

Enrolled Senate Bill 387

Sponsored by Senator BATES (Presession filed.)

CHAPTER

AN ACT

Relating to massage therapy; creating new provisions; amending ORS 687.011, 687.021, 687.061, 687.071, 687.081, 687.121, 687.123 and 687.250; and declaring an emergency.

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

DEFINITION OF MASSAGE FACILITY

SECTION 1. ORS 687.011 is amended to read:

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

- (1) "Board" means the State Board of Massage Therapists.
- (2) "Certified class" means a class that is approved by the board and is offered:
 - (a) By a person or institution licensed as a career school under ORS 345.010 to 345.450;
 - (b) By a community college and approved by the State Board of Education;
 - (c) By an accredited college or university; or
 - (d) In another state and licensed or approved by the appropriate agency in that state.

[(3)] *"Fraud or misrepresentation" means knowingly giving misinformation or a false impression through the intentional misstatement of, concealment of or failure to make known a material fact or by other means.*

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

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

(5)(a) **"Massage facility" means a facility where a person engages in the practice of massage.**

(b) **"Massage facility" does not include:**

(A) A career school licensed under ORS 345.010 to 345.450; or

(B) A clinic or facility owned or operated by a person authorized to practice a profession by a health professional regulatory board, as defined in ORS 676.160.

(6) "Massage therapist" means a person licensed under ORS 687.011 to 687.250, 687.895 and 687.991 to practice massage.

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

- (a) For purposes other than sexual contact, as defined in ORS 167.002 (5); and
- (b) For compensation.
- (8) "Preceptor" means a licensed massage therapist who contracts with an approved school or program of massage to provide direct on-site clinical supervision of a massage student enrolled in a certified class.
- (9) "Supervision" means:
 - (a) The process of overseeing and directing the training of massage students as set forth in the rules of the board;
 - (b) The process of overseeing and directing a licensee, **or a person that has a permit to operate a massage facility, who is** being disciplined by the board; or
 - (c) Voluntary consultation with, and education of, less experienced licensed massage therapists or practitioners in related fields.
- (10) "Treatment" means the selection, application and practice of massage or massage therapy essential to the effective execution and management of a plan of care.
- (11) "Unprofessional or dishonorable conduct" means a behavior, practice or condition that is contrary to the ethical standards adopted by the board.

**PROHIBITION AGAINST OPERATING
MESSAGE FACILITY WITHOUT PERMIT**

SECTION 2. ORS 687.021 is amended to read:

687.021. (1) *[No person shall]* **A person may not:**

- (a) Engage in or purport to *[be]* **engage** in the practice of massage without a massage therapist license issued by the State Board of Massage Therapists~~.]~~ **under ORS 687.051.**
- (b) **Operate a massage facility or purport to operate a massage facility without a permit issued by the board under section 4 of this 2013 Act, unless the person is an individual massage therapist who is working out of the individual's home.**
- (c) **Advertise that the person engages in the practice of massage unless the person is licensed under ORS 687.051 or holds a permit under section 4 of this 2013 Act.**
- (d) **Use the word "massage" in a business name unless the person is licensed under ORS 687.051 or holds a permit under section 4 of this 2013 Act.**

(2) **The board may exempt by rule a type of massage facility from the prohibition in subsection (1)(b) of this section if the board finds that requiring a permit for that type of facility is not necessary to regulate the practice of massage therapy or to protect the health and safety of the public.**

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

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

[(b) The use of "massage" in the business name unless the person providing the massage is licensed under ORS 687.011 to 687.250, 687.895 and 687.991.]

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

ISSUANCE OF PERMIT TO OPERATE MESSAGE FACILITY

SECTION 3. Section 4 of this 2013 Act is added to and made a part of ORS 687.011 to 687.250.

SECTION 4. (1) **To be issued a permit to operate a massage facility in this state, an applicant must:**

(a) Submit an application to the State Board of Massage Therapists in a form and manner prescribed by the board by rule;

(b) Comply with the health, safety and infection control requirements adopted by the board under ORS 687.121;

(c) Pay the fee required under ORS 687.071 (1)(b);

(d) If the applicant is a natural person, be at least 18 years of age; and

(e) If the applicant is not a natural person, comport with the laws of this state related to business formation, including making an appropriate filing with the Secretary of State.

(2) A massage facility for which a person has been issued a permit under this section may provide massage therapy only through the use of massage therapists licensed under ORS 687.051.

(3) The board may authorize relocating a massage facility if:

(a) The permittee submits an application in a form and manner prescribed by the board by rule;

(b) The permittee pays the fee required under ORS 687.071 (1)(h); and

(c) The permittee complies with any other applicable rule of the board.

(4) The board may authorize transferring a permit to operate a massage facility from one person to another person if the person to whom the permit will be transferred:

(a) Submits an application in a form and manner prescribed by the board by rule;

(b) Pays the fee required under ORS 687.071 (1)(i);

(c) Makes all necessary changes to documents on file with the Secretary of State; and

(d) Complies with any other applicable rule of the board.

(5) The board may authorize transferring the name of a massage facility to another massage facility if the permittee who operates the massage facility to which the name will be transferred:

(a) Submits an application in a form and manner prescribed by the board by rule;

(b) Pays the fee required under ORS 687.071 (1)(j);

(c) Makes all necessary changes to documents on file with the Secretary of State; and

(d) Complies with any other applicable rule of the board.

FEES RELATED TO MASSAGE FACILITIES

SECTION 5. ORS 687.071 is amended to read:

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

(a) **Issuance or renewal of a massage therapist license** [*issuance or renewal*].

(b) **Issuance or renewal of a permit to operate a massage facility.**

[(b)] (c) Examinations and reexaminations.

[(c)] (d) Inactive status.

[(d)] (e) Delinquency in renewal of a license **or of a permit to operate a massage facility.**

[(e)] (f) Temporary practice permit.

[(f)] (g) Application for massage license examination.

(h) **Relocation of a massage facility as described in section 4 (3) of this 2013 Act.**

(i) **Transferring a permit to operate a massage facility from one person to another person as described in section 4 (4) of this 2013 Act.**

(j) **Transferring the name of a massage facility to another massage facility as described in section 4 (5) of this 2013 Act.**

(2) If the effective period of [*the*] **an** initial massage therapist license **or permit to operate a massage facility** is to be less than 12 months by reason of the expiration date established by rule of the board, the required license fee shall be prorated to represent one-half of the [*biennial*] rate **for a biennial period.**

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

(4) All moneys received by the board shall be paid into the account created by the board under ORS 182.470 and are [appropriated] continuously **appropriated** to the board [and shall be used only] for the administration and enforcement of ORS 687.011 to 687.250, 687.895 and 687.991.

CONFORMING AMENDMENTS

SECTION 6. ORS 687.061 is amended to read:

687.061. (1) Licenses issued under [ORS 687.011 to 687.250, 687.895 and 687.991] **ORS 687.051 and permits issued under section 4 of this 2013 Act** expire on the date established by the State Board of Massage Therapists by rule and may be renewed after payment of [the] a renewal fee established by the board **under ORS 687.071**. If the renewal fee is not paid by the expiration date established by the board, a delinquency fee must be paid prior to renewal. Licenses **and permits** may be renewed within three years after the date of expiration upon payment of the renewal fee and the delinquency fee established by the board.

(2) An individual who [practices] **engages in the practice of** massage without holding a valid [unexpired] license issued under [ORS 687.011 to 687.250, 687.895 and 687.991] **ORS 687.051 or a person who operates a massage facility without holding a valid permit issued under section 4 of this 2013 Act** is subject to disciplinary action and civil penalty by the board, injunction and criminal prosecution. No disciplinary action, civil penalty or criminal proceeding shall be initiated under this section after the date that a renewal and delinquency fee is paid. However, payment of a renewal and delinquency fee does not stay any disciplinary action, civil penalty or criminal proceeding already assessed or initiated.

SECTION 7. ORS 687.081 is amended to read:

687.081. (1) The State Board of Massage Therapists may discipline a [licensee] **person**, deny, suspend, revoke or refuse to renew a license[, issue a reprimand, censure a licensee or place a licensee on probation if the licensee] **to practice massage or a permit to operate a massage facility and issue a reprimand to or censure or place on probation a licensee or permittee, if the person:**

(a) Has violated [any] a provision of ORS 687.011 to 687.250, 687.895 and 687.991 or any rule of the board adopted under ORS 687.121.

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

(c) **Is licensed under ORS 687.051 or holds a permit under section 4 of this 2013 Act** and has a physical or mental condition that makes the licensee **or permittee** unable to conduct safely the practice of massage **or operation of a massage facility**.

(d) **Is licensed under ORS 687.051 or holds a permit under section 4 of this 2013 Act** and is habitually intemperate in the use of alcoholic beverages or is addicted to the use of habit-forming drugs or controlled substances.

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

(f) Has been convicted of a crime that bears a demonstrable relationship to the practice of massage **or operation of a massage facility**.

(g) **Whether licensed to practice massage or applying for a license to practice massage**, fails to meet [with any] a requirement under ORS 687.051.

(h) **Whether permitted to operate a massage facility or applying for a permit to operate a massage facility, fails to meet a requirement under section 4 of this 2013 Act.**

[h)] (i) Violates [any] a provision of ORS 167.002 to 167.027.

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

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

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

(a) Limitation on the *[allowed]* scope of **the practice of massage or the operation of a massage facility**.

(b) Referral to the impaired health professional program established under ORS 676.190.

(c) Individual or peer supervision.

(d) *[Such other conditions as the board may consider]* **Any other condition that the board considers** necessary for the protection of the public *[and]* **or** the rehabilitation of the licensee **or permittee**.

(3) If the board determines that *[a licensee's]* **the continued practice of massage by a licensee or the continued operation of a massage facility by a permittee** constitutes a serious danger to the public, the board may impose an emergency suspension of the license **or permit** without a hearing. Simultaneous with the order of suspension, the board shall institute proceedings for a hearing as provided under ORS 687.011 to 687.250, 687.895 and 687.991. The suspension shall continue unless and until the licensee **or permittee** obtains injunctive relief from a court of competent jurisdiction or the board determines that the suspension is no longer necessary for the protection of the public.

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

(5) Prior to imposing *[any of the sanctions]* **a sanction** authorized under this section, the board shall consider, but is not limited to **considering**, the following factors:

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

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

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

(d) The economic and financial condition of the person subject to sanction; and

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

(6) In addition to the sanctions authorized by this section, the board may assess against a *[licensee the costs associated with the]* **person the reasonable costs of a** disciplinary action taken against the *[licensee]* **person**.

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

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

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

SECTION 8. ORS 687.121 is amended to read:

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

(1) Establishing reasonable standards concerning the sanitary¹, *hygienic and healthful conditions of]* **and hygienic conditions of, and public health and safety for**, premises and facilities used by massage therapists.

(2) **Establishing health, safety and infection control requirements for massage facilities.**

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

³ (4) Governing the examination and investigation of applicants for *[the licenses issued under ORS 687.011 to 687.250, 687.895 and 687.991]* **a license under ORS 687.051 or a permit under section 4 of this 2013 Act** and the issuance, renewal, suspension and revocation of such licenses **and permits**.

[(4)] (5) Setting standards for certifying classes under ORS 687.051.

[(5)] (6) Requiring that [*massage therapists supply*] **a massage therapist supply** the board with the accurate, current address or addresses where [*they practice*] **the massage therapist engages in the practice of** massage.

(7) **Requiring that a person who holds a permit to operate a massage facility supply the board with the accurate, current address where the massage facility is located.**

[(6)] (8) Fixing the educational, training and experience requirements for licensing by indorsement or reciprocity.

[(7)] (9) Establishing requirements for issuance and retention of an inactive **massage therapist license or permit to operate a massage facility.**

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

SECTION 9. ORS 687.123 is amended to read:

687.123. Upon complaint about **a massage facility or** the premises on which a massage therapist practices massage, the State Board of Massage Therapists or its authorized representative may inspect [*such*] **the massage facility or** premises in order to determine whether the **massage facility or** premises meet the standards set by order of the board under ORS 687.121 (1) **or** (2).

SECTION 10. ORS 687.250 is amended to read:

687.250. (1) The State Board of Massage Therapists shall report to the proper district attorney all cases that in the judgment of the board warrant criminal prosecution under ORS 687.991.

(2) The board may, in its own name, assess a civil penalty against [*any licensed or unlicensed person violating*] **a person who violates** a provision of ORS 687.011 to 687.250, 687.895 and 687.991. The board may assess the civil penalty instead of or in addition to disciplinary action under ORS 687.081, an injunction issued under ORS 687.021 or criminal prosecution by the district attorney under this section. The amount of the civil penalty may not exceed \$1,000 for any single violation. Except as the board may otherwise provide under ORS 182.462 (1)(e), moneys collected through the assessment of civil penalties by the board under this subsection or ORS 687.081 shall be deposited into the account created by the board pursuant to ORS 182.470 and are continuously appropriated to the board for carrying out the provisions of ORS 687.011 to 687.250, 687.895 and 687.991.

OPERATIVE DATE

SECTION 11. (1) Sections 3 and 4 of this 2013 Act and the amendments to ORS 687.011, 687.021, 687.061, 687.071, 687.081, 687.121, 687.123 and 687.250 by sections 1, 2 and 5 to 10 of this 2013 Act become operative January 1, 2014.

(2) **The State Board of Massage Therapists may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the board by sections 3 and 4 of this 2013 Act and the amendments to ORS 687.011, 687.021, 687.061, 687.071, 687.081, 687.121, 687.123 and 687.250 by sections 1, 2 and 5 to 10 of this 2013 Act.**

UNIT CAPTIONS

SECTION 12. **The unit captions used in this 2013 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2013 Act.**

EMERGENCY CLAUSE

SECTION 13. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate March 5, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 3, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State