

## HB0323S02 compared with HB0323S01

~~{deleted text}~~ shows text that was in HB0323S01 but was deleted in HB0323S02.

Inserted text shows text that was not in HB0323S01 but was inserted into HB0323S02.

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Representative ~~{Marc K}~~Brian M. ~~{Roberts}~~Greene proposes the following substitute bill:

### ~~{MASSAGE THERAPY}~~LICENSING AND PRACTICE ~~{ACT}~~ACTS

#### AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Marc K. Roberts**

Senate Sponsor: Wayne A. Harper

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#### LONG TITLE

##### General Description:

This bill modifies provisions of the Cosmetology and Associated Professions Licensing Act and exemptions from licensure in the Massage Therapy Practice Act.

##### Highlighted Provisions:

This bill:

- ▶ modifies the requirements for an approved apprenticeship program under the cosmetology act;
- ▶ modifies the number of apprentices that a supervisor may supervise under the cosmetology act;
- ▶ exempts a bowerwork practitioner from being required to be licensed as a massage

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therapist;

- ▶ amends provisions related to reflexology and foot zone therapy; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

58-11a-102, as last amended by Laws of Utah 2017, Chapters 215 and 342

58-11a-306, as last amended by Laws of Utah 2016, Chapter 274

58-47b-304, as last amended by Laws of Utah 2014, Chapters 330, 348 and last amended by Coordination Clause, Laws of Utah 2014, Chapter 330

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

Section 1. Section 58-11a-102 is amended to read:

#### **58-11a-102. Definitions.**

As used in this chapter:

(1) "Approved barber or cosmetologist/barber apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(1) for barbers or Subsection 58-11a-306(2) for cosmetologist/barbers and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) "Approved esthetician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(3) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) "Approved ~~master esthetician~~ hair designer apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(4) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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~~[(3)]~~ (4) "Approved ~~{nail technician}~~ master esthetician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306~~[(4)]~~(5) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[(4)] (5) "Approved nail technician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306[(5)](6) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(5)]~~ (6) "Barber" means a person who is licensed under this chapter to engage in the practice of barbering.

~~[(6)]~~ (7) "Barber instructor" means a barber who is licensed under this chapter to engage in the practice of barbering instruction.

~~[(7)]~~ (8) "Board" means the Cosmetology and Associated Professions Licensing Board created in Section 58-11a-201.

~~[(8)]~~ (9) "Cosmetic laser procedure" includes a nonablative procedure as defined in Section 58-67-102.

~~[(9)]~~ (10) "Cosmetic supervisor" means a supervisor as defined in Section 58-1-505.

~~[(10)]~~ (11) "Cosmetologist/barber" means a person who is licensed under this chapter to engage in the practice of cosmetology/barbering.

~~[(11)]~~ (12) "Cosmetologist/barber instructor" means a cosmetologist/barber who is licensed under this chapter to engage in the practice of cosmetology/barbering instruction.

~~[(12)]~~ (13) "Direct supervision" means that the supervisor of an apprentice or the instructor of a student is immediately available for consultation, advice, instruction, and evaluation.

~~[(13)]~~ (14) "Electrologist" means a person who is licensed under this chapter to engage in the practice of electrology.

~~[(14)]~~ (15) "Electrologist instructor" means an electrologist who is licensed under this chapter to engage in the practice of electrology instruction.

~~[(15)]~~ (16) "Esthetician" means a person who is licensed under this chapter to engage in the practice of esthetics.

~~[(16)]~~ (17) "Esthetician instructor" means a master esthetician who is licensed under

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this chapter to engage in the practice of esthetics instruction.

~~[(17)]~~ [(18)] "Fund" means the Cosmetology and Associated Professions Education and Enforcement Fund created in Section 58-11a-103.

~~[(18)]~~ [(19)] (a) "Hair braiding" means the twisting, weaving, or interweaving of a person's natural human hair.

(b) "Hair braiding" includes the following methods or styles:

- (i) African-style braiding;
- (ii) box braids;
- (iii) cornrows;
- (iv) dreadlocks;
- (v) french braids;
- (vi) invisible braids;
- (vii) micro braids;
- (viii) single braids;
- (ix) single plaits;
- (x) twists;
- (xi) visible braids;
- (xii) the use of lock braids; and
- (xiii) the use of decorative beads, accessories, and nonhair extensions.

(c) "Hair braiding" does not include:

- (i) the use of:
  - (A) wefts;
  - (B) synthetic tape;
  - (C) synthetic glue;
  - (D) keratin bonds;
  - (E) fusion bonds; or
  - (F) heat tools;
- (ii) the cutting of human hair; or
- (iii) the application of heat, dye, a reactive chemical, or other preparation to:
  - (A) alter the color of the hair; or
  - (B) straighten, curl, or alter the structure of the hair.

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~~[(19)]~~ [(20)] "Hair designer" means a person who is licensed under this chapter to engage in the practice of hair design.

~~[(20)]~~ [(21)] "Hair designer instructor" means a hair designer who is licensed under this chapter to engage in the practice of hair design instruction.

~~[(21)]~~ [(22)] "Licensed barber or cosmetology/barber school" means a barber or cosmetology/barber school licensed under this chapter.

~~[(22)]~~ [(23)] "Licensed electrology school" means an electrology school licensed under this chapter.

~~[(23)]~~ [(24)] "Licensed esthetics school" means an esthetics school licensed under this chapter.

~~[(24)]~~ [(25)] "Licensed hair design school" means a hair design school licensed under this chapter.

~~[(25)]~~ [(26)] "Licensed nail technology school" means a nail technology school licensed under this chapter.

~~[(26)]~~ [(27)] "Master esthetician" means an individual who is licensed under this chapter to engage in the practice of master-level esthetics.

~~[(27)]~~ [(28)] "Nail technician" means an individual who is licensed under this chapter to engage in the practice of nail technology.

~~[(28)]~~ [(29)] "Nail technician instructor" means a nail technician licensed under this chapter to engage in the practice of nail technology instruction.

~~[(29)]~~ [(30)] "Practice of barbering" means:

- (a) cutting, clipping, or trimming the hair of the head of any person by the use of scissors, shears, clippers, or other appliances;
  - (b) draping, shampooing, scalp treatments, basic wet styling, and blow drying;
  - (c) removing hair from the face or neck of a person by the use of shaving equipment;
- and

(d) when providing other services described in this Subsection ~~[(29)]~~ [(30)], gently massaging the head, back of the neck, and shoulders by manual or mechanical means.

~~[(30)]~~ [(31)] "Practice of barbering instruction" means teaching the practice of barbering at a licensed barber school, at a licensed cosmetology/barber school, or for an approved barber apprenticeship.

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~~[(31)]~~[(32)] "Practice of basic esthetics" means any one of the following skin care procedures done on the body for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

(a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or masks, manual extraction, including a comedone extractor, depilatories, waxes, tweezing, the application of eyelash or eyebrow extensions, natural nail manicures or pedicures, or callous removal by buffing or filing;

(b) limited chemical exfoliation as defined by rule;

(c) removing superfluous hair by means other than electrolysis, except that an individual is not required to be licensed as an esthetician to engage in the practice of threading;

(d) other esthetic preparations or procedures with the use of the hands, a high-frequency or galvanic electrical apparatus, or a heat lamp for cosmetic purposes and not for the treatment of medical, physical, or mental ailments;

(e) arching eyebrows, tinting eyebrows or eyelashes, perming eyelashes, or applying eyelash or eyebrow extensions; or

(f) except as provided in Subsection ~~[(31)]~~[(32)](f)(i), cosmetic laser procedures under the direct cosmetic medical procedure supervision of a cosmetic supervisor limited to the following:

(i) superfluous hair removal which shall be under indirect supervision;

(ii) anti-aging resurfacing enhancements;

(iii) photo rejuvenation; or

(iv) tattoo removal.

~~[(32)]~~[(33)] (a) "Practice of cosmetology/barbering" means:

(i) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a person;

(ii) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or other appliances;

(iii) arching eyebrows, tinting eyebrows or eyelashes, perming eyelashes, applying eyelash or eyebrow extensions;

(iv) removing hair from the body of a person by the use of depilatories, waxing, or

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shaving equipment;

(v) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces or both on the human head; or

(vi) practicing hair weaving or hair fusing or servicing previously medically implanted hair.

(b) The term "practice of cosmetology/barbering" includes:

(i) the practice of barbering;

(ii) the practice of basic esthetics; and

(iii) the practice of nail technology.

(c) An individual is not required to be licensed as a cosmetologist/barber to engage in the practice of threading.

~~[(33)]~~ (34) "Practice of cosmetology/barbering instruction" means teaching the practice of cosmetology/barbering:

(a) at a licensed cosmetology/barber school, a licensed barber school, or a licensed nail technology school; or

(b) for an approved cosmetologist/barber apprenticeship.

~~[(34)]~~ (35) "Practice of electrology" means:

(a) the removal of superfluous hair from the body of a person by the use of electricity, waxing, shaving, or tweezing; or

(b) cosmetic laser procedures under the supervision of a cosmetic supervisor limited to superfluous hair removal.

~~[(35)]~~ (36) "Practice of electrology instruction" means teaching the practice of electrology at a licensed electrology school.

~~[(36)]~~ (37) "Practice of esthetics instruction" means teaching the practice of basic esthetics or the practice of master-level esthetics:

(a) at a licensed esthetics school or a licensed cosmetology/barber school; or

(b) for an approved esthetician apprenticeship or an approved master esthetician apprenticeship.

~~[(37)]~~ (38) "Practice of hair design" means:

(a) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a

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person;

(b) barbering, cutting, clipping, shaving, or trimming the hair by the use of scissors, shears, clippers, or other appliances;

(c) cutting, curling, styling, fitting, measuring, or forming caps for wigs, hairpieces, or both on the human head; or

(d) practicing hair weaving, hair fusing, or servicing previously medically implanted hair.

~~[(38)]~~ [(39)] "Practice of hair design instruction" means teaching the practice of hair design at a licensed cosmetology/barber school, a licensed hair design school, or a licensed barber school.

~~[(39)]~~ [(40)] (a) "Practice of master-level esthetics" means:

(i) any of the following when done for cosmetic purposes on the body and not for the treatment of medical, physical, or mental ailments:

(A) body wraps as defined by rule;

(B) hydrotherapy as defined by rule;

(C) chemical exfoliation as defined by rule;

(D) advanced pedicures as defined by rule;

(E) sanding, including microdermabrasion;

(F) advanced extraction;

(G) other esthetic preparations or procedures with the use of:

(I) the hands; or

(II) a mechanical or electrical apparatus which is approved for use by division rule for beautifying or similar work performed on the body for cosmetic purposes and not for the treatment of a medical, physical, or mental ailment; or

(H) cosmetic laser procedures under the supervision of a cosmetic supervisor with a physician's evaluation before the procedure, as needed, unless specifically required under Section 58-1-506, and limited to the following:

(I) superfluous hair removal;

(II) anti-aging resurfacing enhancements;

(III) photo rejuvenation; or

(IV) tattoo removal with a physician's, advanced practice nurse's, or physician



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assistant's evaluation before the tattoo removal procedure, as required by Subsection 58-1-506(3)(a); and

(ii) lymphatic massage by manual or other means as defined by rule.

(b) Notwithstanding the provisions of Subsection ~~[(39)]~~ [(40)](a), a master-level esthetician may perform procedures listed in Subsection ~~[(39)]~~ [(40)](a)(i)(H) if done under the supervision of a cosmetic supervisor acting within the scope of the cosmetic supervisor license.

(c) The term "practice of master-level esthetics" includes the practice of esthetics, but an individual is not required to be licensed as an esthetician or master-level esthetician to engage in the practice of threading.

~~[(40)]~~ [(41)] "Practice of nail technology" means to trim, cut, clean, manicure, shape, massage, or enhance the appearance of the hands, feet, and nails of an individual by the use of hands, mechanical, or electrical preparation, antiseptic, lotions, or creams, including the application and removal of sculptured or artificial nails.

~~[(41)]~~ [(42)] "Practice of nail technology instruction" means teaching the practice of nail technology at a licensed nail technician school, at a licensed cosmetology/barber school, or for an approved nail technician apprenticeship.

~~[(42)]~~ [(43)] "Recognized barber school" means a barber school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

~~[(43)]~~ [(44)] "Recognized cosmetology/barber school" means a cosmetology/barber school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

~~[(44)]~~ [(45)] "Recognized electrology school" means an electrology school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

~~[(45)]~~ [(46)] "Recognized esthetics school" means an esthetics school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

~~[(46)]~~ [(47)] "Recognized hair design school" means a hair design school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

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~~[(47)]~~ (48) "Recognized nail technology school" means a nail technology school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

~~[(48)]~~ (49) "Salon" means a place, shop, or establishment in which cosmetology/barbering, esthetics, electrology, or nail technology is practiced.

~~[(49)]~~ (50) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-11a-502.

~~[(50)]~~ (51) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-11a-501 and as may be further defined by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

### Section 2. Section 58-11a-306 is amended to read:

#### **58-11a-306. Apprenticeship.**

(1) An approved barber apprenticeship shall:

(a) consist of not less than ~~[1,250]~~ 1,000 hours of training in not less than ~~[eight months]~~ 25 weeks; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as a barber instructor or a cosmetology/barber instructor; ~~[and]~~

(ii) provides ~~[one-on-one]~~ direct supervision of the barber apprentice during the apprenticeship program ~~;~~

~~};~~ and

(iii) provides direct supervision to no more than two barber apprentices during the apprenticeship program.

(2) An approved cosmetologist/barber ~~{}~~ apprenticeship shall:

(a) consist of not less than ~~[2,500]~~ 1,600 hours of training in not less than ~~[15 months]~~ 40 weeks; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as a cosmetologist/barber ~~{}~~ instructor; ~~[and]~~

(ii) provides ~~{one-on-one}~~ [one-on-one] direct supervision of the cosmetologist/barber apprentice during the apprenticeship program ~~[-]; and~~

(iii) provides direct supervision ~~of the}~~ to no more than two cosmetologist/barber ~~{ apprentice}~~ apprentices during the apprenticeship program.

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(3) An approved esthetician apprenticeship shall:

(a) consist of not less than ~~[800]~~ 600 hours of training in not less than ~~[five months]~~ 15 weeks; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as an esthetician instructor; ~~[and]~~

(ii) provides ~~[one-on-one]~~ direct supervision of the esthetician apprentice during the apprenticeship program ~~[-]~~.

~~— (4) An approved master esthetician apprenticeship shall:~~

~~— (a) consist of not less than 1,500 hours of training in not less than 10 months; and~~

~~— (b) be conducted by a supervisor who:~~

~~— (i) is licensed under this chapter as a master-level esthetician instructor; and~~

~~— (ii) provides one-on-one [-]; and~~

(iii) provides direct supervision ~~{of the master}~~ to no more than two esthetician ~~{apprentice}~~ apprentices during the apprenticeship program.

~~{5}4~~ An approved ~~{nail technician}~~ hair designer apprenticeship shall:

(a) consist of not less than ~~{375}~~ 1,200 hours of training in not less than ~~{three months}~~ 30 weeks; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as a ~~{nail technician}~~ hair designer instructor or a cosmetology/barber instructor; ~~{and}~~

(ii) provides direct supervision of the hair designer apprentice during the apprenticeship program; and

(iii) provides direct supervision to no more than two hair designer apprentices during the apprenticeship program.

~~[(4)]~~ (5) An approved master esthetician apprenticeship shall:

(a) consist of not less than ~~[1,500]~~ 1,200 hours of training in not less than ~~[10 months]~~ 30 weeks; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as a master-level esthetician instructor; ~~[and]~~

(ii) provides ~~{one-on-one}~~ ~~[one-on-one]~~ direct supervision of the master esthetician apprentice during the apprenticeship program ~~[-]; and~~

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(iii) provides direct supervision to no more than two master esthetician apprentices during the apprenticeship program.

[(5)] (6) An approved nail technician apprenticeship shall:

(a) consist of not less than [375] 300 hours of training in not less than [three months] eight weeks; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as a nail technician instructor or a cosmetology/barber instructor; [and]

(ii) provides [one-on-one] direct supervision of the nail technician apprentice during the apprenticeship program[-]; and

(iii) provides direct supervision ~~of the~~ to no more than two nail technician ~~apprentice~~ apprentices during the apprenticeship program.

[(6)] (7) A person seeking to qualify for licensure by apprenticing in an approved apprenticeship under this chapter shall:

(a) register with the division before beginning the training requirements by:

(i) submitting a form prescribed by the division, which includes the name of the licensed supervisor; and

(ii) paying a fee determined by the department under Section 63J-1-504;

(b) complete the apprenticeship within five years of the date on which the division approves the registration; and

(c) notify the division within 30 days if the licensed supervisor changes after the registration is approved by the division.

[(7)] (8) Notwithstanding Subsection [(6)] (7), if a person seeking to qualify for licensure by apprenticing in an approved apprenticeship under this chapter [registers] is registered with the division before January 1, 2017, any training requirements completed by the person as an apprentice in an approved apprenticeship before registration may be applied to successful completion of the approved apprenticeship.

(9) A salon may have no more than two licensed supervisors conducting an approved apprenticeship at one time.

(10) An approved apprenticeship that charges tuition to an apprentice shall pay an apprentice at least the state minimum wage for work done by the apprentice for which the

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supervisor or salon is compensated.

(11) The division may make rules regarding the requirements of an approved apprenticeship under this section if the rules:

(a) are made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) ensure that the requirements to get a license through an approved apprenticeship are substantially equivalent to the requirements to get a license by graduating from a recognized school.

Section ~~{1}~~3. 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 therapist or massage apprentice:

(a) a physician or surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act;

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

(c) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice Act;

(d) a physical therapist assistant licensed under Title 58, Chapter 24b, Physical Therapy Practice Act, while under the general supervision of a physical therapist;

(e) an osteopathic physician or surgeon licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(f) a chiropractic physician licensed under Title 58, Chapter 73, Chiropractic Physician Practice Act;

(g) a hospital staff member employed by a hospital, who practices massage as part of the staff member's responsibilities;

(h) an athletic trainer licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act;

(i) a student in training enrolled in a massage therapy school approved by the division;

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(j) a naturopathic physician licensed under Title 58, Chapter 71, Naturopathic Physician Practice Act;

(k) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act;

(l) an individual performing gratuitous massage; and

(m) an individual:

(i) certified by or through, and in good standing with, an industry organization that is recognized by the division, and that represents a profession with established standards and ethics[;]:

~~[(ii) (A) who limits the manipulation of the soft tissues of the body to the hands, feet, and outer ears only, including the practice of reflexology and foot zone therapy; or]~~

(A) who is certified to practice reflexology and whose practice is limited to the scope of practice of reflexology;

(B) who is certified to practice a type of zone therapy, including foot zone therapy, and whose practice is limited to the scope of practice for which the individual is certified;

~~[(B)]~~ (C) who is certified to practice ortho-bionomy and whose practice is limited to the scope of practice of ortho-bionomy; or

(D) who is certified to practice bowerwork and whose practice is limited to the scope of practice of bowerwork;

~~[(iii)]~~ (ii) whose clients remain fully clothed from the shoulders to the knees; and

~~[(iv)]~~ (iii) whose clients do not receive gratuitous massage from the individual.

(2) This chapter may not be construed to authorize any individual licensed 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) require insurance coverage or reimbursement for massage therapy from third party payors; or

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