

**MASSAGE 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; PERMITTING THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO CONDUCT CRIMINAL BACKGROUND CHECKS OF APPLICANTS; AMENDING THE EXEMPTIONS TO LICENSURE; CLARIFYING THE CONSENT NECESSARY FOR THERAPEUTIC BREAST MASSAGE; MAKING IT UNPROFESSIONAL CONDUCT TO PERFORM MASSAGE THERAPY ON A MINOR WITHOUT PARENTAL CONSENT; 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-502**, 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,

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

29        [(2)] (3) "Homeostasis" means maintaining, stabilizing, or returning to equilibrium the  
30 muscular system.

31        [(3)] (4) "Massage apprentice" means an individual licensed under this chapter as a  
32 massage apprentice to work under the direct supervision of a licensed massage therapist.

33        [(4)] (5) "Massage therapist" means an individual licensed under this chapter as a massage  
34 therapist.

35        (6) "Minor" means a person under the age of 18 who:

36        (a) is not married; and

37        (b) has not been declared emancipated by a court of law.

38        [(5)] (7) "Practice of massage therapy" means:

39        (a) the examination, assessment, and evaluation of the soft tissue structures of the body,  
40 whether human or animal, for the purpose of devising a treatment plan to promote homeostasis;

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

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

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

45        (iii) relaxing and lengthening muscles;

46        (iv) relieving pain;

47        (v) restoring metabolic balance; and

48        (vi) achieving homeostasis;

49        (c) the use of the hands or a mechanical or electrical apparatus in connection with this

50 Subsection (7);

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

52        (e) range of motion or movements without spinal adjustment as set forth in Section  
53 58-73-102;

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

56        (g) manual traction and stretching exercise;

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

58        (i) counseling, education, and other advisory services to reduce the incidence and severity

59 of physical disability, movement dysfunction, and pain; and

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

61 [(6)] (8) "Soft tissue" means the muscles and related connective tissue.

62 [(7)] (9) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-47b-501.

63 [(8)] (10) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-47b-502

64 and as may be further defined by division rule.

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

66 **58-47b-302. License classifications -- Qualifications for licensure.**

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

68 (a) massage therapist; and

69 (b) massage apprentice.

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

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

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

73 (c) be of good moral character;

74 (d) have either:

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

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

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

82 (e) pass examinations established by rule by the division in collaboration with the board.

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

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

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

86 (c) be of good moral character;

87 (d) provide satisfactory evidence to the division that the individual will practice as a  
88 massage apprentice only under the direct supervision of a licensed massage therapist in good  
89 standing and who has engaged in the lawful practice of massage therapy as a licensed massage

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

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

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

95 (4) (a) The division may, by rule, establish standards for when an applicant for licensure  
96 shall be required to submit identifying information, including fingerprints, to the division for a  
97 criminal background check as described in Subsection (4)(b)(i).

98 (b) If standards are established under Subsection (4)(a), the division shall:

99 (i) submit the applicant's identifying information to the Department of Public Safety for  
100 a determination, made and reported back to the division in a timely manner, of whether the records  
101 of the Department of Public Safety or the Federal Bureau of Investigation indicate that the  
102 applicant has a criminal history and, if so, what that history is; and

103 (ii) adopt rules defining the circumstances, if any, under which a person who has been  
104 convicted of a crime may be licensed under this chapter, taking into account the nature of the crime  
105 as it relates to the practice of massage therapy.

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

107 **58-47b-304. Exemptions from licensure.**

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

112 (a) physicians and surgeons licensed under Title 58, Chapter 67, Utah Medical Practice  
113 Act;

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

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

118 (d) osteopathic physicians and surgeons licensed under Title 58, Chapter 68, Utah  
119 Osteopathic Medical Practice Act;

120 (e) chiropractic physicians licensed under Title 58, Chapter 73, Chiropractic Physician

121 Practice Act;

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

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

126 (h) students in training enrolled in a massage therapy school approved by the division;

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

129 ~~[(j)]~~ (i) naturopathic physicians licensed under Title 58, Chapter 71, Naturopathic  
130 Physician Practice Act;

131 ~~[(k)]~~ (j) occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy  
132 Practice Act; and

133 ~~[(t)]~~ (k) persons performing gratuitous massage.

134 (2) This chapter may not be construed to authorize any individual licensed under this  
135 chapter to engage in any manner in the practice of medicine as defined by the laws of this state.

136 (3) This chapter may not be construed to:

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

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

140 Section 4. Section **58-47b-501** is amended to read:

141 **58-47b-501. Unlawful conduct.**

142 "Unlawful conduct" includes:

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

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

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

149 (a) genitals or anus; and

150 (b) breasts of a female patron, except ~~[in cases in which the]~~ when a female patron ~~[states  
151 to a licensee that the patron]~~ requests therapeutic breast massage and signs a written consent form

152 authorizing the [licensee to perform breast massage] procedure and outlining the reason for it  
153 before the procedure is performed.

154 Section 5. Section **58-47b-502** is amended to read:

155 **58-47b-502. Unprofessional conduct.**

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

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

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

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

164 (4) failing to properly supervise an apprentice;

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

166 (6) failing to adequately monitor patrons utilizing steam rooms, dry heat cabinets, or water  
167 baths;

168 (7) prescribing or administering medicine or drugs;

169 (8) providing massage therapy to a minor before obtaining the consent of a parent, legal  
170 guardian, or their designee in the manner required by rule;

171 [~~(8)~~] (9) engaging in any act or practice in a professional capacity that is outside of the  
172 practice of massage therapy; and

173 [~~(9)~~] (10) engaging in any act or practice in a professional capacity for which the licensee  
174 is not competent to perform through training or experience.

175 Section 6. Section **58-47b-503** is amended to read:

176 **58-47b-503. Penalties.**

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

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

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

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**Legislative Review Note**  
**as of 1-5-00 2:19 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**