

REFERENCE TITLE: **message therapy board; omnibus**

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1249

Introduced by
Senator Barto

AN ACT

AMENDING SECTIONS 32-4201, 32-4202, 32-4205, 32-4222, 32-4225, 32-4228 AND 32-4254, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF MASSAGE THERAPY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-4201, Arizona Revised Statutes, is amended to
3 read:

4 32-4201. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Board" means the board of massage therapy.

7 2. "Board recognized school" means ~~any massage therapy or bodywork~~
8 ~~therapy school or training program in this state that is offered by a~~
9 ~~community college or approved by the state board for private postsecondary~~
10 ~~education or a school or program in another state that meets the criteria~~
11 ~~established by the board of massage therapy.~~ A SCHOOL THAT IS ANY OF THE
12 FOLLOWING:

13 (a) ACCREDITED TO OFFER MESSAGE THERAPY EDUCATION BY AN AGENCY
14 RECOGNIZED BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF EDUCATION.

15 (b) IF LOCATED IN THIS STATE, OFFERED BY A COMMUNITY COLLEGE OR
16 APPROVED BY THE STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION.

17 (c) IF LOCATED IN ANOTHER STATE OR A CANADIAN PROVINCE, APPROVED BY AN
18 AGENCY SIMILAR TO THE STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION.

19 3. "Bodywork therapy" means massage therapy.

20 4. "Massage therapist" means a person who is licensed under this
21 chapter to engage in the practice of massage therapy.

22 5. "Massage therapy" means the following that are undertaken to
23 increase wellness, relaxation, stress reduction, pain relief and postural
24 improvement or provide general or specific therapeutic benefits:

25 (a) The manual application of compression, stretch, vibration or
26 mobilization of the organs and tissues beneath the dermis, including the
27 components of the musculoskeletal system, peripheral vessels of the
28 circulatory system and fascia, when applied primarily to parts of the body
29 other than the hands, feet and head.

30 (b) The manual application of compression, stretch, vibration or
31 mobilization using the forearms, elbows, knees or feet or handheld mechanical
32 or electrical devices.

33 (c) Any combination of range of motion, directed, assisted or passive
34 movements of the joints.

35 (d) Hydrotherapy, including the therapeutic applications of water,
36 heat, cold, wraps, essential oils, skin brushing, salt glows and similar
37 applications of products to the skin.

38 6. "Practice of massage therapy" means the application of massage
39 therapy to any person for a fee or other consideration. Practice of massage
40 therapy does not include the diagnosis of illness or disease, medical
41 procedures, naturopathic manipulative medicine, osteopathic manipulative
42 medicine, chiropractic adjustive procedures, homeopathic neuromuscular
43 integration, electrical stimulation, ultrasound, prescription of medicines or
44 the use of modalities for which a license to practice medicine, chiropractic,

1 nursing, occupational therapy, athletic training, physical therapy,
2 acupuncture or podiatry is required by law.

3 Sec. 2. Section 32-4202, Arizona Revised Statutes, is amended to read:
4 32-4202. Board; membership; terms; compensation; immunity

5 A. The board of massage therapy is established consisting of the
6 following members appointed by the governor:

7 1. Three massage therapists who are residents of this state, who
8 possess an unrestricted license to practice massage therapy in this state and
9 who have been practicing in this state for at least five years immediately
10 preceding their appointment. The governor may make these appointments from a
11 list of names submitted by a statewide massage or bodywork therapy
12 association, or both, or any other group or person. The initial three
13 appointees are not required to be licensed pursuant to this chapter at the
14 time of selection but must meet all of the qualifications for licensure as
15 prescribed by this chapter.

16 2. Two public members who are residents of this state and who are not
17 affiliated with and do not have any financial interest in any health care
18 profession but who have an interest in consumer rights or have a background
19 in compliance or law enforcement issues.

20 B. Board members serve staggered five year terms that begin and end on
21 the third Monday in January. Board members shall not serve for more than two
22 successive five year terms or for more than ten consecutive years, ~~—~~ EXCEPT
23 THAT the term of office for a member of the board appointed to fill a vacancy
24 that occurs before the expiration of a full term is for the unexpired portion
25 of that term and the governor may reappoint that member to not more than two
26 additional full terms.

27 C. If requested by the board, the governor may remove a board member
28 for misconduct, incompetence or neglect of duty.

29 D. Board members are eligible TO RECEIVE COMPENSATION IN THE AMOUNT OF
30 ONE HUNDRED FIFTY DOLLARS PER DAY FOR EACH DAY OF ACTUAL SERVICE IN THE
31 BUSINESS OF THE BOARD AND for reimbursement of expenses pursuant to title 38,
32 chapter 4, article 2 to cover necessary expenses for attending each board
33 meeting or for representing the board in an official board approved activity.

34 E. A board member who acts within the scope of board duties, without
35 malice and in the reasonable belief that the member's action is warranted by
36 law is not subject to civil liability.

37 Sec. 3. Section 32-4205, Arizona Revised Statutes, is amended to read:
38 32-4205. Deposit and use of monies received by board

39 A. Except as provided in section 32-4254, subsection ~~—~~ M and section
40 32-4255, subsection E, the board shall deposit, pursuant to sections 35-146
41 and 35-147, ten per cent of all monies collected pursuant to this chapter in
42 the state general fund and deposit the remaining ninety per cent of the
43 monies in a separate account established for the board of massage therapy in
44 the naturopathic physicians medical board fund established by section
45 32-1505.

1 B. The board may spend monies deposited in the separate account
2 established for the board and deposited in the naturopathic physicians
3 medical board fund pursuant to section 32-1505.

4 Sec. 4. Section 32-4222, Arizona Revised Statutes, is amended to read:
5 32-4222. Qualifications for licensure

6 A. An applicant for a license as a massage therapist shall:

- 7 1. Be at least eighteen years of age.
- 8 2. Be a citizen or legal resident of the United States.
- 9 3. Satisfy the requirements of section 32-4224.
- 10 4. Be of good moral character.

11 5. Receive either a high school diploma or general equivalency diploma
12 or a similar document or certificate or submit proof that the applicant has
13 passed an ability to benefit examination recognized by the United States
14 department of education.

15 6. Pay the fees established pursuant to section 32-4227.

16 7. ~~Not have,~~ Within five years preceding the date of the application,
17 **NOT HAVE** been convicted of:

18 (a) A class 1, 2 or 3 felony.

19 (b) A class 4, 5 or 6 felony offense involving moral turpitude that
20 has a reasonable relationship to the practice of massage therapy.

21 (c) A misdemeanor involving prostitution or solicitation or other
22 similar offense involving moral turpitude that has a reasonable relationship
23 to the practice of massage therapy.

24 8. Within the past five years, not have voluntarily surrendered a
25 license under section 32-4254 or not have had a license to practice massage
26 therapy or another similar license revoked by a political subdivision of this
27 state or a regulatory agency in another jurisdiction in the United States for
28 an act that occurred in that jurisdiction that would be subject to discipline
29 pursuant to this chapter.

30 9. Not be currently under investigation, suspension or restriction by
31 a political subdivision of this state or a regulatory ~~board~~ **AGENCY** in another
32 jurisdiction in the United States for an act that occurred in that
33 jurisdiction that would be subject to discipline pursuant to this
34 chapter. If the applicant is under investigation by a regulatory agency in
35 another jurisdiction, the board shall suspend the application process and may
36 not issue or deny a license to the applicant until the investigation is
37 resolved.

38 10. Submit a full set of fingerprints to the board for the purpose of
39 obtaining a state and federal criminal records check pursuant to section
40 41-1750 and Public Law 92-544. The department of public safety may exchange
41 this fingerprint data with the federal bureau of investigation. The board
42 may charge the cost of each criminal background check to the applicant.

43 11. **ATTEST IN WRITING THAT THE APPLICANT IS ABLE TO READ, SPEAK AND**
44 **UNDERSTAND ENGLISH.**

1 B. In addition to the requirements of subsection A of this section, an
2 applicant for licensure as a massage therapist shall either:

3 1. Have successfully completed a course of study ~~of~~ IN massage therapy
4 or bodywork therapy consisting of a minimum of ~~five~~ SEVEN hundred HOURS OF
5 classroom ~~hours of~~ AND CLINICAL supervised instruction at a board recognized
6 school in this state that is accredited by an agency recognized by the
7 secretary of the United States department of education.

8 2. Have done both of the following:

9 (a) Successfully completed a course of study ~~of~~ IN massage therapy or
10 bodywork therapy consisting of a minimum of ~~five~~ SEVEN hundred classroom AND
11 CLINICAL hours of supervised instruction at a school in this state that is
12 licensed by the state board ~~of~~ FOR private postsecondary education or at a
13 school outside of this state that is recognized by the board pursuant to
14 section 32-4228.

15 (b) Successfully passed an examination administered by a national
16 board accredited by the certifying agency that has been approved by the
17 national commission on competency assurance and that is in good standing with
18 that agency or have successfully passed an examination that is administered
19 or approved by the board.

20 ~~C. Notwithstanding subsection B of this section, a person who applies~~
21 ~~for a provisional license may be licensed by the board on demonstration of~~
22 ~~the qualifications prescribed in this subsection and subsection A of this~~
23 ~~section on or before January 1, 2006 and subject to the requirements of this~~
24 ~~section. A person may qualify for a license under this subsection if the~~
25 ~~person either:~~

26 ~~1. Has completed a minimum of two hundred hours of education and~~
27 ~~training in the study of massage therapy or bodywork therapy and the person~~
28 ~~has continuously practiced massage therapy in this state for at least three~~
29 ~~years before May 12, 2003. The two hundred hours of education and training~~
30 ~~required by this paragraph must be taken in a massage or bodywork training~~
31 ~~program that is approved by either a community college located in this state~~
32 ~~or the state board for private postsecondary education or a similar agency of~~
33 ~~another state that imposes requirements that are substantially equivalent to~~
34 ~~the requirements of the state board for private postsecondary education. The~~
35 ~~training program required by this paragraph must consist of anatomy and~~
36 ~~physiology, massage theory and practice and ethics.~~

37 ~~2. Demonstrates that the person has been self-supportive as a massage~~
38 ~~therapist in this state since from and after December 31, 1992.~~

39 ~~3. Holds a current professional license from a political subdivision~~
40 ~~of this state that regulated the practice of massage therapy before May 12,~~
41 ~~2003.~~

42 ~~D. C.~~ C. The board may adopt rules to allow it to consider the education
43 and experience of an applicant who came from a foreign country. ~~On or after~~
44 ~~July 1, 2006,~~ The board by rule may increase the minimum number of classroom

1 hours of supervised instruction at a board recognized school that an
2 applicant for licensure must successfully have completed.

3 ~~E.~~ D. If the board is satisfied that an applicant meets the
4 requirements of this section, the board shall issue a license to the
5 applicant.

6 E. SUBJECT TO THE BOARD'S APPROVAL AT ITS NEXT REGULARLY SCHEDULED
7 MEETING, THE EXECUTIVE DIRECTOR MAY ISSUE LICENSES TO APPLICANTS WHO MEET THE
8 REQUIREMENTS OF THIS CHAPTER.

9 F. THE BOARD MAY DENY AN APPLICATION FOR A LICENSE IF THE APPLICANT
10 COMMITTED ANY ACT THAT WOULD BE CAUSE FOR DISCIPLINE OF A PERSON LICENSED
11 UNDER THIS CHAPTER.

12 Sec. 5. Section 32-4225, Arizona Revised Statutes, is amended to read:
13 32-4225. License renewal; changes in personal information;
14 notification; continuing education

15 A. Except as provided in section 32-4301, a license issued pursuant to
16 this chapter is subject to renewal every other year on the licensee's
17 birthday and expires unless renewed.

18 B. The executive director shall ~~send a renewal application to~~ NOTIFY
19 each licensee at least sixty days before expiration of the license and may
20 renew the license on receipt of a completed renewal application.

21 C. Each licensee is responsible for reporting to the board a name
22 change and changes in business and home addresses and phone numbers within
23 ten days after any change.

24 D. Each licensee shall notify the board in writing within ten days
25 after the issuance of a final order, judgment or conviction of a felony or
26 other offense involving moral turpitude or prostitution, solicitation or any
27 other similar offense.

28 E. When a licensee renews a license, the licensee must ~~submit to the~~
29 ~~board evidence~~ PROVIDE THE BOARD WITH AN AFFIRMATION of the successful
30 completion of at least ~~twenty-five~~ TWENTY-FOUR hours of continuing education
31 in the practice of massage therapy, as approved by the board, during the
32 immediately preceding two years.

33 Sec. 6. Section 32-4228, Arizona Revised Statutes, is amended to read:
34 32-4228. Massage therapy schools; recognition

35 A. The board shall recognize a school of massage therapy located in
36 this state if it is approved by the state board ~~of~~ FOR private postsecondary
37 education or if it is accredited to offer massage therapy education by an
38 agency recognized by the secretary of the United States department of
39 education.

40 B. The board shall recognize a school of massage therapy located in
41 another state or a Canadian province if it is accredited OR APPROVED by an
42 agency similar to the Arizona state board ~~of~~ FOR private postsecondary
43 education or it is accredited to offer massage therapy education by an agency
44 recognized by the secretary of the United States department of education.

1 C. Each school of massage therapy that is located in this state and
2 that receives approval from the state board for private postsecondary
3 education shall report to the board of massage therapy:

4 1. The physical address of the school and each instructional facility
5 maintained or operated by the school.

6 2. All faculty and instructional staff, and all additions to or
7 deletions from the faculty and staff.

8 D. The board shall maintain a list of recognized schools.

9 Sec. 7. Section 32-4254, Arizona Revised Statutes, is amended to read:

10 32-4254. Investigative powers; emergency action; disciplinary
11 proceedings; formal interview; hearing; civil
12 penalty

13 A. The board on its own motion may investigate any evidence that
14 appears to show that a licensee is or may be incompetent or is or may be
15 subject to discipline under this chapter. On written request of a
16 complainant, the board shall review a complaint and take any action it deems
17 appropriate. The board or the executive director shall notify the licensee
18 as to the content of the complaint as soon as reasonable. A licensee shall,
19 and any other person may, report to the board any information the person may
20 have that appears to show grounds for disciplinary action against a
21 licensee. Any person or entity that reports or provides information to the
22 board in good faith is not subject to an action for civil damages. If
23 requested, the board shall not disclose the name of a person who supplies
24 information regarding a licensee's drug or alcohol impairment. It is an act
25 of unprofessional conduct for any licensee to fail to report as required by
26 this section.

27 B. If the board finds, based on the information it receives under
28 subsection A of this section, that the public health, safety or welfare
29 requires emergency action and incorporates a finding to that effect in its
30 order, the board may restrict, limit or order a summary suspension of a
31 license pending proceedings for revocation or other action. If the board
32 takes action pursuant to this subsection, it shall also serve the licensee
33 with a written notice that states the charges and that the licensee is
34 entitled to a formal hearing before the board or an administrative law judge
35 within sixty days.

36 C. If, after completing its investigation, the board finds that the
37 information provided pursuant to subsection A of this section is not of
38 sufficient seriousness to merit disciplinary action against the license of
39 the licensee, the board or a board committee may take any of the following
40 nondisciplinary actions:

41 1. Dismiss if, in the opinion of the board, the information is without
42 merit.

43 2. File an advisory letter. The licensee may file a written response
44 with the board within thirty days after receiving the advisory letter.

1 3. Issue a nondisciplinary order requiring the licensee to complete a
2 prescribed number of hours of continuing education in an area or areas
3 prescribed by the board to provide the licensee with the necessary
4 understanding of current developments, skills, procedures or treatment.

5 D. If the board finds that it can take rehabilitative or disciplinary
6 action without the presence of the licensee at a formal interview, it may
7 enter into a consent agreement with the licensee to limit or restrict the
8 licensee's practice or to rehabilitate the licensee, protect the public and
9 ensure the licensee's ability to safely engage in the practice of massage
10 therapy. The board may also require the licensee to successfully complete a
11 board approved rehabilitative, retraining, continuing education or assessment
12 program.

13 E. If, after completing its investigation, the board believes that the
14 information is or may be true, it may request a formal interview with the
15 licensee. If the licensee refuses the invitation for a formal interview or
16 accepts and the results indicate that grounds may exist for revocation or
17 suspension of the licensee's license for more than twelve months, the board
18 shall issue a formal complaint and order that a hearing be held pursuant to
19 title 41, chapter 6, article 10. If, after completing a formal interview,
20 the board finds that the protection of the public requires emergency action,
21 it may order a summary suspension of the license pending formal revocation
22 proceedings or other action authorized by this section.

23 F. If, after completing the formal interview, the board finds the
24 information provided under subsection A of this section is not of sufficient
25 seriousness to merit suspension for more than twelve months or revocation of
26 the license, it may take one or more of the following actions:

27 1. Dismiss if, in the opinion of the board, the complaint is without
28 merit.

29 2. File an advisory letter. The licensee may file a written response
30 with the board within thirty days after the licensee receives the advisory
31 letter.

32 3. File a letter of reprimand.

33 4. Issue a decree of censure. A decree of censure is an official
34 action against the licensee's license.

35 5. Fix a period and terms of probation best adapted to protect the
36 public health and safety and to rehabilitate or educate the licensee
37 concerned. Probation may include temporary suspension not to exceed twelve
38 months or restriction of the licensee's license to practice massage
39 therapy. If a licensee fails to comply with the terms of probation, the
40 board shall serve the licensee with a written notice that states that the
41 licensee is subject to a formal hearing based on the information considered
42 by the board at the formal interview and on any other acts or conduct alleged
43 to be in violation of this chapter or rules adopted pursuant to this chapter,
44 including noncompliance with the terms of probation, a consent agreement or a
45 stipulated agreement.

1 6. Enter into an agreement with the licensee to restrict or limit the
2 licensee's practice in order to rehabilitate, retrain or assess the licensee,
3 protect the public and ensure the licensee's ability to safely engage in the
4 practice of massage therapy.

5 7. Order the payment of restitution, including an order to repay fees
6 paid by a massage therapy client and for the cost of the investigation.

7 8. Issue a nondisciplinary order requiring the licensee to complete a
8 prescribed number of hours of continuing education in an area or areas
9 prescribed by the board to provide the licensee with the necessary
10 understanding of current developments, skills, procedures or treatment.

11 G. If the board finds that the information provided in subsection A or
12 E of this section warrants suspension or revocation of a license issued
13 pursuant to this chapter, it shall initiate formal proceedings pursuant to
14 title 41, chapter 6, article 10. If after a formal proceeding the board
15 finds that a licensee has been convicted of prostitution, solicitation or
16 another similar offense, the board shall revoke the license.

17 H. A LICENSEE SHALL RESPOND IN WRITING TO THE BOARD WITHIN THIRTY DAYS
18 AFTER NOTICE OF THE HEARING IS SERVED. THE BOARD MAY CONSIDER A LICENSEE'S
19 FAILURE TO RESPOND WITHIN THIS TIME AS AN ADMISSION BY DEFAULT TO THE
20 ALLEGATIONS STATED IN THE COMPLAINT. THE BOARD MAY THEN TAKE DISCIPLINARY
21 ACTIONS PRESCRIBED BY THIS CHAPTER WITHOUT CONDUCTING A HEARING.

22 ~~H.~~ I. In a formal interview pursuant to subsection E of this section
23 or in a hearing pursuant to subsection G of this section, the board in
24 addition to any other action may impose a civil penalty of ~~at least one~~
25 ~~thousand dollars but~~ not more than ten thousand dollars for each violation of
26 this chapter or a rule adopted pursuant to this chapter.

27 ~~I.~~ J. An advisory letter is a public document.

28 ~~J.~~ K. A licensee who after a formal hearing is found by the board to
29 be subject to discipline pursuant to this chapter is subject to censure,
30 probation or restitution as provided in this section, suspension or
31 revocation of license or any combination of these, including a stay of
32 action, for a period of time or permanently and under conditions the board
33 deems appropriate for the protection of the public health and safety and just
34 in the circumstance. The board may charge the costs of formal hearings to a
35 licensee who it finds to be in violation of this chapter.

36 ~~K.~~ L. If the board, during the course of any investigation,
37 determines that a criminal violation involving the practice of massage
38 therapy may have occurred, it shall make the evidence of a violation
39 available to the appropriate criminal justice agency for its consideration.

40 ~~L.~~ M. The board shall deposit, pursuant to sections 35-146 and
41 35-147, all monies it collects from civil penalties paid pursuant to this
42 section in the state general fund.

43 ~~M.~~ N. Notice of a complaint and hearing is effective by a true copy
44 of it being sent by certified mail to the licensee's last known address of
45 record in the board's files. Notice of the complaint and hearing is complete

1 on the date of its deposit in the mail. The board shall begin a formal
2 hearing within one hundred twenty days after that date.

3 ~~H~~ O. The board may accept the surrender of a license from a person
4 who admits in writing to any of the following:

5 1. Being unable to safely engage in the practice of massage therapy.

6 2. Having committed an act subject to discipline pursuant to this
7 chapter.

8 3. Having violated this chapter or a board rule.

9 ~~H~~ P. In determining the appropriate disciplinary action under this
10 section, the board shall consider all previous nondisciplinary and
11 disciplinary actions against a licensee.