

HOUSE BILL No. 1396

DIGEST OF INTRODUCED BILL

Citations Affected: IC 25-0.5-2-30; IC 25-21.8.

Synopsis: Massage therapists. Provides that an individual must be licensed by the state board of massage therapy (board) to practice massage therapy. (Under current law, massage therapists are certified by the board but certification is not required to practice massage therapy.) Provides that the massage therapy licensing requirements do not apply to individuals who meet certain requirements. Amends the definition of "massage therapy" to include certain acts. Amends the definition of "massage therapist" to include a person who offers massage therapy. Removes provisions that prohibit: (1) membership in a professional massage therapy association being a requirement to serve on the board; and (2) a limitation on the number of members of the board who may belong to the same professional massage therapy association. Removes the prohibition of a board member serving more than two consecutive terms. Requires: (1) that massage therapy instruction must be approved by the board; and (2) that a massage therapy school or program must be an accredited postsecondary proprietary educational institution. Provides that a person may not use certain titles or practice massage therapy without a license. Establishes certain prohibitions and requirements for massage therapy advertisements. Allows more restrictive local ordinances, resolutions, rules, and policies concerning massage therapist advertisements. Provides for the transition to licensure for massage therapists who are certified on June 30, 2016. Provides that the board may not grant licensure by endorsement to an individual who has a pending disciplinary action. Provides that the massage therapist licensing law preempts local ordinances, resolutions, rules, and policies concerning massage therapists, except for zoning requirements and occupational license fees. Makes conforming changes.

Effective: July 1, 2016.

Errington

January 13, 2016, read first time and referred to Committee on Public Health.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL _____

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 25-0.5-2-30, AS ADDED BY P.L.3-2014,
- 2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2016]: Sec. 30. IC 25-1-2-2.1 applies to ~~certifications~~ **licenses**
- 4 held by massage therapists.
- 5 SECTION 2. IC 25-21.8-1-0.5 IS ADDED TO THE INDIANA
- 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 7 [EFFECTIVE JULY 1, 2016]: **Sec. 0.5. This article does not apply to**
- 8 **the following:**
- 9 (1) **An individual who:**
- 10 (A) **is issued a license, registration, certificate, or permit by**
- 11 **the state;**
- 12 (B) **is acting within the scope of the individual's license,**
- 13 **registration, certificate, or permit; and**
- 14 (C) **does not profess to be a massage therapist or use a title,**
- 15 **an abbreviation, or other designation prohibited by**
- 16 **IC 25-21.8-4-3.**
- 17 (2) **An individual who:**



- 1 (A) is a member of a professional association or
 2 organization; and
 3 (i) performs massage in a manner consistent with the
 4 individual's training and code of ethics of the profession;
 5 and
 6 (ii) is engaged within the scope of practice of a profession
 7 with established standards and ethics;
 8 (B) uses:
 9 (i) touch, words, and direct movements to deepen
 10 awareness of existing patterns of movement in the body
 11 and to suggest new possibilities of movement; or
 12 (ii) touch to affect the energy system of the human body;
 13 and
 14 (C) does not profess to be a massage therapist or use a title,
 15 an abbreviation, or other designation prohibited by
 16 IC 25-21.8-4-3 and whose services are not designated or
 17 implied to be massage therapy.
- 18 (3) A massage therapy student who:
 19 (A) performs massage therapy in a massage therapy
 20 program recognized by the board while:
 21 (i) under the supervision of an instructor; and
 22 (ii) completing a clinical requirement for graduation;
 23 (B) does not profess to be a massage therapist or use a title,
 24 an abbreviation, or other designation prohibited by
 25 IC 25-21.8-4-3; and
 26 (C) does not receive compensation for the massage
 27 therapy.
- 28 (4) A health care provider (as defined by IC 16-18-2-163(a))
 29 who:
 30 (A) performs massage therapy in the course of the health
 31 care provider's duties or training; and
 32 (B) does not profess to be a massage therapist or use a title,
 33 an abbreviation, or other designation prohibited by
 34 IC 25-21.8-4-3.
- 35 (5) An individual who is licensed, registered, certified, or
 36 issued a permit in another jurisdiction and is temporarily in
 37 Indiana to provide massage therapy:
 38 (A) as part of an emergency response team working with
 39 a disaster relief agency or organization;
 40 (B) as part of a charity event;
 41 (C) for an athletic team or event; or
 42 (D) for individuals who are part of an artistic



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- performance.
- (6) An individual who provides massage therapy to a member of the individual's immediate family.
- (7) An individual who:
 - (A) provides massage therapy but does not receive any pecuniary gain, including monetary donations; and
 - (B) does not profess to be a massage therapist or use a title, an abbreviation, or other designation prohibited by IC 25-21.8-4-3.

SECTION 3. IC 25-21.8-1-4, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. "Massage therapy":

- (1) means the application of a **system of therapeutic structured touch to the soft tissues of the human body using** massage techniques ~~on~~ **in which the primary intent is to enhance the health and well being of** the human body;
- (2) includes:
 - (A) the use of touch, pressure, **friction, stroking, rocking, gliding, vibration,** percussion, kneading, movement, positioning, nonspecific stretching, stretching within the normal anatomical range of movement, and holding, with or without the use of massage devices that mimic or enhance manual measures; and
 - (B) the external application of heat, cold, water, ice, stones, lubricants, abrasives, and topical preparations that are not classified as prescription drugs; and
- (3) does not include:
 - (A) spinal manipulation; and
 - (B) diagnosis or prescribing drugs for which a license is required.

SECTION 4. IC 25-21.8-1-5, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. "Massage therapist" means an individual who **is licensed under this article and practices or offers to provide** massage therapy.

SECTION 5. IC 25-21.8-2-2, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) The board consists of five (5) members appointed by the governor as follows:

- (1) Three (3) massage therapists, each of whom:
 - (A) is ~~certified~~ **licensed** under this article; ~~and~~
 - (B) has been actively practicing massage therapy for at least



- 1 three (3) of the five (5) years immediately preceding the
 2 individual's appointment; **and**
 3 **(C) does not have a pending disciplinary or suspension**
 4 **proceeding against the individual.**
- 5 (2) Two (2) members of the general public. A board member
 6 appointed under this subdivision must not:
- 7 (A) be ~~certified licensed~~ under this article;
 8 (B) be the spouse of an individual who is ~~certified licensed~~ or
 9 intends to be ~~certified licensed~~ under this article; or
 10 (C) have a direct or an indirect financial interest in the
 11 profession regulated under this article.
- 12 ~~(b) A massage therapist member of the board is not required to be~~
 13 ~~a member of a professional massage therapy association. However:~~
- 14 ~~(1) not more than one (1) massage therapist member appointed to~~
 15 ~~the board may belong to the same professional massage therapy~~
 16 ~~association; and~~
- 17 ~~(2) one (1) massage therapist member must not be a member of~~
 18 ~~a professional massage therapy association.~~
- 19 SECTION 6. IC 25-21.8-2-4, AS ADDED BY P.L.200-2007,
 20 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2016]: Sec. 4. (a) A vacancy in the membership of the board
 22 shall be filled by an individual appointed by the governor for the
 23 unexpired term.
- 24 ~~(b) A member may not serve more than two (2) consecutive terms~~
 25 ~~in addition to any unexpired term to which the individual was~~
 26 ~~appointed. A member may serve until a successor has been appointed~~
 27 ~~and qualified under this chapter.~~
- 28 (c) A member of the board may be removed for cause by the
 29 governor.
- 30 SECTION 7. IC 25-21.8-3-1, AS ADDED BY P.L.200-2007,
 31 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2016]: Sec. 1. (a) The board shall do the following:
- 33 (1) Administer and enforce this article.
 34 (2) Adopt rules under IC 4-22-2 for the administration and
 35 enforcement of this article.
 36 (3) Judge the qualifications of applicants for ~~certification~~
 37 **licensure** under this article.
 38 (4) Issue, deny, or renew ~~certifications licenses~~ under this article.
 39 (5) Subject to IC 4-21.5, IC 25-1-7, and IC 25-1-11, discipline
 40 individuals who are ~~certified licensed~~ under this article for
 41 violations of this article.
 42 (6) Establish reasonable fees for ~~examination, certification~~



- 1 **examinations, license** applications, renewal of ~~certifications,~~
 2 **licenses**, and other services.
 3 (7) Maintain a record of all proceedings.
 4 (8) Maintain records of ~~certified~~ **licensed** massage therapists.
 5 (9) Adopt at least two (2) examinations that an applicant may use
 6 for ~~certification~~ **licensure** under this article.
 7 (b) The board may do the following:
 8 (1) Conduct administrative hearings.
 9 (2) Administer oaths in matters relating to the discharge of the
 10 official duties of the board.
 11 SECTION 8. IC 25-21.8-4-1, AS ADDED BY P.L.200-2007,
 12 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2016]: Sec. 1. An application for a massage therapist
 14 ~~certification~~ **license** must be:
 15 (1) made to the board in the form and manner provided by the
 16 board; and
 17 (2) accompanied by an application fee in the amount set by the
 18 board.
 19 SECTION 9. IC 25-21.8-4-2, AS AMENDED BY P.L.112-2014,
 20 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2016]: Sec. 2. An individual who applies for ~~certification~~
 22 **licensure** as a massage therapist must do the following:
 23 (1) Furnish evidence satisfactory to the board showing that the
 24 individual:
 25 (A) is at least eighteen (18) years of age;
 26 (B) has a high school diploma or the equivalent of a high
 27 school diploma;
 28 (C) has successfully completed a massage therapy school or
 29 program that:
 30 (i) requires at least five hundred (500) hours of supervised
 31 classroom and hands on instruction on massage therapy **that**
 32 **has been approved by the board;**
 33 (ii) is in good standing with a state, regional, or national
 34 agency of government charged with regulating massage
 35 therapy schools or programs; and
 36 (iii) is ~~an~~ **accredited by the state workforce innovation**
 37 **council postsecondary proprietary educational**
 38 **institution** under IC 22-4.1-21 or is accredited by another
 39 state where the standards for massage therapy education are
 40 substantially the same as the standards in Indiana, or is a
 41 program at an institution of higher learning that is approved
 42 by the board; and



- 1 (D) has taken and passed a ~~certification~~ **licensing** examination
 2 approved by the board.
- 3 (2) Provide a history of any criminal convictions the individual
 4 has, including any convictions related to the practice of the
 5 profession. The board shall deny an application for ~~certification~~
 6 **licensure** if the applicant:
- 7 (A) has been convicted of:
- 8 (i) prostitution;
 9 (ii) rape; or
 10 (iii) sexual misconduct; or
 11 (B) is a registered sex offender.
- 12 (3) Provide proof that the applicant currently has professional
 13 liability insurance.
- 14 (4) Verify the information submitted on the application form.
- 15 (5) Pay fees established by the board.

16 SECTION 10. IC 25-21.8-4-3, AS ADDED BY P.L.200-2007,
 17 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2016]: Sec. 3. An individual who is not ~~certified~~ **licensed**
 19 under this article may not:

- 20 (1) profess to be a ~~certified~~ **licensed** massage therapist; ~~or~~
 21 (2) use:
- 22 (A) the title "~~Certified~~ **Licensed** Massage Therapist", ~~or~~
 23 "~~Massage~~ **Muscle** Therapist", "**Licensed Massage**
 24 **Practitioner**", "**Massage Practitioner**", "**Masseur**",
 25 "**Masseuse**", "**Myotherapist**", "**Muscle Mechanic**",
 26 "**Muscle Technician**", or "**Body Worker**"; ~~or~~
 27 (B) the abbreviation "~~CMT~~ **LMT**", "MT"; "**LMP**", or
 28 "**MP**"; or
 29 (C) **other words, initials, letters, abbreviations, or insignia;**
 30 **that indicate or to imply that the person individual is a certified**
 31 **licensed** massage therapist **or practices massage therapy; or**
 32 **(3) practice massage therapy.**

33 SECTION 11. IC 25-21.8-4-3.5 IS ADDED TO THE INDIANA
 34 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2016]: **Sec. 3.5. (a) An individual who is not**
 36 **licensed under this article may not advertise, publicly or privately,**
 37 **that the individual is a massage therapist or provides massage**
 38 **therapy.**

- 39 (b) **An individual may not display or disseminate an**
 40 **advertisement, publicly or privately, for massage therapy that**
 41 **indicates or implies that massage therapy will be provided that**
 42 **includes sexual activity.**



1 (c) An advertisement for massage therapy by a massage
2 therapist must include the following information:

3 (1) The massage therapist's name.

4 (2) The massage therapist's license number.

5 (d) This section does not prohibit a county, municipality, or
6 other governmental unit from adopting an ordinance, resolution,
7 rule, or policy concerning massage therapy advertising that is more
8 restrictive than this section.

9 SECTION 12. IC 25-21.8-4-4, AS ADDED BY P.L.177-2009,
10 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2016]: Sec. 4. A massage therapist who is ~~certified~~ licensed
12 under this article shall provide proof of ~~certification~~ licensure when
13 practicing massage therapy.

14 SECTION 13. IC 25-21.8-4-5 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) If an individual is certified
17 as a massage therapist under this article on June 30, 2016:

18 (1) the individual is considered to be licensed as a massage
19 therapist on July 1, 2016; and

20 (2) the board shall issue a new wall and pocket license to the
21 individual licensed under this article.

22 (b) Notwithstanding subsection (a), the board and the licensing
23 agency are not required to issue a new:

24 (1) wall license to an individual described in subsection (a); or

25 (2) pocket license to an individual described in subsection (a);
26 until the first license renewal period beginning after July 1, 2016.
27 The new license must use the same identification number that the
28 massage therapist was assigned when the massage therapist was
29 certified under this article.

30 (c) Notwithstanding subsection (b), the board and the licensing
31 agency shall issue a new wall and pocket license to the individual
32 who was certified on June 30, 2016, and is licensed under this
33 article if the individual:

34 (1) requests the license from the licensing agency; and

35 (2) pays a fee established by the licensing agency.

36 (d) On July 1, 2016, any investigation or disciplinary action that
37 was pending against a massage therapist who was certified under
38 this article on June 30, 2016, shall be treated after June 30, 2016,
39 as an investigation or disciplinary action against the massage
40 therapist who is licensed on July 1, 2016.

41 (e) This section expires July 1, 2017.

42 SECTION 14. IC 25-21.8-5-1, AS ADDED BY P.L.200-2007,



1 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2016]: Sec. 1. (a) The board may grant ~~certification~~ **licensure**
3 by endorsement to an individual who:

4 (1) is licensed, certified, or registered in another state having
5 credentialing standards that are ~~at least as strict as the~~
6 **substantially equivalent to or exceed the** credentialing
7 standards specified under this article;

8 (2) **does not have a pending disciplinary action and** is in good
9 standing with the standards of the other state or country;

10 (3) pays an application fee established by the board; and

11 (4) provides a history of the individual's criminal convictions, if
12 any, including any criminal convictions relating to the practice of
13 the profession.

14 (b) The board shall deny an application for ~~certification~~ **licensure**
15 **by endorsement** if the applicant:

16 (1) has been convicted of:

17 (A) prostitution;

18 (B) rape; or

19 (C) sexual misconduct; or

20 (2) is a registered sex offender.

21 (c) An applicant for a ~~certification~~ **licensure** by endorsement shall
22 cause each state that previously credentialed the applicant to provide
23 the board with the applicant's current status in the state.

24 SECTION 15. IC 25-21.8-6-1, AS AMENDED BY P.L.177-2015,
25 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2016]: Sec. 1. (a) Subject to IC 25-1-2-6(e), a ~~certification~~
27 **license** issued by the board is valid for four (4) years.

28 (b) A ~~certification~~ **license** expires:

29 (1) at midnight on the date established by the licensing agency
30 under IC 25-1-6-4, subject to IC 25-1-2-6(e); and

31 (2) every four (4) years thereafter, unless renewed before that
32 date.

33 SECTION 16. IC 25-21.8-6-2, AS ADDED BY P.L.200-2007,
34 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2016]: Sec. 2. An individual who applies to renew
36 ~~certification~~ **licensure** as a massage therapist must:

37 (1) apply for renewal in the manner required by the board; and

38 (2) pay a renewal fee established by the board.

39 SECTION 17. IC 25-21.8-7-1, AS ADDED BY P.L.200-2007,
40 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2016]: Sec. 1. (a) This section does not apply to the violation
42 of a rule adopted by the board.



1 (b) **Except as provided in IC 25-21.8-4-3.5**, a person who
 2 knowingly violates or causes a violation of this article commits a Class
 3 C misdemeanor.

4 SECTION 18. IC 25-21.8-7-3, AS ADDED BY P.L.200-2007,
 5 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2016]: Sec. 3. If an individual ~~certified~~ **licensed** under this
 7 article is convicted of a crime, the individual is responsible for
 8 notifying the board not later than thirty (30) days after the conviction.

9 SECTION 19. IC 25-21.8-8 IS ADDED TO THE INDIANA CODE
 10 AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2016]:

12 **Chapter 8. Preemption of Local Ordinances, Resolutions, Rules,**
 13 **and Policies**

14 **Sec. 1. Except as provided in IC 25-21.8-4-3.5 and section 2 of**
 15 **this chapter, this article supersedes any:**

- 16 (1) ordinance;
 17 (2) resolution;
 18 (3) rule; or
 19 (4) policy;

20 **that has the force of law adopted by a municipality, county, or**
 21 **other governmental unit relating to the licensure, certification, or**
 22 **registration of massage therapists.**

23 **Sec. 2. This article does not affect any local ordinance,**
 24 **resolution, rule, or policy that has the force of law relating to:**

- 25 (1) zoning; or
 26 (2) occupational license fees;

27 **adopted by a municipality, county, or other governmental unit and**
 28 **pertaining to massage therapists.**

