Senator R. Mont Evans proposes to substitute the following bill:

MASSAGE PRACTICE ACT AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: R. Mont Evans

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; AMENDING THE SCOPE OF PRACTICE FOR MASSAGE THERAPY; ADDING EXEMPTIONS TO LICENSURE; GRANDFATHERING LYMPHATIC MASSAGE PRACTITIONERS; AMENDING THE DEFINITIONS OF UNLAWFUL CONDUCT AND UNPROFESSIONAL CONDUCT; MAKING CONFORMING AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-47b-101, as enacted by Chapter 76, Laws of Utah 1996

58-47b-102, as enacted by Chapter 76, Laws of Utah 1996

58-47b-201, as enacted by Chapter 76, Laws of Utah 1996

58-47b-301, as enacted by Chapter 76, Laws of Utah 1996

58-47b-302, as enacted by Chapter 76, Laws of Utah 1996

58-47b-304, as last amended by Chapter 10, Laws of Utah 1997

58-47b-305, as enacted by Chapter 76, Laws of Utah 1996

58-47b-501, as enacted by Chapter 76, Laws of Utah 1996

58-47b-502, as enacted by Chapter 76, Laws of Utah 1996

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-47b-101** is amended to read:

58-47b-101. Title.

This chapter is known as the "Massage <u>Therapy</u> Practice Act."

Section 2. Section **58-47b-102** is amended to read:

58-47b-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Utah Board of Massage Therapy created in Section 58-47b-201.

[~~(2) "Massage" means the practice whereby an individual:~~]

[~~(a) (i) represents himself as a massage technician or massage apprentice;~~]

[~~(ii) represents himself as providing massage services using the word massage or any other word to describe the massage services;~~]

[~~(iii) teaches massage; or~~]

[~~(iv) charges or receives a fee or any consideration for providing massage services; and~~]

[~~(b) while carrying out any act under Subsection (2)(a), either by the hands or with a mechanical or electrical apparatus administers to another person:~~]

[~~(i) effleurage or stroking, friction or rubbing, petrissage or kneading, tapotement or percussion, vibration, shaking, or trembling, or variations of these;~~]

[~~(ii) the use of rehabilitative procedures involving the muscles by nonintrusive means and without spinal manipulation; or~~]

[~~(iii) oil rubs, heat lamps, salt glows, hot and cold packs, or tub, shower, steam, or cabinet baths.~~]

(2) "Homeostasis" means maintaining, stabilizing, or returning to equilibrium the muscular system.

(3) "Massage apprentice" means an individual licensed under this chapter as a massage apprentice to work under the direct supervision of a licensed massage technician.

(4) "Massage [~~technician~~] therapist" means an individual [~~who is~~] licensed under this chapter as a massage technician.

(5) "Practice of massage therapy" means **ĥ [Ş ~~, IN ACCORDANCE WITH DIVISION RULE ESTABLISHED IN COLLABORATION WITH THE BOARD~~ ş] ĥ** :

(a) the examination, assessment, **Ş [~~measurement,~~] ş** and evaluation of the soft tissue structures of the body for the purpose of devising a treatment plan to promote homeostasis;

(b) the systematic manual or mechanical manipulation of the soft tissue of the body for the therapeutic purpose of:

(i) promoting the health and well-being of a client;

(ii) enhancing the circulation of the blood and lymph;

(iii) relaxing and lengthening muscles;

(iv) relieving pain;

(v) restoring metabolic balance; and

(vi) achieving **Ş [~~physical and mental~~] ş** homeostasis;

(c) the use of the hands or a mechanical or electrical apparatus;

(d) the use of rehabilitative procedures involving the soft tissue of body;

(e) range of motion or movements without spinal adjustment **Ş AS SET FORTH IN SECTION 58-73-102 ş** ;

(f) oil rubs, heat lamps, salt glows, hot and cold packs, or tub, shower, steam, and cabinet baths;

(g) manual traction and stretching exercise;

(h) correction of muscular distortion **Ş [~~, body mechanics, and gait~~] ş** by treatment of the soft tissues of the body;

(i) counseling, education, and other advisory services to reduce the incidence and severity of physical disability, movement dysfunction, and pain; and

(j) similar or related activities **Ş [~~,~~] AND MODALITY ş** techniques **Ş [~~, and modalities~~] ş** .

(6) "Soft tissue" means the muscles and related connective tissue.

[~~(5)~~] (7) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-47b-501.

[~~(6)~~] (8) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-47b-502 and as may be further defined by division rule.

Section 3. Section **58-47b-201** is amended to read:

58-47b-201. Board.

(1) There is created the Board of Massage Therapy consisting of:

(a) four massage [~~technicians~~] therapists; and

(b) one member of the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:

(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(b) advise the division in its investigation of these complaints.

(4) A board member who has, under Subsection (3), reviewed a complaint or advised in

its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Section 4. Section **58-47b-301** is amended to read:

58-47b-301. Licensure required.

(1) An individual shall hold a license issued under this chapter in order to engage in the practice of massage therapy, except as specifically provided in Section 58-1-307 or 58-47b-304.

(2) An individual shall have a license in order to:

(a) represent himself as a massage [~~technician~~] therapist or massage apprentice;

(b) represents himself as providing a service that is within the practice of massage therapy or uses the word massage or any other word to describe such services; or

(c) charges or receives a fee or any consideration for providing a service that is within the practice of massage therapy.

Section 5. Section **58-47b-302** is amended to read:

58-47b-302. License classifications -- Qualifications for licensure.

(1) The division shall issue licenses under this chapter in the classifications of:

(a) massage [~~technician~~] therapist; and

(b) massage apprentice.

(2) Each applicant for licensure as a massage [~~technician~~] therapist shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character;

(d) have either:

(i) (A) graduated from a school of massage having a curriculum which meets standards established by division rule made in collaboration with the board, which may not exceed 1,000 hours; or [~~have~~]

(B) completed equivalent education and training in compliance with division rule; or

(ii) completed a massage apprenticeship program consisting of a minimum of 1,000 hours of supervised training over a minimum of 12 months and in [~~content in~~] accordance with standards established by the division by rule made in collaboration with the board; and

(e) [~~have passed~~] pass examinations established by rule by the division in collaboration with the board.

(3) Each applicant for licensure as a massage apprentice shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character;

(d) provide satisfactory evidence to the division that the individual will practice as a massage apprentice only under the direct supervision of a licensed massage [~~technician~~] therapist in good standing and who has engaged in the lawful practice of massage therapy as a licensed massage [~~technician~~] therapist for not less than 6,000 hours; and

(e) successfully complete an examination as required by division rule.

(4) A person who qualified for the exemption to engage in lymphatic massage prior to July 1, 1998, may be licensed as a massage therapist by satisfying the requirements of Subsection (2)(a), (b), and (c) before January 1, 1999.

Section 6. Section **58-47b-304** is amended to read:

58-47b-304. Exemptions from licensure.

(1) In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the practice of massage therapy as defined under this chapter, subject to the stated circumstances and limitations, without being licensed, but may not represent themselves as a massage [~~technician~~] therapist or massage apprentice:

(a) physicians and surgeons licensed under Title 58, Chapter [~~12~~] 67, [~~Part 5,~~] Utah Medical Practice Act;

(b) nurses licensed under Title 58, Chapter 31, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(c) physical therapists licensed under Title 58, Chapter 24a, Physical Therapist Practice Act;

(d) [~~osteopaths~~] osteopathic physicians and surgeons licensed under Title 58, Chapter [~~12~~] 68, [~~Part 1,~~] Utah Osteopathic [~~Medicine Licensing~~] Medical Practice Act;

(e) chiropractors licensed under Title 58, Chapter 73, Chiropractic Physician Practice Act;

(f) hospital staff members employed by a hospital who practice massage as part of their responsibilities;

(g) athletic trainers who practice massage as part of their responsibilities while employed by an educational institution or an athletic team that participates in organized sports competition;

(h) students in training enrolled in a massage therapy school approved by the division; [~~and~~]

(i) until January 1, 1999, individuals engaging in lymphatic massage and who meet training standards as defined by division rule[~~.~~]; **Ş [~~and~~] ş**

(j) naturopathic physicians licensed under Title 58, Chapter 71, Naturopathic Physician Practice Act **Ş [~~.~~] ; [~~AND~~]**

(k) OCCUPATIONAL THERAPIST LICENSED UNDER CHAPTER 42a, OCCUPATIONAL THERAPY PRACTICE ACT [~~.~~] ; AND

(l) PERSONS PERFORMING GRATUITOUS MASSAGE. ş

(2) This chapter may not be construed to authorize any individual licensed [~~as a massage technician~~] under this chapter to engage in any manner in the practice of medicine as defined by the laws of this state.

(3) This chapter may not be construed to:

(a) create or require insurance coverage or reimbursement for massage therapy from third party payors if this type of coverage did not exist on or before February 15, 1990; or

(b) prevent any insurance carrier from offering coverage for massage therapy.

Section 7. Section **58-47b-305** is amended to read:

58-47b-305. State and local jurisdiction.

(1) (a) The division is the only agency authorized to license individuals to practice massage therapy within the state or any of its political subdivisions.

(b) This chapter does not prevent any political subdivision of the state from enacting:

(i) ordinances governing the operation of establishments offering massages; or

(ii) ordinances regulating the practice of massage therapy, if the ordinances are not less stringent than this chapter.

(2) This chapter does not prohibit any political subdivision of the state from prosecuting unlicensed individuals engaged in the practice of massage therapy or from prosecuting licensed individuals who are engaged in unlawful conduct.

Section 8. Section **58-47b-501** is amended to read:

58-47b-501. Unlawful conduct.

"Unlawful conduct" includes:

(1) practicing, engaging in, or attempting to practice or engage in massage therapy without holding a current license as a massage [~~technician~~] therapist or a massage apprentice under this chapter;

(2) advertising or representing himself as practicing massage therapy when not licensed

to do so; and

(3) massaging, touching, or applying any instrument or device to the following areas of the body:

[~~(i)~~] (a) genitals or [~~the~~] anus; and

[~~(ii)~~] (b) breasts of a female patron, except in cases in which the female patron states to a licensee that the patron requests breast massage and signs a written consent form authorizing the licensee to perform breast massage before the procedure.

Section 9. Section **58-47b-502** is amended to read:

58-47b-502. Unprofessional conduct.

"Unprofessional conduct" includes the following and may be further defined by division rule:

(1) maintaining, operating, or assisting in the establishment or operation of any place of business for the purpose of performing massage without first obtaining a business license, if a license is required; [~~and~~]

(2) failing to comply with any applicable ordinances relating to the regulation of massage establishment;

(3) failing to comply with all applicable state and local health or sanitation codes;

(4) failing to properly supervise an apprentice;

(5) failing to maintain mechanical or electrical equipment in a safe operating condition;

(6) failing to adequately monitor patrons utilizing steam rooms, dry heat cabinets, or water baths; [~~or~~]

(7) prescribing or administering medicine or drugs;

(8) engaging in any act or practice in a professional capacity that is outside of the practice of massage therapy; and

(9) engaging in any act or practice in a professional capacity for which the licensee is not competent to perform through training or experience.

Section 10. **Effective date.**

This act takes effect on July 1, 1998.