

## CHAPTER 752

H.B. No. 2012

An Act relating to the regulation of massage therapists and massage establishments; providing penalties.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1. DEFINITIONS.** In this Act:

(1) "Massage therapy," as a health care service, means the manipulation of soft tissue for therapeutic purposes. The term includes, but is not limited to, effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics, either by hand or with mechanical or electrical apparatus for the purpose of body massage. Massage therapy may include the use of oil, salt glows, heat lamps, hot and cold packs, tub, shower, or cabinet baths. Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, myo-therapy, or any derivation of those terms. As used in this Act, the terms "therapy" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law.

(2) "Massage therapist" means an individual who practices or administers massage therapy to a patron of either gender for compensation. The term includes a therapeutic massage practitioner, massagist, massage technician, masseur, masseuse, myo-therapist, or any derivation of those titles.

(3) "Massage therapy instructor" means an individual who has already acquired the status of massage therapist, who has practiced massage therapy for a minimum of four years, and who is instructing one or more apprentices in massage therapy.

(4) "Massage establishment" means any place of business in which massage therapy is practiced by a massage therapist.

(5) "Department" means the Texas Department of Health.

(6) "Board" means the Texas Board of Health.

(7) "Advisory Council" means the Advisory Council on Massage Therapy.

(8) "Person" means an individual, corporation, association, or other legal entity.

**SECTION 2. REGISTRATION REQUIREMENTS.** (a) An individual who practices as a massage therapist must register as provided by this Act.

(b) An individual who registers under this Act must present evidence satisfactory to the board that the person:

(1) has satisfactorily completed massage therapy studies in a 250 hour, supervised course of instruction provided by a massage therapy instructor, by a massage therapy school recognized by the department, by a state approved educational institution, or by any combination of instructors or schools, in which 125 hours are dedicated to the study of Swedish massage therapy techniques, 50 hours to the study of anatomy, 25 hours to the study of physiology, 25 hours to the study of hydrotherapy, five hours to the study of business practices and professional ethics standards, and 20 hours to the study of health and hygiene;

(2) is registered as a massage therapist in another state or country that has and maintains standards and requirements of practice and licensing or registration that substantially conform to those of this state, as determined by the department; or

(3) has practiced massage therapy as a profession for not less than five years in another state or country that does not have or maintain standards and requirements of practice and licensing or registration that substantially conform to those of this state, as determined by the department.

**SECTION 3. APPLICATION FOR REGISTRATION.** Each applicant for registration under this Act shall submit application forms provided by the department, accompanied by the application fee set by the department.

**SECTION 4. EXEMPTIONS.** This Act does not apply to a person who is licensed in this state as a physician, chiropractor, physical therapist, nurse, cosmetologist, athletic trainer, or as a member of another similar profession that is subject to state licensing.

**SECTION 5. REGULATION OF ADVERTISING; PROHIBITION.** (a) Each massage establishment must post in plain sight the certificate of registration of each massage therapist who practices in the massage establishment.

(b) A person who is not registered under this Act may not use the word "massage" on any sign or other form of advertising.

**SECTION 6. PENALTY.** (a) A person subject to the registration requirement of this Act commits an offense if the person knowingly violates Section 2 of this Act.

(b) The owner or operator of a massage establishment commits an offense if that person knowingly violates Section 5 of this Act.

(c) An offense under this section is a Class C misdemeanor. However, if it is shown on the trial of an offense under this section that the person has previously been convicted one or more times of an offense under this section, the offense is a Class A misdemeanor.

**SECTION 7. POWERS AND DUTIES OF THE BOARD AND THE DEPARTMENT.** (a) The board shall adopt rules consistent with this Act as necessary for the performance of its duties under this Act. The board shall adopt the rules in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The department shall administer this Act.

(c) The department shall investigate persons who may be engaging in practices that violate this Act.

**SECTION 8. ADVISORY COUNCIL.** (a) The Advisory Council on Massage Therapy is created as an advisory council to the department.

(b) The advisory council is composed of nine members appointed by the board of health. Five members must be massage therapists regulated under this Act, one member must be a licensed chiropractor, one member must be a licensed physician, and two members must be representatives of the general public.

(c) Members of the advisory council hold office for staggered terms of six years. Three members' terms expire September 1 of each odd-numbered year. In the event of a vacancy during a term, the board shall appoint a replacement who meets the qualifications of the vacated office to fill the unexpired portion of the term.

(d) A member of the advisory council may not receive compensation for serving on the council, but is entitled to receive the state per diem allowance as set by the legislature in the General Appropriations Act for transportation and related expenses incurred for each day the member engages in the business of the council.

(e) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member on the advisory council.

(f) The advisory council is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(g) A member of the advisory council is not liable to civil action for any act performed in good faith in the execution of duties as a council member.

(h) A massage therapist member of the advisory council may not be a member of another profession regulated or licensed by this state.

**SECTION 9. POWERS AND DUTIES OF THE ADVISORY COUNCIL.** (a) The advisory council by rule shall prescribe application forms and registration fees. The advisory council shall set the fees in amounts reasonable and necessary to administer this Act.

(b) The advisory council shall meet at least twice a year. Additional meetings may be held at the call of the presiding officer or on the written request of any three members of the council.

(c) The advisory council shall keep a complete record of all registered massage therapists and shall annually prepare a roster showing the names and addresses of all registered massage therapists. A copy of the roster shall be available to any person requesting it on payment of a fee set by the council in an amount sufficient to cover the costs of distribution of the roster.

**SECTION 10. ISSUANCE OF REGISTRATION CERTIFICATES.** (a) The department shall issue a registration certificate to each qualified massage therapist.

(b) A person issued a certificate by the department shall display the certificate in an appropriate public manner as specified by the board.

(c) The issuance of a registration certificate grants all professional rights, honors, and privileges relating to the practice of massage therapy.

(d) A registration certificate is the property of the department and must be surrendered on demand.

**SECTION 11. REGISTRATION, DENIAL, PROBATION, SUSPENSION, OR REVOCATION.** (a) The department may refuse to issue a registration certificate to an applicant, may suspend or revoke a registration certificate, or may place a registered person on probation for any of the following causes:

(1) obtaining a certificate by means of fraud, misrepresentation, or concealment of material facts;

(2) selling, bartering, or offer to sell or barter a registration certificate;

(3) violating any rule adopted by the board; or

(4) violating any provisions of this Act.

(b) An individual who has been convicted of crimes or offenses involving prostitution or sexual offenses is ineligible for registration as a massage therapist.

(c) A person whose application for registration is denied, or whose registration is suspended or revoked is entitled to a hearing before the department if the person submits a written request to the department. Hearings are governed by department rules for a contested hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) A person convicted of a violation of this Act is ineligible for registration as a massage therapist for a period of five years.

**SECTION 12. RENEWAL OF REGISTRATION.** (a) Registration under this Act is subject to annual renewal and expires unless the registered person submits an application for renewal accompanied by the renewal fee.

(b) The department shall adopt a system under which registrations expire and are renewed on various dates of the year. Initial registration fees shall be prorated so that a registered person pays only for that part of the year for which the registration is issued until the expiration date of the registration.

(c) A person registered under this Act who does not renew registration by the expiration date may renew the registration not later than the 90th day after the expiration date by meeting the requirements set forth in this section and paying a late penalty fee.

(d) The registration of a person who fails to meet the renewal requirements of this section is void. Such a person must submit a new application, pay the appropriate fees, and meet the current requirements for registration.

**SECTION 13. INJUNCTIVE RELIEF.** The attorney general or a district or county attorney may institute a civil action to compel compliance with this Act or to enforce a rule adopted under this Act. In addition to any injunctive relief or any other remedy provided by law, a person who violates this Act or a rule adopted under this Act is subject to a civil penalty in an amount not to exceed \$500.

**SECTION 14. EFFECT ON LOCAL REGULATION.** This Act supersedes any regulation adopted by a political subdivision of this state relating to the licensing or regulation of massage therapists. It does not affect local regulations relating to zoning requirements for massage establishments or other similar regulations.

**SECTION 15. EFFECTIVE DATE FOR REGISTRATION REQUIREMENT; GRAND-FATHER CLAUSE.** (a) An individual is not required to be registered under this Act until January 1, 1986.

(b) A person, who is engaged in the practice of massage therapy on the effective date of this Act and who has practiced massage therapy for not less than two years before the effective date of this Act, who has a diploma from an approved school of massage therapy, or who is a member in good standing in the American Massage Therapy Association is entitled to registration as a massage therapist without compliance with Section 2 of this Act if the person applies to the department for registration before January 1, 1986, and pays the required fee.

**SECTION 16. EFFECTIVE DATE.** This Act takes effect September 1, 1985.

**SECTION 17. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 17, 1985, by a non-record vote; passed by the Senate on May 27, 1985, by a viva-voce vote.

Approved: June 14, 1985

Effective: September 1, 1985