

2009 Montana Legislature

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HOUSE BILL NO. 662

INTRODUCED BY E. ARNTZEN

A BILL FOR AN ACT ENTITLED: "AN ACT LICENSING AND REGULATING MASSAGE THERAPISTS; ESTABLISHING A BOARD OF MASSAGE THERAPISTS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING QUALIFICATIONS FOR LICENSURE; ~~PROVIDING FOR A TRANSITIONAL LICENSE~~; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Massage Therapy Licensing Act".

NEW SECTION. **Section 2. Purpose.** (1) The legislature finds that the practice of massage therapy affects the health, safety, and welfare of the people of this state and declares that the practice of massage therapy contributes to choice in health care.

(2) It is the purpose of [sections 1 through 10] to regulate the massage therapy profession, to create a board of massage therapy that will issue massage therapy licenses in accordance with [sections 1 through 10] and the board's rules, and to define the terminology describing competencies of the massage therapy profession.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Board" means the board of massage therapy provided for in [section 11].

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Massage therapist", "licensed massage therapist", "L.M.T.", "masseur", or "masseuse" means a person who is licensed by the board to practice massage therapy. The terms are equivalent terms, and any derivation of the phrases or any letters implying the phrases are

equivalent terms. Any reference to any one of the terms in [sections 1 through 10] includes the others.

(4) (a) (i) "Massage therapy" when provided by a massage therapist means the application of a system of structured touch, pressure, positioning, or holding to soft tissues of the body, Swedish massage, effleurage, petrissage, tapotement, percussion, friction, vibration, compression, passive and active stretching or movement within the normal anatomical range of movement, the external application of water, heat, cold, lubricants, salts, skin brushing, or other topical preparations not classified as prescription drugs, providing information for self-care stress management, and the determination of whether massage is contraindicated and whether referral to another health care practitioner is recommended.

(ii) The techniques described in subsection (4)(a)(i) must be applied by the massage therapist through the use of hands, forearms, elbows, knees, or feet or through the use of hand-held tools that mimic or support the action of the hands and are primarily intended to enhance or restore health and well-being by promoting pain relief, stress reduction, and relaxation.

(b) The term does not include PROVIDING EXAMINATIONS FOR THE PURPOSE OF diagnosis, PROVIDING TREATMENTS THAT ARE OUTSIDE THE SCOPE OF ~~THE MASSAGE THERAPY~~, or attempts to adjust, manipulate, or mobilize any articulations of the body or spine by the use of high-velocity, low-amplitude thrusting force, ~~manual therapy or~~ strengthening exercise, strengthening exercise instruction or prescription, or the use of tape when applied to restrict joint movement, MANUAL OR mechanical traction WHEN APPLIED TO THE SPINE OR EXTREMITIES FOR THE PURPOSES OF JOINT MOBILIZATION OR MANIPULATION, injection therapy, laser therapy, microwave diathermy, electrical stimulation, ultrasound, iontophoresis, or phonophoresis.

NEW SECTION. Section 4. Exemptions -- rules. (1) The provisions of [sections 1 through 10] do not limit or regulate the scope of practice of any other profession licensed under the laws of this state, including but not limited to medicine, dentistry, osteopathy, podiatry, nursing, physical therapy, chiropractic, acupuncture, veterinary medicine, occupational therapy, naturopathic medicine, cosmetology, manicuring, barbering, esthetics, electrology, professional counseling, social work, psychology, or athletic training.

~~(2) Massage therapy continuing education courses may be taught by instructors who do not reside in Montana.~~ A continuing education course instructor is not required to be licensed as a massage therapist.

(3) A massage therapy student, when enrolled in a board-approved program and while practicing the skills of massage therapy designated as a school-sanctioned activity and under the supervision of a licensed massage therapist, is not required to be licensed.

(4) The provisions of [sections 1 through 10] do not limit or regulate the practice of Native American traditional healing or faith healing.

(5) (a) The provisions of [sections 1 through 10] do not limit or regulate the practice of any person who uses:

(i) 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. Exempt practices under this subsection (5)(a)(i) include but are not limited to the Feldenkrais method of somatic education, the Trager approach to movement education, and body-mind centering.

(ii) touch to affect the human energy systems, energy meridians, or energy fields. Exempt practices under this subsection (5)(a)(ii) include but are not limited to polarity bodywork therapy, Asian bodywork therapy, acupuncture, jin shin do, qigong, reiki, shiatsu, and tui na.

(iii) touch to effect change on the integration of the structure of the physical body. Exempt practices under this subsection (5)(a)(iii) include but are not limited to the Rolf method of structural integration, ~~or Rolfing, and~~ Hellerwork.

(iv) touch to affect the reflex areas located in the hands, feet, and outer ears. Exempt practices under this subsection (5)(a)(iv) include but are not limited to reflexology.

(b) The exemptions in subsection (5)(a) apply only if:

(i) the person is recognized by or meets the established requirements of either a professional organization or credentialing agency that represents or certifies the respective practice based on a minimum level of training, demonstration of competence, and adherence to ethical standards; and

(ii) the person's services are not designated as or implied to be massage therapy.

NEW SECTION. Section 5. Powers and duties of board -- rulemaking authority. The board shall:

(1) adopt rules necessary or proper to administer and enforce [sections 1 through 10];

~~—(2) adopt rules that specify the scope of practice of massage therapy that are consistent with the definition of massage therapy provided in [section 3];~~

(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

~~—(4) adopt rules that set nonrefundable fees for license application and license renewal that are commensurate with costs;~~

(5) ADOPT RULES ESTABLISHING REASONABLE REQUIREMENTS FOR CONTINUING EDUCATION, WHICH MUST REQUIRE 12 HOURS OF CONTINUING EDUCATION TO BE COMPLETED IN EACH 2-YEAR PERIOD;

~~(5)(6)~~ meet as often as necessary for the conduct of business but at least twice a year; and

~~(6)(7)~~ take disciplinary action necessary to protect the public as provided for in title 37, chapter 1.

~~—NEW SECTION. Section 6. Duty to report violations — immunity from liability — disciplinary action. (1) A massage therapist shall report to the board any information that appears to show that another massage therapist is:~~

~~—(a) mentally or physically unable to engage safely in the practice of massage therapy; or~~

~~—(b) guilty of any act, omission, or condition that is grounds for disciplinary action under [sections 1 through 10] or under rules adopted by the board.~~

~~—(2) A massage therapist who files a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.~~

~~—(3) The board, after due notice and opportunity for a hearing, may refuse to license any applicant and may suspend, revoke, or refuse to renew a license of or may take lesser disciplinary action against any licensed person who:~~

~~—(a) has been convicted of violating any state or federal narcotic law;~~

~~—(b) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule, including but not limited to engaging in or soliciting sexual relations with a client, sexual exploitation, sexual contact, or sexual intercourse;~~

~~—(c) is guilty, in the judgment of the board, of gross negligence in the practice of massage therapy;~~

~~—(d) has obtained or attempted to obtain licensure by fraud or material misrepresentation; or~~

~~—(e) has practiced massage therapy beyond the scope and limitation of the person's training and education.~~

NEW SECTION. Section 7. License required -- enjoining unlawful practice. (1) As of July 1, 2010, a person who is not eligible for a ~~transitional~~ license ~~as provided for in~~ UNDER [section 9] may not practice or purport to practice massage therapy without first obtaining a license under the provisions of ~~[sections 1 through 10]~~ [SECTION 8].

(2) A person who is not licensed as a massage therapist under this section or [section 9], whose license has been suspended or revoked, or whose license has lapsed and has not been revived may not use the words or letters "massage therapist", "licensed massage therapist", "L.M.T.", "masseur", or "masseuse" or any other letters, words, or insignia indicating or implying that the person is a licensed massage therapist or in any way, orally, in writing, or in print or by sign, directly or by implication, purport to be a massage therapist. A person who knowingly violates the provisions of this subsection is guilty of a misdemeanor as provided in [section 10].

NEW SECTION. Section 8. Qualifications for licensure. (1) To be eligible for licensure as a massage therapist as provided in [section 7], an applicant:

(a) shall submit an application on a form provided by the department;

(b) shall include with the application the application fee set by the board;

~~—(c) must possess a high school diploma or its equivalent;~~

~~(d)~~(C) must be at least 18 years of age; and

~~(e)~~(D) must be of good moral character.

(2) The applicant, in addition to the requirements established in subsection (1), is required to (a) successfully complete a massage therapy program of a minimum of 500 hours of study that meets or exceeds the criteria of a nationally recognized accreditation program designated by the board the curriculum guidelines established by any program or organization accredited by the National Commission for Certifying Agencies or its equivalent or successor and:

~~—(a)~~ receive a passing score on an examination prescribed by the board; or

(b) possess an equivalent current license, certification, or registration in good standing from another state.

NEW SECTION. Section 9. Transitional licensure INITIAL LICENSURE -- GRANDFATHER CLAUSE. (1) As of July 1, 2010, the board ~~may~~ shall issue a ~~transitional~~ massage therapy license to an applicant who applies or has applied for a ~~transitional~~ license by paying the application fee and by providing a signed affidavit to the board that the applicant has engaged in the practice of massage therapy for at least 100 hours in Montana prior to applying for a ~~transitional~~ massage therapy license UNDER THIS SECTION. The board shall by rule establish the application fee not later than January 1, 2010.

~~(2) A transitional license issued under this section expires on June 30, 2013. A transitional license is not subject to renewal. On or after July 1, 2013, a person who held a transitional license, meets the requirements of [section 8(1)], and provides the board with proof of completing 500 hours of education that conforms to established educational requirements determined by the board must be issued a valid massage therapy license subject to the same renewal requirements and renewal fees as a license issued pursuant to [section 8].~~

(2) (A) A LICENSE ISSUED UNDER THIS SECTION IS VALID FOR THE SAME INITIAL PERIOD AS A LICENSE ISSUED UNDER [SECTION 8] AND IS SUBJECT TO THE SAME RENEWAL REQUIREMENTS AND RENEWAL FEES AS A LICENSE ISSUED UNDER [SECTION 8].

(B) A PERSON MAY NOT APPLY FOR LICENSURE UNDER THIS SECTION AFTER JULY 1, 2012.

NEW SECTION. Section 10. Penalty. Any person who knowingly violates any provisions of [sections 1 through 10] is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 11. Board of massage therapy. (1) There is a board of massage therapy.

(2) The board consists of five members appointed by the governor with the consent of the senate. The members are:

(a) one representative of the public who is not a medical practitioner or an owner of a school that educates massage therapists and is not engaged in or directly connected with the practice of massage therapy;

(b) one member who is ~~a Montana physician, chiropractor, physical therapist, nurse, or naturopathic physician~~ a licensed health care provider in good standing in Montana and who is not an owner of a school that educates massage therapists; and

(c) three massage therapists, none of whom may be an owner of a school that educates massage therapists, who have been actively engaged in the practice of massage therapy for at least 3 years prior to being appointed to the board. Not more than two of the three massage therapists may belong to the same national professional association. After the initial appointments are made to establish the board, each of the three members must be licensed as a massage therapist under [sections 1 through 10].

(3) Members shall serve 4-year, staggered terms. The governor may remove a member from the board for neglect of duty required by law, for incompetence, or for unprofessional or dishonorable conduct.

(4) The governor shall make the initial appointments to the board as follows:

(a) one person who is a massage therapist to serve a 2-year term;

(b) one person who is a massage therapist to serve a 3-year term; and

(c) one person who is a massage therapist to serve a 4-year term.

(5) At the expiration of terms provided in subsection (4), the governor shall appoint the person designated to fill each position to a 4-year term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

NEW SECTION. Section 12. Codification instruction. (1) [Sections 1 through 10] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 10].

(2) [Section 11] is intended to be codified as an integral part of Title 2, chapter 15, part 17, and the provisions of Title 2, chapter 15, part 17, apply to [section 11].

NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

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