AN ACT concerning the state board of healing arts; relating to the licensure of acupuncturists.

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

Section 1. Sections 1 through 20, and amendments thereto, shall be known and may be cited as the acupuncture and oriental medicine practice act.

Sec. 2. As used in sections 1 through 20, and amendments thereto:
(a) "Act" means the acupuncture and oriental medicine practice act.
(b) "Acupuncture" means the insertion of fine metal needles through the skin at specific points on or near the surface of the body with or without the palpation of specific points on the body and with or without the application of electric current or heat to the needles or skin or both to treat human disease and impairment and to relieve pain. Acupuncture also refers to a form of health care that is based on a theory of energetic physiology that describes and explains the interrelationship of bodily organs or functions with an associated acupuncture point or combination of points that are stimulated in order to restore the normal function of the bodily organ or function.
(c) "Acupuncturist" means any person licensed by the board in the practice of acupuncture or oriental medicine and who provides for compensation or holds oneself out to the public as a practitioner of acupuncture or oriental medicine. Acupuncturists may collaborate with other health professionals in providing health care.
(d) "Biofeedback device" means an instrument that is used to detect and amplify internal physiological processes and mental functioning, but does not pierce or cut the skin.
(e) "Board" means the state board of healing arts.
(f) "Council" means the acupuncture and oriental medicine council.
(g) "Herbal and animal-based substances" means substances of animal, vegetable or mineral origin for health maintenance and the treatment of effects of disease.
(h) "Homeopathic preparations" means substances and drugs prepared according to the official homeopathic pharmacopoeia recognized by the United States food and drug administration.
(i) "NCCAOM" means the national certification commission for
acupuncture and oriental medicine. NCCAOM is a national organization
that validates competency in the practice of acupuncture and oriental
medicine through the administration of professional certification
examinations.

(j) "Nutritional supplement" means a nutritional substance, including
a concentrate or extract of such a substance.

(k) "Oriental medicine" means the distinct system of health care that
uses health techniques of oriental medicine, both traditional and modern,
to diagnose, evaluate, examine, manage and treat for the prevention, cure
or correction of disease, illness, injury, pain or other physical or mental
condition by controlling and regulating the flow and balance of energy,
form and function to restore, promote and maintain health.

(l) "Physical modalities" means the use of any physical, chemical,
electrical and other noninvasive modalities, including, but not limited to,
heat, cold, air, light, gravity, water in any of its forms, sound, vibration,
pressure, magnetism, electricity, electromagnetic energy, suction,
therapeutic exercise and manual therapy.

(m) "Physician" means a person licensed to practice medicine and
surgery under the Kansas healing arts act.

(n) "Practice of acupuncture" means the use of needles or of oriental
medicine therapies for the purpose of normalizing energetic physiological
functions including pain control and for the promotion, maintenance and
restoration of health.

(1) Needles used in the practice of acupuncture shall only be
prepackaged, single use and sterile acupuncture needles. These needles
shall only be used on an individual patient in a single treatment session
and disposed of according to federal standards for biohazard waste.

(2) The practice of acupuncture includes, but is not limited to:

(A) The use of physical modalities, procedures and devices, but does
not include the practice of osteopathy pursuant to the Kansas healing arts
act, and amendments thereto;

(B) the use, application or recommendation of therapeutic exercises,
breathing and exercise techniques, meditation and the use of biofeedback
devices;

(C) the practice of oriental medicine, but does not include
dispensing or administering of any controlled substances as defined in
K.S.A. 65-4101, and amendments thereto, or any prescription-only drugs;

(D) dietary and nutritional counseling based on traditional Chinese
medical principles;

(E) the recommendation, administration or dispensing of food,
vitamins, minerals, enzymes, homeopathic preparations, herbal and
animal-based substances, amino acids or nutritional supplements; or

(F) the recommendation, administration or dispensing of substances
of Chinese herbology pursuant to the requirements of section 3, and
amendments thereto.
(3) The practice of acupuncture does not mean:
(A) Osteopathic medicine and surgery or osteopathic manipulative
treatment; or
(B) the practice of chiropractic as defined by article 28 of chapter 65
of the Kansas Statutes Annotated, and amendments thereto.
Sec. 3. (a) (1) On and after July 1, 2012, except as otherwise
provided in this act, and amendments thereto, no person shall practice
acupuncture or oriental medicine unless such person possesses a current
and valid acupuncture license issued under this act, and amendments thereto.
(2) On and after July 1, 2012, except as otherwise provided in this
act, and amendments thereto, no person shall recommend, administer or
dispense substances of Chinese herbology unless such person:
(A) Holds a current and valid acupuncture license pursuant to this
act, and amendments thereto; and
(B) is a certified NCCAOM diplomate of Chinese herbology, a
certified NCCAOM diplomate of oriental medicine or has otherwise
demonstrated competency in Chinese herbology or oriental medicine as
recognized by the council and approved by the board.
(b) (1) No person shall depict oneself orally or in writing,
expressly or by implication, as a holder of a Kansas acupuncture license
who does not hold a current and valid acupuncture license under this act,
and amendments thereto.
(2) Only a person licensed under this act, and amendments thereto,
as an acupuncturist shall be entitled to use the following titles, as
appropriate: "Acupuncturist," "licensed acupuncturist," "oriental
medicine practitioner," "practitioner of acupuncture," "practitioner of
oriental medicine," abbreviations thereof or words similar to such titles or
the designated letters "L.Ac."
(3) Nothing in this section shall be construed to prohibit an
acupuncturist licensed under this act, and amendments thereto, from
listing or using in conjunction with their name any letters, words,
abbreviations or other insignia to designate any educational degrees,
certifications or credentials which such licensed acupuncturist has earned.
(4) Only a person licensed as an acupuncturist under this act, and
amendments thereto, shall be entitled, as appropriate, to represent oneself,
in any manner, as specializing in or practicing any form of oriental
medicine in the state of Kansas. This includes, but is not limited to,
Chinese medicine, Asian medicine and traditional Chinese medicine.
Sec. 4. (a) Nothing in this act, and amendments thereto, is intended
to limit, preclude or otherwise interfere with the practices of other health
care providers formally trained and licensed, registered, credentialed or
certified by appropriate agencies of the state of Kansas from performing
duties considered appropriate to their recognized scope of practice.
(b) The following shall be exempt from the requirement of an
acupuncture license pursuant to this act, and amendments thereto:
(1) A person licensed by another health professional licensing board
if the person confines the person's acts or practice to the scope of practice
authorized by the other health professional licensing laws and does not
represent to the public, directly or indirectly, that under this act, and
amendments thereto:
   (A) The person is licensed; or
   (B) through the usage of a name, title, or other designation, the
       person indicates licensure;
(2) any herbalist or herbal retailer who does not hold oneself out to
be a licensed acupuncturist;
(3) health care providers in the United States armed forces, federal
facilities and other military service when acting in the line of duty in this
state;
(4) any student, trainee, or visiting teacher of acupuncture, oriental
medicine or Chinese herbology who is designated as a student, trainee or
visiting teacher while participating in a course of study or training under
the supervision of an acupuncturist licensed under this act, and
amendments thereto, in a program that the council has approved. This
includes continuing education programs and any acupuncture, oriental
medicine or Chinese herbology programs that are a recognized route by
the NCCAOM to certification in acupuncture, oriental medicine or
Chinese herbology; and
(5) persons rendering assistance in the case of an emergency.
(c) This section shall take effect on and after July 1, 2012.
Sec. 5. (a) An applicant for licensure as an acupuncturist shall file
an application, on forms provided by the board, showing to the
satisfaction of the board that the applicant meets the following
requirements:
   (1) At the time of application such applicant is at least 18 years of
   age;
   (2) (A) has the status of a NCCAOM certified diplomate of
       acupuncture;
       (B) has the status of a NCCAOM certified diplomate of oriental
           medicine; or
       (C) has an equivalent status as recognized by the council and
           approved by the board;
   (3) demonstrates the ability to communicate in the English language
       as determined by regulations approved by the board if English is a second
language for the applicant; and
(4) has paid all the fees required for licensure prescribed in this act, and amendments thereto, which shall be nonrefundable.

(b) The board may issue a license to a person who has been in the active practice of acupuncture or oriental medicine in some other state, territory, the District of Columbia or other country upon certificate of the proper licensing authority of that state, territory, District of Columbia or other country certifying that the applicant is duly licensed, certified, or registered, that the applicant's license, certification, or registration has never been limited, suspended or revoked, that the licensee, certification or registration holder has never been censured or had other disciplinary action taken and that, so far as the records of such authority are concerned, the applicant is entitled to its endorsement. The applicant shall also present proof satisfactory to the board:

(1) That the state, territory, District of Columbia or country in which the applicant last practiced maintains standards at least equal to those maintained by Kansas;
(2) that the applicant's original license, certification or registration was based upon licensure, certification or registration requirements at least equal in quality to the state of Kansas licensure requirements pursuant to this section, and amendments thereto;
(3) of the date of the applicant's original and any and all endorsed licenses, certifications or registrations and the date and place from which any license, certification or registration was attained; and
(4) that the applicant has been actively engaged in acupuncture or oriental medicine under such license, certification or registration since issued, and if not, fix the time when and reason why the applicant was out of practice.

An applicant for license by endorsement shall not be granted a license unless such applicant's individual qualifications meet the state of Kansas requirements.

(d) A person whose license has been revoked may make written application to the board requesting reinstatement of the license in a manner prescribed by the board. An application for reinstatement of a license shall be accompanied by the fee provided for in section 8, and amendments thereto.

Sec. 6. (a) There is hereby created the designation of inactive license. The board is authorized to issue an inactive license to any licensee who makes written application for such license on a form provided by the board and remits the fee for an inactive license established pursuant to section 8, and amendments thereto.

(b) The board may issue an inactive license only to a person who meets all the requirements for a license to practice as an acupuncturist
and who does not engage in the active practice of acupuncture or oriental medicine in the state of Kansas.

(c) An inactive license shall not entitle the holder to engage in active practice. The provisions of section 7, and amendments thereto, relating to expiration, renewal, continuing education and reinstatement of a license shall be applicable to an inactive license issued under this subsection. Each inactive licensee may apply to engage in active practice by presenting a request required by section 5, and amendments thereto. The request shall be accompanied by the fee established pursuant to section 8, and amendments thereto.

(d) This section shall take effect on and after July 1, 2012.

Sec. 7. (a) Licenses issued under this act, and amendments thereto, shall expire on the date of expiration established by rules and regulations of the board unless renewed in the manner prescribed by the board. A request for the renewal of a license shall be accompanied by the renewal fee established pursuant to section 8, and amendments thereto.

(b) At least 30 days before the expiration of a licensee's license, the board shall notify the licensee of the licensure expiration by mail addressed to the licensee's last mailing address as noted upon the office records. If the licensee fails to submit an application for renewal of licensure on a form provided by the board, or fails to pay the renewal fee by the date of expiration, the board shall give a second notice to the licensee that the license has expired and the license may be renewed only if an application for renewal, a renewal fee, and a late renewal fee are received by the board within the 30-day period following the date of expiration and that, if both fees are not received within the 30-day period, the license shall be deemed canceled by operation of law and without further proceedings.

(c) The board may require any licensee to submit to a continuing education audit and provide to the board evidence of satisfactory completion of a program of continuing education required by rules and regulations of the board.

(d) Any license canceled for failure to renew may be reinstated upon recommendation of the board. An application for reinstatement of a license shall be on a form provided by the board, and shall be accompanied by payment of a reinstatement fee pursuant to section 8, and amendments thereto, and evidence of completion of any applicable continuing education requirements.

(e) The board, prior to renewal of a license, shall require the licensee, if in the active practice of acupuncture or oriental medicine within the state, to submit to the board evidence satisfactory to the board that the licensee is maintaining a policy of professional liability insurance. The board may require any licensee to provide to the board
evidence of malpractice insurance as required by rules and regulations of the board during an audit. The board shall fix by rules and regulations the minimum level of coverage for such professional liability insurance.

(f) This section shall take effect on and after July 1, 2012.

Sec. 8. (a) The board shall charge and collect in advance fees for acupuncturists as established by the board by rules and regulations, not to exceed:

- Application for licensure: $300
- Annual renewal of license: $300
- Paper renewal: $200
- On-line renewal: $200
- Late renewal of licensure:
  - Late paper renewal: $100
  - Late on-line renewal: $100
- Revoked licensure reinstatement: $325
- Application for inactive license: $300
- Renewal of inactive license: $75
- Conversion of inactive license to active: $150
- Certified copy of license: $25
- Written verification of license: $25

(b) If an examination is not administered by the board, the board may require that fees paid for any examination under the acupuncture and oriental medicine practice act, and amendments thereto, be paid directly to the examination service by the person taking the examination.

Sec. 9. The board shall remit all moneys received by or for the board from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of such amount shall be credited to the state general fund and the balance shall be credited to the healing arts fee fund. All expenditures from the healing arts fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or by a person or persons designated by the president.

Sec. 10. (a) There is established the acupuncture and oriental medicine council to assist the state board of healing arts in carrying out the provisions of this act, and amendments thereto. The council shall consist of five members, all citizens and residents of the state of Kansas appointed as follows:

(1) The board, with recommendation from the Kansas association of oriental medicine, shall appoint:
(A) Two members who are licensed as acupuncturists under this act, and amendments thereto; and
(B) one member who is licensed as an acupuncturist under this act, and amendments thereto, and is authorized to practice Chinese herbology pursuant to the requirements of section 3, and amendments thereto;
(2) one member shall be the president of the state board of healing arts or a person designated by the president; and
(3) the governor shall appoint one member from the public sector who is not engaged, directly or indirectly, in the provision of health services. Insofar as possible persons appointed to the council shall be from different geographic areas. If a vacancy occurs on the council, the appointing authority of the position which has become vacant shall appoint a person of like qualifications to fill the vacant position for the unexpired term, if any.
(b) The members of the council appointed by the governor shall be appointed for terms of three years and until a successor is appointed. The members appointed by the state board of healing arts shall serve at the pleasure of the state board of healing arts. If a member is designated by the president of the state board of healing arts, the member shall serve at the pleasure of the president.
(c) Acupuncturists initially appointed to the council must be eligible, as appropriate, for licensure pursuant to section 5, and amendments thereto. On and after July 1, 2012, new appointees, as appropriate, shall be licensed under the provisions of this act, and amendments thereto.
(d) The council shall meet at least once each year at a time and place of its choosing and at such other times as may be necessary on the chairperson's call or on the request of a majority of the council's members.
(e) A majority of the council constitutes a quorum. No action may be taken by the council except by affirmative vote of the majority of the members present and voting.
(f) Members of the council attending meetings of the council, or attending a subcommittee meeting thereof authorized by the council, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto, from the healing arts fee fund.
Sec. 11. The acupuncture and oriental medicine council shall advise the board regarding:
(a) Examination, licensing and other fees;
(b) rules and regulations to be adopted to carry the provisions of this act, and amendments thereto;
(c) the number of yearly continuing education hours required to maintain active licensure;
(d) changes and new requirements taking place in the areas of
acupuncture and oriental medicine; and
(e) such other duties and responsibilities as the board may assign.

Sec. 12. The board, with the advice and assistance of the
acupuncture and oriental medicine council, shall:
(a) Duly license and regulate applicants for licensure and keep a
roster of all such licensed individuals;
(b) adopt rules and regulations as may be necessary to administer the
provisions of this act, and amendments thereto, and prescribe forms
which shall be issued in the administration of this act, and amendments
thereto;
(c) establish standards for approval of an educational course of study
and clinical experience;
(d) establish criteria for continuing education; and
(e) establish standards of professional conduct, procedure for the
discipline of licensees and keep a record of all such proceedings.

Sec. 13. (a) The license of an acupuncturist may be limited,
suspended or revoked, or the licensee may be censured, reprimanded,
placed on probation, fined pursuant to K.S.A. 65-2863a, and amendments
thereto, assessed costs incurred by the board in conducting any
proceeding in which such licensee is the unsuccessful party, or otherwise
sanctioned by the board, or an application for licensure or reinstatement
of licensure may be denied if it is found that the licensee or applicant:
(1) Has committed an act of fraud or deceit in the procurement or
holding of a license;
(2) has been convicted of a felony or class A misdemeanor in a court
of competent jurisdiction, either within or outside of this state, unless the
conviction has been reversed and the licensee discharged or acquitted or
if the licensee has been pardoned with full restoration of civil rights in
which case the license shall be restored;
(3) is addicted to or has distributed intoxicating liquors or drugs for
other than lawful purposes;
(4) is found to be mentally or physically incapacitated to such a
degree that in the opinion of the board continued practice by the licensee
would constitute a danger to public health and safety;
(5) has aided and abetted a person who is not a licensee under this
act, and amendments thereto, or is not otherwise authorized to perform
the duties of a licensee;
(6) has had a license, certification, or registration to practice
acupuncture or oriental medicine revoked, suspended or limited, has been
censured or has had other disciplinary action taken by the proper
licensing, certification or registration authority of another state, territory,
District of Columbia, or other country; a certified copy of the record of an
action of the other jurisdiction being conclusive evidence thereof;
(7) has had an application for a license, certification or registration of acupuncture or oriental medicine denied, by the proper licensing, certifying, or registration authority of another state, territory, District of Columbia, or other country; a certified copy of the record of an action of the other jurisdiction being conclusive evidence thereof;

(8) has violated any provision of this act, and amendments thereto, rules and regulations promulgated by the board or any lawful order or directive of the board previously entered by the board;

(9) has committed an act of unprofessional conduct under criteria which the board may establish by rules and regulations; or

(10) is, or has been, found guilty of incompetence or negligence while performing as a license holder.

(b) The denial, refusal to renew, suspension, limitation, probation or revocation of a license or other sanction may be ordered by the board upon a finding of a violation of this act, and amendments thereto. All administrative proceedings conducted pursuant to this act, and amendments thereto, shall be in accordance with the provisions of the Kansas administrative procedure act, and amendments thereto, and shall be reviewable in accordance with the Kansas judicial review act, and amendments thereto.

(c) A person whose acupuncture license is suspended shall not engage in any conduct or activity in violation of the order by which the license was suspended.

(d) This section shall take effect on and after July 1, 2012.

Sec. 14. (a) The board shall have jurisdiction of proceedings to take disciplinary action against any licensee practicing under this act, and amendments thereto. Any such action shall be taken in accordance with the provisions of the Kansas administrative procedure act, and amendments thereto.

(b) Either before or after formal charges have been filed, the board and the licensee may enter into a stipulation which shall be binding upon the board and the licensee entering into such stipulation, and the board may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action against the licensee entering into such stipulation.

(c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act, and amendments thereto, if the board determines that there is cause to believe that grounds exist for disciplinary action against the licensee and that the licensee's continuation of practice would constitute an imminent danger
Sec. 15. (a) Professional liability insurance coverage shall be maintained in effect by each licensed acupuncturist and as a condition to rendering professional services as a licensed acupuncturist in the state of Kansas. The board shall fix by rules and regulations the minimum level of coverage for such professional liability insurance. 
(b) This section shall take effect on and after July 1, 2012.

Sec. 16. (a) The confidential relations and communications between a licensed acupuncturist and the acupuncturist's patient are placed on the same basis as provided by law as those between a physician and a physician's patient in K.S.A. 60-427, and amendments thereto. 
(b) The provisions of this section shall take effect on and after July 1, 2012.

Sec. 17. (a) When it appears that any person is violating any provision of this act, and amendments thereto, the board may bring an action in the name of the state in a court of competent jurisdiction for an injunction against such violation without regard as to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted. 
(b) This section shall take effect on and after July 1, 2012.

Sec. 18. On and after July 1, 2012, any violation of this act, and amendments thereto, shall constitute a class B misdemeanor.

Sec. 19. If any section of this act, and amendments thereto, or any part thereof, is adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder or any other section or part thereof.

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