AN ACT enacting the massage therapist licensure act; providing for powers, duties and functions of the state board of nursing; amending K.S.A. 2014 Supp. 74-1112 and repealing the existing section.

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

New Section 1. As used in this act:

(a) "Board" means the state board of nursing.

(b) "Massage school" means a massage therapy educational program which 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 this 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. The organization requires that its members must adhere to the organization's established code of ethics and standards of practice.

(f) "Practice of massage therapy" means the care and services provided by a licensed massage therapist in a system of therapeutic, structured touch, palpation or movement of the skin, muscle, tendons, fascia and the lymphatic system of another person's body in order to enhance or restore the general health and well-being of the recipient.

(1) Such system includes, but is not limited to:

(A) Techniques such as effleurage, commonly called stroking or gliding; petrissage, commonly called kneading; tapotement or percussion; friction, vibration, compression;

(B) stretching within the normal anatomical range of movement;

(C) hydrotherapy; or

(D) such techniques which may be applied with or without the aid of lubricants, salt or herbal preparations, water, hot and cold applications or a
massage device that mimics or enhances the actions possible by human hands.

(2) "Massage" or "massage therapy" does not include:

(A) Medical or nursing diagnosis of injury, illness or disease;
(B) therapeutic exercise;
(C) chiropractic joint adjustment;
(D) physical therapy joint mobilization or manipulation;
(E) electrical stimulation or application of ultrasound; or
(F) 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 client soft tissue manifestations, needs and concerns, including identifying indications, contraindications and precautions of massage therapy within the scope of the 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 this act and in rules and regulations;

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

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

New Sec. 2. (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 this act and provides documentation acceptable to the board that the applicant:

(1) Has obtained a high school diploma or equivalent;
(2) is 18 years of age or older;
(3) has no other 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 a nationally recognized competency examination in massage that meets acceptable psychometric principles, is statistically validated through a job-task analysis under current standards.
for educational and professional testing and has been approved by the board. The passage of this exam may have occurred prior to the effective date of this act.

New Sec. 3. Prior to July 1, 2017, the board may 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 legal authority in another state verified to the board by affidavit;

(b) the individual has completed at least 300 hours of training in massage therapy during the three years;

(c) the individual has practiced 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.

New Sec. 4. (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 or territory if, in the opinion of the board, the applicant meets the qualifications required of a licensed professional 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 for 120 days 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.

New Sec. 5. (a) Nothing in this 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 licensed or regulated profession by the state of Kansas.

(b) Nothing in this 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 this 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
this act, provided the student does not hold oneself out as a licensed
massage therapist and does not receive compensation for services
performed;
(4) any person 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 an 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;
(8) members of any church practicing their religious tenets;
(9) 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 as well as to suggest new possibilities of movement while
engaged within the scope of practice of a profession, provided that they do
not hold themselves out to be massage therapists. Such practices include,
but are not limited to, the Feldenkrais method of somatic education, the
Trager approach to movement education, and body-mind centering;
(10) the practice of any person in this state who uses touch to affect
the energy systems, acupoints or qi meridians (channels of energy) of the
human body while engaged within the scope of practice of a profession,
provided that they do not hold themselves out to be massage therapists.
Such practices include, but are not limited to, polarity, polarity therapy,
polarity bodywork therapy, Asian bodywork therapy, acupressure, jin shin
do, qi gong, reiki, shiatsu and ortho bionomy; or
(11) persons engaged in the profession of structural integration,
restoring postural balance and functional ease by integrating the body in
gravity based on a system of fascial manipulation and awareness, provided
that they do not hold themselves out to be massage therapists. Such
practices include, but are not limited to, rolfing structural integration, the
guild for structural integration and Hellerwork.

New Sec. 6. (a) A person licensed under this 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, including "massage therapist,"
"massagist," "massotherapist," "myotherapist," "body therapist," "massage
technician," "massage practitioner," "masseur," "masseuse" or any
derivation of those terms that implies this practice to indicate that such
person is a massage therapist licensed under the act.

(b) On and after September 1, 2017, it shall be unlawful for any
person who is not licensed under this 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. An intentional violation of this subsection
shall constitute a class B person misdemeanor.

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

New Sec. 7. (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 this 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 state board of
nursing. The three non-board members of the massage therapy advisory
committee shall be appointed by the state board of nursing, 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 state board of nursing.

New Sec. 8. (a) The board shall biennially charge and collect in
advance fees provided for in this act as fixed by the board by rules and
regulations, subject to the following limitations:

Application fee, not more than .......................................................... $80
Temporary permit fee, not more than ................................................................. $25
License renewal fee, not more than ................................................................. $75
License reinstatement fee, not more than ....................................................... $80
Certified copy of license, not more than ........................................................ $25
Written verification of license, not more than .............................................. $30
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.

New Sec. 9. (a) All licenses issued under the provisions of this act,
whether initial or renewal, shall expire every two years. The expiration
date shall be established by the 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 which shall be 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
required by the board. The board, by duly adopted rules and regulations,
shall establish the requirements for such program of continuing massage
therapy education. The board shall require as a condition for renewal of a
license completion of no more than 12 hours biennially of continuing
education approved by the board in rules and regulations. Upon receipt of
such application, payment of fee, upon receipt of the 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 a renewal license.

(b) Any person who fails to secure a renewal license 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 rules and regulations, and upon 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.

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

(d) (1) The board of nursing 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 of nursing 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 of nursing may use the information obtained from fingerprinting and the applicant's criminal history for purposes of verifying the identification of any applicant and in 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 of nursing in the taking and processing of fingerprints of applicants to practice massage therapy in this state and shall release all records of adult convictions and non-convictions and adult convictions or adjudications of another state or country to the board of nursing.
(3) The board shall fix a fee for fingerprinting of applicants or licensees, or both, as may be required by the board in an amount necessary to reimburse the board for the cost of the fingerprinting. Fees collected under this subsection shall be deposited in the criminal background and fingerprinting fund.

New Sec. 10. (a) The board may refuse to grant licensure to, or may suspend, revoke, condition, limit, qualify or restrict the licensure issued under this act of any individual who 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, misdemeanor crimes against persons or substantiation of abuse against a child, adult or resident of a care facility, even if not practice related;
(3) has violated a provision of the massage therapist licensure act or one or more of the rules and regulations of the board;
(4) has obtained or attempted to obtain a license or license renewal by bribery or fraudulent representation;
(5) has knowingly made a false statement on a form required by the board for license or license renewal;
(6) has failed to obtain continuing education credits required by rules and regulations of the board;
(7) has been found guilty of unprofessional conduct as defined by rules and regulations established by the board; or
(8) 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, District of Columbia or another country, 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 this 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. 2014 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
which the attorney general certifies cannot be collected from the applicant
or licensee, shall be paid from the board of nursing fee fund. All moneys
collected following board proceedings shall be credited in full to the board
of nursing 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 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.

New Sec. 11. The board shall remit all moneys received from fees,
charges or penalties 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 nursing 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.

New Sec. 12. A local unit of government shall not establish or maintain professional licensing requirements for a massage therapist licensed under this act. Nothing in this 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.

New Sec. 13. (a) When it appears to the board that any person is violating any of the provisions of this 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, 2017.

New Sec. 14. All state agency adjudicative proceedings under the licensed massage therapist 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.

New Sec. 15. 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. The board shall fix by rules and regulations the minimum level of coverage for such professional liability insurance.

New Sec. 16. On the effective date of this act, 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. 2014 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
erapist licensure act for services provided as a massage therapist.

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

Sec. 18. K.S.A. 2014 Supp. 74-1112 is hereby amended to read as
follows: 74-1112. (a) The board of nursing may require an original
applicant for licensure as a professional nurse, practical nurse—or, mental
health technician or 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 of
nursing 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. The board of nursing may use the
information obtained from fingerprinting and the applicant's criminal
history for purposes of verifying the identification of any applicant and in
the official determination of character and fitness of the applicant for any
licensure to practice professional or practical nursing—or, mental health
technology or massage therapy in this state.

(b) Local and state law enforcement officers and agencies shall assist
the board of nursing in taking and processing of fingerprints of applicants
to practice professional or practical nursing—or, mental health technology
or massage therapy in this state and shall release all records of adult
convictions and nonconvictions and adult convictions or adjudications of
another state or country to the board of nursing.

(c) The board shall fix a fee for fingerprinting of applicants or
licensees, or both, as may be required by the board in an amount necessary
to reimburse the board for the cost of the fingerprinting. Fees collected
under this subsection shall be deposited in the criminal background and
fingerprinting fund.

(d) There is hereby created in the state treasury the criminal
background and fingerprinting fund. All moneys credited to the fund shall
be used to pay the Kansas bureau of investigation for the processing of
fingerprints and criminal history background checks for the board of
nursing. The fund shall be administered by the board of nursing. All
expenditures from the 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 a person designated
by the president.

Sec. 19. K.S.A. 2014 Supp. 74-1112 is hereby repealed.

Sec. 20. This act shall take effect and be in force from and after its
publication in the statute book.