

## HOUSE BILL No. 2564

By Committee on Health and Human Services

1-27

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1 AN ACT enacting the massage therapist licensure act; providing for  
2 powers, duties and functions of the state board of healing arts.

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

5 Section 1. As used in this act:

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

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

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

14 (d) "Advertise" means, but is not limited to, the issuing or causing to  
15 be distributed of any card, sign, direct mail piece or other device, or  
16 causing or permitting a display of any sign or marking on or in any  
17 building or structure, or publishing in any newspaper, magazine or  
18 directory, or announcement on radio, or announcement or display on  
19 television, computer network or electronic or telephonic medium.

20 (e) "Massage therapist" means a person who meets the requirements  
21 of this act and who engages in the practice of massage therapy.

22 (f) "Practice of massage therapy" means the care and services  
23 provided by a massage therapist in a system of therapeutic, structured  
24 touch, palpation or movement of the soft tissue of another person's body in  
25 order to enhance or restore the general health and well-being of the  
26 recipient.

27 (1) Such system includes, but is not limited to:

28 (A) Techniques such as effleurage, commonly called stroking or  
29 gliding; petrissage, commonly called kneading; tapotement or percussion;  
30 friction, vibration, compression;

31 (B) passive and active stretching within the normal anatomical range  
32 of movement;

33 (C) hydromassage;

34 (D) thermal massage; or

35 (E) such techniques may be applied with or without the aid of  
36 lubricants, salt or herbal preparations, water, heat or a massage device that

- 1 mimics or enhances the actions possible by human hands.
- 2 (2) "Massage" or "massage therapy" does not include:
- 3 (A) Diagnosis of injury, illness or disease;
- 4 (B) therapeutic exercise;
- 5 (C) chiropractic joint adjustment;
- 6 (D) physical therapy joint mobilization or manipulation;
- 7 (E) electrical stimulation or application of ultrasound; or
- 8 (F) dispensing or issuing prescriptions or pharmaceutical agents.
- 9 (g) "Massage therapy services" include, but are not limited to:
- 10 (1) Development, implementation and modification of a massage
- 11 therapy treatment plan that addresses client soft tissue manifestations,
- 12 needs and concerns, including identifying indications, contraindications
- 13 and precautions of massage therapy within the scope of the act;
- 14 (2) obtaining informed consent regarding the risks and benefits of the
- 15 massage therapy treatment plan and application and modification of the
- 16 massage therapy treatment plan as needed;
- 17 (3) using effective interpersonal communication in the professional
- 18 relationship;
- 19 (4) utilizing an ethical decision making process that conforms to the
- 20 ethical standards of the profession, as set forth in this act and in the codes
- 21 of ethics of massage therapy professional associations;
- 22 (5) establishing and maintaining a practice environment that provides
- 23 for the client's safety and comfort; or
- 24 (6) establishing and maintaining client records, professional records
- 25 and business records in compliance with standards of professional
- 26 conduct.
- 27 Sec. 2. (a) Upon application to the board and the payment of the
- 28 required fees, an applicant for a license as a massage therapist may be
- 29 licensed as a massage therapist if the applicant meets all the requirements
- 30 of this act and provides documentation acceptable to the board that the
- 31 applicant:
- 32 (1) Has obtained a high school diploma or equivalent;
- 33 (2) is 18 years of age or older;
- 34 (3) is of good moral character as defined by the board according to
- 35 this act;
- 36 (4) has successfully completed an approved course of instruction
- 37 consisting of at least 500 of in-classroom hours of supervised instruction,
- 38 including massage therapy technique and theory, contraindications, ethics,
- 39 sanitation, hygiene, business training, anatomy, physiology and
- 40 pathology; and
- 41 (5) has successfully passed a nationally recognized competency
- 42 examination in massage that meets acceptable psychometric principles, is
- 43 statistically validated through a job-task analysis under current standards

1 for educational and professional testing and has been approved by the  
2 board. The passage of this exam may have occurred prior to the effective  
3 date of this act.

4 (b) All licensed massage therapists shall report to the board any name  
5 change or changes in business and home addresses within 30 days of such  
6 a change.

7 Sec. 3. Prior to July 1, 2014, the board may issue a license as a  
8 massage therapist to any individual who meets the requirements of  
9 subsection (a)(1), (2) and (3) of section 2, and amendments thereto, and  
10 one of the following requirements:

11 (1) The individual has completed a minimum 500 hours of instruction  
12 relating to massage therapy at a massage school or comparable legal  
13 authority in another state;

14 (2) the individual has completed at least 300 hours of training in  
15 massage therapy for at least three years prior to the date of application;

16 (3) the individual has practiced for at least five years prior to the date  
17 of application;

18 (4) the individual has been an active member in good standing as a  
19 massage therapist for a period of at least 12 months, of a professional  
20 massage association or organization that has been in existence for at least  
21 10 years. Such membership may have been any time prior to the effective  
22 date of this act; or

23 (5) the individual has successfully passed an examination meeting the  
24 requirements of subsection (a)(5) of section 2 or passage of a national  
25 certification examination. The passage of these examinations may have  
26 occurred prior to the effective date of this section.

27 Sec. 4. The board may grant a license as a massage therapist without  
28 examination for licensure to any person who, at the time of application,  
29 holds a massage therapy state license or state certification in massage  
30 therapy, or both, in good standing, if the requirements for such licensure  
31 or certification were substantially equivalent to the requirements of this  
32 act, and upon payment of a fee to be determined by the board.

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

42 (b) Nothing in this act shall prohibit:

43 (1) The practice of massage therapy by a person employed by the

1 government of the United States while the person is engaged in the  
2 performance of duties prescribed by the laws and regulations of the United  
3 States;

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

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

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

18 (5) persons giving massage to members of such person's immediate  
19 or extended family without compensation;

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

23 (7) members of any church practicing their religious tenants;

24 (8) the practice of any person in this state who uses touch, words and  
25 directed movement to deepen awareness of existing patterns of movement  
26 in the body as well as to suggest new possibilities of movement while  
27 engaged within the scope of practice of a profession provided that their  
28 services are not designated or implied to be massage or massage therapy.  
29 Such practices include, but are not limited to, the Feldenkrais method of  
30 somatic education, the Trager approach to movement education, and body-  
31 mind centering;

32 (9) The practice of any person in this state who uses touch to affect  
33 the energy systems, acupoints or qi meridians (channels of energy) of the  
34 human body while engaged within the scope of practice of a profession,  
35 provided that their services are not designated or implied to be massage or  
36 massage therapy. Such practices include, but are not limited to, polarity,  
37 polarity therapy, polarity bodywork therapy, Asian bodywork therapy,  
38 acupressure, jin shin do, qi gong, reiki and shiatsu; or

39 (10) Persons engaged in the profession of structural integration,  
40 restoring postural balance and functional ease by integrating the body in  
41 gravity based on a system of fascial manipulation, awareness, and  
42 education developed by Dr. Ida P. Rolf, provided their services are not  
43 designated or implied to be massage or massage therapy. Such practices

1 include, but are not limited to, rolfing structural integration, the guild for  
2 structural integration and Hellerwork.

3 Sec. 6. (a) A person licensed under this act as a massage therapist  
4 shall:

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

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

12 (b) On and after September 1, 2013, it shall be unlawful for any  
13 person who is not licensed under this act as a massage therapist or whose  
14 license has been suspended or revoked to promote oneself to the public in  
15 any manner as a licensed massage therapist. A violation of this subsection  
16 (b) shall constitute a class B person misdemeanor.

17 (c) No statute granting authority to persons licensed or registered by  
18 the state board of healing arts shall be construed to confer authority upon a  
19 massage therapist to engage in any activity not conferred by this act.

20 Sec. 7. (a) There is established a massage therapy advisory council  
21 to advise the board in carrying out the provisions of this act. The council  
22 shall consist of five members, all citizens and residents of the state of  
23 Kansas appointed as follows: Three members shall be massage therapists  
24 appointed by the state board of healing arts; one member shall be the  
25 president of the state board of healing arts or a person designated by the  
26 president; and one member appointed by the governor shall be from the  
27 public sector who is not engaged, directly or indirectly, in the provision of  
28 health services. Insofar as possible persons appointed to the council shall  
29 be from different geographic areas. No more than one member can be an  
30 owner of a massage school. If a vacancy occurs on the council, the  
31 appointing authority of the position which has become vacant shall appoint  
32 a person of like qualifications to fill the vacant position for the unexpired  
33 term, if any. The members of the council appointed by the governor shall  
34 be appointed for terms of three years and until a successor is appointed.  
35 The members appointed by the state board of healing arts shall serve at the  
36 pleasure of the state board of healing arts. If a member is designated by the  
37 president of the state board of healing arts, the member shall serve at the  
38 pleasure of the president.

39 (b) Members of the council attending meetings of the council, or  
40 attending a subcommittee meeting thereof authorized by the council, shall  
41 be paid amounts provided in subsection (e) of K.S.A. 75-3223, and  
42 amendments thereto, from the healing arts fee fund.

43 Sec. 8. The board shall charge and collect in advance fees provided

1 for in this act as fixed by the board by rules and regulations, subject to the  
2 following limitations:

3	Application fee, not more than.....	\$80
4	Temporary license fee, not more than.....	\$25
5	License renewal fee, not more than.....	\$75
6	License late renewal additional fee, not more than.....	\$75
7	License reinstatement fee, not more than.....	\$80
8	Certified copy of license, not more than.....	\$15
9	Written verification of license, not more than.....	\$25

10 Sec. 9. (a) The board may deny, refuse to renew, suspend, revoke or  
11 limit a license or the licensee may be publicly or privately censured where  
12 the licensee or applicant for licensure has been guilty of unprofessional  
13 conduct which has endangered or is likely to endanger the health, welfare  
14 or safety of the public. Unprofessional conduct includes:

15 (1) Obtaining a license by means of fraud, misrepresentation or  
16 concealment of material facts;

17 (2) being guilty of unprofessional conduct as defined by rules and  
18 regulations adopted by the board;

19 (3) being convicted of a felony if the acts for which such person was  
20 convicted are found by the board to have a direct bearing on whether such  
21 person should be entrusted to serve the public in the capacity of a  
22 naturopathic doctor;

23 (4) violating any lawful order or rule and regulation of the board; and

24 (5) violating any provision of this act.

25 (b) Such denial, refusal to renew, suspension, revocation or limitation  
26 of a license or public or private censure of a licensee may be ordered by  
27 the board after notice and hearing on the matter in accordance with the  
28 provisions of the Kansas administrative procedure act. Upon the end of the  
29 period of time established by the board for the revocation of a license,  
30 application may be made to the board for reinstatement. The board shall  
31 have discretion to accept or reject an application for reinstatement and may  
32 hold a hearing to consider such reinstatement. An application for  
33 reinstatement of a revoked license shall be accompanied by the license  
34 renewal fee and the license reinstatement fee established under section 7,  
35 and amendments thereto.

36 (c) The board, in addition to any other penalty prescribed in  
37 subsection (a), may assess a civil fine, after proper notice and an  
38 opportunity to be heard, against a licensee for unprofessional conduct in an  
39 amount not to exceed \$5,000 for the first violation, \$10,000 for the second  
40 violation and \$15,000 for the third violation and for each subsequent  
41 violation. All fines assessed and collected under this section shall be  
42 remitted to the state treasurer in accordance with the provisions of K.S.A.  
43 75-4215, and amendments thereto. Upon receipt of each such remittance,

1 the state treasurer shall deposit the entire amount in the state treasury to  
2 the credit of the state general fund.

3 Sec. 10. (a) Licenses issued under this act shall expire on the date  
4 of expiration established by rules and regulations of the board unless  
5 renewed in the manner prescribed by the board. The request for renewal  
6 shall be accompanied by the license renewal fee established under section  
7 7, and amendments thereto. The board may establish additional  
8 requirements for license renewal which provide evidence of continued  
9 competency. The board shall require as a condition for renewal of a license  
10 completion of no more than 6 hours annually of continuing education  
11 approved by the board.

12 (b) At least 30 days before the expiration of a license, the board shall  
13 notify the licensee of the expiration by mail addressed to the licensee's last  
14 mailing address as noted upon the office records. If the licensee fails to  
15 pay the renewal fee by the date of expiration, the licensee shall be given a  
16 second notice that the license has expired and the license may be renewed  
17 only if the license renewal fee and the late renewal fee are received by the  
18 board within the thirty-day period following the date of expiration and  
19 that, if both fees are not received within the thirty-day period, the license  
20 shall be deemed canceled by operation of law without further proceedings  
21 for failure to renew and shall be reissued only after the license has been  
22 reinstated under subsection (c).

23 (c) Any license canceled for failure to renew as herein provided may  
24 be reinstated upon recommendation of the board and upon payment of the  
25 license reinstatement fee and upon submitting evidence of satisfactory  
26 completion of any applicable continuing education requirements  
27 established by the board. The board shall adopt rules and regulations  
28 establishing appropriate continuing education requirements for  
29 reinstatement of licenses canceled for failure to renew.

30 (d) A person whose license is suspended shall not engage in any  
31 conduct or activity in violation of the order or judgment by which the  
32 license was suspended.

33 Sec. 11. (a) The board shall remit all moneys received by or for it  
34 from fees, charges or penalties to the state treasurer in accordance with the  
35 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of  
36 each such remittance, the state treasurer shall deposit the entire amount in  
37 the state treasury. Ten percent of each such deposit shall be credited to the  
38 state general fund and the balance shall be credited to the healing arts fee  
39 fund. All expenditures from such fund shall be made in accordance with  
40 appropriation acts upon warrants of the director of accounts and reports  
41 issued pursuant to vouchers approved by the president of the board or by a  
42 person designated by the president of the board.

43 Sec. 12. On and after the effective date of this act, a local unit of

1 government shall not establish or maintain professional licensing  
2 requirements for a massage therapist licensed under this act. Nothing in  
3 this act shall affect local zoning requirements.

4 Sec. 13. (a) When it appears to the board that any person is  
5 violating any of the provisions of this act, the board may bring an action in  
6 the name of the state of Kansas in a court of competent jurisdiction for an  
7 injunction against such violation without regard to whether proceedings  
8 have been or may be instituted before the board or whether criminal  
9 proceedings have been or may be instituted.

10 (b) The provisions of this section shall take effect on and after  
11 September 1, 2013.

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

16 Sec. 15. Professional liability insurance coverage shall be maintained  
17 in effect by each massage therapist as a condition to rendering professional  
18 service as a massage therapist in this state. The board shall fix by rules and  
19 regulations the minimum level of coverage for such professional liability  
20 insurance.

21 Sec. 16. On the effective date of this act, nothing in the massage  
22 therapist licensure act or in the provisions of K.S.A. 40-2,100 through 40-  
23 2,105, and amendments thereto, or K.S.A. 2011 Supp. 40-2,105a through  
24 40-2,105d, and amendments thereto, shall be construed to require that any  
25 individual, group or blanket policy of accident and sickness, medical or  
26 surgical expense insurance coverage or any provision of a policy, contract,  
27 plan or agreement for medical service issued on or after the effective date  
28 of this act, reimburse or indemnify a person licensed under the massage  
29 therapist licensure act for services provided as a massage therapist.

30 Sec. 17. The provisions of subsection (f) of K.S.A. 65-2872, and  
31 amendments thereto, shall not apply to a licensed massage therapist under  
32 this act.

33 Sec. 18. This act shall be known and may be cited as the massage  
34 therapist licensure act.

35 Sec. 19. This act shall take effect and be in force from and after July  
36 1, 2013, and its publication in the statute book.

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