

SENATE BILL No. 358

By Committee on Public Health and Welfare

2-1

1 AN ACT enacting the massage therapist licensure act; regulation and
2 licensing of massage therapists; powers, duties and functions of the
3 state board of healing arts.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. As used in the massage therapist licensure act:

7 (a) "Board" means the state board of healing arts.

8 (b) "Massage school" means a massage therapy educational program
9 that meets the standards for training and curriculum as set forth by the
10 state board of regents under the Kansas private and out-of-state
11 postsecondary educational institution act, or comparable legal authority in
12 another state.

13 (c) "Compensation" means the payment, loan, advance, donation,
14 contribution, barter, deposit or gift of money or anything of value.

15 (d) "Licensed massage therapist" means a person who meets the
16 requirements of the massage therapist licensure act and who engages in
17 the practice of massage therapy.

18 (e) "Professional massage therapy association or bodywork
19 association" means a state or nationally chartered professional membership
20 organization that has been recognized by the board as offering services to
21 massage therapists and that requires that its members adhere to the
22 organization's established code of ethics and standards of practice.

23 (f) "Massage" and "massage therapy" mean a healthcare service
24 involving the external manipulation or pressure of soft tissue for
25 therapeutic purposes. It is the application of a system of structured touch,
26 pressure, movement and holding of the soft tissue of the human body in
27 which the primary intent is to relieve pain, improve circulation, relieve
28 stress, increase relaxation and enhance or restore the health and well-being
29 of the client. The practice of massage therapy includes complementary
30 methods, including the external application of water, heat, cold,
31 lubrication, salt scrubs, body wraps or other topical preparations; and
32 electromechanical devices that mimic or enhance the actions possible by
33 the hands. "Massage" or "massage therapy" does not include:

- 34 (1) Medical or nursing diagnosis of injury, illness or disease;
- 35 (2) therapeutic exercise;
- 36 (3) chiropractic joint adjustment;

- 1 (4) physical therapy joint mobilization or manipulation;
- 2 (5) electrical stimulation or application of ultrasound; or
- 3 (6) dispensing or issuing prescriptions or pharmaceutical agents.
- 4 (g) "Massage therapy services" include, but are not limited to:

5 (1) Development, implementation and modification of a massage
6 therapy treatment plan that addresses client soft tissue manifestations,
7 needs and concerns, including identifying indications, contraindications
8 and precautions of massage therapy within the scope of the massage
9 therapist licensure act;

10 (2) obtaining informed consent regarding the risks and benefits of the
11 massage therapy treatment plan and application and modification of the
12 massage therapy treatment plan as needed;

13 (3) using effective interpersonal communication in the professional
14 relationship;

15 (4) utilizing an ethical decision-making process that conforms to the
16 ethical standards of the profession, as set forth in the massage therapist
17 licensure act and in rules and regulations of the board;

18 (5) establishing and maintaining a practice environment that provides
19 for the client's health, safety and comfort; and

20 (6) establishing and maintaining client records, professional records
21 and business records in compliance with standards of professional conduct
22 as required by rules and regulations of the board.

23 Sec. 2. (a) Upon application to the board and the payment of the
24 required fees, an applicant for a license as a massage therapist may be
25 licensed as a massage therapist if the applicant meets all the requirements
26 of the massage therapist licensure act and provides documentation
27 acceptable to the board that the applicant:

28 (1) Has obtained a high school diploma or its equivalent;

29 (2) is 18 years of age or older;

30 (3) has no other disqualifying conduct as defined by the board;

31 (4) has successfully completed a course of instruction approved by
32 the board consisting of at least 500 in-classroom hours of supervised
33 instruction, including massage therapy technique and theory,
34 contraindications, ethics, sanitation, hygiene, business training, anatomy,
35 physiology and pathology; and

36 (5) has successfully passed, including prior to the effective date of the
37 massage therapist licensure act, a nationally recognized competency
38 examination in massage therapy that meets acceptable psychometric
39 principles, is statistically validated through a job-task analysis under
40 current standards for educational and professional testing and has been
41 approved by the board.

42 Sec. 3. Prior to July 1, 2020, the board shall issue a license as a
43 massage therapist to any individual who meets the requirements of section

1 2(a)(1), (2) and (3), and amendments thereto, and one of the following
2 requirements verified to the board by affidavit:

3 (a) The individual has completed a minimum of 500 hours of
4 instruction relating to massage therapy at a massage school or comparable
5 entity in another state;

6 (b) the individual has completed at least 300 hours of training in
7 massage therapy during the three years prior to such individual's license
8 application;

9 (c) the individual has practiced massage therapy for at least three
10 years;

11 (d) the individual has been an active member in good standing of a
12 professional massage or bodywork therapy association as a massage or
13 bodywork therapist for a period of at least 12 months; or

14 (e) the individual has successfully passed an examination meeting the
15 requirements of section 2(a)(5), and amendments thereto, or passed a
16 nationally recognized certification examination.

17 Sec. 4. (a) The board may issue a license to practice massage therapy
18 as a licensed massage therapist to an applicant who has been duly licensed
19 as a massage therapist by examination under the laws of another state or
20 territory if, in the opinion of the board, the applicant meets the
21 qualifications required for licensure as a massage therapist in this state.
22 Verification of the applicant's licensure status shall be required from the
23 original state of licensure.

24 (b) The board may issue a temporary permit to practice massage
25 therapy as a licensed massage therapist for a period not to exceed 120
26 days. A temporary permit may be issued to an applicant for licensure as a
27 licensed massage therapist who is a graduate of a massage school in a
28 foreign country after verification of licensure in that foreign country and
29 approval of educational credentials.

30 Sec. 5. (a) Nothing in the massage therapist licensure act shall be
31 construed to restrict any person licensed or regulated by the state of
32 Kansas from engaging in the profession or practice for which they are
33 licensed or regulated, including, but not limited to, acupuncture, athletic
34 training, barbering, chiropractic, cosmetology, dentistry, electrology,
35 esthetics, manicuring, medicine, naturopathic medicine, nursing,
36 occupational therapy, osteopathy, physical therapy, podiatry, professional
37 counseling, psychology, social work or veterinary medicine or any other
38 profession licensed or regulated by the state of Kansas.

39 (b) Nothing in the massage therapist licensure act shall prohibit:

40 (1) The practice of massage therapy by a person employed by the
41 government of the United States while the person is engaged in the
42 performance of duties prescribed by the laws and regulations of the United
43 States;

1 (2) the practice of massage therapy by persons duly licensed,
2 registered or certified in another state, territory, the District of Columbia or
3 a foreign country when incidentally called into this state to teach a course
4 related to massage therapy or to consult with a person licensed under the
5 massage therapist licensure act;

6 (3) students currently enrolled in a massage school while completing
7 a clinical requirement or supervised massage therapy fieldwork experience
8 for graduation performed under the supervision of a person licensed under
9 the massage therapist licensure act, so long as the student does not hold
10 oneself out as a licensed massage therapist and does not receive
11 compensation for services performed;

12 (4) any person from performing massage therapy services in the state,
13 if those services are performed without compensation and are performed in
14 cooperation with a charitable organization or as part of an emergency
15 response team working in conjunction with disaster relief officials;

16 (5) the practice, conduct and activities or services of a person who is
17 employed by a non-resident performance team, entertainer or athletic team
18 to the extent that such services or activities are provided solely to the team
19 or entertainer in the state for not more than 30 days;

20 (6) persons giving massage to members of such person's immediate
21 or extended family without compensation;

22 (7) persons who restrict their manipulation of the soft tissues of the
23 human body to the hands, feet or ears and do not hold themselves out to be
24 massage therapists; and

25 (8) members of any church practicing their religious tenets.

26 (c) Nothing in the massage therapist licensure act shall be construed
27 to prevent or restrict the practice of any person in this state who uses
28 touch, words and directed movement to deepen awareness of existing
29 patterns of movement in the body and to suggest new possibilities of
30 movement while engaged within the scope of practice of a profession with
31 established standards and ethics, so long as their services are not
32 designated or implied to be massage or massage therapy. Such practices
33 include, but are not limited to: The Feldenkrais method of somatic
34 education; the Rolf Institute's Rolf Movement Integration; the Trager
35 approach to movement education; and body-mind centering. Practitioners
36 must be recognized by or meet the established standards of either a
37 professional organization or credentialing agency that represents or
38 certifies the respective practice based on a minimal level of training,
39 demonstration of competency and adherence to ethical standards.

40 Sec. 6. (a) A person licensed under the massage therapist licensure act
41 as a massage therapist shall:

42 (1) Use the letters "LMT" to identify themselves to patients or the
43 public; and

1 (2) be authorized to use words, including "massage therapist,"
 2 "massagist," "massotherapist," "myotherapist," "body therapist," "massage
 3 technician," "massage practitioner," "masseur," "masseuse" or any
 4 derivation of those terms that implies this practice to indicate that such
 5 person is a massage therapist licensed under the act.

6 (b) On and after September 1, 2020, it shall be unlawful for any
 7 person who is not licensed under the massage therapist licensure act as a
 8 massage therapist or whose license has been suspended, revoked or lapsed
 9 to promote oneself to the public in any manner as a licensed massage
 10 therapist or to engage in the practice of massage therapy. A violation of
 11 this subsection is a class B person misdemeanor. In addition, a violation of
 12 this subsection also constitutes an unconscionable act or practice in
 13 violation under K.S.A. 50-627, and amendments thereto, whether or not it
 14 involves a consumer, a consumer transaction or a supplier, as defined in
 15 K.S.A. 50-624, and amendments thereto. Notwithstanding the provisions
 16 of K.S.A. 50-634, and amendments thereto, no private right of action
 17 under the Kansas consumer protection act may be brought alleging a
 18 violation of this subsection.

19 (c) No statute granting authority to persons licensed or registered by
 20 the board shall be construed to confer authority upon a massage therapist
 21 to engage in any activity not conferred by the massage therapist licensure
 22 act.

23 Sec. 7. (a) An advisory committee of six members, two board
 24 members and four non-board members, shall be established by the board
 25 to advise and assist the board in implementing the massage therapist
 26 licensure act as determined by the board. The advisory committee shall
 27 meet at least annually. Members of the advisory committee shall receive
 28 amounts provided for in K.S.A. 75-3223(e), and amendments thereto, for
 29 each day of actual attendance at any meeting of the advisory committee or
 30 any subcommittee meeting of the advisory committee authorized by the
 31 board.

32 (b) The two board members shall be appointed by the board. Three
 33 non-board members of the massage therapy advisory committee shall be
 34 appointed by the board, shall be massage therapists and shall be citizens
 35 and residents of the state. No more than one member may be an owner of a
 36 massage school. The fourth non-board member shall be the designee of the
 37 Kansas attorney general. The members of the committee shall be
 38 appointed for terms of two years and shall serve at the pleasure of the
 39 board.

40 Sec. 8. (a) The board shall biennially charge and collect in advance
 41 fees provided for in the massage therapist licensure act as fixed by the
 42 board by rules and regulations, subject to the following limitations:
 43 Application fee, not more than.....\$80

1	Temporary permit fee, not more than.....	\$25
2	License renewal fee, not more than.....	\$75
3	License reinstatement fee, not more than.....	\$80
4	Certified copy of license, not more than.....	\$25
5	Written verification of license, not more than.....	\$30
6	Inactive license fee, not more than.....	\$20

7 (b) The board may require that fees paid for any examination under
 8 the massage therapist licensure act be paid directly to the examination
 9 service by the person taking the examination.

10 (c) The board shall accept for payment of fees under this section
 11 personal checks, certified checks, cashier's checks, money orders or credit
 12 cards. The board may designate other methods of payment, but shall not
 13 refuse payment in the form of a personal check. The board may impose
 14 additional fees and recover any costs incurred by reason of payments made
 15 by personal checks with insufficient funds and payments made by credit
 16 cards.

17 Sec. 9. (a) All licenses issued under the provisions of the massage
 18 therapist licensure act, whether initial or renewal, shall expire every two
 19 years. The expiration date shall be established by rules and regulations of
 20 the board. The board shall send a notice for renewal of license to every
 21 massage therapist at least 60 days prior to the expiration date of such
 22 person's license. Every person so licensed who desires to renew such
 23 license shall file with the board, on or before the date of expiration of such
 24 license, a renewal application together with the prescribed biennial
 25 renewal fee. Every licensee who is no longer engaged in the active practice
 26 of massage therapy may so state by affidavit and submit such affidavit
 27 with the renewal application. An inactive license may be requested along
 28 with payment of a fee fixed by rules and regulations of the board. Except
 29 for the first renewal for a license that expires within 30 months following
 30 licensure examination or for renewal of a license that expires within the
 31 first nine months following licensure by reinstatement or endorsement,
 32 every licensee with an active massage therapy license shall submit with the
 33 renewal application evidence of satisfactory completion of a program of
 34 continuing massage therapy education.

35 (b) The board shall require as a condition for renewal of a license
 36 completion of no more than 24 hours biennially of continuing education
 37 approved by the board in rules and regulations. Upon receipt of such
 38 application and payment of fee, upon receipt of the evidence of
 39 satisfactory completion of the required program of continuing massage
 40 therapy education and upon being satisfied that the applicant meets the
 41 requirements set forth by law in effect at the time of initial licensure of the
 42 applicant, the board shall verify the accuracy of the application and grant
 43 renewal of the license.

1 (c) Continuing education courses shall be offered by providers
2 approved by the board. The courses shall be completed within the 24
3 months preceding the date renewal is due. Hours in excess of the total
4 number required may not be carried over to future renewals. The
5 continuing education requirements shall not apply to a massage therapist
6 within the biennium when the massage therapist is first licensed, but shall
7 apply to licensees every biennium thereafter.

8 (d) Any person who fails to secure a license renewal within the time
9 specified herein may secure a reinstatement of such lapsed license by
10 making verified application therefor on a form provided by the board by
11 rules and regulations, by furnishing proof that the applicant is competent
12 and qualified to act as a massage therapist and by satisfying all of the
13 requirements for reinstatement, including payment to the board of a
14 reinstatement fee as established by the board. A reinstatement application
15 for licensure will be held awaiting completion of such documentation as
16 may be required, but such application shall not be held for a period of time
17 in excess of that specified in rules and regulations of the board.

18 (e) (1) Each licensee shall notify the board in writing of:

19 (A) A change in name or address within 30 days of the change; or

20 (B) a conviction of any felony or misdemeanor that is specified in
21 rules and regulations adopted by the board within 30 days from the date
22 the conviction becomes final.

23 (2) As used in this subsection, "conviction" means a final conviction
24 without regard to whether the sentence was suspended or probation was
25 granted after such conviction. Also, for the purposes of this subsection, a
26 forfeiture of bail, bond or collateral deposited to secure a defendant's
27 appearance in court, which forfeiture has not been vacated, shall be
28 equivalent to a conviction. Failure to so notify the board shall not
29 constitute a defense in an action relating to failure to renew a license, nor
30 shall it constitute a defense in any other proceeding.

31 (f) (1) The board shall require an original applicant for licensure as a
32 massage therapist to be fingerprinted and submit to a state and national
33 criminal history record check. The fingerprints shall be used to identify the
34 applicant and to determine whether the applicant has a record of criminal
35 history in this state or other jurisdictions. The board is authorized to
36 submit the fingerprints to the Kansas bureau of investigation and the
37 federal bureau of investigation for a state and national criminal history
38 record check and request subsequent arrest notification services from both
39 agencies. The board may use the information obtained from fingerprinting
40 and the applicant's criminal history for purposes of verifying the
41 identification of any applicant and in the official determination of
42 character and fitness of the applicant for any licensure to practice massage
43 therapy in this state.

1 (2) Local and state law enforcement officers and agencies shall assist
2 the board in the taking and processing of fingerprints of applicants to
3 practice massage therapy in this state and shall release all records of adult
4 convictions and non-convictions and adult convictions or adjudications of
5 another state or country to the board.

6 (3) The board shall fix a fee for fingerprinting of applicants or
7 licensees, or both, as may be required by the board in an amount necessary
8 to reimburse the board for the cost of the fingerprinting. Fees collected
9 under this subsection shall be deposited in the state treasury in accordance
10 with K.S.A. 75-4215, and amendments thereto, and credited to the healing
11 arts fee fund.

12 Sec. 10. (a) The board may refuse to grant licensure to, or may
13 suspend, revoke, condition, limit, qualify or restrict the licensure issued
14 under the massage therapist licensure act of any individual whom the
15 board, after the opportunity for a hearing, determines:

16 (1) Is incompetent to practice massage therapy or is found to engage
17 in the practice of massage therapy in a manner harmful or dangerous to a
18 client or to the public;

19 (2) is convicted by a court of competent jurisdiction of a felony,
20 misdemeanor crimes against persons or substantiation of abuse against a
21 child, adult or resident of a care facility, even if not practice-related;

22 (3) has violated a provision of the massage therapist licensure act or
23 one or more of the rules and regulations of the board;

24 (4) has obtained or attempted to obtain a license or license renewal by
25 bribery or fraudulent representation;

26 (5) has knowingly made a false statement on a form required by the
27 board for license or license renewal;

28 (6) has failed to obtain continuing education credits required by rules
29 and regulations of the board;

30 (7) has been found guilty of unprofessional conduct as defined by
31 rules and regulations of the board; or

32 (8) has had a registration, license or certificate as a massage therapist
33 revoked, suspended or limited, or has had other disciplinary action taken,
34 or an application for registration, license or certificate denied by the proper
35 regulatory authority of another state, territory, the District of Columbia or
36 another country, a certified copy of the record of the action of the other
37 jurisdiction being conclusive evidence thereof.

38 (b) Upon filing of a sworn complaint with the board charging a
39 person with having been guilty of any of the unlawful practices specified
40 in subsection (a), two or more members of the board shall investigate the
41 charges, or the board may designate and authorize an employee or
42 employees of the board to conduct an investigation. After investigation,
43 the board may institute charges. If an investigation, in the opinion of the

1 board, reveals reasonable grounds for believing the applicant or licensee is
2 guilty of the charges, the board shall fix a time and place for proceedings,
3 which shall be conducted in accordance with the provisions of the Kansas
4 administrative procedure act.

5 (c) No person shall be excused from testifying in any proceedings
6 before the board under the massage therapist licensure act or in any civil
7 proceedings under this act before a court of competent jurisdiction on the
8 ground that such testimony may incriminate the person testifying, but such
9 testimony shall not be used against the person for the prosecution of any
10 crime under the laws of this state, except the crime of perjury as defined in
11 K.S.A. 2017 Supp. 21-5903, and amendments thereto.

12 (d) If final agency action of the board in a proceeding under this
13 section is adverse to the applicant or licensee, the costs of the board's
14 proceedings shall be charged to the applicant or licensee as in ordinary
15 civil actions in the district court, but if the board is the unsuccessful party,
16 the costs shall be paid by the board. Witness fees and costs may be taxed
17 by the board according to the statutes relating to procedure in the district
18 court. All costs accrued by the board, when it is the successful party and
19 that the attorney general certifies cannot be collected from the applicant or
20 licensee, shall be paid from the healing arts fee fund. All moneys collected
21 following board proceedings shall be credited in full to the healing arts fee
22 fund.

23 (e) The denial, suspension, revocation or limitation of a license or
24 public or private censure of a licensee may be ordered by the board after
25 notice and hearing on the matter in accordance with the provisions of the
26 Kansas administrative procedure act. The board shall also notify the local
27 law enforcement agency upon disciplinary action. Upon the end of the
28 period of no less than two years for the revocation of a license, application
29 may be made to the board for reinstatement. The board shall have
30 discretion to accept or reject an application for reinstatement and may hold
31 a hearing to consider such reinstatement. An application for reinstatement
32 of a revoked license shall be accompanied by the license reinstatement fee
33 established under section 8, and amendments thereto.

34 (f) The board, in addition to any other penalty prescribed in
35 subsection (a), may assess a civil fine, after proper notice and an
36 opportunity to be heard, against a licensee for unprofessional conduct in an
37 amount not to exceed \$1,000 for the first violation, \$2,000 for the second
38 violation and \$3,000 for the third violation and for each subsequent
39 violation. All fines assessed and collected under this section shall be
40 remitted to the state treasurer in accordance with the provisions of K.S.A.
41 75-4215, and amendments thereto. Upon receipt of each such remittance,
42 the state treasurer shall deposit the entire amount in the state treasury to
43 the credit of the state general fund.

1 (g) The board, upon request, shall receive from the Kansas bureau of
2 investigation such criminal history record information relating to arrests
3 and criminal convictions as necessary for the purpose of determining
4 initial and continuing qualifications of licensees and applicants for
5 licensure by the board.

6 Sec. 11. The board shall remit all moneys received from fees, charges
7 or penalties under the massage therapist licensure act to the state treasurer
8 in accordance with the provisions of K.S.A. 75-4215, and amendments
9 thereto. Upon receipt of each such remittance, the state treasurer shall
10 deposit the entire amount in the state treasury. Ten percent of each such
11 deposit shall be credited to the state general fund and the balance shall be
12 credited to the healing arts fee fund. All expenditures from such fund shall
13 be made in accordance with appropriation acts upon warrants of the
14 director of accounts and reports issued pursuant to vouchers approved by
15 the president of the board or by a person designated by the president of the
16 board.

17 Sec. 12. A local unit of government shall not establish or maintain
18 professional licensing requirements for a massage therapist licensed under
19 the massage therapist licensure act. Nothing in the massage therapist
20 licensure act shall affect local zoning requirements. Local government law
21 enforcement agencies may inspect massage therapy registrations and the
22 business premises where massage therapy is practiced for compliance with
23 applicable laws. Nothing in this section shall be construed to preclude
24 criminal prosecution for a violation of any criminal law. If such inspection
25 reveals the practice of massage therapy by a person without a valid license,
26 the person may be charged with a violation of section 6(b), and
27 amendments thereto, and the board shall be notified.

28 Sec. 13. (a) When it appears to the board that any person is violating
29 any of the provisions of the massage therapist licensure act, the board may
30 bring an action in the name of the state of Kansas in a court of competent
31 jurisdiction for an injunction against such violation without regard to
32 whether proceedings have been or may be instituted before the board or
33 whether criminal proceedings have been or may be instituted.

34 (b) The provisions of this section shall take effect on and after
35 September 1, 2020.

36 Sec. 14. All state agency adjudicative proceedings under the massage
37 therapist licensure act shall be conducted in accordance with the
38 provisions of the Kansas administrative procedure act and shall be
39 reviewable in accordance with the Kansas judicial review act.

40 Sec. 15. Professional liability insurance coverage shall be maintained
41 in effect by each massage therapist as a condition to rendering professional
42 service as a massage therapist in this state. An applicant for initial or
43 renewal licensure shall provide proof to the board that the applicant

1 currently has professional liability insurance with minimum coverage of
2 \$2,000,000 per claim and \$6,000,000 in aggregate.

3 Sec. 16. On the effective date of this section, nothing in the massage
4 therapist licensure act or in the provisions of K.S.A. 40-2,100 through 40-
5 2,105, and amendments thereto, or K.S.A. 2017 Supp. 40-2,105a through
6 40-2,105d, and amendments thereto, shall be construed to require that any
7 individual, group or blanket policy of accident and sickness, medical or
8 surgical expense insurance coverage or any provision of a policy, contract,
9 plan or agreement for medical service issued on or after the effective date
10 of this act, reimburse or indemnify a person licensed under the massage
11 therapist licensure act for services provided as a massage therapist.

12 Sec. 17. Sections 1 through 17, and amendments thereto, shall be
13 known and may be cited as the massage therapist licensure act.

14 Sec. 18. This act shall take effect and be in force from and after its
15 publication in the statute book.