

HOUSE BILL No. 2184

By Committee on Health and Human Services

2-7

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. 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) "Board" means the state board of healing arts.

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

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

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

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

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

36 (1) Medical or nursing diagnosis of injury, illness or disease;

- 1 (2) therapeutic exercise;
- 2 (3) chiropractic diagnosis of injury, illness or disease and treatment
- 3 including chiropractic joint adjustment;
- 4 (4) physical therapy joint mobilization or manipulation;
- 5 (5) electrical stimulation or application of ultrasound; or
- 6 (6) dispensing or issuing prescriptions or pharmaceutical agents.
- 7 (g) "Massage therapy services" include, but are not limited to:

8 (1) Development, implementation and modification of a massage

9 therapy treatment plan that addresses the client's soft tissue manifestations,

10 needs and concerns, including identifying indications, contraindications

11 and precautions of massage therapy within the scope of the massage

12 therapist licensure act;

13 (2) obtaining informed consent regarding the risks and benefits of the

14 massage therapy treatment plan and application and modification of the

15 massage therapy treatment plan as needed;

16 (3) using effective interpersonal communication in the professional

17 relationship;

18 (4) utilizing an ethical decision-making process that conforms to the

19 ethical standards of the profession, as set forth in the massage therapist

20 licensure act and in rules and regulations of the board;

21 (5) establishing and maintaining a practice environment that provides

22 for the client's health, safety and comfort; and

23 (6) establishing and maintaining client records, professional records

24 and business records in compliance with standards of professional conduct

25 as required by rules and regulations of the board.

26 Sec. 3. (a) Upon application to the board and the payment of the

27 required fees, an applicant for a license as a massage therapist may be

28 licensed as a massage therapist if the applicant meets all the requirements

29 of the massage therapist licensure act and provides documentation

30 acceptable to the board that the applicant:

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

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

33 (3) has no other record of disqualifying conduct as defined by the

34 board;

35 (4) has successfully completed a course of instruction approved by

36 the board consisting of at least 500 in-classroom hours of supervised

37 instruction, including massage therapy technique and theory,

38 contraindications, ethics, sanitation, hygiene, business training, anatomy,

39 physiology and pathology; and

40 (5) has successfully passed, including prior to the effective date of the

41 massage therapist licensure act, a nationally recognized competency

42 examination in massage therapy that meets acceptable psychometric

43 principles, is statistically validated through a job-task analysis under

1 current standards for educational and professional testing and has been
2 approved by the board.

3 Sec. 4. Prior to July 1, 2021, the board shall issue a license as a
4 massage therapist to any individual who meets the requirements of section
5 2(a)(1), (2) and (3), and amendments thereto, and one of the following
6 requirements verified to the board by affidavit:

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

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

13 (c) the individual has practiced massage therapy for at least three
14 years;

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

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

21 Sec. 5. (a) The board may issue a license to practice massage therapy
22 as a licensed massage therapist to an applicant who has been duly licensed
23 as a massage therapist by examination under the laws of another state,
24 territory, the District of Columbia or a foreign country if, in the opinion of
25 the board, the applicant meets the qualifications required for licensure as a
26 massage therapist in this state. Verification of the applicant's licensure
27 status shall be required from the original state of licensure.

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

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

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

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

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

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

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

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

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

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

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

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

1 Sec. 7. (a) A person licensed under the massage therapist licensure act
2 as a massage therapist shall:

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

5 (2) be authorized to use words that indicate that such person is a
6 massage therapist licensed under the massage therapist licensure act,
7 including: "Massage therapist," "massagist," "massotherapist,"
8 "myotherapist," "body therapist," "massage technician," "massage
9 practitioner," "masseur," "masseuse" or any derivation thereof.

10 (b) On and after September 1, 2021, it shall be unlawful for any
11 person who is not licensed under the massage therapist licensure act as a
12 massage therapist or whose license has been suspended, revoked or lapsed
13 to promote oneself to the public in any manner as a licensed massage
14 therapist or to engage in the practice of massage therapy. A violation of
15 this subsection is a class B person misdemeanor. In addition, a violation of
16 this subsection also constitutes an unconscionable act or practice in
17 violation under K.S.A. 50-627, and amendments thereto, whether or not it
18 involves a consumer, a consumer transaction or a supplier, as defined in
19 K.S.A. 50-624, and amendments thereto. Notwithstanding the provisions
20 of K.S.A. 50-634, and amendments thereto, no private right of action
21 under the Kansas consumer protection act may be brought alleging a
22 violation of this subsection.

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

27 Sec. 8. (a) An advisory committee of six members, two board
28 members and four non-board members, shall be established by the board
29 to advise and assist the board in implementing the massage therapist
30 licensure act as determined by the board. The advisory committee shall
31 meet at least annually. Members of the advisory committee shall receive
32 amounts provided for in K.S.A. 75-3223(e), and amendments thereto, for
33 each day of actual attendance at any meeting of the advisory committee or
34 any subcommittee meeting of the advisory committee authorized by the
35 board.

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

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

4 Application fee, not more than.....	\$80
5 Temporary permit fee, not more than.....	25
6 License renewal fee, not more than.....	75
7 License reinstatement fee, not more than.....	80
8 Certified copy of license, not more than.....	25
9 Written verification of license, not more than.....	30
10 Inactive license fee, not more than.....	20

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

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

21 Sec. 10. (a) All licenses issued under the provisions of the massage
22 therapist licensure act, whether initial or renewal, shall expire every two
23 years. The expiration date shall be established by rules and regulations of
24 the board. The board shall send a notice for renewal of license to every
25 massage therapist at least 60 days prior to the expiration date of such
26 person's license. Every person so licensed who desires to renew such
27 license shall file with the board, on or before the date of expiration of such
28 license, a renewal application together with the prescribed biennial
29 renewal fee. Every licensee who is no longer engaged in the active practice
30 of massage therapy may so state by affidavit and submit such affidavit
31 with the renewal application. An inactive license may be requested along
32 with payment of a fee fixed by rules and regulations of the board. Except
33 for the first renewal for a license that expires within 30 months following
34 licensure examination or for renewal of a license that expires within the
35 first nine months following licensure by reinstatement or endorsement,
36 every licensee with an active massage therapy license shall submit with the
37 renewal application evidence of satisfactory completion of a program of
38 continuing massage therapy education.

39 (b) The board shall require as a condition for renewal of a license
40 completion of no more than 24 hours biennially of continuing education
41 approved by the board in rules and regulations. Upon receipt of such
42 application, payment of fee and evidence of satisfactory completion of the
43 required program of continuing massage therapy education and upon being

1 satisfied that the applicant meets the requirements set forth by law in effect
2 at the time of initial licensure of the applicant, the board shall verify the
3 accuracy of the application and grant renewal of the license.

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

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

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

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

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

26 (2) As used in this subsection, "conviction" means:

27 (A) The entry of a plea or verdict of guilty or a conviction following a
28 plea of nolo contendere and without regard to whether the sentence was
29 suspended or probation granted after such conviction;

30 (B) a forfeiture of bail, bond or collateral deposited to secure a
31 defendant's appearance, in court, if such forfeiture has not been vacated;

32 (C) entering into a diversion agreement in lieu of further criminal
33 proceedings alleging a violation of any offense specified by the board in
34 rules and regulations.

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

1 and the applicant's criminal history for purposes of verifying the identity of
2 any applicant and in making the official determination of character and
3 fitness of the applicant for any licensure to practice massage therapy in
4 this state.

5 (2) Local and state law enforcement officers and agencies shall assist
6 the board in the taking and processing of fingerprints of applicants to
7 practice massage therapy in this state and shall release all records of an
8 applicant's adult convictions and nonconvictions to the board.

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

15 Sec. 11. (a) The board may refuse to grant licensure to, or may
16 suspend, revoke, condition, limit, qualify or restrict the licensure issued
17 under the massage therapist licensure act of any individual whom the
18 board, after the opportunity for a hearing, determines:

19 (1) Is incompetent to practice massage therapy or is found to engage
20 in the practice of massage therapy in a manner harmful or dangerous to a
21 client or to the public;

22 (2) is convicted by a court of competent jurisdiction of a felony or a
23 misdemeanor crime against persons, even if not practice-related;

24 (3) is currently listed on a child abuse registry or an adult protective
25 services registry as the result of a substantiated finding of abuse or neglect
26 by any state agency, agency of another state or the United States, territory
27 of the United States or another country and the applicant or licensee has
28 not demonstrated to the board's satisfaction that such person has been
29 sufficiently rehabilitated to merit the public trust;

30 (4) has violated a provision of the massage therapist licensure act or
31 one or more of the rules and regulations of the board;

32 (5) has obtained or attempted to obtain a license or license renewal by
33 bribery or fraudulent representation;

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

36 (7) has failed to obtain continuing education credits required by rules
37 and regulations of the board;

38 (8) has been found guilty of unprofessional conduct as defined by
39 rules and regulations of the board; or

40 (9) has had a registration, license or certificate as a massage therapist
41 revoked, suspended or limited, or has had other disciplinary action taken,
42 or an application for registration, license or certificate denied by the proper
43 regulatory authority of another state, territory, the District of Columbia or

1 another country, with a certified copy of the record of the action of the
2 other jurisdiction being conclusive evidence thereof.

3 (b) Upon filing of a sworn complaint with the board charging a
4 person with having been guilty of any of the unlawful practices specified
5 in subsection (a), two or more members of the board shall investigate the
6 charges, or the board may designate and authorize an employee or
7 employees of the board to conduct an investigation. After investigation,
8 the board may institute charges. If an investigation, in the opinion of the
9 board, reveals reasonable grounds for believing the applicant or licensee is
10 guilty of the charges, the board shall fix a time and place for proceedings,
11 which shall be conducted in accordance with the provisions of the Kansas
12 administrative procedure act.

13 (c) No person shall be excused from testifying in any proceedings
14 before the board under the massage therapist licensure act or in any civil
15 proceedings under this act before a court of competent jurisdiction on the
16 ground that such testimony may incriminate the person testifying, but such
17 testimony shall not be used against the person for the prosecution of any
18 crime under the laws of this state, except the crime of perjury as defined in
19 K.S.A. 2018 Supp. 21-5903, and amendments thereto.

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

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

42 (f) The board, in addition to any other penalty prescribed in
43 subsection (a), may assess a civil fine, after proper notice and an

1 opportunity to be heard, against a licensee for unprofessional conduct in an
2 amount not to exceed \$1,000 for the first violation, \$2,000 for the second
3 violation and \$3,000 for the third violation and for each subsequent
4 violation. All fines assessed and collected under this section shall be
5 remitted to the state treasurer in accordance with the provisions of K.S.A.
6 75-4215, and amendments thereto. Upon receipt of each such remittance,
7 the state treasurer shall deposit the entire amount in the state treasury to
8 the credit of the state general fund.

9 (g) The board, upon request, shall receive from the Kansas bureau of
10 investigation such criminal history record information relating to arrests
11 and criminal convictions as necessary for the purpose of determining
12 initial and continuing qualifications of licensees and applicants for
13 licensure by the board.

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

25 Sec. 13. A local unit of government shall not establish or maintain
26 professional licensing requirements for a massage therapist licensed under
27 the massage therapist licensure act. Nothing in the massage therapist
28 licensure act shall affect local zoning requirements. Local government law
29 enforcement agencies may inspect massage therapy registrations and the
30 business premises where massage therapy is practiced for compliance with
31 applicable laws. Nothing in this section shall be construed to preclude
32 criminal prosecution for a violation of any criminal law. If such inspection
33 reveals the practice of massage therapy by a person without a valid license,
34 the person may be charged with a violation of section 6(b), and
35 amendments thereto, and the board shall be notified.

36 Sec. 14. (a) When it appears to the board that any person is violating
37 any of the provisions of the massage therapist licensure act, the board may
38 bring an action in the name of the state of Kansas in a court of competent
39 jurisdiction for an injunction against such violation without regard to
40 whether proceedings have been or may be instituted before the board or
41 whether criminal proceedings have been or may be instituted.

42 (b) The provisions of this section shall take effect on and after
43 September 1, 2021.

1 Sec. 15. All state agency adjudicative proceedings under the massage
2 therapist licensure act shall be conducted in accordance with the
3 provisions of the Kansas administrative procedure act and shall be
4 reviewable in accordance with the Kansas judicial review act.

5 Sec. 16. Professional liability insurance coverage shall be maintained
6 in effect by each massage therapist as a condition to rendering professional
7 service as a massage therapist in this state. An applicant for initial or
8 renewal licensure shall provide proof to the board that the applicant
9 currently has professional liability insurance with minimum coverage of
10 \$2,000,000 per claim and \$6,000,000 in aggregate.

11 Sec. 17. On the effective date of this section, nothing in the massage
12 therapist licensure act or in the provisions of K.S.A. 40-2,100 through 40-
13 2,105, and amendments thereto, or K.S.A. 2018 Supp. 40-2,105a through
14 40-2,105d, and amendments thereto, shall be construed to require that any
15 individual, group or blanket policy of accident and sickness, medical or
16 surgical expense insurance coverage or any provision of a policy, contract,
17 plan or agreement for medical service issued on or after the effective date
18 of this act, reimburse or indemnify a person licensed under the massage
19 therapist licensure act for services provided as a massage therapist.

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