

HOUSE BILL No. 2187

By Committee on Health and Human Services

1-31

Proposed Amendments

1 AN ACT enacting the massage therapist licensure act; providing for
2 powers, duties and functions of the state board of nursing.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. As used in this act:

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

7 (b) "Massage school" means a massage therapy educational program
8 which meets the standards for training and curriculum as set forth by the
9 state board of regents under the Kansas private and out-of-state
10 postsecondary educational institution act, or comparable legal authority in
11 another state.

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

14 (d) "Licensed massage therapist" means a person who meets the
15 requirements of this act and who engages in the practice of massage
16 therapy.

17 (e) "Professional massage therapy association or bodywork
18 association" means a state or nationally chartered professional membership
19 organization that has been recognized by the board as offering services to
20 massage therapists. The organization requires that its members must
21 adhere to the organization's established code of ethics and standards of
22 practice.

23 (f) "Practice of massage therapy" means the care and services
24 provided by a licensed massage therapist in a system of therapeutic,
25 structured touch, palpation or movement of the soft tissue of another
26 person's body in order to enhance or restore the general health and well-
27 being of the recipient.

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

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

32 (B) passive and active stretching within the normal anatomical range
33 of movement;

34 (C) hydromassage;

35 (D) thermal massage; or

36 (E) such techniques may be applied with or without the aid of

1 lubricants, salt or herbal preparations, water, heat or a massage device that
2 mimics or enhances the actions possible by human hands.

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

4 (A) Medical or nursing diagnosis of injury, illness or disease;

5 (B) therapeutic exercise;

6 (C) chiropractic joint adjustment;

7 (D) physical therapy joint mobilization or manipulation;

8 (E) electrical stimulation or application of ultrasound; or

9 (F) dispensing or issuing prescriptions or pharmaceutical agents.

10 (g) "Massage therapy services" include, but are not limited to:

11 (1) Development, implementation and modification of a massage
12 therapy treatment plan that addresses client soft tissue manifestations,
13 needs and concerns, including identifying indications, contraindications
14 and precautions of massage therapy within the scope of the act;

15 (2) obtaining informed consent regarding the risks and benefits of the
16 massage therapy treatment plan and application and modification of the
17 massage therapy treatment plan as needed;

18 (3) using effective interpersonal communication in the professional
19 relationship;

20 (4) utilizing an ethical decision making process that conforms to the
21 ethical standards of the profession, as set forth in this act and in rules and
22 regulations;

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

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

28 Sec. 2. (a) Upon application to the board and the payment of the
29 required fees, an applicant for a license as a massage therapist may be
30 licensed as a massage therapist if the applicant meets all the requirements
31 of this act and provides documentation acceptable to the board that the
32 applicant:

33 (1) Has obtained a high school diploma or equivalent;

34 (2) is 18 years of age or older;

35 (3) has no other disqualifying conduct as defined by the board;

36 (4) has successfully completed an approved course of instruction
37 consisting of at least 500 in-classroom hours of supervised instruction,
38 including massage therapy technique and theory, contraindications, ethics,
39 sanitation, hygiene, business training, anatomy, physiology and pathology;
40 and

41 (5) has successfully passed a nationally recognized competency
42 examination in massage that meets acceptable psychometric principles, is
43 statistically validated through a job-task analysis under current standards

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approved by the board

1 for educational and professional testing and has been approved by the
2 board. The passage of this exam may have occurred prior to the effective
3 date of this act.

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4 Sec. 3. Prior to July 1, [2014], the board may issue a license as a
5 massage therapist to any individual who meets the requirements of
6 subsection (a)(1), (2) and (3) of section 2, and amendments thereto, and
7 one of the following requirements verified to the board by affidavit:

8 (a) The individual has completed a minimum 500 hours of instruction
9 relating to massage therapy at a massage school or comparable legal
10 authority in another state verified to the board by affidavit;

11 (b) the individual has completed at least 300 hours of training in
12 massage therapy during the three years prior to the date of application;

13 (c) the individual has practiced for at least [five] years prior to the date
14 of application;

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15 (d) the individual has been an active member in good standing as a
16 massage or bodywork therapist for a period of at least 12 months, of a
17 professional massage or bodywork therapy association. Such membership
18 may have been any time prior to the effective date of this act; or

19 (e) the individual has successfully passed an examination meeting the
20 requirements of subsection (a)(5) of section 2, and amendments thereto, or
21 passage of a nationally recognized certification examination. The passage
22 of these examinations may have occurred prior to the effective date of this
23 section.

24 Sec. 4. (a) The board may issue a license to practice massage therapy
25 as a licensed massage therapist to an applicant who has been duly licensed
26 as a massage therapist by examination under the laws of another state or
27 territory if, in the opinion of the board, the applicant meets the
28 qualifications required of a licensed professional in this state. Verification
29 of the applicant's licensure status shall be required from the original state
30 of licensure.

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

37 Sec. 5. (a) Nothing in this act shall be construed to restrict any person
38 licensed or regulated by the state of Kansas from engaging in the
39 profession or practice for which they are licensed or regulated including,
40 but not limited to, acupuncture, athletic training, barbering, chiropractic,
41 cosmetology, dentistry, electrology, esthetics, manicuring, medicine,
42 naturopathic medicine, nursing, occupational therapy, osteopathy, physical
43 therapy, podiatry, professional counseling, psychology, social work or

1 veterinary medicine or any other licensed or regulated profession by the
2 state of Kansas.

3 (b) Nothing in this act shall prohibit:

4 (1) The practice of massage therapy by a person employed by the
5 government of the United States while the person is engaged in the
6 performance of duties prescribed by the laws and regulations of the United
7 States;

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

13 (3) students currently enrolled in a massage school while completing
14 a clinical requirement or supervised massage therapy fieldwork experience
15 for graduation performed under the supervision of a person licensed under
16 this act, provided the student does not hold oneself out as a licensed
17 massage therapist and does not receive compensation for services
18 performed;

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

23 (5) the practice, conduct and activities or services of a person who is
24 employed by a non-resident performance team, entertainer, or [a
25 professional]athletic team to the extent that such services or activities are
26 provided solely to the team or entertainer in the state for not more than 30
27 days. Such persons may not offer, hold out, or claim to be licensed
28 massage therapists, or offer massage therapy;

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

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

34 (8) members of any church practicing their religious[tenants]

tenets

35 (9) the practice of any person in this state who uses touch, words and
36 directed movement to deepen awareness of existing patterns of movement
37 in the body as well as to suggest new possibilities of movement while
38 engaged within the scope of practice of a profession provided that their
39 services are not designated or implied to be massage or massage therapy.
40 Such practices include, but are not limited to, the Feldenkrais method of
41 somatic education, the Trager approach to movement education, and body-
42 mind centering;

43 (10) the practice of any person in this state who uses touch to affect

1 the energy systems, acupoints or qi meridians (channels of energy) of the
2 human body while engaged within the scope of practice of a profession,
3 provided that their services are not designated or implied to be massage or
4 massage therapy. Such practices include, but are not limited to, polarity,
5 polarity therapy, polarity bodywork therapy, Asian bodywork therapy,
6 acupressure, jin shin do, qi gong, reiki and shiatsu; or

and ortho bionomy

7 (11) persons engaged in the profession of structural integration,
8 restoring postural balance and functional ease by integrating the body in
9 gravity based on a system of fascial manipulation and awareness, provided
10 their services are not designated or implied to be massage or massage
11 therapy. Such practices include, but are not limited to, rolfing structural
12 integration, the guild for structural integration and Hellerwork.

13 Sec. 6. (a) A person licensed under this act as a massage therapist
14 shall:

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

17 (2) be authorized to use the words including "massage therapist,"
18 "massagist," "massotherapist," "myotherapist," "body therapist," "massage
19 technician," "massage practitioner," "masseur," "masseuse" or any
20 derivation of those terms that implies this practice to indicate that such
21 person is a massage therapist licensed under the act.

22 (b) On and after September 1, [2015] it shall be unlawful for any
23 person who is not licensed under this act as a massage therapist or whose
24 license has been suspended, revoked or lapsed to promote oneself to the
25 public in any manner as a licensed massage therapist or to engage in the
26 practice of massage therapy. [A] violation of this subsection (b) shall
27 constitute a class B person misdemeanor.

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

31 Sec. 7. (a) An advisory committee of two board members and five
32 nonboard members shall be established by the board to advise and assist
33 the board in implementing this act as determined by the board. The
34 advisory committee shall meet at least annually. Members of the advisory
35 committee shall receive amounts provided for in subsection (e) of K.S.A.
36 75-3223, and amendments thereto, for each day of actual attendance at any
37 meeting of the advisory committee or any subcommittee meeting of the
38 advisory committee authorized by the board.

39 (b) The two board members shall be appointed by the state board of
40 nursing. The five nonboard members of the massage therapy advisory
41 committee shall be appointed by the state board of nursing, shall be
42 massage therapists and shall be citizens and residents of the state. No more
43 than one member may be an owner of a massage school. The members of

1 the committee shall be appointed for terms of two years and shall serve at
2 the pleasure of the state board of nursing.

biennially

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

- 6 Application fee, not more than.....\$80
- 7 Temporary permit fee, not more than.....\$25
- 8 License renewal fee, not more than.....\$75
- 9 License late renewal additional fee, not more than.....\$75
- 10 License reinstatement fee, not more than.....\$80
- 11 Certified copy of license, not more than.....\$25
- 12 Written verification of license, not more than.....\$30

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

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

23 Sec. 9. (a) All licenses issued under the provisions of this act, whether
24 initial or renewal, shall expire every two years. The expiration date shall
25 be established by the rules and regulations of the board. The board shall
26 send a notice for renewal of license to every massage therapist at least 60
27 days prior to the expiration date of such person's license. Every person so
28 licensed who desires to renew such license shall file with the board, on or
29 before the date of expiration of such license, a renewal application
30 together with the prescribed biennial renewal fee. Every licensee who is no
31 longer engaged in the active practice of massage therapy may so state by
32 affidavit and submit such affidavit with the renewal application. An
33 inactive license may be requested along with payment of a fee which shall
34 be fixed by rules and regulations of the board. Except for the first renewal
35 for a license that expires within 30 months following licensure
36 examination or for renewal of a license that expires within the first nine
37 months following licensure by reinstatement or endorsement, every
38 licensee with an active massage therapy license shall submit with the
39 renewal application evidence of satisfactory completion of a program of
40 continuing massage therapy education required by the board. The board by
41 duly adopted rules and regulations shall establish the requirements for
42 such program of continuing massage therapy education. The board shall
43 require as a condition for renewal of a license completion of no more than

1 12 hours biennially of continuing education approved by the board. Upon
2 receipt of such application, payment of fee, upon receipt of the evidence of
3 satisfactory completion of the required program of continuing massage
4 therapy education and upon being satisfied that the applicant meets the
5 requirements set forth by law in effect at the time of initial licensure of the
6 applicant, the board shall verify the accuracy of the application and grant a
7 renewal license.

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

18 (c) (1) Each licensee shall notify the board in writing of:

19 (A) A change in name or address within 30 days of the change; or

20 (B) a conviction of any felony or misdemeanor, that is specified in
21 rules and regulations adopted by the board, within 30 days from the date
22 the conviction becomes final.

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

31 (d) (1) The board of nursing may require an original applicant for
32 licensure as a massage therapist to be fingerprinted and submit to a state
33 and national criminal history record check. The fingerprints shall be used
34 to identify the applicant and to determine whether the applicant has a
35 record of criminal history in this state or other jurisdictions. The board of
36 nursing is authorized to submit the fingerprints to the Kansas bureau of
37 investigation and the federal bureau of investigation for a state and
38 national criminal history record check. The board of nursing may use the
39 information obtained from fingerprinting and the applicant's criminal
40 history for purposes of verifying the identification of any applicant and in
41 the official determination of character and fitness of the applicant for any
42 licensure to practice massage therapy in this state.

43 (2) Local and state law enforcement officers and agencies shall assist

1 the board of nursing in the taking and processing of fingerprints of
2 applicants to practice massage therapy in this state and shall release all
3 records of adult convictions and non-convictions and adult convictions or
4 adjudications of another state or country to the board of nursing.

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

10 (e) There is hereby created in the state treasury the criminal
11 background and fingerprinting fund. All moneys credited to the fund shall
12 be used to pay the Kansas bureau of investigation for the processing of
13 fingerprints and criminal history background checks for the board of
14 nursing. The fund shall be administered by the board of nursing. All
15 expenditures from the fund shall be made in accordance with appropriation
16 acts upon warrants of the director of accounts and reports issued pursuant
17 to vouchers approved by the president of the board or a person designated
18 by the president.

19 Sec. 10. (a) The board may deny, suspend, revoke or limit a license or
20 the licensee may be publicly or privately censured where the licensee or
21 applicant for licensure has been guilty of unprofessional conduct which
22 has endangered or is likely to endanger the health, welfare or safety of the
23 public. Unprofessional conduct includes:

24 (1) Obtaining a license by means of fraud, misrepresentation or
25 concealment of material facts;

26 (2) being guilty of unprofessional conduct as defined by rules and
27 regulations adopted by the board;

28 (3) [to have been] guilty of a felony unless the applicant or licensee
29 establishes sufficient rehabilitation to warrant the public trust; being

30 (4) [to have been] guilty of a felony or [to have been guilty of] a
31 misdemeanor involving an illegal drug offense unless the applicant or
32 licensee establishes sufficient rehabilitation to warrant the public trust,
33 except that notwithstanding K.S.A. 74-120, and amendments thereto, no
34 license or authorization to practice massage as a licensed massage
35 therapist shall be granted to a person with a felony conviction for a crime
36 against persons as specified in article 34 of chapter 21 of the Kansas
37 Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the
38 Kansas Statutes annotated, or K.S.A. [2012] Supp. 21-6104, 21-6325, 21-
39 6326 or 21-6418, and amendments thereto;

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40 (5) [to be guilty of unprofessional conduct as defined by rules and
41 regulations of the board;

42 (6) to have] willfully or repeatedly [violated] the provisions of the
43 Kansas massage therapy licensure act or any rules and regulations adopted violating

1 pursuant to that act;

[]

2 (7) [to have] a license to practice massage therapy as a licensed
3 massage therapist denied, revoked, limited or suspended, or [to be] publicly
4 or privately censured, by a licensing authority of another state, agency of
5 the United States government, territory of the United States or country or
6 to have other disciplinary action taken against the applicant or licensee by
7 a licensing authority of another state, agency of the United States
8 government, territory of the United States or country. A certified copy of
9 the record or order of public or private censure, denial, suspension,
10 limitation, revocation or other disciplinary action of the licensing authority
11 of another state, agency of the United States government, territory of the
12 United States or country shall constitute prima facie evidence of such a
13 fact for purposes of this paragraph;

having

14 (8) violating any lawful order or rule and regulation of the board; and

15 (9) violating any provision of this act.

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

26 (c) No person shall be excused from testifying in any proceedings
27 before the board under this act or in any civil proceedings under this act
28 before a court of competent jurisdiction on the ground that such testimony
29 may incriminate the person testifying, but such testimony shall not be used
30 against the person for the prosecution of any crime under the laws of this
31 state except the crime of perjury as defined in K.S.A. [2012] Supp. 21-5903,
32 and amendments thereto.

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

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1 (e) [Such] denial, suspension, revocation or limitation of a license or
 2 public or private censure of a licensee may be ordered by the board after
 3 notice and hearing on the matter in accordance with the provisions of the
 4 Kansas administrative procedure act. Upon the end of the period no less
 5 than two years for the revocation of a license, application may be made to
 6 the board for reinstatement. The board shall have discretion to accept or
 7 reject an application for reinstatement and may hold a hearing to consider
 8 such reinstatement. An application for reinstatement of a revoked license
 9 shall be accompanied by the license reinstatement fee established under
 10 section 8, and amendments thereto.

11 (f) The board, in addition to any other penalty prescribed in
 12 subsection (a), may assess a civil fine, after proper notice and an
 13 opportunity to be heard, against a licensee for unprofessional conduct in an
 14 amount not to exceed \$1,000 for the first violation, \$2,000 for the second
 15 violation and \$3,000 for the third violation and for each subsequent
 16 violation. All fines assessed and collected under this section shall be
 17 remitted to the state treasurer in accordance with the provisions of K.S.A.
 18 75-4215, and amendments thereto. Upon receipt of each such remittance,
 19 the state treasurer shall deposit the entire amount in the state treasury to
 20 the credit of the state general fund.

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

26 Sec. 11. The board shall remit all moneys received by or for it from
 27 fees, charges or penalties to the state treasurer in accordance with the
 28 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
 29 each such remittance, the state treasurer shall deposit the entire amount in
 30 the state treasury. Ten percent of each such deposit shall be credited to the
 31 state general fund and the balance shall be credited to the nursing fee fund.
 32 All expenditures from such fund shall be made in accordance with
 33 appropriation acts upon warrants of the director of accounts and reports
 34 issued pursuant to vouchers approved by the president of the board or by a
 35 person designated by the president of the board.

36 Sec. 12. On and after July 1, 2015, a local unit of government shall
 37 not establish or maintain professional licensing requirements for a massage
 38 therapist licensed under this act. Nothing in this act shall affect local
 39 zoning requirements.

40 Sec. 13. (a) When it appears to the board that any person is violating
 41 any of the provisions of this act, the board may bring an action in the name
 42 of the state of Kansas in a court of competent jurisdiction for an injunction
 43 against such violation without regard to whether proceedings have been or

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 subsection (b) of section 6, and amendments thereto.

1 may be instituted before the board or whether criminal proceedings have
2 been or may be instituted.

3 (b) The provisions of this section shall take effect on and after 2016
4 September 1 ~~[2013]~~.

5 Sec. 14. All state agency adjudicative proceedings under the licensed
6 massage therapist act shall be conducted in accordance with the provisions
7 of the Kansas administrative procedure act and shall be reviewable in
8 accordance with the Kansas judicial review act.

9 Sec. 15. Professional liability insurance coverage shall be maintained
10 in effect by each massage therapist as a condition to rendering professional
11 service as a massage therapist in this state. The board shall fix by rules and
12 regulations the minimum level of coverage for such professional liability
13 insurance.

14 Sec. 16. On the effective date of this act, nothing in the massage
15 therapist licensure act or in the provisions of K.S.A. 40-2,100 through 40-
16 2,105, and amendments thereto, or K.S.A. ~~[2012]~~ 2013 Supp. 40-2,105a through
17 40-2,105d, and amendments thereto, shall be construed to require that any
18 individual, group or blanket policy of accident and sickness, medical or
19 surgical expense insurance coverage or any provision of a policy, contract,
20 plan or agreement for medical service issued on or after the effective date
21 of this act, reimburse or indemnify a person licensed under the massage
22 therapist licensure act for services provided as a massage therapist.

23 Sec. 17. This act shall be known and may be cited as the massage
24 therapist licensure act.

25 Sec. 18. This act shall take effect and be in force from and after ~~its~~ July 1, 2015, and
26 publication in the statute book.