

SENATE BILL No. 572

By Committee on Ways and Means

2-6

9 AN ACT creating the massage therapy practice act; establishing the
10 board of licensure and regulation of the massage therapists.

11

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

13 Section 1. This act shall be known and may be cited as the massage
14 therapy practice act.

15 Sec. 2. As used in this act:

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

22 (b) "Applicant" means any person seeking a license under this act.

23 (c) "Board" means the board of massage therapy established by this
24 act.

25 (d) "Compensation" means the payment, loan, advance, donation,
26 contribution, deposit or gift of money or anything of value.

27 (e) "License" means a valid and current certificate issued by the
28 board permitting the practice of massage by a qualified person.

29 (f) "Massage therapist" means a person licensed under this act who
30 administers massage or massage therapy for compensation.

31 (g) "Massage" or "massage therapy" means a system of structured
32 palpation or movement of the soft tissue of the body. The system may
33 include, but is not limited to, techniques such as effleurage or stroking
34 and gliding, petrissage or kneading, tapotement or percussion, friction,
35 vibration, compression, and passive or active stretching within the normal
36 anatomical range of movement. These techniques may be applied with
37 or without the aid of lubricants, salt or herbal preparations, hydro-mas-
38 sage, thermal massage, or a massage device that mimics or enhances the
39 actions possible by human hands. The purpose of the practice of massage,
40 as licensed under this act, is to enhance the general health and well-being
41 of the recipient. "Massage" does not include the diagnosis of a specific
42 pathology, the prescription of legend drugs or controlled substances, spi-
43 nal manipulation, or those acts of physical therapy that are outside the

- 1 scope of massage therapy practice as defined in this section.
- 2 (h) "Massage therapy fund" or "fund" means a fund set up by the
3 board to accept and disburse fees paid by massage therapists for the
4 purposes of administering the provisions of this act.
- 5 (i) "Person" means a natural person only.
- 6 (j) "Professional massage and bodywork therapy association" means
7 a state or nationally chartered professional membership organization of-
8 fering services to massage therapists that has been in existence for at least
9 36 months prior to the effective date of this act, that currently has at least
10 500 members in good standing, and whose membership requirements
11 include the following:
- 12 (1) The organization requires that its members meet minimum eli-
13 gibility criteria, which include massage or bodywork education comple-
14 tion standards. Required education must embrace the subject areas of
15 anatomy, physiology, hygiene, sanitation, ethics and application of tech-
16 niques; and
- 17 (2) the organization has an established code of ethics, requires mem-
18 bers to agree to that code and has procedures for the membership sus-
19 pension and revocation of persons violating the code of ethics.
- 20 Sec. 3. (a) The board shall consist of seven members who are resi-
21 dents of the state.
- 22 (1) There shall be five professional members of the board who shall:
- 23 (A) Be citizens of the United States and residents of this state for at
24 least three years prior to the date of appointment;
- 25 (B) have been engaged in massage therapy practice for compensation
26 for at least three years immediately preceding their appointment; and
- 27 (C) be eligible for licensure under this act. Effective January 1, 2011,
28 and thereafter, all professional members of the board shall be licensed
29 under this act.
- 30 (2) No more than one professional member of the board may be an
31 owner of or be affiliated with any massage school.
- 32 (3) There shall be two consumer members of the board who shall:
- 33 (A) Be citizens of the United States and residents of this state; and
- 34 (B) shall be persons to whom neither this state nor any other state or
35 jurisdiction or organization has ever issued a certificate, registration, li-
36 cense or permit to engage in the practice of massage therapy nor be an
37 owner of or affiliated with any massage school.
- 38 (4) No more than one consumer member of the board may be,
39 though none is required to be, a licensed physician or other health care
40 professional licensed by the state.
- 41 (b) The governor shall appoint all members of the board for initial
42 terms of office beginning November 1, 2008. The governor shall appoint
43 three initial members of the board, including one consumer member, to

1 serve for terms of two years and four initial members of the board, in-
2 cluding the other public member, to serve for terms of three years. After
3 the initial terms specified in this subsection, members of the board shall
4 take office on the first day of November immediately following the ex-
5 pired term of that office and shall serve for a term of three years and until
6 their successors are appointed and qualified. No member shall serve on
7 the board for more than two full consecutive terms. Any vacancy due to
8 death, resignation, removal or otherwise shall be filled for the remainder
9 of the unexpired term in the same manner as regular appointments.

10 (c) An appointee to the board shall qualify by taking an oath of office
11 within 15 days from the date of appointment. On presentation of the oath,
12 the secretary of state shall issue a commission to each appointee as evi-
13 dence of authority to act as a member of the board.

14 (d) The governor, after notice and opportunity for hearing, may re-
15 move any member of the board for incompetence, neglect of duty, un-
16 professional conduct, conviction of a felony, failure to meet the qualifi-
17 cations of this act or committing any act prohibited by this act. A member
18 subject to disciplinary proceedings as a massage therapist shall be dis-
19 qualified from participating in the official business of the board until the
20 charges have been resolved.

21 (e) Each member of the board shall receive compensation, travel ex-
22 penses and subsistence expenses as provided in K.S.A. 75-3223, and
23 amendments thereto, when attending meetings of the board.

24 Sec. 4. (a) The board shall meet as often as necessary for the conduct
25 of business but at least twice each year at times fixed by the board. At its
26 annual meeting, the board shall elect from its members a chair and any
27 other officers as deemed necessary who shall hold office for a term of
28 one year. Additionally, the board may appoint such committees as it con-
29 siders necessary to fulfill its duties. The board shall establish procedures
30 governing the calling, holding and conducting of regular and special meet-
31 ings. A majority of the board shall constitute a quorum.

32 (b) The board shall have the following powers and duties:

33 (1) Represent the diversity within the profession at all times when
34 making decisions and stay current and informed regarding the various
35 branches of massage and massage therapy practice;

36 (2) examine and determine the qualifications and fitness of applicants
37 to practice massage therapy in this state;

38 (3) issue, renew, refuse to renew, deny, suspend or revoke licenses
39 to practice massage therapy in this state or otherwise discipline massage
40 therapists; the board is directed to begin receiving and reviewing license
41 applications and issuing licenses to qualified persons no later than January
42 1, 2010;

43 (4) conduct investigations for the purpose of discovering violations of

- 1 this act or grounds for disciplining persons licensed under this act;
- 2 (5) hold hearings on all matters properly brought before the board
3 and, in conjunction therewith, to administer oaths, receive evidence,
4 make the necessary determinations and enter orders consistent with the
5 findings. The board may designate one or more of its members as its
6 hearing officer;
- 7 (6) provide a system for grievances to be presented and resolved;
- 8 (7) employ professional, clerical or other special personnel; enter into
9 contracts and purchase or rent office space, equipment and supplies nec-
10 essary to carry out the provisions of this act. No employee of the board,
11 or their spouse, shall be a board member or shall have any financial in-
12 terest in the practice or instruction of massage therapy;
- 13 (8) establish fees reasonably related to the cost of providing services
14 and carrying out its ongoing responsibilities and duties; fees for the fol-
15 lowing core services shall not exceed the amounts listed as follows:
- | | |
|--|-------|
| 16 (A) Initial application for a license | \$50 |
| 17 (B) issuance of an initial two-year license | \$100 |
| 18 (C) issuance of a two-year renewal license | \$100 |
- 19 Initial and renewal license fees shall be established by the board
20 annually;
- 21 (9) adopt, revise and enforce rules and regulations concerning ad-
22 vertising by massage therapists including, but not limited to, rules to pro-
23 hibit false, misleading or deceptive practices;
- 24 (10) adopt such other reasonable rules and regulations necessary to
25 carry out the purposes of this act and the duties and responsibilities of
26 the board. Any rules and regulations adopted or amended shall take into
27 account the membership entry-level educational standards of professional
28 massage and bodywork therapy associations;
- 29 (11) at its discretion, enter into reciprocal relations with other states
30 whose licensure requirements are substantially the same or are more rig-
31 orous as those provided in this act;
- 32 (12) at its discretion, elect to participate in and pay dues to a feder-
33 ation of state massage boards whose purposes include sharing of best
34 practices, development of staff and board member governance knowledge
35 and exchange of information on disciplinary actions taken with regard to
36 massage therapists;
- 37 (13) appoint from its own membership one or more members to act
38 as representatives of the board at any meeting where such representation
39 is deemed desirable;
- 40 (14) maintain a timely record of all proceedings and make available
41 by electronic or other means of communications to all massage therapists
42 and other concerned parties an annual report of the board. Timely main-
43 tain a record book and computer file in which shall be entered the names

1 and addresses of all persons to whom licenses have been granted under
2 this act, the license number and dates of granting such licenses and re-
3 newals thereof and other matters of record. Copies of records shall be
4 furnished to any person requesting them upon payment of such copying
5 fee as the board may require to recover its costs of compliance with the
6 information request;

7 (15) adopt an official seal containing the name of the board for use
8 on all certificates and official reports issued by it;

9 (16) bring proceedings to the courts for the enforcement of this act
10 or any rules and regulations promulgated pursuant to this act; as cumu-
11 lative to any other remedy or criminal prosecution, the board may file a
12 proceeding in the name of the state seeking issuance of a restraining
13 order, injunction or writ of mandamus against any person who is or has
14 been violating any of the provisions of this act or the lawful rules or
15 regulations or orders of the board; and

16 (17) assess civil penalties pursuant to section 11.

17 Sec. 5. (a) Commencing January 1, 2011, no person may practice
18 massage therapy in this state who is not a licensed massage therapist
19 pursuant to this act.

20 (b) On and after January 1, 2011, any new applicant for a license must
21 submit a completed application upon a form and in such manner as the
22 board prescribes, accompanied by applicable fees, and evidence satisfac-
23 tory to the board that the applicant:

24 (1) Is at least 18 years of age;

25 (2) has a high school diploma or its recognized equivalent;

26 (3) is a citizen of the United States or a permanent resident of the
27 United States;

28 (4) is of good moral character. For purposes of this paragraph, "good
29 moral character" means professional integrity and a lack of any conviction
30 for acts involving moral turpitude where the underlying conduct relates
31 to the applicant's fitness to practice massage therapy;

32 (5) acknowledges having read and pledges to adhere by standards of
33 conduct set forth in section 9 with awareness that adherence or failure to
34 adhere to such standards shall be considered in evaluating eligibility to
35 receive an initial license, to renew a license, and the meting out of dis-
36 cipline by the board pursuant to its powers and responsibilities set forth
37 in this act;

38 (6) agrees to provide the board with any and all information necessary
39 to perform a criminal background check and expressly consents and au-
40 thORIZes the board or its representative to perform such a check; and

41 (7) has completed successfully a board recognized educational pro-
42 gram consisting of a minimum of 500 hours of course and clinical work.

43 (c) The board shall issue a license to a person who meets all the

1 criteria set forth in subsection (b)(1) through (6), if that person:

2 (1) Is currently licensed as a massage therapist in another jurisdiction,
3 state or territory of the United States or foreign country, which requires
4 standards for licensure considered by the board to be substantially equiv-
5 alent to the requirements for licensure under this act;

6 (2) has completed at least 500 hours of course and clinical massage
7 education in a program in another state or jurisdiction that, upon review,
8 is deemed by the board to be sufficient; or

9 (3) has passed satisfactorily a psychometrically valid massage knowl-
10 edge examination approved by the board.

11 (d) The board shall have the power to issue a license to a person who
12 does not fully satisfy the eligibility criteria set forth in this act but who,
13 in the board's judgment, has sufficient training and experience to be able
14 to practice safely on members of the public.

15 (e) The board may require that all applications be made under oath.

16 Sec. 6. (a) Prior to January 1, 2011, all applicants must submit a com-
17 pleted application upon a form and in such manner as the board pre-
18 scribes, accompanied by applicable fees, and evidence satisfactory to the
19 board that the applicant:

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

21 (2) has a high school diploma or its recognized equivalent;

22 (3) is a citizen or a permanent resident of the United States;

23 (4) is of good moral character. For purposes of this paragraph "good
24 moral character" means professional integrity and a lack of any conviction
25 for acts involving moral turpitude where the underlying conduct relates
26 to the applicant's fitness to practice massage therapy;

27 (5) agrees to provide the board with any and all information necessary
28 to perform a criminal background check and expressly consents and au-
29 thORIZes the board or its representative to perform such a check; and

30 (6) has met at least one of the following requirements that such
31 applicant:

32 (A) Meets the criteria for post-2012 licensure described in paragraphs
33 (b), (c) or (d) of section 5, and amendments thereto;

34 (B) has completed at least 100 hours of formal training in massage
35 therapy as determined by the board and has practiced massage therapy
36 for at least 10 hours per week on average for at least 10 years prior to the
37 date of application;

38 (C) has completed a minimum of 200 hours of formal training in
39 massage therapy as determined by the board and can provide documen-
40 tary evidence satisfactory to the board of having provided a total of at
41 least 500 hours of massage to the public for compensation during the
42 immediately prior 36 months; or

43 (D) has been a member, as a massage therapist, for a period of at

1 least one year prior to application for licensure, of a professional massage
2 and bodywork therapy association.

3 (b) (1) On or after January 1, 2011, a massage therapist who was
4 granted a license under provisions of this act may, upon payment of the
5 requisite fee and satisfaction of other requirements set forth in section 5,
6 and amendments thereto, renew that license notwithstanding failure to
7 satisfy the minimum education provisions of section 5, and amendments
8 thereto, and may continue to renew such license so long as there are no
9 lapses in active licensure status.

10 (2) In the event the qualifications for a license are increased beyond
11 what is provided for in this act, those massage therapists who hold a
12 license will be able to retain that license without having to satisfy the
13 increased requirements.

14 Sec. 7. (a) The massage therapist shall display the license certificate
15 or a photocopy thereof in an appropriate and public manner at each lo-
16 cation of practice.

17 (b) All licenses shall expire biennially unless renewed. All applications
18 for renewal of a license shall be filed with the board or its designee prior
19 to the expiration date, accompanied by the biennial renewal fee pre-
20 scribed by the board and certifying that all current requirements of con-
21 tinuing education and adherence to standards of conduct set for in section
22 9, and amendments thereto, have been fulfilled. The board shall provide
23 for penalty fees for late registration. The failure to renew a license by the
24 end of an established penalty period shall have the same effect as a rev-
25 ocation of said license, subject to reinstatement only after application and
26 payment of the prescribed reinstatement fee within the time period es-
27 tablished by the division director, provided that the massage therapist
28 meets such requirements as the board may establish by rules and
29 regulations.

30 (c) The board shall establish continuing education requirements not
31 to exceed 16 hours per biennium. The board shall by rules and regulations
32 establish criteria for the approval of continuing education programs or
33 courses, a means for verification of completion of the required continuing
34 education, and allowed carrying over of accumulated continuing educa-
35 tion hours to the next renewal cycle. The programs or courses approved
36 by the board may include correspondence or on-line distance education
37 courses that meet the criteria for continuing education courses. No li-
38 cense may be renewed without the massage therapist's satisfaction of the
39 continuing education requirements.

40 (d) The massage therapist shall inform the board of any change of
41 address within 30 days.

42 (e) Each person licensed under this act is responsible for renewing
43 such license before the expiration date.

- 1 (f) Under procedures and conditions established by the board, a mas-
2 sage therapist may request that such license be declared inactive. The
3 massage therapist may apply for active status at any time and upon meet-
4 ing the conditions set forth by the board shall be declared active.
- 5 Sec. 8. The following persons are exempted from the provisions of
6 this act:
- 7 (a) Any person licensed, or otherwise recognized in this state by any
8 other law or regulation when that person is engaged in the profession or
9 occupation for which such person is licensed or otherwise recognized,
10 and who is performing services within their authorized scope of practice
11 and who does not hold out to be a massage therapist;
- 12 (b) students enrolled in an approved massage school, while complet-
13 ing a clinical requirement or supervised fieldwork experience for gradu-
14 ation performed under the supervision of a massage therapist, provided
15 the students do not hold themselves out as licensed massage therapists
16 and do not receive compensation for massage;
- 17 (c) persons giving massage to members of the extended family;
- 18 (d) persons who restrict their manipulation of the soft tissues of the
19 human body to the hands, feet or ears and do not hold themselves out to
20 be massage therapists or to do massage or massage therapy;
- 21 (e) persons using methods which involve only techniques which are
22 specifically intended to affect the human energy fields or systems, without
23 intentional soft tissue manipulation, including, but not limited to, Polarity
24 therapy, Reiki, Ayurveda, Touch for Health or Jin Shin Do, in which their
25 services are not designated or implied to be massage or massage therapy;
- 26 (f) persons who use touch, words and directed movement to deepen
27 awareness of existing patterns of movement in the body as well as to
28 suggest new possibilities of movement while engaged in the scope of
29 practice of a profession with established standards and ethics, provided
30 that their services are not designated or implied to be massage or massage
31 therapy and involve only incidental contact or manipulation of soft tissue.
32 These practices include, but are not limited to, the Feldendkrais method
33 of somatic education, the Trager approach to movement education, the
34 Rosen method, and body-mind centering;
- 35 (g) a person, who is duly licensed, registered or certified by another
36 state or political jurisdiction, is in the state solely for the purposes of
37 educational instruction and demonstration to an audience, if those serv-
38 ices are performed for no more than 16 calendar days in a year, and the
39 person satisfies board established criteria for continuing education pro-
40 viders; or
- 41 (h) any persons performing massage therapy services in the state, if
42 those services are performed for no more than 45 days in a calendar year,
43 and for no more than 30 days within any 60-consecutive-day period, the

1 person is not a resident of Kansas, is duly licensed, registered or certified
2 by another state or political jurisdiction, and if one of the following con-
3 ditions is satisfied:

4 (1) The person is incidentally in this state to provide service as part
5 of an emergency response team working in conjunction with disaster re-
6 lief officials;

7 (2) the person travels with and provides massage therapy exclusively
8 to members of an athletic team, dance troupe or other performing artists
9 while such groups or persons are temporarily in the state; or

10 (3) the person is part of an organized team of massage therapists
11 providing massage services without compensation at a public event such
12 as the olympic games, special olympics, a marathon or triathlon, provided
13 that these services are performed only during a period from 48 hours
14 prior to the commencement of the event until 24 hours after the com-
15 pletion of the event.

16 Sec. 9. The following standards for the practice of massage therapy
17 are intended to protect the public health, safety and welfare, to preserve
18 the integrity of the profession, and to allow for the proper discharge of
19 responsibilities to those served. Licensees shall have a commitment to
20 provide the highest quality of care to those who seek their professional
21 services and shall:

22 (a) Represent their qualifications, credentials and professional affili-
23 ations accurately, and provide only those services which they are qualified
24 to perform;

25 (b) inquire as to the health history and current health status of each
26 client before treatment to determine the indications and contraindica-
27 tions for the application of massage therapy;

28 (c) inform clients, other health care providers and the public of the
29 scope and limitations of the practice of massage therapy, and refer clients
30 to appropriate health care providers whenever indicated;

31 (d) follow recommendations for the plan of care when receiving a
32 client referral from a physician or other primary medical care provider
33 licensed by the state;

34 (e) obtain and document the informed consent of the client before
35 obtaining treatment;

36 (f) maintain the confidentiality of all client information, unless dis-
37 closure is consented to by the client, required by law or required by court
38 order;

39 (g) provide draping and treatment in a way that ensures the safety,
40 comfort and privacy of the client;

41 (h) respect the client's right to refuse, modify or terminate treatment
42 regardless of prior consent given;

43 (i) refrain from initiating or engaging in any sexual activity involving

1 a client or engaging in another relationship with a client that could impair
2 professional judgment or result in exploitation of the client; and

3 (j) inform the board of any violation of this act or adopted rules and
4 regulations.

5 Sec. 10. (a) It is a class B nonperson misdemeanor for any person,
6 organization or corporation to:

7 (1) Advertise massage therapy services unless such services are pro-
8 vided by a person who holds a valid license under this act, or by those
9 persons described in section 8, and amendments thereto;

10 (2) advertise the provision of massage services involving techniques
11 or modalities in which the provider of such services has not received
12 training;

13 (3) refer in advertising to any personal physical qualities of the prac-
14 titioner; or

15 (4) advertise massage therapy services combined with escort or dating
16 services or adult entertainment.

17 (b) All advertising of massage services by massage therapists shall
18 include the massage therapist's name and current valid license number.
19 Advertising by multi-practitioner practices may alternatively state, "All
20 massage therapist professionals at this facility possess a valid Kansas mas-
21 sage license" or words conveying substantially identical meaning. The
22 practice owner or principal and the massage therapists shall each be
23 jointly responsible for ensuing adherence to the license display require-
24 ments set forth in section 7, and amendments thereto.

25 (c) The publisher or producer of a print or broadcast advertising me-
26 dium shall refuse to publish or broadcast an advertisement or listing for
27 a massage therapist that does not comply with the requirements of this
28 section. A publisher or producer who obtains a signed statement from
29 the massage therapist which states that the massage therapist has read
30 the text of the advertisement or listing, has an applicable and current
31 massage therapist license for the services advertised, has included all ap-
32 plicable and current license numbers in the advertisement or listing, and
33 is aware of civil or criminal penalties for advertising as a massage therapist
34 without a valid license, shall be entitled to a refutable presumption of
35 compliance with this section. A publisher or producer of a print or broad-
36 cast advertising medium shall not be liable in any suit, action or claim
37 arising from refusal to list or accept advertisements pursuant to this
38 section.

39 (d) It shall be unlawful for a person or business entity or its employ-
40 ees, agents or representatives to practice massage therapy or to use in
41 connection with its name or business activity the terms "massage," "mas-
42 sage therapy," "massage therapist," "massage practitioner," any coupling
43 of one of those terms with the words "licensed" or "registered," or the

1 letters “M.T.,” “L.M.T.,” or any other words, letters, abbreviations or
2 insignia indicating or implying directly or indirectly that massage therapy
3 is provided or supplied unless such massage therapy is provided by a
4 massage therapist licensed and practicing in accordance with this act.

5 Sec. 11. (a) Any person who practices massage therapy without a
6 valid license in violation of this act, upon conviction thereof, shall be
7 punished as follows:

8 (1) Each act of unlawful practice under this section shall constitute a
9 distinct and separate offense.

10 (2) Upon being convicted a first time under this section, such person
11 shall be punished by a fine of not more than \$1,000 for each offense.
12 Upon being convicted a second or subsequent time under this section,
13 such person shall be punished by a fine of not more than \$1,000 for each
14 offense, imprisonment for not more than 12 months, or both.

15 (b) The board may refuse to issue or renew, or may revoke, suspend,
16 place on probation, reprimand or take other disciplinary action, as the
17 board considers appropriate, including the imposition of fines not to ex-
18 ceed \$1,000 for each violation, with regard to any license or massage
19 therapist for any one or more of the following additional offenses:

20 (1) Being convicted of any crime under the laws of the United States
21 or any state or territory thereof that is a felony or a misdemeanor, an
22 essential element of which is dishonesty or fraud, or any that is directly
23 related to the practice of massage. Conviction, as used in this paragraph,
24 shall include a finding or verdict of guilty, an admission of guilt or a plea
25 of nolo contendere;

26 (2) advertising in a false, deceptive or misleading manner;

27 (3) aiding, assisting, procuring or advising any unlicensed person to
28 practice massage contrary to any rules or provisions of this act;

29 (4) engaging, attempting or offering to engage a client in sexual ac-
30 tivity, including genital contact, within a client-therapist relationship; a
31 client shall be presumed incapable of giving free, full, and informed con-
32 sent to sexual activity with such massage therapist;

33 (5) engaging in dishonorable, unethical or unprofessional conduct or
34 representation in the practice of massage of a character likely to deceive,
35 defraud or harm the public;

36 (6) practicing or offering to practice beyond the scope permitted by
37 law or accepting and performing professional responsibilities which the
38 massage therapist knows or has reason to know that such massage ther-
39 apist is not competent to perform;

40 (7) knowingly delegating professional responsibilities to a person un-
41 qualified by training, experience or licensure to perform;

42 (8) having a habitual or excessive use of or addiction to alcohol, nar-
43 cotics, stimulants or any other chemical agent or drug which results in

- 1 the inability to practice with reasonable judgment, skill or safety;
- 2 (9) having a physical illness, including, but not limited to, deteriora-
3 tion through the aging process or loss of motor skills, that results in the
4 inability to practice the profession with reasonable judgment, skill or
5 safety;
- 6 (10) having a pattern of practice or other behavior that demonstrates
7 incapacity or incompetence to practice under this act;
- 8 (11) making a material misstatement in furnishing information to the
9 board or otherwise making misleading, deceptive, untrue or fraudulent
10 representations in violation of this act or otherwise in the practice of the
11 profession;
- 12 (12) making any misrepresentation for the purpose of obtaining a
13 license; or
- 14 (13) prescribing medicine or legend drugs or practicing any licensed
15 profession without legal authority.
- 16 (c) Before imposing and assessing a civil penalty, the board shall con-
17 sider the following factors:
- 18 (1) The nature, gravity and persistence of the particular violation;
- 19 (2) the appropriateness of the imposition of a civil penalty when con-
20 sidered alone or in combination with other punishment;
- 21 (3) whether the violation was willful or malicious; and
- 22 (4) any other factors which would tend to mitigate or aggravate the
23 violations found to exist.
- 24 (d) Any person may present charges relative to a violation of this act,
25 or the board may, on its own motion, direct the chair of the board to
26 present charges. An accusation may be filed with the board chair, charging
27 any massage therapist with any of the offenses enumerated in this section.
- 28 (e) The board shall provide applicants denied issuance of a license or
29 massage therapists whose license is suspended, revoked or not renewed,
30 a hearing on such suspension, revocation or nonrenewal. Upon a decision
31 of the board to refuse to issue, revoke or not to renew a license, the
32 massage therapist shall be prohibited from engaging in massage until the
33 board's decision is rescinded.
- 34 (f) All administrative proceedings provided in this act shall be con-
35 ducted in accordance with the provisions of the Kansas administrative
36 procedure act.
- 37 (g) Judicial review and civil enforcement of any agency action under
38 this act shall be in accordance with the act for judicial review and civil
39 enforcement of agency actions.
- 40 Sec. 12. (a) A city, county or other political jurisdiction within the
41 state may not enact an ordinance that regulates the practice of massage,
42 as defined by this act, by a person who is licensed under this act. No
43 provision of any ordinance enacted by a city, county or other political

1 jurisdiction that is in effect before the effective date of this act, and that
2 relates to the practice of massage, may be enforced against a person who
3 is issued a license by the board under this act.

4 (b) Nothing in this act shall be interpreted to prevent any local juris-
5 diction from adopting or enforcing any local ordinance that is not in con-
6 flict with any provision of this act, and that does not conflict with subsec-
7 tion (a). Nothing in this act shall preclude application of any local
8 ordinance with respect to a person licensed pursuant to this act where
9 that ordinance is equally applied to each person operating any other law-
10 ful business within the local jurisdiction.

11 Sec. 13. There is hereby created the board of massage therapy fee
12 fund. The board of massage therapy shall remit all moneys received by it
13 or for it from fees, charges or penalties to the state treasurer in accordance
14 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
15 receipt of each such remittance, the state treasurer shall deposit the entire
16 amount in the state treasury. All expenditures from the board of massage
17 therapy fee fund shall be made in accordance with appropriation acts
18 upon warrants of the director of accounts and reports issued pursuant to
19 vouchers approved by the chairperson of the board of massage therapy
20 or by a person designated by the chairperson.

21 Sec. 14. This act shall take effect and be in force from and after its
22 publication in the statute book.