

March 23, 2023

The Honorable Beverly Gossage, Chairperson
Senate Committee on Public Health and Welfare
300 SW 10th Avenue, Room 142-S
Topeka, Kansas 66612

Dear Senator Gossage:

SUBJECT: Fiscal Note for SB 305 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 305 is respectfully submitted to your committee.

SB 305 would create the Massage Therapist Licensure Act. The bill would require the State Board of Healing Arts to regulate and license massage therapists practicing in Kansas. The bill would include requirements for licensure and the maximum fees that could be charged for application and licensing. The bill would outline the powers, duties, and functions of the Board regarding the regulation and licensure of massage therapists. The bill would establish a Massage Therapy Advisory Committee that would consist of six members. The Committee would advise and assist the Board in implementing the Act. The bill also would require a licensed massage therapist to maintain professional liability insurance coverage.

On and after September 1, 2024, any person who practices massage therapy without a license would be subject to a class B person misdemeanor and the action would constitute an unconscionable act or practice in violation of the Kansas Consumer Protection Act. The bill would also allow the Board to assess civil fines for unprofessional conduct, which would be deposited to the State General Fund. All applicants would be fingerprinted, and those fingerprints would be submitted to the Kansas Bureau of Investigation and the Federal Bureau of Investigation. Local and state law enforcement would assist in taking and processing the fingerprints of applicants. The Board would set a fee for fingerprinting to reimburse any related expenditures. A total of 10.0 percent of all other fees, charges, or penalties received under the Act would be deposited to the State General Fund with the Board receiving the remaining 90.0 percent.

According to the Kansas State Board of Healing Arts, enactment of SB 305 would result in additional fee fund expenditures totaling \$256,468 and 3.00 additional FTE positions in FY

2024. The bill would require the Board to research and update new rules and regulations related to the practice of massage therapy. The agency would also be required to staff, service, and manage a new professional advisory council, which would likely require an additional legal assistant to manage the workload. The agency would also likely need another position to assist with either investigations resulting from the license type or litigating the complaints. The agency states that to avoid adverse impact on the speed of application processing for the other 16 professions they currently license, they would also need to add a Licensing Analyst to the Licensing Department. This position would be responsible for reviewing initial and renewal applications for completeness and accuracy. During FY 2024, this position could also have to assist with the development of application materials. In addition, the agency would have expenses related to an increase in the number of complaints received and investigations assigned, though the number of complaints could not be estimated. The agency estimates salaries and benefits for the Legal Assistant at \$73,153; the Licensing Analyst at \$53,980; and the Investigator or Staff Attorney at approximately \$103,475. The agency also estimates overhead for the new positions at \$24,600, which would include additional office equipment, internet, software, and phone lines. The bill would require the Board to research and update new rules and regulations related to the practice of massage therapy. One-time publication costs are estimated at \$1,260 to post notices of public hearings for approximately 15 proposed regulations and to post 15 adopted regulations in the Kansas Register. While the bill would generate some revenue through initial licensure fees, renewal, and reinstatement fees, the agency does not anticipate the revenue would be enough to cover the costs to implement the requirements of the bill. The estimate is based on information from the Kansas Association of Therapeutic Massage and Bodywork, Inc. There are approximately 2,500 massage therapists in Kansas who could qualify for licensure under this bill. If 75.0 percent of those massage therapists were to seek initial licensure and a licensing fee set at the maximum amount allowed under the Act was assumed, revenues are estimated to be approximately \$150,000 for initial licensure fees. The licenses would expire every two years, so the renewal revenues would not be received annually.

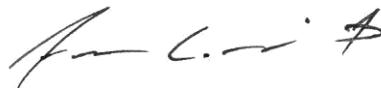
The Office of Judicial Administration states enactment of SB 305 could increase the number of cases filed in district court because it creates new crimes. The bill also includes provisions that would allow the Board of Healing Arts' administrative actions taken against licensees to be subject to the Kansas Judicial Review Act, as well as allow the Board to file civil actions for injunctions against violators. This could result in more time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing these cases. Since crimes under the Act carry misdemeanor penalties, there could also be more supervision of offenders required to be performed by Court Services Officers. The Office estimates enactment of the bill could result in the collection of docket fees assessed in those cases filed under the bill's provisions. According to the Office, a fiscal effect cannot be estimated.

The Office of the Attorney General notes that violations of the act could be enforced under the Kansas Consumer Protection Act. The Office is unable to estimate the total fiscal effect as they are unable to determine how many consumer complaints could arise from enactment of the legislation, how much additional staff time would be involved regarding investigations and enforcement, or if additional fines and penalties could be imposed. The Kansas Bureau of Investigation does not anticipate a fiscal effect from the bill as any additional revenue received

from the state and national criminal history record check requests sent to the agency would be offset for expenditures related to staffing and maintenance of the required systems necessary for the dissemination of criminal history record information in accordance with the Act. The Kansas Insurance Department states that while the bill would create a new mandatory purchase of insurance, the estimated effect on additional premium taxes would be minimal. Any fiscal effect associated with SB 305 is not reflected in *The FY 2024 Governor's Budget Report*.

The League of Kansas Municipalities states passage of the bill would require cities to assist with implementation and enforcement of the Act. The total fiscal effect could not be estimated. The Kansas Association of Counties notes enactment of the bill could have a fiscal effect for counties related to the zoning of new businesses but anticipates the effect would be negligible.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Susan Gile, Board of Healing Arts
Bobbi Mariani, Insurance Department
Vicki Jacobsen, Judiciary
John Milburn, Office of the Attorney General
Paul Weisgerber, Kansas Bureau of Investigation
Jay Hall, Kansas Association of Counties
Wendi Stark, League of Kansas Municipalities