

Senate Bill 146

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for State Board of Massage Therapists)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revises various provisions related to massage therapists.

A BILL FOR AN ACT

1
2 Relating to State Board of Massage Therapists; creating new provisions; and amending ORS 687.011,
3 687.021, 687.031, 687.051, 687.057, 687.061, 687.071, 687.081, 687.121 and 687.123.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 687.011 is amended to read:

6 687.011. As used in ORS 687.011 to 687.250, 687.895 and 687.991:

7 [(1) "Board" means the State Board of Massage Therapists.]

8 [(2)] (1) "Certified **program or class**" means a **program or class** that is approved by the **State**
9 **Board of Massage Therapists** and is offered:

10 (a) By a person or institution licensed as a career school under ORS 345.010 to 345.450;

11 (b) By a community college and approved by the State Board of Education; or

12 (c) In another [state] **jurisdiction** and licensed or approved by the appropriate agency in that
13 [state] **jurisdiction**.

14 [(3)] (2) "Fraud or misrepresentation" means knowingly giving misinformation or a false im-
15 pression through the intentional misstatement of, concealment of or failure to make known a mate-
16 rial fact or by other means.

17 (3) "**Jurisdiction**" means a **state or territory of the United States or a foreign country**.

18 (4) "Manual" means the use of the hands, **feet** [or the feet, or both,] or any part of the body in
19 the performance of massage.

20 (5) "Massage" or "massage therapy" means the use on the human body [of pressure, friction,
21 stroking, tapping or kneading, vibration or stretching by manual or mechanical means or gymnastics,
22 with or without appliances such as vibrators, infrared heat, sun lamps and external baths, and with
23 or without lubricants such as salts, powders, liquids or creams for the purpose of, but], **for a purpose**
24 **that includes but is not limited to**[,] maintaining good health and establishing and maintaining good
25 physical condition[.], **of:**

26 (a) **Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or**
27 **mechanical means or gymnastics;**

28 (b) **Appliances, tools or devices;**

29 (c) **Topical preparations; or**

30 (d) **Hot or cold applications.**

31 (6) "Massage therapist" means a person licensed under ORS 687.011 to 687.250, 687.895 and

NOTE: Matter in **boldfaced** type in an amended section is new; matter [italic and bracketed] is existing law to be omitted.
New sections are in **boldfaced** type.

1 687.991 to practice massage.

2 (7) "Practice of massage" means the performance of massage:

3 (a) For purposes other than sexual contact, as defined in ORS 167.002 (5); and

4 (b) For compensation.

5 (8) "Preceptor" means a licensed massage therapist who contracts with an approved school or
6 program of massage to provide direct on-site clinical supervision of a massage student enrolled in
7 a certified **program or class**.

8 (9) "Supervision" means:

9 (a) The process of overseeing and directing the training of massage students as set forth in rules
10 of the **State Board of Massage Therapists**;

11 (b) The process of overseeing and directing a licensee being disciplined by the board; or

12 (c) Voluntary consultation with, and education of, less experienced licensed massage therapists
13 or practitioners in related fields.

14 (10) "Treatment" means the selection, application and practice of massage or massage therapy
15 essential to the effective execution and management of a plan of care.

16 (11) "Unprofessional or dishonorable conduct" means a behavior, practice or condition that is
17 contrary to the ethical standards adopted by the **State Board of Massage Therapists**.

18 **SECTION 2.** ORS 687.021 is amended to read:

19 687.021. (1) *[No person shall]* **A person may not** engage in or purport to be in the practice of
20 massage without *[a]* **an active** massage therapist license issued by the State Board of Massage
21 Therapists.

22 **(2)(a) A person may not knowingly aid, abet or assist another person who does not have**
23 **an active massage therapist license issued under ORS 687.011 to 687.250 to engage in or**
24 **purport to engage in the practice of massage.**

25 **(b) The board shall issue a person violating paragraph (a) of this subsection one warning**
26 **before taking any formal action under ORS 687.122.**

27 **(c) For purposes of this subsection, a person does not aid, abet or assist another person**
28 **who does not have an active massage therapist license if the person acts solely:**

29 **(A) As a client of the other person; or**

30 **(B) To provide referrals to the other person without receiving compensation for the re-**
31 **errals.**

32 *[(2)]* **(3) It is unlawful to advertise by printed publication or otherwise:**

33 (a) The giving of massage treatments in this state by a person not licensed under ORS 687.011
34 to 687.250, 687.895 and 687.991; or

35 (b) The use of "massage" in the business name unless the person providing the massage is li-
36 censed under ORS 687.011 to 687.250, 687.895 and 687.991.

37 *[(3)]* **(4) The Attorney General, the prosecuting attorney of any county or the board, in its own**
38 **name, may maintain an action for an injunction against any person violating this section. An in-**
39 **junction may be issued without proof of actual damage sustained by any person. An injunction does**
40 **not relieve a person from criminal prosecution for violation of this section or from any other civil,**
41 **criminal or disciplinary remedy.**

42 **SECTION 3.** ORS 687.031 is amended to read:

43 687.031. *[(1)]* ORS 687.011 to 687.250, 687.895 and 687.991 do not apply to:

44 **(1) A person licensed by an Oregon state regulatory body when the person is acting**
45 **within the scope of the license.**

1 **(2) A student enrolled in a certified program or class when practicing massage in a clin-**
 2 **ical or nonclinical setting, at or away from the massage school premises or program site,**
 3 **under the supervision of an approved instructor or preceptor, if:**

4 **(a) The charge for the massage does not exceed the cost incurred in providing the mas-**
 5 **sage;**

6 **(b) The student is not compensated; and**

7 **(c) The student is clearly identified as a student to the member of the public receiving**
 8 **the massage.**

9 *[(a) Persons licensed under any other law of this state to do any acts included in the definition of*
 10 *massage in ORS 687.011 or persons working under the direction of any such person.]*

11 *[(b) Trainers of any amateur, semiprofessional or professional athlete or athletic team.]*

12 *[(c) Massage practiced at the athletic department of any institution maintained by public funds of*
 13 *the state or of any of its political subdivisions.]*

14 *[(d) Massage practiced at the athletic department of any school or college.]*

15 *[(e) Massage clinics operated as part of a certified class for the purpose of student training super-*
 16 *vised by an approved instructor or preceptor if:]*

17 *[(A) Any charge for the massage does not exceed the cost incurred in providing the massage;*
 18 *and]*

19 *[(B) The student is not compensated.]*

20 *[(f) Students enrolled in a certified class when practicing massage techniques in a nonclinical set-*
 21 *ting, at or away from massage school premises or program sites, under the supervision of an approved*
 22 *instructor or preceptor, if:]*

23 *[(A) The student is clearly identified as a student to any member of the public receiving massage*
 24 *services; and]*

25 *[(B) The student is not compensated.]*

26 *[(g) Nonresident practitioners holding a valid license, permit, certificate or registration issued by*
 27 *any other state or territory of the United States or by a foreign country and temporarily practicing*
 28 *massage in this state for a period not exceeding 30 days for the purpose of:]*

29 *[(A) Presenting educational or clinical programs, lectures, seminars or workshops;]*

30 *[(B) Furnishing massage services during an emergency as part of a disaster response team; or]*

31 *[(C) Consulting with a massage therapist licensed in this state regarding massage practices or*
 32 *services.]*

33 *[(h) Trained or licensed practitioners of psychotherapy or counseling modalities that use physical*
 34 *techniques to access or support psychotherapeutic processes when practicing within the scope of a li-*
 35 *cence or if the practitioner has an express oral or written agreement that the sole intent in using the*
 36 *physical techniques is to render the psychotherapy or counseling.]*

37 *[(i) (3) Practitioners of reflexology who do not claim expressly or implicitly to be massage*
 38 *therapists and who limit their work to the practice of reflexology through the application of pres-*
 39 *sure with the thumbs to reflex points on the feet, hands and ears for the purpose of bringing the*
 40 *body into balance, thereby promoting the well-being of clients.*

41 *[(2) A nonresident practitioner performing massage under subsection (1)(g) of this section must*
 42 *obtain a temporary practice permit if practicing in this state for a total of more than 30 days in a*
 43 *calendar year. Applications shall be accompanied by the application fee provided for in ORS 687.071.*
 44 *A temporary practice permit shall allow the nonresident practitioner to practice massage in this state*
 45 *for a maximum of 180 days in a calendar year.]*

1 **SECTION 4.** ORS 687.051 is amended to read:

2 687.051. (1) *[To be eligible for issuance of an initial license in this state as a massage therapist*
 3 *after January 1, 1999, the applicant shall]* **An applicant is eligible for an initial license as a**
 4 **massage therapist if the applicant:**

5 (a) *[Furnish]* **Furnishes** the State Board of Massage Therapists with any personal references
 6 required by rule of the board.

7 (b) *[Have]* **Has** attained the age of 18 years.

8 (c) *[Furnish]* **Furnishes** the board with educational certificates or transcripts required by law
 9 or **by** rule of the board *[including but not limited to proof of certification in cardiopulmonary resus-*
 10 *citation and the subjects listed in paragraph (d) of this subsection].*

11 (d) *[Have]* **Has** completed a minimum of 500 contact hours of certified **programs or** classes *[in*
 12 *the following subjects: Anatomy and physiology, kinesiology, pathology, hydrotherapy, theory and*
 13 *hands-on practice of massage and bodywork techniques and professional practices, including client*
 14 *communication and boundaries, professional and business ethics and sanitation. The board by rule may*
 15 *set the minimum number of required hours for each subject]* **in subject areas prescribed by the**
 16 **board by rule.**

17 (e) *[Pass an examination]* **Passes examinations** prepared and conducted by the board or its
 18 authorized representative establishing competency and ability to engage in the practice of massage.
 19 The *[examination]* **examinations** shall be administered in the English language and may be in writ-
 20 ten, oral or practical form and may test the applicant for the required level of knowledge and skill
 21 in any subject related to massage and bodywork. The board may accept passage of a board-approved
 22 national standardized examination as meeting *[the]* **a** written examination requirement contained in
 23 this paragraph.

24 (f) *[Submit]* **Submits** the application with payment for licensing within one year after notifica-
 25 tion of having passed the qualifying *[examination]* **examinations.**

26 (2) An applicant must be a person of good moral character. For purposes of this section, the
 27 lack of good moral character may be established by reference to acts or conduct reflecting moral
 28 turpitude or to acts or conduct that would cause a reasonable person to have substantial doubts
 29 about the applicant's ability to practice massage in accordance with ORS 687.011 to 687.250, 687.895
 30 and 687.991 and rules of the board.

31 (3) The board may require that an applicant furnish evidence satisfactory to the board that the
 32 applicant can safely and competently practice the profession of massage. The board may consider
 33 evidence including, but not limited to, indications of impairment by alcohol or controlled substances
 34 or behavior, practices or conduct that would be considered unprofessional or dishonorable conduct
 35 if engaged in by a person licensed under ORS 687.011 to 687.250, 687.895 and 687.991.

36 (4) To be eligible for biennial renewal, a renewal applicant shall submit evidence to the board,
 37 as determined by the board by rule, that the applicant has completed a minimum of 12 hours of
 38 board-approved continuing education.

39 (5) To be eligible for inactive status, a licensed massage therapist must not be practicing mas-
 40 sage in this state.

41 **SECTION 5.** ORS 687.057 is amended to read:

42 687.057. (1) The State Board of Massage Therapists may license by indorsement or reciprocity
 43 any individual who applies, meets the requirements established by the board and, on the date of
 44 making application, is a massage therapist licensed under the laws of any other *[state or territory*
 45 *of the United States or by a foreign country]* **jurisdiction** if the requirements in the *[state, territory*

1 *or country*] **jurisdiction** where the applicant is licensed are [*not less than*] **equivalent to** those re-
 2 quired in ORS 687.011 to 687.250, 687.895 and 687.991. The board shall adopt rules for determining
 3 the necessity of an examination based on educational preparation, successful completion of other
 4 examinations, work experience and the number of years in active practice of massage.

5 (2) The board may license by indorsement any individual who applies and successfully completes
 6 a practical examination if the individual is already licensed under a law of this state to do an act
 7 included in the definition of massage in ORS 687.011.

8 (3) The board may enter into an agreement with the appropriate regulatory body of any other
 9 [*state, territory or foreign country*] **jurisdiction** for reciprocal licensing if the board determines that
 10 the qualifications and standards of the other [*state, territory or foreign country*] **jurisdiction** are [*not*
 11 *less than*] **equivalent to** those required in ORS 687.011 to 687.250, 687.895 and 687.991.

12 **SECTION 6.** ORS 687.061 is amended to read:

13 687.061. (1) Licenses issued under ORS 687.011 to 687.250, 687.895 and 687.991 expire on the date
 14 established by the State Board of Massage Therapists by rule and may be renewed after **completion**
 15 **of the application requirements and** payment of the renewal fee established by the board. If the
 16 renewal fee is not paid by the [*expiration*] date established by the board, a delinquency fee must be
 17 paid prior to renewal. Licenses may be renewed within [*three*] **four** years after the date of expiration
 18 [*upon payment of the renewal fee and the delinquency fee established by the board*].

19 (2) An individual who practices massage without holding a valid, **active and** unexpired license
 20 issued under ORS 687.011 to 687.250, 687.895 and 687.991 is subject to disciplinary action and civil
 21 penalty by the board, injunction and criminal prosecution. [*No*] **A** disciplinary action, civil penalty
 22 or criminal proceeding [*shall*] **may not** be initiated under this section after the date that a renewal
 23 and delinquency fee is paid. However, payment of a renewal and delinquency fee does not stay any
 24 disciplinary action, civil penalty or criminal proceeding already assessed or initiated.

25 **SECTION 7.** ORS 687.071 is amended to read:

26 687.071. (1) The State Board of Massage Therapists shall impose fees for the following:

- 27 (a) Massage therapist license issuance or renewal.
- 28 (b) Examinations and reexaminations.
- 29 (c) Inactive status.
- 30 (d) Delinquency in renewal of a license.
- 31 (e) Temporary [*practice permit*] **license to practice massage therapy**.
- 32 (f) Application for massage **therapist** license examination.

33 (2) If the effective period of the initial massage therapist license is to be less than 12 months
 34 by reason of the expiration date established by rule of the board, the required license fee shall be
 35 prorated to represent one-half of the biennial rate.

36 (3) The board shall examine or reexamine any applicant for a massage therapist license who
 37 pays a fee for each examination and who meets the requirements of ORS 687.051.

38 (4) All moneys received by the board shall be paid into the account created by the board under
 39 ORS 182.470 and are appropriated continuously to the board and shall be used only for the admin-
 40 istration and enforcement of ORS 687.011 to 687.250, 687.895 and 687.991.

41 **SECTION 8.** ORS 687.081 is amended to read:

42 687.081. (1) The State Board of Massage Therapists may discipline a licensee, deny, suspend,
 43 revoke or refuse to renew a license, issue a reprimand, censure a licensee or place a licensee on
 44 probation if the licensee:

- 45 (a) Has violated any provision of ORS 687.011 to 687.250, 687.895 and 687.991 or any rule of the

1 board adopted under ORS 687.121[.];

2 (b) Has made any false representation or statement to the board in order to induce or prevent
3 action by the board[.];

4 (c) Has a physical or mental condition that makes the licensee unable to conduct safely the
5 practice of massage[.];

6 (d) Is habitually intemperate in the use of alcoholic beverages or is addicted to the use of
7 habit-forming drugs or controlled substances[.];

8 (e) Has misrepresented to any patron any services rendered[.];

9 (f) Has been convicted of a crime that bears a demonstrable relationship to the practice of
10 massage[.];

11 (g) Fails to meet *[with]* any requirement under ORS 687.051[.];

12 (h) Violates any provision of ORS 167.002 to 167.027[.];

13 (i) Engages in unprofessional or dishonorable conduct[.];

14 (j) Has been the subject of disciplinary action as a massage therapist by any other *[state or*
15 *territory of the United States or by a foreign country]* **jurisdiction** and the board determines that the
16 cause of the disciplinary action would be a violation under ORS 687.011 to 687.250, 687.895 and
17 687.991 or rules of the board if it occurred in this state[.]; **or**

18 **(k) Has knowingly aided, abetted or assisted another person to engage or purport to be**
19 **engaged in the practice of massage, if the other person does not have an active massage**
20 **therapist license issued by the board.**

21 (2) If the board places a licensee on probation pursuant to subsection (1) of this section, the
22 board may impose and at any time modify the following conditions of probation:

23 (a) Limitation on the allowed scope of practice.

24 (b) If the board finds that the licensee is physically or mentally impaired, a requirement for
25 successful completion of appropriate treatment as determined by the board.

26 (c) Individual or peer supervision.

27 (d) Such other conditions as the board may deem necessary for the protection of the public and
28 the rehabilitation of the licensee.

29 (3) If the board determines that a licensee's continued practice constitutes a serious danger to
30 the public, the board may impose an emergency suspension of the license without a hearing. Si-
31 multaneous with the order of suspension, the board shall institute proceedings for a hearing as
32 provided under ORS 687.011 to 687.250, 687.895 and 687.991. The suspension shall continue unless
33 and until the licensee obtains injunctive relief from a court of competent jurisdiction or the board
34 determines that the suspension is no longer necessary for the protection of the public.

35 (4) In addition to the discipline described in subsection (1) of this section, the board may impose
36 a civil penalty as provided under ORS 687.250. Civil penalties under this subsection shall be imposed
37 pursuant to ORS 183.745.

38 (5) Prior to imposing any of the sanctions authorized under this section, the board shall con-
39 sider, but is not limited to, the following factors:

40 (a) The *[person's]* **licensee's** past history in observing the provisions of ORS 687.011 to 687.250,
41 687.895 and 687.991 and the rules adopted pursuant thereto;

42 (b) The effect of the violation on public safety and welfare;

43 (c) The degree to which the action subject to sanction violates professional ethics and standards
44 of practice;

45 (d) The economic and financial condition of the *[person]* **licensee** subject to sanction; and

1 (e) Any mitigating factors that the board may choose to consider.

2 (6) In addition to the sanctions authorized by this section, the board may assess against a
3 licensee the costs associated with the disciplinary action taken against the licensee.

4 (7) The board shall adopt a code of ethical standards for practitioners of massage and shall take
5 appropriate measures to ensure that all applicants and practitioners of massage are aware of those
6 standards.

7 (8) Upon receipt of a complaint under ORS 687.011 to 687.250, 687.895 and 687.991, the board
8 shall conduct an investigation as described under ORS 676.165.

9 (9) Information that the board obtains as part of an investigation into licensee or applicant
10 conduct or as part of a contested case proceeding, consent order or stipulated agreement involving
11 licensee or applicant conduct is confidential as provided under ORS 676.175.

12 **SECTION 9.** ORS 687.121 is amended to read:

13 687.121. The State Board of Massage Therapists may adopt rules:

14 (1) Establishing reasonable standards concerning the sanitary, hygienic and healthful conditions
15 of premises and facilities used by massage therapists.

16 (2) Relating to the methods and procedures used in the practice of massage.

17 (3) Governing the examination and investigation of applicants for the licenses issued under ORS
18 687.011 to 687.250, 687.895 and 687.991 and the issuance, renewal, suspension and revocation of such
19 licenses.

20 (4) Setting standards for certifying **programs and** classes under ORS 687.051.

21 (5)(a) Requiring that **a** massage [*therapists supply*] **therapist provide** the board with the [*accu-*
22 *rate, current address or addresses where they practice massage*] **massage therapist's accurate and**
23 **current legal name and address.**

24 **(b) As used in this subsection, "address" means residence address, mailing address and**
25 **business address.**

26 (6) Fixing the educational, training and experience requirements for licensing by indorsement
27 or reciprocity.

28 (7) Establishing requirements for issuance and retention of an inactive license.

29 **(8) Setting standards for the issuance of temporary massage therapist licenses.**

30 [(8)] **(9)** Regarding any matter that the board reasonably considers necessary and proper for the
31 administration and enforcement of ORS 687.011 to 687.250, 687.895 and 687.991.

32 **SECTION 10.** ORS 687.123 is amended to read:

33 687.123. [*Upon complaint about the premises on which a massage therapist practices massage, the*
34 *State Board of Massage Therapists or its authorized representative may inspect such premises in order*
35 *to determine whether the premises meet the standards set by order of the board under ORS 687.121*
36 *(1).] **The State Board of Massage Therapists or an authorized representative of the board may***
37 **inspect the premises where a massage therapist practices massage to determine whether the**
38 **premises meet the standards established by rule of the board under ORS 687.121.**

39 **SECTION 11.** The State Board of Massage Therapists may issue a temporary license to
40 practice massage therapy if the issuance of the license complies with standards established
41 by rule of the board under ORS 687.121.

42 **SECTION 12.** The amendments to ORS 687.021 and 687.081 by sections 2 and 8 of this 2009
43 Act apply to acts or conduct occurring on or after the effective date of this 2009 Act.