of the renewal period, during
14 which time a license may be renewed upon payment of the renewal fee
15 and a late fee as prescribed by the Board.

16 4. If a license is not renewed by the end of the sixty (60)
17 calendar day grace period, the license shall expire.

18 SECTION 5. AMENDATORY 59 O.S. 2021, Section 4200.10, is
19 amended to read as follows:

20 Section 4200.10. A. The Massage Therapy Practice Act shall
21 supersede all ordinances or regulations regulating massage
22 therapists in any city, county, or political subdivision, except as
23 provided in subsection B and C of this section.
24

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

4 C. Municipalities, counties, and political subdivisions may
5 enact ordinances or resolutions regulating the operation times of
6 massage therapists. No municipal ordinance, resolution, or other
7 political subdivision requirement shall prohibit the operation of a
8 massage therapy establishment between the hours of 7:00 a.m. and
9 10:00 p.m. Monday through Saturday.

10 SECTION 6. This act shall become effective November 1, 2022.

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