

IN THE SENATE

SENATE BILL NO. 1295

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO REGULATION AND Licensure OF MASSAGE THERAPISTS; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 40, TITLE 54, IDAHO CODE, TO PROVIDE PURPOSE, TO DEFINE TERMS, TO PROVIDE EXEMPTIONS, TO PROVIDE PROHIBITIONS, TO REQUIRE Licensure, TO ESTABLISH THE BOARD OF MASSAGE THERAPY AND TO PROVIDE FOR MEMBERSHIP, TO PROVIDE POWERS AND DUTIES OF THE BOARD, TO PROVIDE FEES, TO PROVIDE REQUIREMENTS FOR ISSUANCE OF A LICENSE, TO PROVIDE FOR ENDORSEMENT Licensure, TO PROVIDE FOR LICENSE RENEWAL, TO PROVIDE FOR LICENSING OF EXISTING MASSAGE PRACTITIONERS, TO PROVIDE FOR DISCIPLINARY ACTION, TO PROVIDE FOR ENFORCEMENT AND PENALTIES AND TO PROVIDE FOR PREEMPTION OF LOCAL REGULATION; AND PROVIDING EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 40, Title 54, Idaho Code, and to read as follows:

CHAPTER 40
MASSAGE THERAPISTS

54-4001. PURPOSE. By the adoption of this chapter, it is the intent of the legislature to protect the public health, safety and welfare, and to provide for state administrative supervision, licensure, regulation and disciplinary procedures of every person providing massage therapy who meets and maintains the standards of practice and code of ethics as adopted by the board and is licensed under the provisions of this chapter, unless otherwise exempted herein.

54-4002. DEFINITIONS. As used in this chapter, the following terms have the following meanings:

(1) "Advertise" means, but is not limited to, the issuing or causing to be distributed of any card, sign, direct mail piece or other device or causing or permitting any sign or marking on or in any building or structure, or in any newspaper, magazine or directory, or announcement on radio or announcement or display on television, computer network or electronic or telephonic medium.

(2) "Board" means the Idaho state board of massage therapy created pursuant to section 54-4006, Idaho Code.

(3) "Compensation" means the payment, loan, advance, donation, contribution, deposit or gift of money or anything of value.

(4) "Massage school" means a massage therapy educational program that is registered by the state board of education in accordance with chapter 24, title 33, Idaho Code, or comparable authority in another state.

1 (5) "Massage therapist" means a person who is licensed under this chap-
 2 ter and who engages in the practice of massage therapy.

3 (6) "Massage therapy" means the care and services provided by a massage
 4 therapist.

5 (7) "Practice of massage therapy" means the application of a system of
 6 structured touch, pressure, movement and holding of the soft tissues of the
 7 human body. The application may include:

8 (a) Pressure, friction, stroking, rocking, kneading, percussion, or
 9 passive or active stretching within the normal anatomical range of
 10 movement;

11 (b) Complementary methods, including the external application of wa-
 12 ter, heat, cold, lubricants and other topical preparations; or

13 (c) The use of mechanical devices that mimic or enhance actions that may
 14 be done by the hands.

15 54-4003. EXEMPTIONS. (1) Nothing in this chapter shall be construed
 16 to restrict any person licensed or regulated by the state of Idaho from en-
 17 gaging in the profession or practice for which they are licensed or regu-
 18 lated.

19 (2) Nothing in this chapter shall prohibit:

20 (a) The practice of massage therapy by a person employed by the govern-
 21 ment of the United States while the person is engaged in the performance
 22 of duties prescribed by the laws and regulations of the United States.

23 (b) The practice of massage therapy by persons duly licensed, reg-
 24 istered or certified in another state, territory, the District of
 25 Columbia or a foreign country when incidentally called into this state
 26 to teach a course related to massage therapy or to consult with a person
 27 licensed under this chapter.

28 (c) Students enrolled in a board-approved course of instruction while
 29 completing a clinical requirement or supervised massage therapy field-
 30 work experience for graduation performed under the supervision of a
 31 person licensed under this chapter, provided the student does not hold
 32 himself or herself out as a licensed massage therapist and does not re-
 33 ceive compensation for services performed.

34 (d) Any persons performing massage therapy services in the state, if
 35 those services are performed without compensation and are performed in
 36 cooperation with a charitable organization or as part of an emergency
 37 response team working in conjunction with disaster relief officials.

38 (e) Persons giving massage to members of his or her immediate or ex-
 39 tended family without compensation.

40 (f) Nothing in this chapter shall be construed to prevent or restrict
 41 the practice of any person in this state who uses touch, words and di-
 42 rected movement to deepen awareness of existing patterns of movement in
 43 the body as well as to suggest new possibilities of movement while en-
 44 gaged within the scope of practice of a profession, provided that their
 45 services are not designated or implied to be massage or massage ther-
 46 apy. Such practices include, but are not limited to, the Feldenkrais
 47 method® of somatic education, the Trager approach® to movement educa-
 48 tion, body-mind centering®, Ortho-Bionomy® and craniosacral therapy.

(g) Persons who restrict their practice to 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 or to do massage or massage therapy.

(h) Nothing in this chapter shall be construed to prevent or restrict 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 their services are not designated or implied to be massage or massage therapy. Such practices include, but are not limited to, polarity, polarity therapy, polarity bodywork therapy, Asian bodywork therapy, acupressure, jin shin do®, qi gong, reiki and shiatsu.

(i) 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, awareness, and education developed by Dr. Ida P. Rolf, provided their services are not designated or implied to be massage or massage therapy. Such practices include, but are not limited to: Rolfing® structural integration, the guild for structural integration, Hellerwork®.

54-4004. PROHIBITIONS. Massage therapists shall not perform any of the following:

- (1) Diagnosis of injury, illness or disease;
- (2) Chiropractic adjustment or skeletal manipulative procedures or any other procedures as defined in section 54-704, Idaho Code, except as allowed in section 54-4002(7), Idaho Code;
- (3) Therapeutic exercise, medical or other therapeutic modalities including, but not limited to, the use of medically classified therapeutic devices, mechanical traction, laser and light therapies, electrical stimulation or application of ultrasound; and
- (4) Dispensation of, application of or issuance of prescriptions for pharmaceutical agents.

54-4005. LICENSE REQUIRED. (1) A person shall not practice or hold himself or herself out to others as a massage therapist without first receiving from the board a license to engage in that practice.

(2) A person holds himself or herself out to others as a massage therapist when the person adopts or uses any title or description including "massage therapist," "massagist," "massotherapist," "myotherapist," "body therapist," "massage technician," "massage practitioner" or any derivation of those terms that implies this practice.

(3) It shall be unlawful for any person who is not a licensed massage therapist under this chapter to advertise using the term "massage therapist." Any person who holds a license to practice as a massage therapist in this state may use the title "licensed massage therapist." No other person shall assume this title or use an abbreviation or any other words, letters, signs or figures to indicate that the person using the title is a licensed massage therapist.

54-4006. BOARD OF MASSAGE THERAPY. (1) There is hereby established in the department of self-governing agencies, bureau of occupational licenses,

1 the board of massage therapy. The members thereof shall be appointed by the
2 governor and serve at the pleasure of the governor.

3 (2) The board shall consist of five (5) members, four (4) of whom shall
4 be licensed pursuant to this chapter and one (1) of whom shall be a member of
5 the public with an interest in the rights of the consumers of massage therapy
6 services. At no time shall more than one (1) board member be an owner of, an
7 instructor of, or otherwise affiliated with a board-approved course of in-
8 struction or any other massage therapy school or course of instruction.

9 (3) Professional massage therapy associations and/or any resident of
10 the state of Idaho may provide nominations to the governor.

11 (4) All members of the board shall be residents of the state of Idaho for
12 the duration of their appointment and shall have been residents of the state
13 of Idaho for a minimum of three (3) years immediately preceding appointment.

14 (5) The initial four (4) massage therapist members of the board shall be
15 persons with at least three (3) years of experience in the practice of mas-
16 sage therapy who become licensed pursuant to this chapter.

17 (6) The initial board shall be appointed for staggered terms, the
18 longest of which shall not exceed three (3) years. After the initial ap-
19 pointments, all terms shall be for three (3) years, and a member may be
20 reappointed for a second term. No member shall serve more than two (2) terms.
21 In the event of death, resignation or removal of any member before the expi-
22 ration of the term to which appointed, the vacancy shall be filled for the
23 unexpired portion of the term in the same manner as the original appointment.

24 (7) The board, within thirty (30) days after its initial appointment
25 and at least annually thereafter, shall hold a meeting and elect a chairman.
26 The board may hold additional meetings on the call of the chairman or at the
27 written request of any three (3) members of the board. The board may appoint
28 such committees as it considers necessary to carry out its duties. A major-
29 ity of the members of the board shall constitute a quorum.

30 (8) Each member of the board shall be compensated as provided in section
31 59-509(n), Idaho Code.

32 54-4007. POWERS AND DUTIES OF THE BOARD. The board shall have the au-
33 thority to:

34 (1) Determine the qualifications of persons applying for licensure
35 pursuant to this chapter and define, by rule, the appropriate scope of mas-
36 sage therapy in this state, provided however, that the scope of practice may
37 not exceed that defined in section 54-4002(7), Idaho Code;

38 (2) Authorize, by written agreement, the bureau of occupational li-
39 censes as agent to act in its interest;

40 (3) Promulgate such rules as are necessary for the administration of
41 this chapter, including standards of professional conduct;

42 (4) Conduct investigations and hold hearings and compel the attendance
43 of witnesses and the production of papers at such investigations or hear-
44 ings;

45 (5) Collect fees and other funds as prescribed by this chapter;

46 (6) Contract and pursue other matters lawful in this state relating to
47 massage therapy;

48 (7) Provide such other services and perform such other functions as are
49 necessary and desirable to fulfill its purposes;

1 (8) Establish requirements for renewal of license and approval of con-
 2 tinuing education courses as set forth in section 67-2614, Idaho Code; and

3 (9) Establish rules for the approval of massage therapy entry-level ed-
 4 ucational standards but must remain consistent with curriculum requirements
 5 in this chapter, or rules promulgated pursuant thereto.

6 The registration of massage schools shall remain with the state board of edu-
 7 cation in accordance with chapter 24, title 33, Idaho Code.

8 54-4008. FEES. (1) All fees received under the provisions of this
 9 chapter shall be paid to the department of self-governing agencies, bureau
 10 of occupational licenses, and deposited in the state treasury to the credit
 11 of the occupational licenses fund. All costs and expenses incurred under
 12 the provisions of this chapter shall be a charge against and paid from said
 13 fund. In no case shall any salary, expense or other obligation of the board
 14 be charged against the general fund.

15 (2) The board, by rule, may impose fees not to exceed two hundred dol-
 16 lars (\$200) annually per fee to provide for the administration of this sec-
 17 tion including, but not limited to, the following:

- 18 (a) Original license fee;
- 19 (b) Application fee;
- 20 (c) License renewal fee;
- 21 (d) License by endorsement;
- 22 (e) Duplicate license; and
- 23 (f) Reinstatement fee.

24 54-4009. REQUIREMENTS FOR ISSUANCE OF LICENSE. Upon application to
 25 the board and the payment of the required fees, an applicant may be licensed
 26 as a massage therapist if the applicant meets all the requirements of this
 27 chapter and provides documentation acceptable to the board that he or she:

- 28 (1) Has obtained a high school diploma or equivalent;
- 29 (2) Is eighteen (18) years of age or older;
- 30 (3) Is of good moral character;
- 31 (4) Has successfully completed a massage program registered pursuant
 32 to chapter 24, title 33, Idaho Code, or a comparable authority in another
 33 state that consists of the minimum of five hundred (500) in-class supervised
 34 hours of coursework and clinic work; and
- 35 (5) Has successfully passed a nationally recognized competency exami-
 36 nation in massage therapy that is approved by the board. The passage of this
 37 exam may have occurred prior to the effective date of this chapter.

38 54-4010. ENDORSEMENT LICENSURE. The board may grant a license without
 39 examination to any person who, at the time of application, is licensed or
 40 certified in good standing by a board of massage therapy of another state,
 41 provided the requirements for such certification or licensure are substan-
 42 tially equivalent to the requirements of this chapter, and upon payment of a
 43 fee to be determined by the board.

44 54-4011. LICENSE RENEWAL. (1) A license shall be issued and renewed in
 45 accordance with section 67-2614, Idaho Code.

1 54-4012. LICENSING OF EXISTING MASSAGE PRACTITIONERS. Until July 1,
2 2014, the board may issue a license to any individual who meets one (1) of the
3 following requirements:

4 (1) He or she has completed a minimum of five hundred (500) hours of su-
5 pervised classroom and hands-on instruction relating to massage therapy;

6 (2) He or she has completed at least three hundred (300) hours of for-
7 mal training in massage therapy as determined by the board and has practiced
8 massage therapy for at least five (5) hours per week on average for at least
9 three (3) years prior to the date of application;

10 (3) He or she has completed at least two hundred (200) hours of formal
11 training in massage therapy as determined by the board and has practiced mas-
12 sage therapy for at least five (5) hours per week on average for at least five
13 (5) years prior to the date of application;

14 (4) He or she has been an active member in good standing as a massage
15 therapist for a period of at least twelve (12) months of a national profes-
16 sional massage association/organization that offers professional liability
17 insurance; or

18 (5) He or she has successfully passed an examination meeting the re-
19 quirements of section 54-4009(5), Idaho Code. The passage of this examina-
20 tion may have occurred before the effective date of this section.

21 54-4013. DISCIPLINARY ACTION. The board may refuse to issue or renew
22 or otherwise discipline a license holder for any of the following:

23 (1) The employment of fraud, deceit or misrepresentation in obtaining
24 or attempting to obtain a license or the renewal of a license;

25 (2) Practicing as a massage therapist when physical or mental abilities
26 are impaired as determined by the board;

27 (3) Conviction of a felony, a crime involving moral turpitude or a crime
28 under any municipal, state or federal narcotic or controlled substance law,
29 provided that the board has taken into consideration the rehabilitation of
30 the applicant or licensee and other mitigating circumstances;

31 (4) Having been adjudged mentally incompetent by a court of competent
32 jurisdiction;

33 (5) Engaging in any act or practice in violation of any of the provi-
34 sions of this chapter or any of the rules adopted by the board, or aiding,
35 abetting or assisting any other person in such a violation;

36 (6) The commission of an act of gross negligence or incompetence;

37 (7) Practice without a valid license;

38 (8) Engaging in any lewd, indecent, obscene or unlawful behavior with a
39 client;

40 (9) The employment of fraud, deceit, or misrepresentation when commu-
41 nicating with the general public, health care professionals or other busi-
42 ness professionals;

43 (10) Having had a license revoked or suspended, other disciplinary ac-
44 tion taken or an application for licensure refused, revoked or suspended by
45 the proper authorities of another state, territory or country, or omitting
46 such information from any application to the board, or failing to divulge
47 such information when requested by the board;

48 (11) A violation of the code of ethics or standards of practice as
49 adopted by the board; and

1 (12) Failure to comply with an order issued by the board.

2 54-4014. ENFORCEMENT -- PENALTIES. A person who violates any provi-
3 sion of this chapter shall, upon conviction, be guilty of a misdemeanor. The
4 board may seek an injunction against any person who practices massage ther-
5 apy in violation of the provisions of this chapter.

6 54-4015. PREEMPTION OF LOCAL REGULATION. Beginning on the date appli-
7 cations for licensure become available pursuant to this chapter, a local
8 unit of government shall not establish or maintain professional licensing
9 requirements for a massage therapist licensed pursuant to this chapter.

10 SECTION 2. This act shall be in full force and effect on and after July
11 1, 2012, except that the provisions of Sections 54-4005 and 54-4015, Idaho
12 Code, shall not take effect until July 1, 2013.