

SENATE BILL NO. 358
INTRODUCED BY J. ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REGULATION OF THE PRACTICE OF MASSAGE THERAPY BY THE ALTERNATIVE HEALTH CARE BOARD; ESTABLISHING MINIMUM REQUIREMENTS FOR ACTIVE LICENSURE AND EXEMPTIONS FROM LICENSING; PROVIDING FOR A 2-YEAR TEMPORARY LICENSE; ADDING TWO MASSAGE THERAPY MEMBERS TO THE ALTERNATIVE HEALTH CARE BOARD AND AUTHORIZING THE BOARD TO ADOPT ADMINISTRATIVE RULES; AUTHORIZING INJUNCTIVE RELIEF AND PROVIDING FOR PENALTIES; PROVIDING FOR STAGGERED TERMS FOR BOARD MEMBERS WHO ARE MASSAGE THERAPISTS; AMENDING SECTION 2-15-1730, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Massage Therapy Licensing Act".

NEW SECTION. **Section 2. Purpose.** The legislature finds that because the practice of massage therapy affects the health, safety, and welfare of the people of this state, it is the purpose of [sections 1 through 10] to promote high standards of professional performance and to protect the public from unprofessional conduct by regulating and ensuring the qualified and professional practice of massage therapy.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 10], the following definitions apply:

- (1) "Board" means the alternative health care board established in 2-15-1730.
- (2) "Massage therapist" means a person who is licensed by the alternative health care board and who administers massage therapy.
- (3) "Massage therapy" means the application of manual techniques, touch, pressure, positioning, and holding to the soft tissues of the body in which the goal is to enhance the well-being of the person and to facilitate relaxation, stress reduction, and general therapeutic benefits. The term includes:
 - (a) massage therapy techniques that may be applied using the hands, forearms, elbows, knees, feet,

or hand-held massage therapy tools; and

(b) complementary methods, including but not limited to the application of water, heat, cold, lubricants, salt scrubs, skin brushing, wraps, or other massage oils, creams, and gels, and mechanical massage tools when used by massage therapists acting within their scope of practice.

NEW SECTION. Section 4. Exemptions. (1) [Sections 1 through 10] do not limit or regulate:

(a) the teaching of a course on massage therapy by a person who is licensed, registered, or certified in another state or territory of the United States, the District of Columbia, or a foreign country;

(b) the practice, performed without compensation, of a massage therapy student who is under the direct supervision of a person licensed under [sections 1 through 10] and who is currently enrolled in a required massage therapy program recognized by the board;

(c) gratuitous massage therapy provided to a member of the person's immediate family;

(d) the practice of native traditional healers, dance therapists, dance, yoga, or meditation teachers, personal trainers, or martial arts instructors;

(e) the practice of persons who use touch, words, and directed movement to deepen awareness of existing patterns of movement in the body and to suggest new possibilities of movement while engaged within the scope of practice of a profession with established standards and ethics if:

(i) their services are not designative or implied to be massage therapy; and

(ii) they are recognized by either a professional organization or credentialing agency that represents or certifies the respective practice based on a minimal level of training, demonstration of competency, and adherence to ethical standards;

(f) the practice of persons in this state who use touch to affect the human energy system, energy meridians, or energy fields while engaged within the scope of practice of a profession with established standards and ethics if:

(i) their services are not designated or implied to be massage therapy; and

(ii) they are recognized by either a professional organization or credentialing agency that represents or certifies the respective practice based on a minimal level of training, demonstration of competency, and adherence to ethical standards;

(g) the practice of persons who restrict their manipulation of soft tissues to the hands, feet, or ears and who do not hold themselves out to be massage therapists or perform massage therapy; or

(h) the services provided by persons in Montana as part of a massage emergency response team

working in conjunction with disaster relief officials when providing disaster and emergency services.

(2) [Sections 1 through 10] are not intended to preclude or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state who perform services within their authorized scope of practice and do not hold themselves out to be massage therapists.

NEW SECTION. Section 5. Powers and duties of board -- rulemaking authority. The board shall adopt rules necessary to administer and enforce [sections 1 through 10]. The rules may include, but are not limited to:

- (1) the development of a license application, designation of at least one specific national examination, and establishment of license fees commensurate with actual costs;
- (2) the endorsement of equivalent licensure applicants of another state or territory of the United States, the District of Columbia, or a foreign country;
- (3) the adoption of disciplinary standards for licensees;
- (4) the development of criteria for approving schools and educational coursework necessary to meet the requirements for licensure;
- (5) the development of continuing education provider criteria; and
- (6) the adoption of ethical standards for licensed massage therapists.

NEW SECTION. Section 6. Licensed required -- enjoining unlawful practice. (1) A person may not practice massage therapy or represent to the public that the person is a massage therapist without a valid and current license issued by the board under the provisions of [sections 1 through 10].

(2) Only a massage therapist licensed under [sections 1 through 10] may use any or all of the titles or terms "massage therapist", "licensed massage therapist, LMT", "massage practitioner", "licensed massage practitioner, LMP", "massage technician", "licensed massage technician", "masseur", or "masseuse".

(3) The titles and terms in subsection (2) identify massage therapists and are restricted to describing and identifying licensed practitioners and their practice. A person who uses these titles and terms to represent the person or the person's practice to the public in any advertisement, statement, or publication without being licensed pursuant to [sections 1 through 10] is in violation of [sections 1 through 10].

(4) The board may bring an action in district court to enjoin a person found by the board to be in violation of [sections 1 through 10].

NEW SECTION. Section 7. Qualifications for active licensure -- exceptions -- temporary license

-- license renewal. (1) Except for a 2-year temporary license granted under subsection (2), to be eligible for a license as a massage therapist, an applicant:

(a) must possess a high school diploma or its equivalent;

(b) must be at least 18 years of age;

(c) shall file documentation with the board that the applicant is currently certified by the American heart association or the American red cross to perform cardiopulmonary resuscitation and has completed a first aid training program and an HIV training program;

(d) may not have been convicted of the offense of prostitution or promotion or aggravated promotion of prostitution as described in 45-5-601 through 45-5-603 or sexual crimes as described in Title 45, chapter 5, part 5;

(e) shall provide verification that the department of justice and the federal bureau of investigation have completed a fingerprint background check and may not be currently under investigation by any state or federal regulatory body or had any massage therapy or similar license suspended, restricted, or revoked by any state or federal regulatory body;

(f) shall provide proof of a current certificate issued by a national certification board accredited by a national accrediting agency and approved by the board, such as the national commission for certifying agencies or the American national standards institute; and

(g) shall file documentation with the board that the applicant has completed a minimum of 600 hours of board-approved educational course work.

(2) For 1 year after [the effective date of this act], the board may grant a 2-year temporary license if an applicant for licensure meets the requirements of subsections (1)(a) through (1)(e) and if the applicant:

(a) provides proof of completion of a minimum of 100 hours of formal training in massage therapy approved by the board; or

(b) provides proof that the applicant has been in active, continuous professional massage therapy practice for 10 or more years within the 15-year period immediately prior to [the effective date of this act], including submission of two forms of official government or business records that may include tax returns or an appointment book kept in the ordinary course of business.

(3) By the end of the 2-year period:

(a) an individual who qualifies for a temporary license under subsection (2)(a) shall provide proof of a current certificate issued by a national certification board accredited by a national accrediting agency and

approved by the board, such as the national commission for certifying agencies or the American national standards institute, and shall provide proof of completion of a total of 600 hours of board-approved educational course work;

(b) an individual who qualifies for a temporary license under subsection (2)(b) shall provide proof of a current certificate issued by a national certification board accredited by a national accrediting agency and approved by the board, such as the national commission for certifying agencies or the American national standards institute.

(4) A temporary license holder who meets the requirements of subsection (3)(a) or (3)(b) by the end of the prescribed 2-year period must be granted a license to practice massage therapy.

(5) A temporary license holder who fails to meet the requirements of either subsection (3)(a) or (3)(b) within the required 2-year time period may not practice massage therapy in this state.

(6) Except as provided in subsection (2), a person licensed under the provisions of this section shall renew the license annually and file documentation with the board of completion of a minimum of 12 hours of board-approved educational course work in the previous 12 months.

NEW SECTION. Section 8. Prohibited acts. A licensed massage therapist may not:

- (1) diagnose or treat illnesses or diseases;
- (2) perform high-velocity, low-amplitude thrust to a joint;
- (3) apply electrical stimulation, ultrasound, iontophoresis or phonophoresis;
- (4) prescribe medicines; or
- (5) authorize the use of procedures and modalities for which a license to practice medicine, chiropractic medicine, nursing, physical therapy, occupational therapy, acupuncture, naturopathic medicine, or podiatry is required by law.

NEW SECTION. Section 9. Fees. (1) An applicant for a massage therapy license shall, upon submitting an application to the board, pay all fees set by the board. The fees must be established commensurate with costs.

- (2) Subject to 37-1-101(6), fees must be deposited in the state special revenue fund for use by the board.
- (3) Fees are nonrefundable.

NEW SECTION. Section 10. Enforcement -- penalties. A person who violates any provision of [sections 1 through 10] is guilty of a misdemeanor and is punishable by a fine not to exceed \$500, by

imprisonment in the county jail for a term of not more than 6 months, or both.

Section 11. Section 2-15-1730, MCA, is amended to read:

"2-15-1730. Alternative health care board -- composition -- terms -- allocation. (1) There is an alternative health care board.

(2) The board consists of ~~six~~ eight members appointed by the governor with the consent of the senate.

The members are:

(a) two persons from each of the health care professions regulated by the board who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board; The professions regulated by the board include naturopathic physicians, direct-entry midwives, and massage therapists.

(b) one public member who is not a member of a profession regulated by the board; and

(c) one member who is a Montana physician whose practice includes obstetrics.

(3) The members must have been residents of this state for at least 3 years before appointment to the board.

(4) All members shall serve staggered 4-year terms. The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

(6) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that one member of the board need not be an attorney licensed to practice law in this state."

NEW SECTION. **Section 12. Transition to staggered terms -- appointments.** (1) On July 1, 2003, the governor shall make additional appointments to the alternative health care board, as follows:

(a) one person who is a massage therapist, to serve a 2-year term; and

(b) one person who is a massage therapist, to serve a 4-year term.

(2) At the expiration of the 2-year term provided for in subsection (1)(a), the governor shall appoint the person designated to fill that position to serve a 4-year term. At the expiration of the 4-year terms, appointments must be made in accordance with 2-15-1730.

NEW SECTION. **Section 13. Codification instruction.** [Sections 1 through 10] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 10].

NEW SECTION. **Section 14. Effective date -- applicability.** [This act] is effective on passage and approval and applies to persons applying for massage therapist licenses on or after [the effective date of this act].

- END -

