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

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

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

Sec. 2. As used in the massage therapist licensure act:
(a) "Board" means the state board of healing arts.
(b) "Massage school" means a massage therapy educational program that meets the standards for training and curriculum as set forth by the state board of regents under the Kansas private and out-of-state postsecondary educational institution act, or comparable legal authority in another state.
(c) "Compensation" means the payment, loan, advance, donation, contribution, barter, deposit or gift of money or anything of value.
(d) "Licensed massage therapist" means a person who meets the requirements of the massage therapist licensure act and who engages in the practice of massage therapy.
(e) "Professional massage therapy association" or "bodywork association" means a state or nationally chartered professional membership organization that has been recognized by the board as offering services to massage therapists and that requires that its members adhere to the organization's established code of ethics and standards of practice.
(f) "Massage" and "massage therapy" mean a healthcare service involving the external manipulation or pressure of soft tissue for therapeutic purposes. It is the application of a system of structured touch, pressure, movement and holding of the soft tissue of the human body in which the primary intent is to relieve pain, improve circulation, relieve stress, increase relaxation and enhance or restore the health and well-being of the client. The practice of massage therapy includes complementary methods, including the external application of water, heat, cold, lubrication, salt scrubs, body wraps or other topical preparations; and electromechanical devices that mimic or enhance the actions possible by the hands. "Massage" or "massage therapy" does not include:
(1) Medical or nursing diagnosis of injury, illness or disease;
(2) therapeutic exercise;
(3) chiropractic diagnosis of injury, illness or disease and treatment including chiropractic joint adjustment;
(4) physical therapy joint mobilization or manipulation;
(5) electrical stimulation or application of ultrasound; or
(6) dispensing or issuing prescriptions or pharmaceutical agents.
(g) "Massage therapy services" include, but are not limited to:
(1) Development, implementation and modification of a massage therapy treatment plan that addresses the client's soft tissue manifestations, needs and concerns, including identifying indications, contraindications and precautions of massage therapy within the scope of the massage therapist licensure act;
(2) obtaining informed consent regarding the risks and benefits of the massage therapy treatment plan and application and modification of the massage therapy treatment plan as needed;
(3) using effective interpersonal communication in the professional relationship;
(4) utilizing an ethical decision-making process that conforms to the ethical standards of the profession, as set forth in the massage therapist licensure act and in rules and regulations of the board;
(5) establishing and maintaining a practice environment that provides for the client's health, safety and comfort; and
(6) establishing and maintaining client records, professional records and business records in compliance with standards of professional conduct as required by rules and regulations of the board.
Sec. 3. (a) Upon application to the board and the payment of the required fees, an applicant for a license as a massage therapist may be licensed as a massage therapist if the applicant meets all the requirements of the massage therapist licensure act and provides documentation acceptable to the board that the applicant:
(1) Has obtained a high school diploma or its equivalent;
(2) is 18 years of age or older;
(3) has no other record of disqualifying conduct as defined by the board;
(4) has successfully completed a course of instruction approved by the board consisting of at least 500 in-classroom hours of supervised instruction, including massage therapy technique and theory, contraindications, ethics, sanitation, hygiene, business training, anatomy, physiology and pathology; and
(5) has successfully passed, including prior to the effective date of the massage therapist licensure act, a nationally recognized competency examination in massage therapy that meets acceptable psychometric principles, is statistically validated through a job-task analysis under
Sec. 4. Prior to July 1, 2021, the board shall issue a license as a massage therapist to any individual who meets the requirements of section 2(a)(1), (2) and (3), and amendments thereto, and one of the following requirements verified to the board by affidavit:

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

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

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

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

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

Sec. 5. (a) The board may issue a license to practice massage therapy as a licensed massage therapist to an applicant who has been duly licensed as a massage therapist by examination under the laws of another state, territory, the District of Columbia or a foreign country if, in the opinion of the board, the applicant meets the qualifications required for licensure as a massage therapist in this state. Verification of the applicant's licensure status shall be required from the original state of licensure.

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

Sec. 6. (a) Nothing in the massage therapist licensure act shall be construed to restrict any person licensed or regulated by the state of Kansas from engaging in the profession or practice for which they are licensed or regulated, including, but not limited to, acupuncture, athletic training, barbering, chiropractic, cosmetology, dentistry, electrology, esthetics, manicuring, medicine, naturopathic medicine, nursing, occupational therapy, osteopathy, physical therapy, podiatry, professional counseling, psychology, social work or veterinary medicine or any other profession licensed or regulated by the state of Kansas.

(b) Nothing in the massage therapist licensure act shall prohibit:
(1) The practice of massage therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States;

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

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

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

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

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

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

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

(c) Nothing in the massage therapist licensure act shall be construed to prevent or restrict the practice of any person in this state who uses 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, so long as their services are not designated or implied to be massage or massage therapy. Such practices include, but are not limited to: The Feldenkrais method of somatic education; the Rolf Institute's Rolf Movement Integration; the Trager approach to movement education; and body-mind centering. Practitioners must be recognized by or meet the established standards of 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.
Sec. 7. (a) A person licensed under the massage therapist licensure act as a massage therapist shall:

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

(2) be authorized to use words that indicate that such person is a massage therapist licensed under the massage therapist licensure act, including: "Massage therapist," "massagist," "massotherapist," "myotherapist," "body therapist," "massage technician," "massage practitioner," "masseur," "masseuse" or any derivation thereof.

(b) On and after September 1, 2021, it shall be unlawful for any person who is not licensed under the massage therapist licensure act as a massage therapist or whose license has been suspended, revoked or lapsed to promote oneself to the public in any manner as a licensed massage therapist or to engage in the practice of massage therapy. A violation of this subsection is a class B person misdemeanor. In addition, a violation of this subsection also constitutes an unconscionable act or practice in violation under K.S.A. 50-627, and amendments thereto, whether or not it involves a consumer, a consumer transaction or a supplier, as defined in K.S.A. 50-624, and amendments thereto. Notwithstanding the provisions of K.S.A. 50-634, and amendments thereto, no private right of action under the Kansas consumer protection act may be brought alleging a violation of this subsection.

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

Sec. 8. (a) An advisory committee of six members, two board members and four non-board members, shall be established by the board to advise and assist the board in implementing the massage therapist licensure act as determined by the board. The advisory committee shall meet at least annually. Members of the advisory committee shall receive amounts provided for in K.S.A. 75-3223(e), and amendments thereto, for each day of actual attendance at any meeting of the advisory committee or any subcommittee meeting of the advisory committee authorized by the board.

(b) The two board members shall be appointed by the board. Three non-board members of the massage therapy advisory committee shall be appointed by the board, shall be massage therapists and shall be citizens and residents of the state. No more than one member may be an owner of a massage school. The fourth non-board member shall be the designee of the Kansas attorney general. The members of the committee shall be appointed for terms of two years and shall serve at the pleasure of the board.
Sec. 9. (a) The board shall biennially charge and collect in advance fees provided for in the massage therapist licensure act as fixed by the board by rules and regulations, subject to the following limitations:

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

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

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

Sec. 10. (a) All licenses issued under the provisions of the massage therapist licensure act, whether initial or renewal, shall expire every two years. The expiration date shall be established by rules and regulations of the board. The board shall send a notice for renewal of license to every massage therapist at least 60 days prior to the expiration date of such person’s license. Every person so licensed who desires to renew such license shall file with the board, on or before the date of expiration of such license, a renewal application together with the prescribed biennial renewal fee. Every licensee who is no longer engaged in the active practice of massage therapy may so state by affidavit and submit such affidavit with the renewal application. An inactive license may be requested along with payment of a fee fixed by rules and regulations of the board. Except for the first renewal for a license that expires within 30 months following licensure examination or for renewal of a license that expires within the first nine months following licensure by reinstatement or endorsement, every licensee with an active massage therapy license shall submit with the renewal application evidence of satisfactory completion of a program of continuing massage therapy education.

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

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

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

(e) (1) Each licensee shall notify the board in writing of:
(A) A change in name or address within 30 days of the change; or
(B) a conviction of any felony or misdemeanor that is specified in
rules and regulations adopted by the board within 30 days from the date
the conviction becomes final.
(2) As used in this subsection, "conviction" means:
(A) The entry of a plea or verdict of guilty or a conviction following a
plea of nolo contendere and without regard to whether the sentence was
suspended or probation granted after such conviction;
(B) a forfeiture of bail, bond or collateral deposited to secure a
defendant's appearance, in court, if such forfeiture has not been vacated;
(C) entering into a diversion agreement in lieu of further criminal
proceedings alleging a violation of any offense specified by the board in
rules and regulations.

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

(2) Local and state law enforcement officers and agencies shall assist
the board in the taking and processing of fingerprints of applicants to
practice massage therapy in this state and shall release all records of an
applicant's adult convictions and nonconvictions to the board.

(3) The board shall fix a fee for fingerprinting and conducting a state
and national criminal history record check of applicants or licensees as
may be required by the board in an amount necessary to reimburse the
board for the cost. Fees collected under this subsection shall be deposited
in the state treasury in accordance with K.S.A. 75-4215, and amendments
tereto, and credited to the healing arts fee fund.

Sec. 11. (a) The board may refuse to grant licensure to, or may
suspend, revoke, condition, limit, qualify or restrict the licensure issued
under the massage therapist licensure act of any individual whom the
board, after the opportunity for a hearing, determines:

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

(2) is convicted by a court of competent jurisdiction of a felony or a
misdemeanor crime against persons, even if not practice-related;

(3) is currently listed on a child abuse registry or an adult protective
services registry as the result of a substantiated finding of abuse or neglect
by any state agency, agency of another state or the United States, territory
of the United States or another country and the applicant or licensee has
not demonstrated to the board's satisfaction that such person has been
sufficiently rehabilitated to merit the public trust;

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

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

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

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

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

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

(b) Upon filing of a sworn complaint with the board charging a
person with having been guilty of any of the unlawful practices specified
in subsection (a), two or more members of the board shall investigate the
charges, or the board may designate and authorize an employee or
employees of the board to conduct an investigation. After investigation,
the board may institute charges. If an investigation, in the opinion of the
board, reveals reasonable grounds for believing the applicant or licensee is
guilty of the charges, the board shall fix a time and place for proceedings,
which shall be conducted in accordance with the provisions of the Kansas
administrative procedure act.

(c) No person shall be excused from testifying in any proceedings
before the board under the massage therapist licensure act or in any civil
proceedings under this act before a court of competent jurisdiction on the
ground that such testimony may incriminate the person testifying, but such
testimony shall not be used against the person for the prosecution of any
crime under the laws of this state, except the crime of perjury as defined in
K.S.A. 2018 Supp. 21-5903, and amendments thereto.

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

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

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

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

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

Sec. 13. A local unit of government shall not establish or maintain
professional licensing requirements for a massage therapist licensed under
the massage therapist licensure act. Nothing in the massage therapist
licensure act shall affect local zoning requirements. Local government law
enforcement agencies may inspect massage therapy registrations and the
business premises where massage therapy is practiced for compliance with
applicable laws. Nothing in this section shall be construed to preclude
criminal prosecution for a violation of any criminal law. If such inspection
reveals the practice of massage therapy by a person without a valid license,
the person may be charged with a violation of section 6(b), and
amendments thereto, and the board shall be notified.

Sec. 14. (a) When it appears to the board that any person is violating
any of the provisions of the massage therapist licensure act, the board may
bring an action in the name of the state of Kansas in a court of competent
jurisdiction for an injunction against such violation without regard to
whether proceedings have been or may be instituted before the board or
whether criminal proceedings have been or may be instituted.

(b) The provisions of this section shall take effect on and after
September 1, 2021.
Sec. 15. All state agency adjudicative proceedings under the massage therapist licensure act shall be conducted in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the Kansas judicial review act.

Sec. 16. Professional liability insurance coverage shall be maintained in effect by each massage therapist as a condition to rendering professional service as a massage therapist in this state. An applicant for initial or renewal licensure shall provide proof to the board that the applicant currently has professional liability insurance with minimum coverage of $2,000,000 per claim and $6,000,000 in aggregate.

Sec. 17. On the effective date of this section, nothing in the massage therapist licensure act or in the provisions of K.S.A. 40-2,100 through 40-2,105, and amendments thereto, or K.S.A. 2018 Supp. 40-2,105a through 40-2,105d, and amendments thereto, shall be construed to require that any individual, group or blanket policy of accident and sickness, medical or surgical expense insurance coverage or any provision of a policy, contract, plan or agreement for medical service issued on or after the effective date of this act, reimburse or indemnify a person licensed under the massage therapist licensure act for services provided as a massage therapist.

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