

# SB0180S01 compared with SB0180

~~{deleted text}~~ shows text that was in SB0180 but was deleted in SB0180S01.

inserted text shows text that was not in SB0180 but was inserted into SB0180S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

## MASSAGE THERAPY PRACTICE ACT AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill amends the Massage Therapy Practice Act.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a license classification for ~~{}~~:
  - a certified massage ~~{practitioner}~~ assistant; and
  - a massage assistant in-training;
- ▶ establishes the qualifications and scope of practice for a certified massage ~~{practitioner}~~ assistant and a massage assistant in-training;
- ▶ modifies massage therapist ~~{and massage apprentice}~~ exam requirements;
- ▶ allows a massage therapist to supervise at one time up to six individuals licensed as

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a message ~~{apprentices}~~ apprentice or massage assistant in-training;

- ▶ allows certain licensed individuals to supervise at one time up to six individuals licensed as a certified massage assistant; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**58-47b-102**, as last amended by Laws of Utah 2012, Chapter 34

**58-47b-301**, as last amended by Laws of Utah 2013, Chapter 278

**58-47b-302**, as last amended by Laws of Utah 2020, Chapter 339

**58-47b-303**, as enacted by Laws of Utah 1996, Chapter 76

**58-47b-304**, as last amended by Laws of Utah 2021, Chapter 403

**58-47b-305**, as last amended by Laws of Utah 1998, Chapter 159

**58-47b-501**, as last amended by Laws of Utah 2018, Chapter 318

**58-47b-502**, as last amended by Laws of Utah 1998, Chapter 159

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*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 Board of Massage Therapy created in Section 58-47b-201.

(2) "Breast" means the female mammary gland and does not include the muscles, connective tissue, or other soft tissue of the upper chest.

(3) "Certified massage ~~{practitioner}~~ assistant" means an individual licensed under this chapter as a certified massage ~~{practitioner}~~ assistant to engage in the practice of limited massage therapy while working under the ~~{direct}~~ indirect supervision of:

(a) a massage therapist ~~{;}~~ who has:

(i) at least three years of experience as a licensee; and

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(ii) engaged in the lawful practice of massage therapy for at least 3,000 hours;

(b) a physician licensed under Chapter 67, Utah Medical Practice Act;

(c) an osteopathic physician licensed under Chapter 68, Utah Osteopathic Medical

Practice Act;

(d) a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice

Act;

(e) an acupuncturist licensed under Chapter 72, Acupuncture Licensing Act; or

(f) a physical therapist licensed under Chapter 24b, Physical Therapy Practice Act.

~~(3)~~ (4) "Homeostasis" means maintaining, stabilizing, or returning to equilibrium the muscular system.

~~(4)~~ (5) "Massage apprentice" means an individual licensed under this chapter as a massage apprentice to work under the direct supervision of a licensed massage therapist.

(6) "Massage assistant in-training" means an individual licensed under this chapter as a massage assistant in-training to engage in the practice of limited massage therapy while working under the direct supervision of a massage therapist in good standing who has engaged in the lawful practice of massage therapy for at least 6,000 hours.

~~(5)~~ ~~(6)~~ (7) "Massage therapist" means an individual licensed under this chapter as a massage therapist.

~~(7)~~ (8) "Practice of limited massage therapy" means:

(a) the systematic manual ~~for mechanical~~ manipulation of the soft tissue of the body for the purpose of:

(i) promoting the therapeutic 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;

(vi) achieving homeostasis; or

(vii) other purposes;

(b) seated chair massage;

(c) body ~~scrubs and body wraps;~~

~~(d) foot treatments and foot }wraps;~~

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~~(f)(d)~~ aromatherapy;

~~(f)(e)~~ reflexology;

~~(g) functional stretching;~~ or

~~(h)(f)~~ in connection with an activity described in this Subsection ~~(7)(8)~~ the use of:

(i) the hands;

(ii) a towel;

(iii) a stone;

(iv) a shell;

(v) a bamboo stick; or

(vi) an herbal ball compress.

~~(6)~~ ~~(8)(9)~~ "Practice of massage therapy" means:

(a) the examination, assessment, 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 purpose of:

(i) promoting the therapeutic 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;

(vi) achieving homeostasis; or

(vii) other purposes;

(c) the use of the hands or a mechanical or electrical apparatus in connection with this Subsection ~~(6)~~ ~~(8)(9)~~;

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

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

(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 by treatment of the soft tissues of the body;

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

(j) similar or related activities and modality techniques;

(k) the practice described in this Subsection [~~(6)~~] (~~(8)~~9) on an animal to the extent permitted by:

(i) Subsection 58-28-307(12);

(ii) the provisions of this chapter; and

(iii) division rule; or

(l) providing, offering, or advertising a paid service using the term massage or a derivative of the word massage, regardless of whether the service includes physical contact.

[~~(7)~~] (~~(9)~~10) "Soft tissue" means the muscles and related connective tissue.

[~~(8)~~] (~~(10)~~11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-47b-501.

[~~(9)~~] (~~(11)~~12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-47b-502 and as may be further defined by division rule.

Section 2. 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 or the practice of limited 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~~] oneself as a massage therapist [~~or~~], a massage apprentice, ~~for~~ certified massage practitioner assistant, or massage assistant in-training;

(b) represent [~~himself~~] oneself as providing a service that is within the practice of massage therapy or the practice of limited massage therapy or use the word massage or any other word to describe [~~such~~] the services; or

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

Section 3. 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 therapist; [~~and~~]

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(b) massage apprentice~~[-]; and~~

(c) certified massage ~~practitioner~~assistant; and

(d) massage assistant in-training.

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

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

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

(c) be 18 years ~~[of age]~~ old or older;

(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; or

(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 accordance with standards established by the division by rule made in collaboration with the board; and

(e) pass ~~[examinations]~~:

(i) the Federation of State Massage Therapy Boards Massage and Bodywork Licensing Examination, taken with an in-person or online proctor; or

(ii) any other examination 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 63J-1-504;

(c) be 18 years ~~[of age]~~ old or older;

(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 therapist in good standing and who has engaged in the lawful practice of massage therapy as a licensed massage therapist for not less than 6,000 hours; and

(e) successfully complete ~~an~~:

~~(i) the Federation of Massage Therapy Boards Massage and Bodywork Licensing Examination, taken with an in-person or online proctor; or~~

~~(ii) any other~~ examination as required by division rule.

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(4) Each applicant for licensure as a certified massage ~~practitioner~~assistant shall:

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

(b) pay a fee determined by the department in accordance with Section 63J-1-504;

(c) be 18 years old or older; and

(d) provide satisfactory evidence to the division that:

(i) the individual will practice as a certified massage ~~practitioner~~assistant only under the indirect supervision of an individual described in Subsections 58-47b-102(3)(a) through (f) ~~who has:~~

~~— (i) at least three years of experience as a licensee; and~~

~~— (ii) ~~;~~ and~~

(ii) the applicant has completed at least 150 hours of education and training that meets the requirements established by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) (a) Each applicant for licensure as a massage assistant in-training shall:

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

(ii) pay a fee determined by the department in accordance with Section 63J-1-504;

(iii) be 18 years old or older; and

(iv) provide satisfactory evidence to the division that the individual will practice as a massage assistant in-training to satisfy the requirements of Subsection (4)(d)(ii) during a training period of no more than six months only under the direct supervision of a massage therapist in good standing who has engaged in the lawful practice of massage therapy for at least ~~3~~6,000 hours.

~~(5) A licensed~~(b) After an individual licensed as a massage assistant in-training completes the education and training described in Subsection (4)(d)(ii) during the individual's training period, the division shall issue to the individual a license for a certified massage assistant.

(6) (a) A massage therapist may supervise at one time up to six individuals licensed as a massage ~~apprentices at one time.~~

~~— (4) (6) apprentice or massage assistant in-training.~~

(b) An individual described in Subsections 58-47b-102(3)(a) through (f) may supervise at one time up to six individuals licensed as a certified massage assistant.

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~~[(4)] (7)~~ (a) ~~[Any]~~ Each new massage therapist ~~[or]~~, massage apprentice, ~~for~~ certified massage ~~practitioner~~ assistant, or massage assistant in-training applicant shall submit fingerprint cards in a form acceptable to the division at the time the license application is filed and shall consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.

(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each new massage therapist ~~[or]~~, massage apprentice, ~~for~~ certified massage ~~practitioner~~ assistant, or massage assistant in-training applicant through the national criminal history system (NCIC) or any successor system.

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

~~[(5)] (7;8)~~ (a) ~~[Any]~~ A new massage therapist ~~[or]~~, massage apprentice, ~~for~~ certified massage ~~practitioner~~ assistant, or massage assistant in-training license issued under this section shall be conditional, pending completion of the criminal background check. If the criminal background check discloses the applicant has failed to accurately disclose a criminal history, the license shall be immediately and automatically revoked.

(b) ~~[Any]~~ A person whose conditional license has been revoked under Subsection ~~[(5)] (7;8)~~(a) shall be entitled to a post-revocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

~~[(6)] (8;9)~~ An applicant who successfully completes a fingerprint background check under Subsection ~~[(4)] (6;7)~~ may not be required by any other state or local government body to submit to a second fingerprint background check as a condition of lawfully practicing massage therapy or limited massage therapy in this state.

### Section 4. Section 58-47b-303 is amended to read:

#### **58-47b-303. Term of license -- Expiration -- Renewal.**

(1) (a) ~~[Each]~~ Except as provided in Subsection (3), each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule.

(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.



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(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

(3) Each license the division issues to a massage assistant in-training expires six months after the day on which the division issues the massage assistant in-training license.

Section ~~{4}~~5. 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 or the practice of limited 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, ~~for~~ certified massage ~~practitioner~~ assistant, or massage assistant in-training:

- (a) a physician or surgeon licensed under Chapter 67, Utah Medical Practice Act;
- (b) a physician assistant licensed under Chapter 70a, Utah Physician Assistant Act;
- (c) a nurse licensed under Chapter 31b, Nurse Practice Act, or under Chapter 44a, Nurse Midwife Practice Act;
- (d) a physical therapist licensed under Chapter 24b, Physical Therapy Practice Act;
- (e) a physical therapist assistant licensed under Chapter 24b, Physical Therapy Practice Act, while under the general supervision of a physical therapist;
- (f) an osteopathic physician or surgeon licensed under Chapter 68, Utah Osteopathic Medical Practice Act;
- (g) a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act;
- (h) a hospital staff member employed by a hospital, who practices massage as part of the staff member's responsibilities;
- (i) an athletic trainer licensed under Chapter 40a, Athletic Trainer Licensing Act;
- (j) a student in training enrolled in a massage therapy school approved by the division;
- (k) a naturopathic physician licensed under Chapter 71, Naturopathic Physician Practice Act;
- (l) (i) an occupational therapist licensed under Chapter 42a, Occupational Therapy Practice Act; and
- (ii) an occupational therapy assistant licensed under Chapter 42a, Occupational

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Therapy Practice Act, while under the general supervision of an occupational therapist;

(m) an individual performing gratuitous massage; and

(n) 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:

(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;

(C) who is certified to practice ortho-bionomy and whose practice is limited to the scope of practice of ortho-bionomy;

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

(E) who is certified to practice a type of brain integration and whose practice is limited to the scope of practice for which the individual is certified;

(ii) whose clients remain fully clothed from the shoulders to the knees; and

(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 or limited massage therapy from third party payors; or

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

Section 6. 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] engage in the practice of massage therapy or the practice of limited massage therapy within the state or any of [its] the state's political subdivisions.

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

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(i) ordinances governing the operation of establishments offering massages; or  
(ii) ordinances regulating the practice of massage therapy or the practice of limited 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 the practice of limited massage therapy or from prosecuting licensed individuals who are engaged in unlawful conduct.

Section 7. 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 the practice of massage therapy without holding a current license as a massage therapist or a massage apprentice under this chapter;

(2) advertising or representing [himself as practicing] oneself as engaging in the practice of massage therapy when not licensed to do so; [and]

(3) practicing, engaging in, or attempting to practice or engage in the practice of limited massage therapy without holding a current license as a certified massage assistant or massage assistant in-training under this chapter;

(4) advertising or representing oneself as engaging in the practice of limited massage therapy when not licensed to do so; and

[~~(3)~~ (5) massaging, touching, or applying any instrument or device by a licensee in the course of practicing or engaging in the practice of massage therapy or the practice of limited massage therapy to the:

(a) genitals;

(b) anus; or

(c) breasts of a female patron, except when a female patron requests breast massage, as may be further defined by division rule, and signs a written consent form, which must also include the signature of a parent or legal guardian if the patron is a minor, authorizing the procedure and outlining the reason for it before the procedure is performed.

Section 8. Section 58-47b-502 is amended to read:

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

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"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 the practice of massage therapy or the practice of limited massage therapy without first obtaining a business license, if a license is required;

(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, certified massage assistant, or massage assistant in-training;

(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;

(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 or the practice of limited 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.