

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

MESSAGE PRACTICE ACT AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: R. Mont Evans

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; DEFINING TERMS;
AMENDING THE SCOPE OF PRACTICE; REQUIRING APPLICANTS TO BE 18 OR OLDER
AND TO SUBMIT TO A CRIMINAL BACKGROUND CHECK; RESTRICTING
GOVERNMENTAL ENTITIES FROM REQUIRING A SECOND CRIMINAL BACKGROUND
CHECK IF THE FIRST WAS SUCCESSFULLY COMPLETED; AMENDING THE
EXEMPTIONS TO LICENSURE; CLARIFYING THE CONSENT NECESSARY FOR
THERAPEUTIC BREAST MASSAGE; CLARIFYING THE PENALTIES FOR UNLAWFUL
CONDUCT; AND MAKING CONFORMING AND TECHNICAL AMENDMENTS.

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

AMENDS:

58-47b-102, as last amended by Chapter 21, Laws of Utah 1999

58-47b-302, as last amended by Chapter 159, Laws of Utah 1998

58-47b-304, as last amended by Chapter 21, Laws of Utah 1999

58-47b-501, as last amended by Chapter 159, Laws of Utah 1998

58-47b-503, 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-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) "Breast" means the female mammary gland and does not include the muscles.

26 connective tissue, or other soft tissue of the upper chest.

27 [~~(2)~~] (3) "Homeostasis" means maintaining, stabilizing, or returning to equilibrium the
28 muscular system.

29 [~~(3)~~] (4) "Massage apprentice" means an individual licensed under this chapter as a
30 massage apprentice to work under the direct supervision of a licensed massage therapist.

31 [~~(4)~~] (5) "Massage therapist" means an individual licensed under this chapter as a massage
32 therapist.

33 [~~(5)~~] (6) "Practice of massage therapy" means:

34 (a) the examination, assessment, and evaluation of the soft tissue structures of the body § [~~(6)~~]
35 whether human or animal, § for the purpose of devising a treatment plan to promote homeostasis;

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

- 38 (i) promoting the health and well-being of a client;
- 39 (ii) enhancing the circulation of the blood and lymph;
- 40 (iii) relaxing and lengthening muscles;
- 41 (iv) relieving pain;
- 42 (v) restoring metabolic balance; and
- 43 (vi) achieving homeostasis;

44 (c) the use of the hands or a mechanical or electrical apparatus in connection with this
45 Subsection (6);

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

47 (e) range of motion or movements without spinal adjustment as set forth in Section
48 58-73-102;

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

51 (g) manual traction and stretching exercise;

52 (h) correction of muscular distortion by treatment of the soft tissues of the body;

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

55 (j) similar or related activities and modality techniques.

56 [~~(6)~~] (7) "Soft tissue" means the muscles and related connective tissue.

57 ~~[(7)]~~ (8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-47b-501.

58 ~~[(8)]~~ (9) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-47b-502 and
59 as may be further defined by division rule.

60 Section 2. Section **58-47b-302** is amended to read:

61 **58-47b-302. License classifications -- Qualifications for licensure.**

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

63 (a) massage therapist; and

64 (b) massage apprentice.

65 (2) Each applicant for licensure as a massage therapist shall:

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

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

68 (c) be of good moral character;

69 (d) be 18 years of age or older;

70 ~~[(d)]~~ (e) have either:

71 (i) (A) graduated from a school of massage having a curriculum which meets standards

72 established by division rule made in collaboration with the board~~[-which may not exceed 1,000~~

73 ~~hours];~~ or

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

75 (ii) completed a massage apprenticeship program consisting of a minimum of 1,000 hours

76 of supervised training over a minimum of 12 months and in accordance with standards established

77 by the division by rule made in collaboration with the board; and

78 ~~[(e)]~~ (f) pass examinations established by rule by the division in collaboration with the

79 board.

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

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

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

83 (c) be of good moral character;

84 (d) be 18 years of age or older;

85 ~~[(d)]~~ (e) provide satisfactory evidence to the division that the individual will practice as

86 a massage apprentice only under the direct supervision of a licensed massage therapist in good

87 standing and who has engaged in the lawful practice of massage therapy as a licensed massage

88 therapist for not less than 6,000 hours; and

89 ~~[(e)]~~ (f) successfully complete an examination as required by division rule.

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

93 (4) (a) Any new massage therapist or massage apprentice applicant shall submit fingerprint
94 cards in a form acceptable to the division at the time the license application is filed and shall
95 consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the
96 Federal Bureau of Investigation regarding the application.

97 (b) The division shall request the Department of Public Safety to complete a Federal
98 Bureau of Investigation criminal background check for each new massage therapist or apprentice
99 applicant through the national criminal history system (NCIC) or any successor system.

100 (c) The cost of the background check and the fingerprinting shall be borne by the
101 applicant.

102 (5) (a) Any new massage therapist or massage apprentice license issued under this section
103 shall be conditional, pending completion of the criminal background check. If the criminal
104 background check discloses the applicant has failed to accurately disclose a criminal history, the
105 license shall be immediately and automatically revoked.

106 (b) Any person whose conditional license has been revoked under Subsection (e)(i) shall
107 be entitled to a post-revocation hearing to challenge the revocation. The hearing shall be
108 conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

109 (6) An applicant who successfully completes a fingerprint background check under
110 Subsection (4) may not be required by any other state or local government body to submit to a
111 second fingerprint background check as a condition of lawfully practicing massage therapy in this
112 state.

113 Section 3. Section **58-47b-304** is amended to read:

114 **58-47b-304. Exemptions from licensure.**

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

- 119 (a) physicians and surgeons licensed under Title 58, Chapter 67, Utah Medical Practice
120 Act;
- 121 (b) nurses licensed under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58,
122 Chapter 44a, Nurse Midwife Practice Act;
- 123 (c) physical therapists licensed under Title 58, Chapter 24a, Physical Therapist Practice
124 Act;
- 125 (d) osteopathic physicians and surgeons licensed under Title 58, Chapter 68, Utah
126 Osteopathic Medical Practice Act;
- 127 (e) chiropractic physicians licensed under Title 58, Chapter 73, Chiropractic Physician
128 Practice Act;
- 129 (f) hospital staff members employed by a hospital who practice massage as part of their
130 responsibilities;
- 131 (g) athletic trainers who practice massage as part of their responsibilities while employed
132 by an educational institution or an athletic team that participates in organized sports competition;
- 133 (h) students in training enrolled in a massage therapy school approved by the division;
- 134 ~~[(i) until January 1, 1999, individuals engaging in lymphatic massage and who meet~~
135 ~~training standards as defined by division rule;]~~
- 136 ~~[(j)]~~ (i) naturopathic physicians licensed under Title 58, Chapter 71, Naturopathic
137 Physician Practice Act;
- 138 ~~[(k)]~~ (j) occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy
139 Practice Act; and
- 140 ~~[(l)]~~ (k) persons performing gratuitous massage.
- 141 (2) This chapter may not be construed to authorize any individual licensed under this
142 chapter to engage in any manner in the practice of medicine as defined by the laws of this state.
- 143 (3) This chapter may not be construed to:
- 144 (a) create or require insurance coverage or reimbursement for massage therapy from third
145 party payors if this type of coverage did not exist on or before February 15, 1990; or
- 146 (b) prevent any insurance carrier from offering coverage for massage therapy.
- 147 Section 4. Section **58-47b-501** is amended to read:
- 148 **58-47b-501. Unlawful conduct.**
- 149 "Unlawful conduct" includes:

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

152 (2) advertising or representing himself as practicing massage therapy when not licensed
153 to do so; and

154 (3) massaging, touching, or applying any instrument or device ~~[to the following areas of~~
155 ~~the body]~~ by a licensee in the course of practicing or engaging in massage therapy to:

156 (a) genitals or anus; and

157 (b) breasts of a female patron, except ~~[in cases in which the]~~ when a female patron [states
158 to a licensee that the patron] requests § [therapeutic] § breast massage, as may be further defined by

159 division rule, and signs a written consent form ĥ , WHICH MUST ALSO INCLUDE THE SIGNATURE

159a OF A PARENT OR LEGAL GUARDIAN IF THE PATRON IS A MINOR, ĥ authorizing the [licensee to
159b perform breast massage]

160 procedure and outlining the reason for it before the procedure is performed.

161 Section 5. Section **58-47b-503** is amended to read:

162 **58-47b-503. Penalties.**

163 ~~[(1) Each violation of this chapter, other than a violation of Section 58-47b-501, is a class~~
164 ~~B misdemeanor.]~~

165 ~~[(2) Any]~~ (1) Except as provided in Subsection (2), any individual who commits an act
166 of unlawful conduct under Section 58-47b-501 is guilty of a class A misdemeanor.

167 (2) Sexual conduct that violates Section 58-47b-501 and Title 76, Criminal Code, shall be
168 subject to the applicable penalties in Title 76.