

FIRST REGULAR SESSION

SENATE BILL NO. 362

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WESTFALL.

Read 1st time January 27, 1999, and 1,000 copies ordered printed.

S1454.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 324.240, 324.243, 324.245, 324.247, 324.250, 324.257, 324.260, 324.262, 324.265 and 324.267, RSMo Supp. 1998, relating to the licensure of massage therapists, and to enact in lieu thereof eleven new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 324.240, 324.243, 324.245, 324.247, 324.250, 324.257, 324.260, 324.262, 324.265 and 324.267, RSMo Supp. 1998, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 324.240, 324.243, 324.245, 324.247, 324.250, 324.257, 324.260, 324.262, 324.265, 324.267 and 324.273, to read as follows:

324.240. As used in sections 324.240 to 324.275, the following terms shall mean:

(1) "Board", the [state board of registration for the healing arts in the state of Missouri] **board of therapeutic massage;**

(2) "Certified mentor", a practitioner who is qualified for license in this state under this law and who has practiced professionally for five years, with an average of four hundred fifty hours per year of teaching and massage hours and who has been approved by the board [of higher education] as a massage therapy instructor;

(3) **"Director", the director of the division of professional registration of the department of economic development;**

(4) **"Division", the division of professional registration of the department of economic development;**

[(3)] (5) "Massage business", any place of business in which [only] massage therapy is practiced [by two or more massage therapists];

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

[(4)] (6) "Massage therapist", a health care practitioner who provides or offers to provide massage therapy, as provided in sections 324.240 to 324.275, to any person at no cost or for a fee, monetary or otherwise, implying that the massage therapist is trained, experienced and licensed in massage therapy, and who holds a current, valid license to practice massage therapy;

[(5)] (7) "Massage therapy", a health care profession which involves the treatment of the body's tonus system through the scientific or skillful touching, rubbing, pressing or other movements of the soft tissues of the body with the hands, forearms, elbows, or feet, or with the aid of mechanical apparatus, for relaxation, therapeutic, remedial or health maintenance purposes to enhance the mental and physical well-being of the client, but does not include the prescription of medication, spinal or joint manipulation, the diagnosis of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law, or to those occupations defined in chapter 329, RSMo;

[(6)] (8) "Massage therapy instructor", an individual who possesses teaching credentials satisfactory to the [department of higher education] **board** for the purpose of teaching massage therapy;

[(7)] (9) "Person", an individual, corporation, association or other legal entity.

324.243. 1. There is hereby established in the division of professional registration in the department of economic development the ["Advisory Commission for Massage Therapists"] "**Board of Therapeutic Massage**" which shall guide, advise and make recommendations to the [board] **division** and fulfill other responsibilities designated by sections 324.240 to 324.275. The [commission] **board** shall approve the examination required by section 324.265 and shall assist the [board] **division** in carrying out the provisions of sections 324.240 to 324.275.

2. The [commission] **board** shall consist of seven voting members, including one public member, and one nonvoting member, appointed by the governor with the advice and consent of the senate. Each member of the [commission] **board** shall be a citizen of the United States and a resident of this state and, except for the members first appointed, shall be licensed as a massage therapist by this state. The nonvoting member shall be a member of the massage education community in the state and shall serve a four-year term. Beginning with the appointments made after August 28, [1997] **1998**, three voting members shall be appointed for four years, two voting members shall be appointed for three years and two voting members shall be appointed for two years. Thereafter, all voting members shall be appointed to serve four-year terms. No person shall be eligible for reappointment who has served as a member of the [commission] **board** for a total of eight years. The membership of the [commission] **board** shall reflect the differences in work experience and the professional affiliations of therapists with consideration being given to race, gender and ethnic origins.

3. A vacancy in the office of a member shall be filled by appointment by the governor for the remainder of the unexpired term.

4. The [commission] **board** shall hold an annual meeting at which it shall elect from its membership a chairperson, vice chairperson and secretary. The [commission] **board** may hold such additional meetings as may be required in the performance of its duties, provided that notice of every meeting shall be given to each member at least three days prior to the date of the meeting. A quorum of the [commission] **board** shall consist of a majority of its voting members.

5. The governor may remove a [commission] **board** member for misconduct, incompetence or neglect of official duties after giving the [commission] **board** member written notice of the charges and allowing the [commission] **board** member an opportunity to be heard.

6. The public member shall be, at the time of appointment, a citizen of the United States; a resident of this state for a period of one year and a registered voter; but may not have been a member of any profession licensed or regulated pursuant to sections 324.240 to 324.275 or an immediate family member of such a person; and may not have had a material, financial interest in either the providing of massage therapy as defined in sections 324.240 to 324.275 or in an activity or organization directly related to any profession licensed or regulated pursuant to sections 324.240 to 324.275. **The duties of the public member shall not include any determination of the technical requirements to be met for licensure, whether a candidate for licensure meets such technical requirements, or of the technical competence or technical judgment of a licensee or a candidate for licensure.**

7. The professional members shall not be officers in a professional massage organization, nor may they be the owners or managers of any massage educational entity.

8. No member of the [commission] **board** shall be entitled to any compensation for the performance of the member's official duties, but each member shall be reimbursed for necessary and actual expenses incurred in the performance of the member's official duties. All staff for the [commission] **board** shall be provided by the [board] **division**.

324.245. 1. The [commission] **board** is authorized to [regulate the following areas] **promulgate rules and regulations regarding:**

(1) The [form and] content of license applications and the procedures for filing an application for an initial or renewal license in this state;

(2) The content, conduct and administration of the licensing examination required by section 324.265;

(3) Educational requirements for licensure;

(4) The standards and methods to be used in assessing competency as a massage therapist;

[and]

(5) All applicable fees, set at an amount which shall not substantially exceed the cost and expense of administering sections 324.240 to 324.275; and

[(5)] **(6)** Establishment of procedures for granting reciprocity with other states, including states which do not have massage therapy licensing laws or states whose licensing laws are not

substantially the same as those of this state.

2. All funds received by the board [or commission] under the provisions of sections 324.240 to 324.275 shall be [deposited] **collected by the director who shall transmit the funds to the department of revenue for deposit to the credit of the "Massage Therapy Fund" which is hereby created** in the state treasury [pursuant to section 33.080, RSMo]. **Notwithstanding the provisions of section 33.080, RSMo, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds three times the amount of the appropriation from the fund for the preceding fiscal year.**

3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated to administer and enforce sections 324.240 to 324.275, shall become effective only if the agency has fully complied with all of the requirements of chapter 536, RSMo, including but not limited to, section 536.028, RSMo, if applicable, after August 28, 1998. If the provisions of section 536.028, RSMo, apply, the provisions of this section are nonseverable and if any of the powers vested with the general assembly pursuant to section 536.028, RSMo, to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void, except that nothing in this act shall affect the validity of any rule adopted and promulgated prior to August 28, 1998.

324.247. [1.] A person desiring to receive a license to operate a massage business in the state of Missouri shall file a written application with the board on a form prescribed by the [board] **division and pay the required fee.**

[2. The application shall be accompanied by a one hundred dollar license fee.]

324.250. 1. The board shall review the applications and shall issue a license to applicants who have complied with the requirements of sections 324.240 to 324.275 and have received approval of the board after a survey inspection.

2. A license shall be renewed every two years upon approval of the board when the following conditions have been met:

(1) The application is accompanied by [a fifty dollar] **the required** renewal fee;

(2) The massage business is in compliance with the requirements established under the provisions of sections 324.240 to 324.275 as evidenced by a survey inspection by the board within ninety days prior to renewal;

(3) The application is accompanied by a statement of any changes in the information previously filed with the board under section 324.247.

3. Each license shall be issued only for the massage business listed in the application. Licenses shall be posted in a conspicuous place on the premises of the licensed massage business.

324.257. After completion of each board survey inspection, a written report of the findings with respect to the massage business' compliance or noncompliance with the provisions of sections 324.240 to 324.275 and the standards established hereunder as well as a list of deficiencies found shall be prepared. A copy of the report and the list of deficiencies found shall be sent to the massage business within fifteen business days following the survey inspection. The list of deficiencies shall specifically state the statute or rule which the massage business is alleged to have violated. If the massage business acknowledges the deficiencies found by the survey inspection, the massage business shall inform the board of the time necessary for compliance and shall file a plan of correction with the board. If the massage business does not acknowledge the deficiencies, [it may request a second survey by the board. If, after such survey, the massage business does not agree with the findings of the board, it may seek a review of the findings of the board by] **or file an acceptable plan of correction with the board or timely complete an acceptable plan of correction, the board may file a complaint with** the administrative hearing commission **as set forth in sections 324.240 to 324.275.**

324.260. [1. Any person wishing to make a complaint against a massage business or massage therapist licensed under the provisions of sections 324.240 to 324.275 may file the complaint in writing with the board setting forth facts supporting the complaint. The board may determine if the charges are sufficient to warrant a hearing to determine whether the license of the massage business or massage therapist should be suspended or revoked. A copy of the complaint shall be given to the massage business or massage therapist at the time such business or therapist is notified of the hearing. The notice of the hearing shall be given at least twenty days prior to the date of the hearing. The hearing shall be conducted by the administrative hearing commission in accordance with the provisions of chapter 621, RSMo.

2.] The board may [file an action] **cause a complaint to be filed** in the circuit court of the county in which any massage business alleged to be violating the provisions of sections 324.240 to 324.275 is located for an injunction to restrain the massage business from continuing such violation.

[324.262. 1. The board shall refuse to issue, shall suspend or shall revoke the license of any massage business or massage therapist for failure to comply with any provision of sections 324.240 to 324.275, or with any rule or regulation of the board adopted under the provisions of sections 324.240 to 324.275, or for obtaining the license by means of fraud, misrepresentation, or concealment of material facts, or for any criminal act committed by an owner or employee of a massage business pursuant to chapter 567, RSMo.

2. Any massage business which has been denied a license or which has had its license revoked or suspended by the board may seek a review of the board's action by the administrative hearing commission.]

324.262. 1. The board may refuse to issue, renew or reinstate any license

required by sections 324.240 to 324.275 for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license issued pursuant to sections 324.240 to 324.275 or any person who has failed to renew or has surrendered his license for any one or any combination of the following causes:

(1) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of the profession regulated pursuant to sections 324.240 to 324.275, or for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(2) Use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to sections 324.240 to 324.275 or in obtaining permission to take any examination given or required pursuant to sections 324.240 to 324.275;

(3) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(4) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of the profession regulated by sections 324.240 to 324.275;

(5) Violation of, or assisting or enabling any person to violate, any provision of sections 324.240 to 324.275, or of any lawful rule or regulation adopted pursuant to sections 324.240 to 324.275;

(6) Impersonation of any person holding a license or allowing any other person to use his or her certificate or diploma from any school;

(7) Disciplinary action against the holder of a license or other right to practice the profession regulated by sections 324.240 to 324.275 granted by another state, territory, federal agency, or country upon grounds for which revocation or suspension is authorized in this state;

(8) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(9) Issuance of a license based upon a material mistake of fact;

(10) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed.

3. Any person, organization, association or corporation who reports or provides

information to the division pursuant to the provisions of sections 324.240 to 324.275 and who does so in good faith shall not be subject to an action for civil damages as a result.

4. After the filing of a complaint pursuant to subsection 2 of this section, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that one or more of the grounds for disciplinary action provided in subsection 2 of this section are met, the board may, singly or in combination, censure or place the person named in the complaint on probation or suspension or revoke the license of the person on such terms and conditions as the division deems appropriate.

324.265. 1. A person desiring a license to practice massage therapy shall be at least eighteen years of age, shall pay the **required** application fee [of fifty dollars], and shall submit satisfactory evidence to the [commission] **board** of meeting at least one of the following requirements:

(1) [Passing an] **Has passed a statistically valid** examination on therapeutic massage and body work which is approved by the [coordinating] board [for higher education], **prior to the effective date of sections 324.240 to 324.275, and applies for such license by December 31, 2000;** or

(2) Completing massage therapy studies consisting of at least five hundred hours of supervised instruction and subsequently passing an examination approved by the [commission] **board**. The examination may consist of school examinations. The course of instruction shall be [provided] **approved** by the [coordinating] board [for higher education]. The five hundred hours shall consist of three hundred hours dedicated to massage theory and practice techniques, one hundred hours dedicated to the study of anatomy and physiology, fifty hours dedicated to business practice, professional ethics, hygiene and massage law in the state of Missouri, and fifty hours dedicated to ancillary therapies, including cardiopulmonary resuscitation (CPR) and first aid; or

(3) Has completed five hundred hours in an apprenticeship with a certified mentor and has successfully passed an examination approved by the [commission] **board;** or

(4) Has been licensed or registered as a massage therapist in another state, territory or commonwealth or the District of Columbia, which maintains standards of practice and licensure which substantially conform to the requirements in force in this state; or

(5) Has been engaged in the practice of massage therapy for at least ten years prior to the effective date of sections 324.240 to 324.275 and applies for such license by December 31, 2000; or

[(5)] **(6)** Has been in the practice of massage therapy for at least three years prior to August 28, [1997] **1998**, has completed at least one hundred hours of formal training in massage approved by the [commission] **board** and applies for such license [within one year after August 28, 1998] **by December 31, 2000.**

2. A person who has practiced less than three years or has less than one hundred hours of training may request a waiver of the requirements of subsection 1 of this section and apply for a temporary two-year license which shall not be renewable. By the end of such two-year period, such person must complete at least one hundred additional hours of formal training, including at least twenty-five hours in anatomy and physiology, in a school approved by the [coordinating] board [for higher education]. Such person will have until December 31, [1999] **2000**, to apply for a temporary license under this subsection.

3. Each license issued pursuant to the provisions of this section shall be valid for two years and shall expire on its renewal date. The [commission] **board** shall renew any license upon:

- (1) Application for renewal;
- (2) Proof that the therapist has completed twelve hours of continuing education; and
- (3) Payment of [a twenty-five dollar] **the required** renewal fee.

4. An applicant who possesses the qualifications specified in subsection 2 of this section to take the examination approved by the [commission] **board** may be granted a provisional license to engage in the practice of massage therapy until the date of the next examination, and thereafter until the results of the examination are known.

5. As determined by the [commission] **board**, students making substantial progress toward completion of their training in an approved curriculum shall be granted a student license for the purpose of practicing massage therapy on the public while under the supervision of a massage therapy instructor.

6. A provisional license may, at the discretion of the [commission] **board**, be renewed once, and a student license may be renewed until the student completes such student's training.

7. The following practitioners are exempt from the provisions of this section upon filing written proof with the board that they meet one or more of the following:

(1) Persons who act under a Missouri state license, registration, or certification and perform soft tissue manipulation within their scope of practice;

(2) Persons who restrict their manipulation of the soft tissues of the human body to the hands, feet or ears;

(3) Persons who use touch and words to deepen awareness of existing patterns of movement in the human body as well as to suggest new possibilities of movement;

(4) Persons who manipulate the human body above the neck, below the elbow, and below the knee and do not disrobe the client in performing such manipulation[;

(5) Persons who have been engaged in the practice of massage therapy for at least ten years prior to August 28, 1998].

324.267. 1. Any applicant for a license to operate a massage business or a license to practice massage therapy shall authorize the [commission] **board** to conduct a criminal background check.

2. The cost of such background check shall be paid by the applicant.

324.273. The division shall:

(1) Employ, within the funds appropriated, such employees as are necessary to carry out the provisions of sections 324.240 to 324.275;

(2) Exercise all budgeting, purchasing, reporting and other related management functions.

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