

SECOND REGULAR SESSION

HOUSE BILL NO. 1658

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BEHNEN.

Read 1st time February 2, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4817L.01I

AN ACT

To repeal sections 324.245, 324.247, 324.257, 324.262, 324.265, and 324.270, RSMo, and to enact in lieu thereof six new sections relating to massage therapists.

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

Section A. Sections 324.245, 324.247, 324.257, 324.262, 324.265, and 324.270, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 324.245, 324.247, 324.257, 324.262, 324.265, and 324.270, to read as follows:

- 324.245. 1. The board is authorized to promulgate rules and regulations regarding:
- (1) The 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, including, but not limited to, provisions that allow clock hours of supervised instruction at a vocational-technical school;
 - (4) The standards and methods to be used in assessing competency as a massage therapist;
 - (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]
 - (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; **and**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 **(7) Establishment of requirements for granting a license, as defined by rule, to a**
16 **person who has completed an approved massage therapy program in another state that is**
17 **less than five hundred hours.**

18 2. All funds received by the board pursuant to the provisions of sections 324.240 to
19 324.275 shall be collected by the director who shall transmit the funds to the department of
20 revenue for deposit in the state treasury to the credit of the "Massage Therapy Fund" which is
21 hereby created. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, money
22 in this fund shall not be transferred and placed to the credit of general revenue until the amount
23 in the fund at the end of the biennium exceeds three times the amount of the appropriation from
24 the fund for the preceding fiscal year.

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

 324.247. A person desiring to receive a license to operate a massage business in the state
2 of Missouri shall file a written application with the board on a form prescribed by the division
3 and pay the appropriate required fee. **It shall be unlawful for a business to employ or contract**
4 **with any person in this state to provide massage therapy as defined in subdivision (7) of**
5 **section 324.240 unless such person has obtained a license as provided by this chapter.**
6 **Failure to comply with the provisions of this section shall be cause to discipline the licensee.**

 324.257. After completion of each board survey inspection, a written report of the
2 findings with respect to the massage business' compliance or noncompliance with the provisions
3 of sections 324.240 to 324.275 and the standards established hereunder as well as a list of
4 deficiencies found shall be prepared. A copy of the report and the list of deficiencies found shall
5 be sent to the massage business within [fifteen] **thirty** business days following the survey
6 inspection. The list of deficiencies shall specifically state the statute or rule which the massage
7 business is alleged to have violated. If the massage business acknowledges the deficiencies
8 found by the survey inspection, the massage business shall inform the board of the time
9 necessary for compliance and shall file a plan of correction with the board. If the massage
10 business does not acknowledge the deficiencies, or file an acceptable plan of correction with the

11 board or timely complete an acceptable plan of correction, the board may file a complaint with
12 the administrative hearing commission as set forth and as provided in sections 324.240 to
13 324.275.

324.262. 1. The board may refuse to issue, renew or reinstate any license required by
2 sections 324.240 to 324.275 for one or any combination of causes stated in subsection 2 of this
3 section. The board shall notify the applicant in writing of the reasons for the refusal and shall
4 advise the applicant of his or her right to file a complaint with the administrative hearing
5 commission as provided by chapter 621, RSMo.

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

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

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

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

21 (4) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty
22 in the performance of the functions or duties of the profession regulated by sections 324.240 to
23 324.275;

24 (5) Violation of, or assisting or enabling any person to violate, any provision of sections
25 324.240 to 324.275, or of any lawful rule or regulation adopted pursuant to sections 324.240 to
26 324.275, **including providing massage therapy under subdivision (7) of section 324.240 at**
27 **a massage business as defined in subdivision (5) of section 324.240 that is not licensed**
28 **under this chapter;**

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

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

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

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

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

39 3. Any person, organization, association or corporation who reports or provides
40 information to the division pursuant to the provisions of sections 324.240 to 324.275 and who
41 does so in good faith and without negligence shall not be subject to an action for civil damages
42 as a result thereof.

43 4. After the filing of a complaint pursuant to subsection 2 of this section, the proceedings
44 shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by
45 the administrative hearing commission that one or more of the grounds for disciplinary action
46 provided in subsection 2 of this section are met, the board may, singly or in combination, censure
47 or place the person named in the complaint on probation or suspension or revoke the license of
48 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
2 eighteen years of age, shall pay the appropriate required application fee, and shall submit
3 satisfactory evidence to the board of meeting at least one of the following requirements:

4 (1) Has passed a statistically valid examination on therapeutic massage and body work
5 which is approved by the board, prior to August 28, 1999, and applies for such license by
6 December 31, 2000; or

7 (2) Completing massage therapy studies consisting of at least five hundred hours of
8 supervised instruction and subsequently passing an examination approved by the board. The
9 examination may consist of school examinations. The course of instruction shall be approved
10 by the board. The five hundred hours shall consist of three hundred hours dedicated to massage
11 theory and practice techniques, one hundred hours dedicated to the study of anatomy and
12 physiology, fifty hours dedicated to business practice, professional ethics, hygiene and massage
13 law in the state of Missouri, and fifty hours dedicated to ancillary therapies, including
14 cardiopulmonary resuscitation (CPR) and first aid; or

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

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

20 (5) Has been engaged in the practice of massage therapy for at least ten years prior to
21 August 28, 1999, and applies for such license by December 31, 2000; or

22 (6) Has been in the practice of massage therapy for at least three years prior to August
23 28, 1999, has completed at least one hundred hours of formal training in massage approved by
24 the board and applies for such license by December 31, 2000.

25 2. A person who has practiced less than three years or has less than one hundred hours
26 of training may request a waiver of the requirements of subsection 1 of this section and apply for
27 a temporary two-year license which shall not be renewable. By the end of such two-year period,
28 such person shall complete at least one hundred additional hours of formal training, including
29 at least twenty-five hours in anatomy and physiology, in a school approved by the board. Such
30 person shall have until December 31, 2000, to apply for a temporary license pursuant to this
31 subsection.

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

34 (1) Application for renewal;

35 (2) Proof, **as provided by rule**, that the therapist has completed twelve hours of
36 continuing education; and

37 (3) Payment of the appropriate renewal fee.

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39 **Failure to obtain the required continuing education hours, submit satisfactory evidence,**
40 **or maintain required documentation is a violation of this subsection. As provided by rule,**
41 **the board may waive or extend the time requirements for completion of continuing**
42 **education for reasons related to health, military service, foreign residency, or other good**
43 **cause. All requests for waivers or extensions of time shall be made in writing and**
44 **submitted to the board before the renewal date.**

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

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

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

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

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

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

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

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

65 **8. Any nonresident person licensed, registered, or certified by another state or**
66 **territory of the United States, the District of Columbia, or foreign territory or recognized**
67 **certification system determined as acceptable by the board shall be exempt from licensure**
68 **as defined in this chapter, if such persons are incidentally called into the state to teach a**
69 **course related to massage or bodywork therapy or to provide massage therapy services as**
70 **part of an emergency response team working in conjunction with disaster relief officials.**

71 **9. Any nonresident person holding a current license, registration, or certification**
72 **in massage therapy from another state or recognized national certification system**
73 **determined as acceptable by the board shall be exempt from licensure as defined in this**
74 **chapter when temporarily present in this state for the purpose of providing massage**
75 **therapy services at special events such as conventions, sporting events, educational field**
76 **trips, conferences, and traveling shows or exhibitions.**

324.270. A person who does not hold a license to practice massage therapy or a license
2 to operate a massage business or is not exempted from obtaining a license pursuant to subsection
3 7 of section 324.265 shall not use the words "massage", "body work", or any of their synonyms
4 on any sign or in any other form of advertising, unless specifically exempted by the board. [Any
5 advertisement by a massage therapist or a massage business shall contain the license or
6 registration number of such therapist or business.] **The division or board may, in its discretion,**
7 **contract with legal counsel for legal services, not directly related to pending litigation,**
8 **which it deems necessary for the administration or enforcement of the provisions of this**
9 **chapter.**

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