

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SUBCOMMITTEE RECOMMENDATION
4 FOR ENGROSSED

5 SENATE BILL NO. 687

6 By: Sykes and Sparks of the
7 Senate

8 and

9 Derby of the House

10 SUBCOMMITTEE RECOMMENDATION

11 An Act relating to professions and occupations;
12 creating the Massage Therapy Practice Act; providing
13 short title; defining terms; prohibiting certain
14 actions without a license; prohibiting certain
15 operation of certain schools or instruction without a
16 license; limiting certain practices; providing for
17 exceptions; authorizing the State Board of
18 Cosmetology and Barbering to adopt rules for
19 implementing the act; granting the Board certain
20 investigation powers; creating the Advisory Board on
21 Massage Therapy; stating duties; providing for
22 membership; setting fees; establishing requirements
23 for licensure of certain persons for certain time
24 periods; allowing the Board to establish additional
licensure standards; requiring a license to practice
after a certain date; requiring posting of certain
license; stating certain license is not assignable or
transferable; prohibiting the operation of a certain
school without certain license; limiting the scope of
instruction; requiring certain examination to be a
standardized national message therapy examination
meeting certain criteria; providing for reciprocity;
providing for expiration of certain licenses;
establishing procedure for renewal of license;
providing for certain inactive status and procedures
for restoring status; providing for certain fees;
setting limits of certain fees; making act supersede

1 certain local ordinances and regulations; allowing
2 certain zoning and licensing by county or municipal
3 governments; authorizing Board to take certain
4 disciplinary actions; authorizing Board to take
5 certain actions based on certain unprofessional
6 conduct; providing for the institution of certain
7 disciplinary proceedings; providing for certain
8 guidelines for the disposition of disciplinary cases;
9 providing for responsibility for certain costs;
10 prohibiting certain liability, civil damages or
11 criminal prosecution; creating criminal offenses and
12 punishments; authorizing the use of certain terms by
13 certain persons; making the use of certain
14 professional title by certain persons subject to
15 certain discipline; making a person subject to
16 disciplinary action for certain acts; making certain
17 advertising a violation of the act; providing for
18 codification; and providing an effective date.

19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 4200.1 of Title 59, unless there
22 is created a duplication in numbering, reads as follows:

23 This act shall be known and may be cited as the "Massage Therapy
24 Practice Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 4200.2 of Title 59, unless there
is created a duplication in numbering, reads as follows:

As used in the Massage Therapy Practice Act:

1. "Board" means the State Board of Cosmetology and Barbering;

1 2. "Direct access" means the ability that the public has to
2 seek out treatment by a massage therapist without the direct
3 referral from a medical or health care professional;

4 3. "Massage therapist" means an individual who practices
5 massage or massage therapy and is licensed under the Massage Therapy
6 Practice Act. A massage therapist uses visual, kinesthetic, and
7 palpatory skills to assess the body and may evaluate a condition to
8 the extent of determining whether massage is indicated or
9 contraindicated;

10 4. "Massage therapy" means the skillful treatment of the soft
11 tissues of the human body. Massage is designed to promote general
12 relaxation, improve movement, relieve somatic and muscular pain or
13 dysfunction, stress and muscle tension, provide for general health
14 enhancement, personal growth, education and the organization,
15 balance and integration of the human body and includes, but is not
16 limited to:

- 17 a. the use of touch, pressure, friction, stroking,
18 gliding, percussion, kneading, movement, positioning,
19 holding, range of motion and nonspecific stretching
20 within the normal anatomical range of movement, and
21 vibration by manual or mechanical means with or
22 without the use of massage devices that mimic or
23 enhance manual measures, and
24

- 1 b. the external application of ice, heat and cold packs
2 for thermal therapy, water, lubricants, abrasives and
3 external application of herbal or topical preparations
4 not classified as prescription drugs; and

5 5. "Massage therapy school" means a facility providing
6 instruction in massage therapy.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 4200.3 of Title 59, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Unless a person is a licensed massage therapist, a person
11 shall not:

- 12 1. Use the title of massage therapist;
13 2. Represent himself or herself to be a massage therapist;
14 3. Use any other title, words, abbreviations, letters, figures,
15 signs or devices that indicate the person is a massage therapist; or
16 4. Utilize the terms "massage", "massage therapy" or "massage
17 therapist" when advertising or printing promotional material.

18 B. A person shall not maintain, manage or operate a massage
19 therapy school offering education, instruction or training in
20 massage therapy unless the school is a licensed massage therapy
21 school pursuant to Section 7 of this act.

22 C. Individuals practicing massage therapy under the Massage
23 Therapy Practice Act shall not perform any of the following:

- 24 1. Diagnosis of illness or disease;

- 1 2. High-velocity, low-amplitude thrust;
- 2 3. Electrical stimulation;
- 3 4. Application of ultrasound;
- 4 5. Use of any technique that interrupts or breaks the skin; or
- 5 6. Prescribing of medicines.

6 D. Nothing in the Massage Therapy Practice Act shall be
7 construed to prevent:

8 1. Qualified members of other recognized professions who are
9 licensed or regulated under Oklahoma law from rendering services
10 within the scope of the license of the person, provided the person
11 does not represent himself or herself as a massage therapist. A
12 physician or other licensed health care provider providing health
13 care services within the scope of practice of the physician or
14 provider shall not be required to be licensed by or registered with
15 the State Board of Cosmetology and Barbering;

16 2. Students from rendering massage therapy services within the
17 course of study when enrolled at a licensed massage therapy school;

18 3. Visiting massage therapy instructors from another state or
19 territory of the United States, the District of Columbia or any
20 foreign nation from teaching massage therapy, provided the
21 instructor is duly licensed or registered, if required, and is
22 qualified in the instructor's place of residence for the practice of
23 massage therapy;

1 4. Any nonresident person holding a current license,
2 registration or certification in massage therapy from another state
3 or recognized national certification system determined as acceptable
4 by the Board when temporarily present in this state from providing
5 massage therapy services as a part of an emergency response team
6 working in conjunction with disaster relief officials or at special
7 events such as conventions, sporting events, educational field
8 trips, conferences, traveling shows or exhibitions;

9 5. Physicians or other health care professionals from
10 appropriately referring to duly licensed massage therapists or limit
11 in any way the right of direct access of the public to licensed
12 massage therapists; or

13 6. The practice of any person in this state who uses touch,
14 words and directed movement to deepen awareness of existing patterns
15 of movement in the body as well as to suggest new possibilities of
16 movement while engaged within the scope of practice of a profession
17 with established standards and ethics, provided that the services
18 are not designated or implied to be massage or massage therapy.
19 Practices shall include but are not limited to the Feldenkrais
20 Method of somatic education, Rolf Movement Integration by the Rolf
21 Institute, the Trager Approach of movement education, and Body-Mind
22 Centering. Practitioners shall be recognized by or meet the
23 established standards of either a professional organization or
24 credentialing agency that represents or certifies the respective

1 practice based on a minimal level of training, demonstration of
2 competency, and adherence to ethical standards.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 4200.4 of Title 59, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The State Board of Cosmetology and Barbering is hereby
7 authorized to adopt and promulgate rules pursuant to the
8 Administrative Procedures Act that are necessary for the
9 implementation and enforcement of the Massage Therapy Practice Act,
10 including, but not limited to, qualifications for licensure,
11 renewals, reinstatements, and continuing education requirements.

12 B. The State Board of Cosmetology and Barbering is hereby
13 empowered to perform investigations, to require the production of
14 records and other documents relating to practices regulated by the
15 Massage Therapy Practice Act, and to seek injunctive relief.

16 C. There is hereby created an Advisory Board on Massage
17 Therapy. The Advisory Board on Massage Therapy shall assist the
18 Board in carrying out the provisions of this section regarding the
19 qualifications, examination, registration, regulation, and standards
20 of professional conduct of massage therapists. The Advisory Board
21 on Massage Therapy shall consist of five (5) members to be appointed
22 by the Governor for four-year terms as follows:

23
24

1 1. Three members who shall be licensed massage therapists and
2 have practiced in Oklahoma for not less than three (3) years prior
3 to their appointment;

4 2. One member who shall be an administrator or faculty member
5 of a nationally accredited school of massage therapy; and

6 3. One who shall be a citizen member.

7 D. The fee for any license issued between the effective date of
8 this act and May 1, 2017, shall be Twenty-five Dollars (\$25.00).

9 The fee or renewal fee for any massage therapy license issued after
10 May 1, 2017, shall be Fifty Dollars (\$50.00) per year. A duplicate
11 license fee shall be Ten Dollars (\$10.00).

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 4200.5 of Title 59, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Between the effective date of this act and May 1, 2017, the
16 State Board of Cosmetology and Barbering shall issue a license to
17 practice massage therapy to any person who files a completed
18 application, accompanied by the required fees, and who submits
19 satisfactory evidence that the applicant:

20 1. Is at least eighteen (18) years of age;

21 2. Has one or more of the following:

22 a. documentation that the applicant has completed and
23 passed a nationally recognized competency examination
24 in the practice of massage therapy,

1 b. an affidavit of at least five (5) years of work
2 experience in the state, or

3 c. a certificate and transcript of completion from a
4 massage school with at least five hundred (500) hours
5 of education;

6 3. Provides proof of documentation that the applicant currently
7 maintains liability insurance for practice as a massage therapist;
8 and

9 4. Provides full disclosure to the Board of any criminal
10 proceeding taken against the applicant including, but not limited
11 to:

12 a. pleading guilty, pleading nolo contendere or receiving
13 a conviction of a felony,

14 b. pleading guilty, pleading nolo contendere or receiving
15 a conviction of a misdemeanor involving moral
16 turpitude, or

17 c. pleading guilty, pleading nolo contendere or receiving
18 a conviction for violation of federal or state
19 controlled dangerous substance laws.

20 B. To assist in determining the entry-level competence of an
21 applicant who makes application for a license after May 1, 2017, the
22 Board may adopt rules establishing additional standards or criteria
23 for examination acceptance and may adopt only those examinations
24 that meet the standards outlined in Section 8 of this act.

1 C. 1. After May 1, 2017, except as otherwise provided in the
2 Massage Therapy Practice Act, every person desiring to practice
3 massage therapy in this state shall be required to first obtain a
4 license from the Board.

5 2. After May 1, 2017, the Board may issue a license to an
6 applicant who:

- 7 a. is at least eighteen (18) years of age;
- 8 b. provides documentation that the applicant has
9 completed the equivalent of five hundred (500) hours
10 of formal education in massage therapy from a state-
11 licensed school;
- 12 c. provides documentation that the applicant has passed a
13 nationally recognized competency examination approved
14 by the Board;
- 15 d. provides proof that the applicant currently maintains
16 liability insurance for practice as a massage
17 therapist; and
- 18 e. provides full disclosure to the Board of any criminal
19 proceeding taken against the applicant including, but
20 not limited to:
 - 21 i. pleading guilty, pleading nolo contendere
22 or receiving a conviction of a felony,

- 1 ii. pleading guilty, pleading nolo contendere
2 or receiving a conviction of a
3 misdemeanor involving moral turpitude, or
4 iii. pleading guilty, pleading nolo contendere
5 or receiving a conviction for violation
6 of federal or state controlled dangerous
7 substance laws.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 4200.6 of Title 59, unless there
10 is created a duplication in numbering, reads as follows:

11 A. A massage therapy license issued by the State Board of
12 Cosmetology and Barbering shall at all times be posted in a
13 conspicuous place in the principal place of business of the holder.

14 B. A license issued pursuant to the Massage Therapy Practice
15 Act is not assignable or transferable.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 4200.7 of Title 59, unless there
18 is created a duplication in numbering, reads as follows:

19 A. A person shall not advertise, maintain, manage or operate a
20 massage therapy school unless the school is licensed by the Oklahoma
21 Board of Private Vocational Schools.

22 B. A person shall not instruct as a massage therapist unless
23 the instruction is within the scope of curriculum at a licensed
24 massage therapy school.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4200.8 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 The required examination approved by the State Board of
5 Cosmetology and Barbering for licensure under the Massage Therapy
6 Practice Act shall be a standardized national massage therapy
7 examination that meets the following criteria:

- 8 1. Is statistically validated through a job analysis under
9 current standards for educational and professional testing;
- 10 2. Complies with pertinent state and federal equal employment
11 opportunity guidelines;
- 12 3. Is available to all potential licensing candidates; and
- 13 4. Is delivered through a professional testing company with
14 high-security test centers located nationwide.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 4200.9 of Title 59, unless there
17 is created a duplication in numbering, reads as follows:

18 A. The State Board of Cosmetology and Barbering may license an
19 applicant, provided that the applicant possesses a valid license or
20 registration to practice massage therapy issued by the appropriate
21 examining board under the laws of any other state or territory of
22 the United States, the District of Columbia or any foreign nation
23 and has met educational and examination requirements equal to or
24

1 exceeding those established pursuant to the Massage Therapy Practice
2 Act.

3 B. 1. Massage therapy licenses shall expire biennially.

4 Expiration dates shall be established by the Board through adoption
5 of a rule.

6 2. A license shall be renewed by submitting a renewal
7 application on a form provided by the Board.

8 3. A thirty-day grace period shall be allowed each license
9 holder after the end of the renewal period, during which time a
10 license may be renewed upon payment of the renewal fee and a late
11 fee as prescribed by the Board.

12 C. 1. If a massage therapy license is not renewed by the end
13 of the thirty-day grace period, the license shall be placed on
14 inactive status for a period not to exceed one (1) year. At the end
15 of one (1) year, if the license has not been reactivated, it shall
16 automatically expire.

17 2. If within a period of one (1) year from the date the license
18 was placed on inactive status the massage therapist wishes to resume
19 practice, the massage therapist shall notify the Board in writing
20 and, upon receipt of proof of completion of all continuing education
21 requirements and payment of an amount set by the Board in lieu of
22 all lapsed renewal fees, the license shall be restored in full.

23 D. The Board shall establish a schedule of reasonable and
24 necessary administrative fees.

1 E. The Board shall fix the amount of fees so that the total
2 fees collected shall be sufficient to meet the expenses of
3 administering the provisions of the Massage Therapy Practice Act
4 without unnecessary surpluses.

5 SECTION 10. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 4200.10 of Title 59, unless
7 there is created a duplication in numbering, reads as follows:

8 A. The Massage Therapy Practice Act shall supersede all
9 ordinances or regulations regulating massage therapists in any city,
10 county, or political subdivision.

11 B. This section shall not affect the regulations of a city,
12 county or a political subdivision relating to zoning requirements or
13 occupational license fees pertaining to health care professions.

14 SECTION 11. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 4200.11 of Title 59, unless
16 there is created a duplication in numbering, reads as follows:

17 A. The State Board of Cosmetology and Barbering may take
18 disciplinary action against a person licensed pursuant to the
19 Massage Therapy Practice Act as follows:

- 20 1. Deny or refuse to renew a license;
- 21 2. Suspend or revoke a license;
- 22 3. Issue an administrative reprimand; or
- 23 4. Impose probationary conditions when the licensee or
24 applicant has engaged in unprofessional conduct that has endangered

1 or is likely to endanger the health, welfare or safety of the
2 public.

3 B. The Board shall take disciplinary action upon a finding that
4 the licensee or person has committed an act of unprofessional
5 conduct or committed a violation of rule or law.

6 C. Disciplinary proceedings may be instituted by sworn
7 complaint of any person, including members of the Board, and shall
8 conform to the provisions of the Administrative Procedures Act.

9 D. The Board shall establish the guidelines for the disposition
10 of disciplinary cases. Guidelines may include, but shall not be
11 limited to, periods of probation, conditions of probation,
12 suspension, revocation or reissuance of a license.

13 E. A license holder who has been found culpable and sanctioned
14 by the Board shall be responsible for the payment of all costs of
15 the disciplinary proceedings and any administrative fees imposed.

16 F. The surrender of a license shall not deprive the Board of
17 jurisdiction to proceed with disciplinary action.

18 SECTION 12. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 4200.12 of Title 59, unless
20 there is created a duplication in numbering, reads as follows:

21 A. No member of the State Board of Cosmetology and Barbering
22 shall bear liability or be subject to civil damages or criminal
23 prosecution for any action undertaken or performed within the scope
24 of duty imposed pursuant to the Massage Therapy Practice Act.

1 B. No person or legal entity providing truthful and accurate
2 information to the Board, whether as a report, a complaint or
3 testimony, shall be subject to civil damages or criminal
4 prosecutions.

5 SECTION 13. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 4200.13 of Title 59, unless
7 there is created a duplication in numbering, reads as follows:

8 A. A person who does any of the following shall be guilty of a
9 misdemeanor upon conviction:

10 1. Violates a provision of the Massage Therapy Practice Act or
11 rules adopted pursuant to the Massage Therapy Practice Act;

12 2. Renders or attempts to render massage therapy services or
13 massage therapy instruction without the required current valid
14 license issued by the State Board of Cosmetology and Barbering;

15 3. Advertises or uses a designation, diploma or certificate
16 implying that the person offers massage therapy instruction or is a
17 massage therapy school unless the person holds a current valid
18 license issued by the Oklahoma Board of Private Vocational Schools
19 or is a technology center school supervised by the State Board of
20 Career and Technology Education; or

21 4. Advertises or uses a designation, diploma, or certificate
22 implying that the person is a massage therapist unless the person
23 holds a current valid license issued by the State Board of
24 Cosmetology and Barbering.

1 B. 1. Therapists regulated by the Massage Therapy Practice Act
2 shall be designated as "massage therapists" and entitled to utilize
3 the term "massage" when advertising or printing promotional
4 material.

5 2. Any person who uses a professional title regulated by the
6 Massage Therapy Practice Act who is not authorized to use the
7 professional title shall be subject to disciplinary action by the
8 Board.

9 3. Any person who knowingly aids and abets one or more persons
10 not authorized to use a professional title regulated by the Massage
11 Therapy Practice Act or knowingly employs or contracts with a person
12 or persons not authorized to use a regulated professional title in
13 the course of the employment, shall also be subject to disciplinary
14 action by the Board. It shall be a violation of the Massage Therapy
15 Practice Act for any person to advertise massage therapy services in
16 any combination with any escort or dating service.

17 SECTION 14. This act shall become effective in accordance with
18 the provisions of Section 58 of Article V of the Oklahoma
19 Constitution.

20

21 55-2-9673 KB 03/31/16

22

23

24