

## HOUSE BILL No. 2557

By Committee on Health and Human Services

1-26

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1 AN ACT enacting the massage therapist licensure act; regulation and  
2 licensing of massage therapists; powers, duties and functions of the  
3 state board of healing arts.

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

6 Section 1. As used in the massage therapist licensure act:

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

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

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

15 (d) "Licensed massage therapist" means a person who meets the  
16 requirements of the massage therapist licensure act and who engages in  
17 the practice of massage therapy.

18 (e) "Professional massage therapy association or bodywork  
19 association" means a state or nationally chartered professional membership  
20 organization that has been recognized by the board as offering services to  
21 massage therapists and that requires that its members adhere to the  
22 organization's established code of ethics and standards of practice.

23 (f) "Massage" and "massage therapy" mean a healthcare service  
24 involving the external manipulation or pressure of soft tissue for  
25 therapeutic purposes. It is the application of a system of structured touch,  
26 pressure, movement and holding of the soft tissue of the human body in  
27 which the primary intent is to relieve pain, improve circulation, relieve  
28 stress, increase relaxation and enhance or restore the health and well-being  
29 of the client. The practice of massage therapy includes complementary  
30 methods, including the external application of water, heat, cold,  
31 lubrication, salt scrubs, body wraps or other topical preparations; and  
32 electromechanical devices that mimic or enhance the actions possible by  
33 the hands. "Massage" or "massage therapy" does not include:

- 34 (1) Medical or nursing diagnosis of injury, illness or disease;
- 35 (2) therapeutic exercise;
- 36 (3) chiropractic joint adjustment;

- 1 (4) physical therapy joint mobilization or manipulation;
- 2 (5) electrical stimulation or application of ultrasound; or
- 3 (6) dispensing or issuing prescriptions or pharmaceutical agents.
- 4 (g) "Massage therapy services" include, but are not limited to:

5 (1) Development, implementation and modification of a massage  
6 therapy treatment plan that addresses client soft tissue manifestations,  
7 needs and concerns, including identifying indications, contraindications  
8 and precautions of massage therapy within the scope of the massage  
9 therapist licensure act;

10 (2) obtaining informed consent regarding the risks and benefits of the  
11 massage therapy treatment plan and application and modification of the  
12 massage therapy treatment plan as needed;

13 (3) using effective interpersonal communication in the professional  
14 relationship;

15 (4) utilizing an ethical decision-making process that conforms to the  
16 ethical standards of the profession, as set forth in the massage therapist  
17 licensure act and in rules and regulations of the board;

18 (5) establishing and maintaining a practice environment that provides  
19 for the client's health, safety and comfort; and

20 (6) establishing and maintaining client records, professional records  
21 and business records in compliance with standards of professional conduct  
22 as required by rules and regulations of the board.

23 Sec. 2. (a) Upon application to the board and the payment of the  
24 required fees, an applicant for a license as a massage therapist may be  
25 licensed as a massage therapist if the applicant meets all the requirements  
26 of the massage therapist licensure act and provides documentation  
27 acceptable to the board that the applicant:

28 (1) Has obtained a high school diploma or its equivalent;

29 (2) is 18 years of age or older;

30 (3) has no other disqualifying conduct as defined by the board;

31 (4) has successfully completed a course of instruction approved by  
32 the board consisting of at least 500 in-classroom hours of supervised  
33 instruction, including massage therapy technique and theory,  
34 contraindications, ethics, sanitation, hygiene, business training, anatomy,  
35 physiology and pathology; and

36 (5) has successfully passed, including prior to the effective date of the  
37 massage therapist licensure act, a nationally recognized competency  
38 examination in massage therapy that meets acceptable psychometric  
39 principles, is statistically validated through a job-task analysis under  
40 current standards for educational and professional testing and has been  
41 approved by the board.

42 Sec. 3. Prior to July 1, 2020, the board shall issue a license as a  
43 massage therapist to any individual who meets the requirements of section

1 2(a)(1), (2) and (3), and amendments thereto, and one of the following  
2 requirements verified to the board by affidavit:

3 (a) The individual has completed a minimum of 500 hours of  
4 instruction relating to massage therapy at a massage school or comparable  
5 entity in another state;

6 (b) the individual has completed at least 300 hours of training in  
7 massage therapy during the three years prior to such individual's license  
8 application;

9 (c) the individual has practiced massage therapy for at least three  
10 years;

11 (d) the individual has been an active member in good standing of a  
12 professional massage or bodywork therapy association as a massage or  
13 bodywork therapist for a period of at least 12 months; or

14 (e) the individual has successfully passed an examination meeting the  
15 requirements of section 2(a)(5), and amendments thereto, or passed a  
16 nationally recognized certification examination.

17 Sec. 4. (a) The board may issue a license to practice massage therapy  
18 as a licensed massage therapist to an applicant who has been duly licensed  
19 as a massage therapist by examination under the laws of another state or  
20 territory if, in the opinion of the board, the applicant meets the  
21 qualifications required for licensure as a massage therapist in this state.  
22 Verification of the applicant's licensure status shall be required from the  
23 original state of licensure.

24 (b) The board may issue a temporary permit to practice massage  
25 therapy as a licensed massage therapist for a period not to exceed 120  
26 days. A temporary permit may be issued to an applicant for licensure as a  
27 licensed massage therapist who is a graduate of a massage school in a  
28 foreign country after verification of licensure in that foreign country and  
29 approval of educational credentials.

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

39 (b) Nothing in the massage therapist licensure act shall prohibit:

40 (1) The practice of massage therapy by a person employed by the  
41 government of the United States while the person is engaged in the  
42 performance of duties prescribed by the laws and regulations of the United  
43 States;

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

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

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

16 (5) the practice, conduct and activities or services of a person who is  
17 employed by a non-resident performance team, entertainer or athletic team  
18 to the extent that such services or activities are provided solely to the team  
19 or entertainer in the state for not more than 30 days;

20 (6) persons giving massage to members of such person's immediate  
21 or extended family without compensation;

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

25 (8) members of any church practicing their religious tenets.

26 (c) Nothing in the massage therapist licensure act shall be construed  
27 to prevent or restrict the practice of any person in this state who uses  
28 touch, words and directed movement to deepen awareness of existing  
29 patterns of movement in the body and to suggest new possibilities of  
30 movement while engaged within the scope of practice of a profession with  
31 established standards and ethics, so long as their services are not  
32 designated or implied to be massage or massage therapy. Such practices  
33 include, but are not limited to: The Feldenkrais method of somatic  
34 education; the Rolf Institute's Rolf Movement Integration; the Trager  
35 approach to movement education; and body-mind centering. Practitioners  
36 must be recognized by or meet the established standards of either a  
37 professional organization or credentialing agency that represents or  
38 certifies the respective practice based on a minimal level of training,  
39 demonstration of competency and adherence to ethical standards.

40 Sec. 6. (a) A person licensed under the massage therapist licensure act  
41 as a massage therapist shall:

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

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

6 (b) On and after September 1, 2020, it shall be unlawful for any  
 7 person who is not licensed under the massage therapist licensure act as a  
 8 massage therapist or whose license has been suspended, revoked or lapsed  
 9 to promote oneself to the public in any manner as a licensed massage  
 10 therapist or to engage in the practice of massage therapy. A violation of  
 11 this subsection is a class B person misdemeanor. In addition, a violation of  
 12 this subsection also constitutes an unconscionable act or practice in  
 13 violation under K.S.A. 50-627, and amendments thereto, whether or not it  
 14 involves a consumer, a consumer transaction or a supplier, as defined in  
 15 K.S.A. 50-624, and amendments thereto. Notwithstanding the provisions  
 16 of K.S.A. 50-634, and amendments thereto, no private right of action  
 17 under the Kansas consumer protection act may be brought alleging a  
 18 violation of this subsection.

19 (c) No statute granting authority to persons licensed or registered by  
 20 the board shall be construed to confer authority upon a massage therapist  
 21 to engage in any activity not conferred by the massage therapist licensure  
 22 act.

23 Sec. 7. (a) An advisory committee of six members, two board  
 24 members and four non-board members, shall be established by the board  
 25 to advise and assist the board in implementing the massage therapist  
 26 licensure act as determined by the board. The advisory committee shall  
 27 meet at least annually. Members of the advisory committee shall receive  
 28 amounts provided for in K.S.A. 75-3223(e), and amendments thereto, for  
 29 each day of actual attendance at any meeting of the advisory committee or  
 30 any subcommittee meeting of the advisory committee authorized by the  
 31 board.

32 (b) The two board members shall be appointed by the board. Three  
 33 non-board members of the massage therapy advisory committee shall be  
 34 appointed by the board, shall be massage therapists and shall be citizens  
 35 and residents of the state. No more than one member may be an owner of a  
 36 massage school. The fourth non-board member shall be the designee of the  
 37 Kansas attorney general. The members of the committee shall be  
 38 appointed for terms of two years and shall serve at the pleasure of the  
 39 board.

40 Sec. 8. (a) The board shall biennially charge and collect in advance  
 41 fees provided for in the massage therapist licensure act as fixed by the  
 42 board by rules and regulations, subject to the following limitations:  
 43 Application fee, not more than.....\$80

1	Temporary permit fee, not more than.....	\$25
2	License renewal fee, not more than.....	\$75
3	License reinstatement fee, not more than.....	\$80
4	Certified copy of license, not more than.....	\$25
5	Written verification of license, not more than.....	\$30
6	Inactive license fee, not more than.....	\$20

7 (b) The board may require that fees paid for any examination under  
8 the massage therapist licensure act be paid directly to the examination  
9 service by the person taking the examination.

10 (c) The board shall accept for payment of fees under this section  
11 personal checks, certified checks, cashier's checks, money orders or credit  
12 cards. The board may designate other methods of payment, but shall not  
13 refuse payment in the form of a personal check. The board may impose  
14 additional fees and recover any costs incurred by reason of payments made  
15 by personal checks with insufficient funds and payments made by credit  
16 cards.

17 Sec. 9. (a) All licenses issued under the provisions of the massage  
18 therapist licensure act, whether initial or renewal, shall expire every two  
19 years. The expiration date shall be established by rules and regulations of  
20 the board. The board shall send a notice for renewal of license to every  
21 massage therapist at least 60 days prior to the expiration date of such  
22 person's license. Every person so licensed who desires to renew such  
23 license shall file with the board, on or before the date of expiration of such  
24 license, a renewal application together with the prescribed biennial  
25 renewal fee. Every licensee who is no longer engaged in the active practice  
26 of massage therapy may so state by affidavit and submit such affidavit  
27 with the renewal application. An inactive license may be requested along  
28 with payment of a fee fixed by rules and regulations of the board. Except  
29 for the first renewal for a license that expires within 30 months following  
30 licensure examination or for renewal of a license that expires within the  
31 first nine months following licensure by reinstatement or endorsement,  
32 every licensee with an active massage therapy license shall submit with the  
33 renewal application evidence of satisfactory completion of a program of  
34 continuing massage therapy education.

35 (b) The board shall require as a condition for renewal of a license  
36 completion of no more than 24 hours biennially of continuing education  
37 approved by the board in rules and regulations. Upon receipt of such  
38 application and payment of fee, upon receipt of the evidence of  
39 satisfactory completion of the required program of continuing massage  
40 therapy education and upon being satisfied that the applicant meets the  
41 requirements set forth by law in effect at the time of initial licensure of the  
42 applicant, the board shall verify the accuracy of the application and grant  
43 renewal of the license.

1 (c) Continuing education courses shall be offered by providers  
2 approved by the board. The courses shall be completed within the 24  
3 months preceding the date renewal is due. Hours in excess of the total  
4 number required may not be carried over to future renewals. The  
5 continuing education requirements shall not apply to a massage therapist  
6 within the biennium when the massage therapist is first licensed, but shall  
7 apply to licensees every biennium thereafter.

8 (d) Any person who fails to secure a license renewal within the time  
9 specified herein may secure a reinstatement of such lapsed license by  
10 making verified application therefor on a form provided by the board by  
11 rules and regulations, by furnishing proof that the applicant is competent  
12 and qualified to act as a massage therapist and by satisfying all of the  
13 requirements for reinstatement, including payment to the board of a  
14 reinstatement fee as established by the board. A reinstatement application  
15 for licensure will be held awaiting completion of such documentation as  
16 may be required, but such application shall not be held for a period of time  
17 in excess of that specified in rules and regulations of the board.

18 (e) (1) Each licensee shall notify the board in writing of:

19 (A) A change in name or address within 30 days of the change; or

20 (B) a conviction of any felony or misdemeanor that is specified in  
21 rules and regulations adopted by the board within 30 days from the date  
22 the conviction becomes final.

23 (2) As used in this subsection, "conviction" means a final conviction  
24 without regard to whether the sentence was suspended or probation was  
25 granted after such conviction. Also, for the purposes of this subsection, a  
26 forfeiture of bail, bond or collateral deposited to secure a defendant's  
27 appearance in court, which forfeiture has not been vacated, shall be  
28 equivalent to a conviction. Failure to so notify the board shall not  
29 constitute a defense in an action relating to failure to renew a license, nor  
30 shall it constitute a defense in any other proceeding.

31 (f) (1) The board shall require an original applicant for licensure as a  
32 massage therapist to be fingerprinted and submit to a state and national  
33 criminal history record check. The fingerprints shall be used to identify the  
34 applicant and to determine whether the applicant has a record of criminal  
35 history in this state or other jurisdictions. The board is authorized to  
36 submit the fingerprints to the Kansas bureau of investigation and the  
37 federal bureau of investigation for a state and national criminal history  
38 record check and request subsequent arrest notification services from both  
39 agencies. The board may use the information obtained from fingerprinting  
40 and the applicant's criminal history for purposes of verifying the  
41 identification of any applicant and in the official determination of  
42 character and fitness of the applicant for any licensure to practice massage  
43 therapy in this state.

1 (2) Local and state law enforcement officers and agencies shall assist  
2 the board in the taking and processing of fingerprints of applicants to  
3 practice massage therapy in this state and shall release all records of adult  
4 convictions and non-convictions and adult convictions or adjudications of  
5 another state or country to the board.

6 (3) The board shall fix a fee for fingerprinting of applicants or  
7 licensees, or both, as may be required by the board in an amount necessary  
8 to reimburse the board for the cost of the fingerprinting. Fees collected  
9 under this subsection shall be deposited in the state treasury in accordance  
10 with K.S.A. 75-4215, and amendments thereto, and credited to the healing  
11 arts fee fund.

12 Sec. 10. (a) The board may refuse to grant licensure to, or may  
13 suspend, revoke, condition, limit, qualify or restrict the licensure issued  
14 under the massage therapist licensure act of any individual whom the  
15 board, after the opportunity for a hearing, determines:

16 (1) Is incompetent to practice massage therapy or is found to engage  
17 in the practice of massage therapy in a manner harmful or dangerous to a  
18 client or to the public;

19 (2) is convicted by a court of competent jurisdiction of a felony,  
20 misdemeanor crimes against persons or substantiation of abuse against a  
21 child, adult or resident of a care facility, even if not practice-related;

22 (3) has violated a provision of the massage therapist licensure act or  
23 one or more of the rules and regulations of the board;

24 (4) has obtained or attempted to obtain a license or license renewal by  
25 bribery or fraudulent representation;

26 (5) has knowingly made a false statement on a form required by the  
27 board for license or license renewal;

28 (6) has failed to obtain continuing education credits required by rules  
29 and regulations of the board;

30 (7) has been found guilty of unprofessional conduct as defined by  
31 rules and regulations of the board; or

32 (8) has had a registration, license or certificate as a massage therapist  
33 revoked, suspended or limited, or has had other disciplinary action taken,  
34 or an application for registration, license or certificate denied by the proper  
35 regulatory authority of another state, territory, the District of Columbia or  
36 another country, a certified copy of the record of the action of the other  
37 jurisdiction being conclusive evidence thereof.

38 (b) Upon filing of a sworn complaint with the board charging a  
39 person with having been guilty of any of the unlawful practices specified  
40 in subsection (a), two or more members of the board shall investigate the  
41 charges, or the board may designate and authorize an employee or  
42 employees of the board to conduct an investigation. After investigation,  
43 the board may institute charges. If an investigation, in the opinion of the



1 board, reveals reasonable grounds for believing the applicant or licensee is  
2 guilty of the charges, the board shall fix a time and place for proceedings,  
3 which shall be conducted in accordance with the provisions of the Kansas  
4 administrative procedure act.

5 (c) No person shall be excused from testifying in any proceedings  
6 before the board under the massage therapist licensure act or in any civil  
7 proceedings under this act before a court of competent jurisdiction on the  
8 ground that such testimony may incriminate the person testifying, but such  
9 testimony shall not be used against the person for the prosecution of any  
10 crime under the laws of this state, except the crime of perjury as defined in  
11 K.S.A. 2017 Supp. 21-5903, and amendments thereto.

12 (d) If final agency action of the board in a proceeding under this  
13 section is adverse to the applicant or licensee, the costs of the board's  
14 proceedings shall be charged to the applicant or licensee as in ordinary  
15 civil actions in the district court, but if the board is the unsuccessful party,  
16 the costs shall be paid by the board. Witness fees and costs may be taxed  
17 by the board according to the statutes relating to procedure in the district  
18 court. All costs accrued by the board, when it is the successful party and  
19 that the attorney general certifies cannot be collected from the applicant or  
20 licensee, shall be paid from the healing arts fee fund. All moneys collected  
21 following board proceedings shall be credited in full to the healing arts fee  
22 fund.

23 (e) The denial, suspension, revocation or limitation of a license or  
24 public or private censure of a licensee may be ordered by the board after  
25 notice and hearing on the matter in accordance with the provisions of the  
26 Kansas administrative procedure act. The board shall also notify the local  
27 law enforcement agency upon disciplinary action. Upon the end of the  
28 period of no less than two years for the revocation of a license, application  
29 may be made to the board for reinstatement. The board shall have  
30 discretion to accept or reject an application for reinstatement and may hold  
31 a hearing to consider such reinstatement. An application for reinstatement  
32 of a revoked license shall be accompanied by the license reinstatement fee  
33 established under section 8, and amendments thereto.

34 (f) The board, in addition to any other penalty prescribed in  
35 subsection (a), may assess a civil fine, after proper notice and an  
36 opportunity to be heard, against a licensee for unprofessional conduct in an  
37 amount not to exceed \$1,000 for the first violation, \$2,000 for the second  
38 violation and \$3,000 for the third violation and for each subsequent  
39 violation. All fines assessed and collected under this section shall be  
40 remitted to the state treasurer in accordance with the provisions of K.S.A.  
41 75-4215, and amendments thereto. Upon receipt of each such remittance,  
42 the state treasurer shall deposit the entire amount in the state treasury to  
43 the credit of the state general fund.

1 (g) The board, upon request, shall receive from the Kansas bureau of  
2 investigation such criminal history record information relating to arrests  
3 and criminal convictions as necessary for the purpose of determining  
4 initial and continuing qualifications of licensees and applicants for  
5 licensure by the board.

6 Sec. 11. The board shall remit all moneys received from fees, charges  
7 or penalties under the massage therapist licensure act to the state treasurer  
8 in accordance with the provisions of K.S.A. 75-4215, and amendments  
9 thereto. Upon receipt of each such remittance, the state treasurer shall  
10 deposit the entire amount in the state treasury. Ten percent of each such  
11 deposit shall be credited to the state general fund and the balance shall be  
12 credited to the healing arts fee fund. All expenditures from such fund shall  
13 be made in accordance with appropriation acts upon warrants of the  
14 director of accounts and reports issued pursuant to vouchers approved by  
15 the president of the board or by a person designated by the president of the  
16 board.

17 Sec. 12. A local unit of government shall not establish or maintain  
18 professional licensing requirements for a massage therapist licensed under  
19 the massage therapist licensure act. Nothing in the massage therapist  
20 licensure act shall affect local zoning requirements. Local government law  
21 enforcement agencies may inspect massage therapy registrations and the  
22 business premises where massage therapy is practiced for compliance with  
23 applicable laws. Nothing in this section shall be construed to preclude  
24 criminal prosecution for a violation of any criminal law. If such inspection  
25 reveals the practice of massage therapy by a person without a valid license,  
26 the person may be charged with a violation of section 6(b), and  
27 amendments thereto, and the board shall be notified.

28 Sec. 13. (a) When it appears to the board that any person is violating  
29 any of the provisions of the massage therapist licensure act, the board may  
30 bring an action in the name of the state of Kansas in a court of competent  
31 jurisdiction for an injunction against such violation without regard to  
32 whether proceedings have been or may be instituted before the board or  
33 whether criminal proceedings have been or may be instituted.

34 (b) The provisions of this section shall take effect on and after  
35 September 1, 2020.

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

40 Sec. 15. Professional liability insurance coverage shall be maintained  
41 in effect by each massage therapist as a condition to rendering professional  
42 service as a massage therapist in this state. An applicant for initial or  
43 renewal licensure shall provide proof to the board that the applicant

1 currently has professional liability insurance with minimum coverage of  
2 \$2,000,000 per claim and \$6,000,000 in aggregate.

3 Sec. 16. On the effective date of this act, nothing in the massage  
4 therapist licensure act or in the provisions of K.S.A. 40-2,100 through 40-  
5 2,105, and amendments thereto, or K.S.A. 2017 Supp. 40-2,105a through  
6 40-2,105d, and amendments thereto, shall be construed to require that any  
7 individual, group or blanket policy of accident and sickness, medical or  
8 surgical expense insurance coverage or any provision of a policy, contract,  
9 plan or agreement for medical service issued on or after the effective date  
10 of this act, reimburse or indemnify a person licensed under the massage  
11 therapist licensure act for services provided as a massage therapist.

12 Sec. 17. Sections 1 through 17, and amendments thereto, shall be  
13 known and may be cited as the massage therapist licensure act.

14 Sec. 18. This act shall take effect and be in force from and after its  
15 publication in the statute book.