

SENATE BILL No. 452

By Committee on Federal and State Affairs

2-14

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

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

6 Section 1. Sections 1 through 17, and amendments thereto, shall be
7 known and may be cited as the massage therapist licensure act.

8 Sec. 2. As used in the massage therapist licensure act:

9 (a) "Act" means the massage therapist licensure act.

10 (b) "Board" means the state board of healing arts.

11 (c) "Bodywork association" or "professional massage therapy
12 association" means a state or nationally chartered professional membership
13 organization that has been recognized by the board as offering services to
14 massage therapists and requires its members to adhere to the organization's
15 established code of ethics and standards of practice.

16 (d) "Compensation" means the payment, loan, advance, donation,
17 contribution, barter, deposit or gift of money or anything of value.

18 (e) "Licensed massage therapist" means a person who meets the
19 requirements of the massage therapist licensure act and who engages in the
20 practice of massage therapy.

21 (f) "Massage school" means a massage therapy educational program
22 that meets the standards for training and curriculum as set forth by the
23 state board of regents under the Kansas private and out-of-state
24 postsecondary educational institution act, or comparable legal authority in
25 another state.

26 (g) (1) "Massage therapy" and "massage" mean the application of a
27 system of manipulation or pressure to the muscle or tissues of the human
28 body for the purpose of relieving pain, improving circulation, enhancing
29 muscle relaxation, reducing stress or promoting a greater sense of well-
30 being.

31 (2) "Massage therapy" and "massage" include, but are not limited to:

32 (A) Techniques such as gliding, kneading, stroking, percussion,
33 compression, vibration, friction and passive and active stretching within
34 the normal anatomical range of movement;

35 (B) the external application of water, heat, cold, lubrication, salt
36 scrubs, body wraps or other topical preparations; and

1 (C) the use of electromechanical devices that mimic or enhance the
2 actions possible by the hands.

3 (3) "Massage therapy" and "massage" do not include:

4 (A) Adjustment, manipulation or mobilization of any of the
5 articulations of the osseous structures of the human body or spine;

6 (B) physical therapy joint mobilization or manipulation;

7 (C) electrical stimulation or application of ultrasound;

8 (D) the practice of medicine and surgery;

9 (E) the practice of physical therapy;

10 (F) the practice of chiropractic;

11 (G) prescribing, dispensing or administering of any controlled
12 substances as defined in K.S.A. 65-4101 et seq., and amendments thereto,
13 or any prescription drugs; and

14 (H) persons who use touch, words and directed movement to deepen
15 awareness of existing patterns of movement in the body and to suggest
16 new possibilities of movement while engaged within the scope of practice
17 of a profession with established standards and ethics, including: (i) The
18 Feldenkrais method of somatic education; (ii) the Rolf institute's Rolf
19 movement integration; (iii) the Trager approach to movement education;
20 and (iv) body-mind centering, if such practitioners are recognized by or
21 meet the established standards of a professional organization or
22 credentialing agency that represents or certifies the respective practice.

23 Sec. 3. (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 record of disqualifying conduct as defined by the
31 board;

32 (4) is a citizen or legal permanent resident of the United States;

33 (5) has successfully completed a course of instruction approved by
34 the board consisting of at least 625 in-classroom hours of supervised
35 instruction, including massage therapy technique and theory,
36 contraindications, ethics, sanitation, hygiene, business training, anatomy,
37 physiology and pathology; and

38 (6) has successfully passed a nationally recognized competency
39 examination in massage therapy that meets acceptable psychometric
40 principles, is statistically validated through a job-task analysis under
41 current standards for educational and professional testing and has been
42 approved by the board.

43 (b) Professional liability insurance coverage shall be maintained by

1 each massage therapist as a condition to rendering professional service as a
2 massage therapist in this state. An applicant for initial or renewal licensure
3 shall provide proof to the board that the applicant currently has
4 professional liability insurance with minimum coverage of \$2,000,000 per
5 claim and \$6,000,000, per year in the aggregate.

6 Sec. 4. Prior to July 1, 2022, the board shall issue a license as a
7 massage therapist to any individual who meets the requirements of section
8 3(a)(1) through (a)(4) and (b), and amendments thereto, and who has:

9 (a) Completed a minimum of 625 hours of instruction relating to
10 massage therapy at a massage school or comparable entity in another state,
11 verified to the board by affidavit;

12 (b) completed at least 300 hours of training in massage therapy
13 during the three years prior to such individual's license application,
14 verified to the board by affidavit;

15 (c) practiced massage therapy for at least three years, verified to the
16 board by affidavit;

17 (d) been an active member in good standing of a professional
18 massage or bodywork therapy association as a massage or bodywork
19 therapist for a period of at least 12 months, verified to the board by
20 affidavit; or

21 (e) successfully passed an examination meeting the requirements of
22 section 3(a)(6), and amendments thereto, or passed a nationally recognized
23 certification examination.

24 Sec. 5. (a) The board may issue a license to practice massage therapy
25 as a licensed massage therapist to an applicant who presents proof of a
26 current license or registration in another state, territory, the District of
27 Columbia or a foreign country if, in the opinion of the board, the applicant
28 meets the qualifications required for licensure as a massage therapist in
29 this state.

30 (b) The board may issue a temporary permit to practice massage
31 therapy as a licensed massage therapist for a period not to exceed 120
32 days. A temporary permit may be issued to an applicant for licensure as a
33 licensed massage therapist who is a graduate of a massage school in a
34 foreign country after verification of licensure in that foreign country and
35 approval of educational credentials.

36 Sec. 6. (a) Nothing in the massage therapist licensure act shall be
37 construed to restrict any person licensed or regulated by the state of
38 Kansas from engaging in the profession or practice for which they are
39 licensed or regulated, including, but not limited to, acupuncture, athletic
40 training, barbering, chiropractic, cosmetology, dentistry, electrology,
41 esthetics, manicuring, medicine and surgery, naturopathic medicine,
42 nursing, occupational therapy, osteopathy, physical therapy, podiatry,
43 professional counseling, psychology, social work or veterinary medicine or

1 any other profession licensed or regulated by the state of Kansas.

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

3 (1) The practice of massage therapy by a person employed by the
4 government of the United States while the person is engaged in the
5 performance of duties prescribed by the laws and regulations of the United
6 States;

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

12 (3) a student currently enrolled in a massage school while completing
13 a clinical requirement or supervised massage therapy fieldwork experience
14 for graduation performed under the supervision of a person licensed under
15 the massage therapist licensure act, so long as the student does not hold
16 oneself out as a licensed massage therapist and does not receive
17 compensation for services performed;

18 (4) any person from performing massage therapy services without
19 compensation in the state, if performed in cooperation with a charitable
20 organization or as part of an emergency response team working in
21 conjunction with disaster relief officials;

22 (5) the practice, conduct, services or activities of a person who is
23 employed by a non-resident performance team, entertainer or athletic team
24 to the extent that such services or activities are provided only to the team
25 or entertainer in the state for not more than 30 days per calendar year;

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

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

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

32 Sec. 7. (a) On and after July 1, 2021, except as otherwise provided in
33 this act, no person shall perform massage therapy unless such person
34 possesses a current and valid massage therapist license under this act.

35 (b) (1) A person who does not hold a current license under this act
36 shall not present or hold oneself out, orally or in writing, expressly or by
37 implication, as a holder of a massage therapy license.

38 (2) Only persons licensed under this act are entitled to present or hold
39 themselves out as a licensed massage therapist or use words or titles to
40 imply that such person is a massage therapist licensed under the massage
41 therapist licensure act, including: "Massage therapist," "massagist,"
42 "masso therapist," "myo therapist," "body therapist," "massage technician,"
43 "massage practitioner," "masseur," "masseuse" or any derivation thereof,

1 or the designated letters "LMT."

2 (c) A violation of this section is a class B person misdemeanor.

3 (d) A violation of this section is an unconscionable act or practice
4 within the meaning of K.S.A. 50-627, and amendments thereto, and any
5 person who engages in unlicensed conduct as a massage therapist shall be
6 subject to the remedies and penalties provided by the Kansas consumer
7 protection act. This subsection shall not be construed as creating or
8 allowing a private right of action under the Kansas consumer protection
9 act.

10 Sec. 8. (a) A massage therapy advisory committee of six members,
11 consisting of two board members and four non-board members, shall be
12 established by the board to advise and assist the board in implementing the
13 massage therapist licensure act as determined by the board. The advisory
14 committee shall meet at least annually. Members of the advisory
15 committee shall be paid amounts provided in K.S.A. 75-3223(e), and
16 amendments thereto, for each day of actual attendance at any meeting of
17 the advisory committee or any subcommittee meeting of the advisory
18 committee authorized by the board.

19 (b) The two board members of the advisory committee shall be
20 appointed by the board. Three non-board members of the advisory
21 committee shall be appointed by the board, shall be massage therapists and
22 shall be citizens and residents of the state. No more than one member may
23 be an owner of a massage school. The attorney general shall appoint the
24 fourth non-board member of the advisory committee. The members of the
25 committee shall be appointed for terms of two years and shall serve at the
26 pleasure of the board.

27 Sec. 9. (a) The board shall biennially charge and collect in advance
28 fees provided for in the massage therapist licensure act as fixed by the
29 board by rules and regulations, subject to the following limitations:

30 Application fee, not more than.....	\$80
31 Temporary permit fee, not more than.....	25
32 License renewal fee, not more than.....	75
33 License reinstatement fee, not more than.....	80
34 Certified copy of license, not more than.....	25
35 Written verification of license, not more than.....	30
36 Inactive license fee, not more than.....	20

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

40 (c) The board shall accept, for payment of fees under this section,
41 personal checks, certified checks, cashier's checks, money orders, credit
42 cards or other methods of payment as designated by the board. The board
43 may impose additional fees and recover any costs incurred by reason of

1 payments made by personal checks with insufficient funds and payments
2 made by credit cards.

3 Sec. 10. (a) All licenses issued under the provisions of the massage
4 therapist licensure act, whether initial or renewal, shall expire every two
5 years. The expiration date shall be established by rules and regulations of
6 the board. The board shall send a notice for renewal of license to every
7 massage therapist at least 60 days prior to the expiration date of such
8 person's license. Every person so licensed who desires to renew such
9 license shall file with the board, on or before the date of expiration of such
10 license, a renewal application together with the prescribed biennial
11 renewal fee. Every licensee who is no longer engaged in the active practice
12 of massage therapy may so state by affidavit and submit such affidavit
13 with the renewal application. An inactive license may be requested along
14 with payment of a fee fixed by rules and regulations of the board. Except
15 for the first renewal for a license that expires within 30 months following
16 licensure examination or for renewal of a license that expires within the
17 first nine months following licensure by reinstatement or endorsement,
18 every licensee with an active massage therapy license shall submit with the
19 renewal application evidence of satisfactory completion of a program of
20 continuing massage therapy education.

21 (b) The board shall require as a condition for renewal of a license
22 completion of no more than 24 hours biennially of continuing education
23 approved by the board in rules and regulations. Upon receipt of such
24 application, payment of fee and evidence of satisfactory completion of the
25 required program of continuing massage therapy education and upon being
26 satisfied that the applicant meets the requirements set forth by law in effect
27 at the time of initial licensure of the applicant, the board shall verify the
28 accuracy of the application and grant renewal of the license.

29 (c) Continuing education courses shall be offered by providers
30 approved by the board. The courses shall be completed within the 24
31 months preceding the date renewal is due. Hours in excess of the total
32 number required may not be carried over to future renewals. The
33 continuing education requirements shall not apply to a massage therapist
34 within the biennium when the massage therapist is first licensed, but shall
35 apply to licensees every biennium thereafter.

36 (d) Any person who fails to secure a license renewal within the time
37 specified may secure a reinstatement of such lapsed license by making
38 verified application therefor on a form provided by the board, by
39 furnishing proof that the applicant is competent and qualified to act as a
40 massage therapist and by satisfying all of the requirements for
41 reinstatement, including payment to the board of a reinstatement fee as
42 specified by the board in rules and regulations. A reinstatement application
43 for licensure shall be held awaiting completion of such documentation as

1 may be required, but such application shall not be held for a period of time
2 in excess of that specified by the board in rules and regulations.

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

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

5 (B) a conviction of a felony or misdemeanor against persons within
6 30 days from the date the conviction becomes final.

7 (2) As used in this subsection, "conviction" means the entry of a plea
8 or verdict of guilty or a conviction following a plea of nolo contendere, a
9 diversion agreement entered into in lieu of further criminal proceedings or
10 a juvenile adjudication.

11 (f) (1) The board shall require an original applicant for licensure as a
12 massage therapist to be fingerprinted and submit to a state and national
13 criminal history record check. The fingerprints shall be used to identify the
14 applicant and to determine whether the applicant has a record of criminal
15 history in this state or other jurisdictions. The board is authorized to
16 submit the fingerprints to the Kansas bureau of investigation and the
17 federal bureau of investigation for a state and national criminal history
18 record check and request subsequent arrest notification services from both
19 agencies. The board may use the information obtained from fingerprinting
20 and the applicant's criminal history for purposes of verifying the identity of
21 any applicant and in making the official determination of the character and
22 fitness of the applicant for licensure to practice massage therapy in this
23 state.

24 (2) Local and state law enforcement officers and agencies shall assist
25 the board in the taking and processing of fingerprints of applicants to
26 practice massage therapy in this state and shall release all records of an
27 applicant's adult arrests and convictions to the board.

28 (3) The board shall fix a fee for fingerprinting and conducting a state
29 and national criminal history record check of applicants or licensees as
30 may be required by the board in an amount necessary to reimburse the
31 board for the cost. Fees collected under this subsection shall be deposited
32 in the state treasury in accordance with K.S.A. 75-4215, and amendments
33 thereto, and credited to the healing arts fee fund.

34 Sec. 11. (a) The board may deny, suspend, revoke, condition, restrict
35 or refuse renewal of any license issued under this act if the board
36 determines that the licensee or applicant:

37 (1) Is incompetent to practice massage therapy or is found to engage
38 in the practice of massage therapy in a manner harmful or dangerous to a
39 client or to the public;

40 (2) has been convicted of a felony and has not demonstrated to the
41 board's satisfaction that such person has been sufficiently rehabilitated to
42 merit the public trust;

43 (3) has been convicted of a misdemeanor against persons and has not

1 demonstrated to the board's satisfaction that such person has been
2 sufficiently rehabilitated to merit the public trust;

3 (4) has committed an act of unprofessional conduct as defined by
4 rules and regulations adopted by the board;

5 (5) has committed fraud or misrepresentation in applying for or
6 obtaining license or license renewal under this act;

7 (6) has knowingly made a false statement on a form required by the
8 board for license or license renewal;

9 (7) is currently listed on a child abuse registry or an adult protective
10 services registry as the result of a substantiated finding of abuse or neglect
11 by any state agency, agency of another state or the United States, territory
12 of the United States or another country and the applicant or licensee has
13 not demonstrated to the board's satisfaction that such person has been
14 sufficiently rehabilitated to merit the public trust;

15 (8) has failed to obtain continuing education credits required by this
16 act;

17 (9) has surrendered a license, registration or certificate as a massage
18 therapist in another state or jurisdiction, has agreed to a limitation or
19 restriction of privileges; or

20 (10) has had a registration, license or certificate as a massage
21 therapist revoked, suspended or limited, or has had other disciplinary
22 action taken, or an application for registration, license or certificate denied
23 by the proper regulatory authority of another state, territory, the District of
24 Columbia or another country, with a certified copy of the record of the
25 action of the other jurisdiction being conclusive evidence thereof.

26 (b) Administrative proceedings and disciplinary actions conducted
27 pursuant to this act shall be conducted in accordance with the Kansas
28 administrative procedure act. Judicial review and civil enforcement under
29 this act shall be in accordance with the Kansas judicial review act.

30 (c) The board shall notify local law enforcement of any disciplinary
31 action in which the board becomes aware of evidence of a crime.

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

42 (e) A person whose license has been revoked may apply for
43 reinstatement after the expiration of two years from the effective date of

1 the revocation. Application for reinstatement shall be on a form provided
2 by the board and shall be accompanied by the fee established pursuant to
3 section 9, and amendments thereto. The applicant shall prove to the board
4 sufficient rehabilitation to justify reinstatement. If the board determines
5 that a license should not be reinstated, the person shall not be eligible to
6 reapply for reinstatement for two years from the effective date of the
7 denial. All proceedings conducted on an application for reinstatement shall
8 be in accordance with the Kansas administrative procedure act and shall be
9 reviewable in accordance with the Kansas judicial review act. The board,
10 on its own motion, may stay the effectiveness of an order of revocation of
11 license.

12 Sec. 12. Except as provided in section 11(d), and amendments
13 thereto, the board shall remit all moneys received from fees, charges or
14 penalties under the massage therapist licensure act to the state treasurer in
15 accordance with the provisions of K.S.A. 75-4215, and amendments
16 thereto. Upon receipt of each such remittance, the state treasurer shall
17 deposit the entire amount in the state treasury. Ten percent of each such
18 deposit shall be credited to the state general fund and the balance shall be
19 credited to the healing arts fee fund.

20 Sec. 13. A local unit of government shall not establish or maintain
21 professional licensing requirements for a massage therapist licensed under
22 the massage therapist licensure act. Nothing in the massage therapist
23 licensure act shall affect local zoning requirements. Local government law
24 enforcement agencies may inspect massage therapy registrations and the
25 business premises where massage therapy is practiced for compliance with
26 applicable laws. Nothing in this section shall be construed to preclude
27 criminal prosecution for a violation of any criminal law. If such inspection
28 reveals the practice of massage therapy by a person without a valid license,
29 the person may be charged with a violation of section 7, and amendments
30 thereto, and the board shall be notified by the investigating law
31 enforcement agency.

32 Sec. 14. (a) The board shall adopt rules and regulations necessary to
33 implement and administer the provisions of this act on or before July 1,
34 2021. Such rules and regulations shall include, but not be limited to:

35 (1) The form and content of applications required and the procedures
36 for filing applications related to licensure;

37 (2) the establishment of fees for licenses to cover all of the costs of
38 administering the provisions of this act;

39 (3) standards of professional competency and conduct;

40 (4) minimum requirements to maintain a safe and healthy practice
41 environment;

42 (5) standards for establishment and retention of client records and
43 business records; and

1 (6) such other rules and regulations as the board deems necessary to
2 carry out the provisions of this act.

3 Sec. 15. (a) When it appears to the board that any person is violating
4 any of the provisions of the massage therapist licensure act, the board may
5 bring an action in the name of the state of Kansas in a court of competent
6 jurisdiction for an injunction against such violation without regard to
7 whether proceedings have been or may be instituted before the board or
8 whether criminal proceedings have been or may be initiated.

9 (b) The provisions of this section shall take effect on and after July 1,
10 2021.

11 Sec. 16. All state agency adjudicative proceedings under the massage
12 therapist licensure act shall be conducted in accordance with the
13 provisions of the Kansas administrative procedure act and shall be
14 reviewable in accordance with the Kansas judicial review act.

15 Sec. 17. On and after July 1, 2020, nothing in the massage therapist
16 licensure act or in the provisions of K.S.A. 40-2,100 through 40-2,105, and
17 amendments thereto, or K.S.A. 2019 Supp. 40-2,105a through 40-2,105d,
18 and amendments thereto, shall be construed to require that any individual,
19 group or blanket policy of accident and sickness, medical or surgical
20 expense insurance coverage or any provision of a policy, contract, plan or
21 agreement for medical service issued on or after the July 1, 2020,
22 reimburse or indemnify a person licensed under the massage therapist
23 licensure act for services provided as a massage therapist.

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