

1 HOUSE BILL 155

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Linda M. Trujillo

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9  
10 AN ACT

11 RELATING TO OCCUPATIONAL LICENSING; REQUIRING LICENSURE OF  
12 ESTABLISHMENTS WHERE MASSAGE THERAPY IS OFFERED OR PERFORMED;  
13 ADDING A DEFINITION; PROVIDING A PENALTY.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of the Massage Therapy Practice  
17 Act is enacted to read:

18 "[NEW MATERIAL] REQUIREMENTS FOR REGISTRATION OF MASSAGE  
19 THERAPY ESTABLISHMENTS.--

20 A. The board shall establish by rule procedures for  
21 the licensure of massage therapy establishments and shall issue  
22 a license to massage therapy establishments that meet the  
23 requirements of the Massage Therapy Practice Act and rules  
24 adopted by the board pursuant to that act.

25 B. The board shall establish minimum standards of

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1 health and safety for massage therapy establishments."

2 SECTION 2. A new section of the Massage Therapy Practice  
3 Act is enacted to read:

4 "[NEW MATERIAL] MASSAGE THERAPY ESTABLISHMENT LICENSURE,  
5 RENEWAL, SUSPENSION AND REVOCATION--APPLICABILITY.--

6 A. On or after January 1, 2021, a person shall not  
7 maintain, manage or operate a massage therapy establishment  
8 unless the establishment is a licensed massage therapy  
9 establishment.

10 B. Massage therapy establishment licenses shall  
11 expire biennially. Expiration dates shall be established by  
12 rule of the board.

13 C. A license shall be renewed by submitting a  
14 renewal application on a form provided by the board.

15 D. A sixty-day grace period shall be allowed each  
16 licensee after the end of the renewal period, during which time  
17 a license may be renewed upon payment of the renewal fee and a  
18 late fee as prescribed by the board.

19 E. Proceedings to determine whether to suspend or  
20 revoke the license of a massage therapy establishment may be  
21 instituted by sworn complaint of any individual, including  
22 members of the board, and shall conform with the provisions of  
23 the Uniform Licensing Act."

24 SECTION 3. Section 61-12C-3 NMSA 1978 (being Laws 1991,  
25 Chapter 147, Section 3, as amended) is amended to read:

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1 "61-12C-3. DEFINITIONS.--As used in the Massage Therapy  
2 Practice Act:

3 A. "board" means the massage therapy board;

4 B. "continuing education" means courses, seminars,  
5 workshops and classes in areas related to the practice of  
6 massage therapy, such as:

7 (1) massage;

8 (2) bodywork;

9 (3) health care;

10 (4) psychology;

11 (5) anatomy and physiology;

12 (6) business;

13 (7) insurance;

14 (8) ethics;

15 (9) professional development;

16 (10) movement therapy;

17 (11) stress management;

18 (12) exempt modalities listed in Subsection C

19 of Section 61-12C-5.1 NMSA 1978;

20 (13) cardiopulmonary resuscitation or first  
21 aid; and

22 (14) complementary alternative medicine  
23 modalities determined by the board to be related to the  
24 practice of massage therapy;

25 C. "continuing education provider" means:

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1 (1) an individual who was an active New Mexico  
2 registered independent massage therapy instructor on [~~the~~  
3 ~~effective date of this 2019 act~~] February 4, 2019;

4 (2) a massage therapy school regulated by the  
5 requisite regulatory agency where the massage therapy school is  
6 located;

7 (3) a national or international professional  
8 association for massage therapists;

9 (4) an individual or an organization approved  
10 by a national or international massage therapy continuing  
11 education approval agency;

12 (5) a health care professional organization;  
13 or

14 (6) accredited post-secondary educational  
15 institutions;

16 D. "department" means the regulation and licensing  
17 department;

18 E. "jurisprudence" means the statutes and rules of  
19 the state pertaining to the practice of massage therapy;

20 F. "massage therapist" means an individual licensed  
21 to practice massage therapy pursuant to the Massage Therapy  
22 Practice Act;

23 G. "massage therapy" or "massage" means the  
24 treatment of soft tissues for therapeutic purposes, primarily  
25 comfort and relief of pain; it is a health care service that

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1 includes gliding, kneading, percussion, compression, vibration,  
2 friction, nerve strokes, stretching the tissue and exercising  
3 the range of motion and may include the use of oils, salt  
4 glows, hot or cold packs or hydrotherapy. [~~Synonymous~~] Terms  
5 for massage or massage therapy include [~~massage~~] therapeutic  
6 massage, body massage, myomassage, bodywork, body rub or any  
7 derivation of those terms. "Massage" or "massage therapy" does  
8 not include the diagnosis or treatment of illness or disease or  
9 any service or procedure for which a license to practice  
10 medicine, nursing, chiropractic, physical therapy, occupational  
11 therapy, acupuncture or podiatry is required by law; [~~and~~]

12 H. "massage therapy establishment" or "massage  
13 establishment" means a place of business in which massage or  
14 massage therapy is offered or performed; and

15 [~~H.~~] I. "massage therapy school" means a facility  
16 providing an educational program in massage therapy that is  
17 registered with the board."

18 SECTION 4. Section 61-12C-8 NMSA 1978 (being Laws 1991,  
19 Chapter 147, Section 8, as amended) is amended to read:

20 "61-12C-8. BOARD POWERS.--The board has the power to:

21 A. adopt and file, in accordance with the State  
22 Rules Act, rules necessary to carry out the provisions of the  
23 Massage Therapy Practice Act, in accordance with the provisions  
24 of the Uniform Licensing Act;

25 B. provide for the evaluation of the qualifications

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1 of applicants for licensure as a massage therapist, massage  
2 therapy establishment or registration as a massage therapy  
3 school under the Massage Therapy Practice Act;

4 C. provide for the issuance of massage therapist  
5 licenses to applicants who meet the requirements of the Massage  
6 Therapy Practice Act;

7 D. establish minimum curricula for massage therapy  
8 schools and provide for the issuance and revocation of massage  
9 therapy school registrations;

10 E. establish minimum standards for massage therapy  
11 establishments and provide for the issuance and revocation of  
12 massage therapy establishment licenses;

13 ~~[E.]~~ F. establish instructor qualifications for  
14 hands-on massage therapy instruction within the minimum  
15 curricula;

16 ~~[F.]~~ G. provide for the inspection, when required,  
17 of the business premises of any licensee or registrant during  
18 regular business hours or posted hours of operation;

19 ~~[G.]~~ H. establish minimum training and educational  
20 standards for licensure as a massage therapist;

21 ~~[H.]~~ I. pursuant to the Uniform Licensing Act,  
22 conduct hearings on charges against applicants or licensees and  
23 take actions described in Section 61-1-3 NMSA 1978;

24 ~~[I.]~~ J. bring an action for injunctive relief in  
25 district court seeking to enjoin a person from violating the

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1 provisions of the Massage Therapy Practice Act;

2           ~~[J-]~~ K. issue cease and desist orders to persons  
3 violating the provisions of the Massage Therapy Practice Act or  
4 any rule adopted by the board pursuant to that act;

5           ~~[K-]~~ L. adopt an annual budget;

6           ~~[L-]~~ M. adopt a code of professional conduct for  
7 massage therapists;

8           ~~[M-]~~ N. provide for the investigation of complaints  
9 against licensees and registrants; and

10           ~~[N-]~~ O. publish at least annually combined or  
11 separate lists of licensed massage therapists and registered  
12 massage therapy schools."

13           **SECTION 5.** Section 61-12C-17 NMSA 1978 (being Laws 1991,  
14 Chapter 147, Section 17, as amended) is amended to read:

15           "61-12C-17. LICENSE RENEWAL--CONTINUING EDUCATION.--

16           A. Except as provided for initial licensure in  
17 Subsection B of Section 61-12C-9 NMSA 1978, massage therapy  
18 licenses shall expire biennially. Expiration dates shall be  
19 established by rule.

20           B. The board may establish continuing education  
21 requirements as a condition of the renewal of massage therapy  
22 licenses.

23           C. All courses offered by continuing education  
24 providers shall be acceptable to meet continuing education  
25 requirements regardless of the location where the course is

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1 offered.

2 D. A continuing education provider who is an  
3 individual who was an active New Mexico registered independent  
4 massage therapy instructor on [~~the effective date of this 2019~~  
5 ~~act~~] February 4, 2019 shall submit to the board a syllabus and  
6 one-time fee for any course not previously approved by the  
7 board.

8 E. Within thirty days of application, the board may  
9 approve or deny the application of an individual who is not a  
10 continuing education provider to offer a particular continuing  
11 education course; provided that the individual submits:

- 12 (1) a copy of any relevant license;  
13 (2) proof of a minimum of two years'  
14 experience in the area of instruction;  
15 (3) a course syllabus for the proposed course;  
16 (4) a resume; and  
17 (5) a one-time fee to be determined by the  
18 board by rule.

19 F. A license shall be renewed by submitting a  
20 renewal application on a form provided by the board.

21 G. A sixty-day grace period shall be allowed each  
22 licensee after the end of the renewal period, during which time  
23 a license may be renewed upon payment of the renewal fee and a  
24 late fee as prescribed by the board."

25 SECTION 6. Section 61-12C-18 NMSA 1978 (being Laws 1991,  
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1 Chapter 147, Section 18, as amended) is amended to read:

2 "61-12C-18. LICENSE RENEWAL--INACTIVE STATUS.--

3 A. A massage therapy license not renewed at the end  
4 of the sixty-day grace period shall be placed on inactive  
5 status for a period not to exceed two years. At the end of two  
6 years, if the license has not been reactivated, it shall  
7 automatically expire.

8 B. If within a period of two years from the date  
9 the license was placed on inactive status the licensee wishes  
10 to resume practice, the licensee shall notify the board in  
11 writing, and, upon proof of completion of any continuing  
12 education or refresher courses prescribed by rule of the board  
13 and payment of an amount set by the board in lieu of all lapsed  
14 renewal fees, the license shall be restored in full.

15 C. A massage therapy establishment license not  
16 renewed at the end of the sixty-day grace period shall be  
17 placed on inactive status for a period not to exceed two years.  
18 At the end of two years, if the license has not been  
19 reactivated, it shall automatically expire.

20 D. If within a period of two years from the date  
21 the license was placed on inactive status the licensee wishes  
22 to resume maintenance, management or operation of the massage  
23 therapy establishment, the licensee shall notify the board in  
24 writing, and, upon proof of compliance with health and safety  
25 standards prescribed by rule of the board and payment of an

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

3 SECTION 7. Section 61-12C-24 NMSA 1978 (being Laws 1991,  
4 Chapter 147, Section 24, as amended) is amended to read:

5 "61-12C-24. SUSPENSION, REVOCATION AND REINSTATEMENT OF  
6 LICENSES.--

7 A. Pursuant to the Uniform Licensing Act, the board  
8 may take disciplinary action against an individual licensed  
9 pursuant to the Massage Therapy Practice Act.

10 B. The board has authority to take an action set  
11 forth in Section 61-1-3 NMSA 1978 upon a finding by the board  
12 that the licensee:

- 13 (1) is guilty of fraud, deceit or  
14 misrepresentation;
- 15 (2) attempted to use as the licensee's own the  
16 license of another;
- 17 (3) allowed the use of the licensee's license  
18 by another;
- 19 (4) has been adjudicated as mentally  
20 incompetent by regularly constituted authorities;
- 21 (5) has been convicted of a crime that  
22 substantially relates to the qualifications, functions or  
23 duties of a massage therapist. A copy of the record of  
24 conviction, certified by the clerk of the court entering the  
25 conviction, is conclusive evidence of conviction;

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1 (6) is guilty of unprofessional or unethical  
2 conduct or a violation of the code of ethics;

3 (7) is habitually or excessively using  
4 controlled substances or alcohol;

5 (8) is guilty of false, deceptive or  
6 misleading advertising;

7 (9) is guilty of aiding, assisting or  
8 advertising an unlicensed individual in the practice of massage  
9 therapy;

10 (10) is grossly negligent or incompetent in  
11 the practice of massage therapy;

12 (11) has had a license to practice massage  
13 therapy revoked, suspended or denied in any jurisdiction,  
14 territory or possession of the United States or another country  
15 for acts of the licensee similar to acts described in this  
16 section. A certified copy of the [~~record of conviction~~] order  
17 of revocation, suspension or denial shall be conclusive  
18 evidence of the [~~conviction~~] revocation, suspension or denial;  
19 [~~or~~]

20 (12) performs massage therapy at or maintains,  
21 manages or operates a massage therapy establishment that is not  
22 licensed pursuant to the Massage Therapy Practice Act; or

23 [~~(12)~~] (13) is guilty of failing to comply  
24 with a provision of the Massage Therapy Practice Act or rules  
25 of the board adopted pursuant to that act and filed in

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1 accordance with the State Rules Act.

2 C. Disciplinary proceedings may be instituted by  
3 sworn complaint of any individual, including members of the  
4 board, and shall conform with the provisions of the Uniform  
5 Licensing Act.

6 D. The board shall establish the guidelines for the  
7 disposition of disciplinary cases. Guidelines may include  
8 minimum and maximum fines, periods of probation, conditions of  
9 probation or reissuance of a license.

10 E. Licensees who have been found culpable and  
11 sanctioned by the board shall be responsible for the payments  
12 of all costs of the disciplinary proceedings."

13 SECTION 8. Section 61-12C-24.1 NMSA 1978 (being Laws  
14 2019, Chapter 40, Section 13) is amended to read:

15 "61-12C-24.1. DENIAL OF LICENSE.--

16 A. Pursuant to the Uniform Licensing Act, the board  
17 may deny the issuance of a massage therapist license or a  
18 massage therapy establishment license to an applicant.

19 B. The board has authority to take an action set  
20 forth in Section 61-1-3 NMSA 1978 upon a finding by the board  
21 that the applicant:

22 (1) is guilty of fraud, deceit or  
23 misrepresentation;

24 (2) attempted to use as the applicant's own  
25 the license of another;

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1 (3) allowed the use by another of the  
2 applicant's license issued in another jurisdiction;

3 (4) has been adjudicated as mentally  
4 incompetent by regularly constituted authorities;

5 (5) has been convicted of a crime that  
6 substantially relates to the qualifications, functions or  
7 duties of a massage therapist. A copy of the record of  
8 conviction, certified by the clerk of the court entering the  
9 conviction, is conclusive evidence of conviction;

10 (6) is guilty of unprofessional or unethical  
11 conduct or a violation of the code of ethics;

12 (7) is habitually or excessively using  
13 controlled substances or alcohol;

14 (8) is guilty of false, deceptive or  
15 misleading advertising;

16 (9) is guilty of aiding, assisting or  
17 advertising the practice of massage therapy in New Mexico  
18 without a New Mexico license;

19 (10) is grossly negligent or incompetent in  
20 the practice of massage therapy;

21 (11) has had a license to practice massage  
22 therapy revoked, suspended or denied in any jurisdiction,  
23 territory or possession of the United States or another country  
24 for acts of the applicant similar to acts described in this  
25 section. A certified copy of the ~~[record of conviction]~~ order

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1 of revocation, suspension or denial shall be conclusive  
2 evidence of the [~~conviction~~] revocation, suspension or denial;  
3 [~~or~~]

4 (12) has performed massage therapy at or has  
5 maintained, managed or operated a massage therapy establishment  
6 that is not licensed pursuant to the Massage Therapy Practice  
7 Act; or

8 [~~(12)~~] (13) is guilty of failing to comply  
9 with a provision of the Massage Therapy Practice Act or rules  
10 of the board adopted pursuant to that act and filed in  
11 accordance with the State Rules Act."

12 SECTION 9. Section 61-12C-27 NMSA 1978 (being Laws 1993,  
13 Chapter 173, Section 20, as amended) is amended to read:

14 "61-12C-27. OFFENSES--CRIMINAL PENALTIES.--An individual  
15 who does any of the following is guilty of a misdemeanor and  
16 shall be sentenced pursuant to Section 31-19-1 NMSA 1978:

17 A. violates a provision of the Massage Therapy  
18 Practice Act or rules adopted pursuant to that act;

19 B. renders or attempts to render massage therapy  
20 services without the required current valid license issued by  
21 the board; [~~or~~]

22 C. maintains, manages or operates a massage therapy  
23 establishment that is not licensed pursuant to the Massage  
24 Therapy Practice Act; or

25 [~~G-~~] D. advertises or uses a designation, diploma

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1 or certificate implying that the individual is a massage  
2 therapist or massage therapy school unless the individual holds  
3 a current valid license or registration issued by the board."

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