

IN THE SENATE

SENATE BILL NO. 1078

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO REGULATION AND LICENSURE OF MASSAGE THERAPISTS; AMENDING TITLE  
2 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 40, TITLE 54, IDAHO  
3 CODE, TO PROVIDE PURPOSE, TO DEFINE TERMS, TO PROVIDE EXEMPTIONS, TO  
4 PROVIDE PROHIBITIONS, TO REQUIRE LICENSURE, TO ESTABLISH THE BOARD OF  
5 MASSAGE THERAPY AND TO PROVIDE FOR MEMBERSHIP, TO PROVIDE POWERS AND DU-  
6 TIES OF THE BOARD, TO PROVIDE FEES, TO PROVIDE REQUIREMENTS FOR ISSUANCE  
7 OF A LICENSE, TO PROVIDE FOR ENDORSEMENT LICENSURE, TO PROVIDE FOR LI-  
8 CENSE RENEWAL, TO PROVIDE FOR REINSTATEMENT OF A LICENSE, TO PROVIDE  
9 FOR LICENSING OF EXISTING MASSAGE PRACTITIONERS, TO PROVIDE FOR DISCI-  
10 PLINARY ACTION, TO PROVIDE FOR ENFORCEMENT AND PENALTIES AND TO PROVIDE  
11 FOR PREEMPTION OF LOCAL REGULATION; AND PROVIDING AN EFFECTIVE DATE.  
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended  
15 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
16 ter 40, Title 54, Idaho Code, and to read as follows:

17 CHAPTER 40  
18 MASSAGE THERAPISTS

19 54-4001. PURPOSE. By the adoption of this chapter, it is the intent  
20 of the legislature to protect the public health, safety and welfare, and to  
21 provide for state administrative supervision, licensure, regulation and  
22 disciplinary procedures of every person providing massage therapy who meets  
23 and maintains the standards of practice and code of ethics as adopted by the  
24 board and is licensed under the provisions of this chapter, unless otherwise  
25 exempted herein.

26 54-4002. DEFINITIONS. As used in this chapter, the following terms  
27 have the following meanings:

28 (1) "Advertise" means, but is not limited to, the issuing or causing to  
29 be distributed of any card, sign, direct mail piece or other device or caus-  
30 ing or permitting any sign or marking on or in any building or structure,  
31 or in any newspaper, magazine or directory, or announcement on radio or an-  
32 nouncement or display on television, computer network or electronic or tele-  
33 phonic medium.

34 (2) "Board" means the Idaho state board of massage therapy created pur-  
35 suant to section 54-4007, Idaho Code.

36 (3) "Compensation" means the payment, loan, advance, donation, contri-  
37 bution, deposit or gift of money or anything of value.

38 (4) "Massage school" means a massage therapy educational program that  
39 meets the standards for training and curriculum as set forth by section  
40 54-4007(9), Idaho Code, or comparable authority in another state.

1 (5) "Massage therapist" means a person who meets the requirements of  
2 this chapter and who engages in the practice of massage therapy.

3 (6) "Massage therapy" means the care and services provided by a massage  
4 therapist.

5 (7) "Practice of massage therapy" means the application of a system of  
6 structured touch, pressure, movement and holding of the soft tissues of the  
7 human body. The application may include:

8 (a) Pressure, friction, stroking, rocking, kneading, percussion, or  
9 passive or active stretching within the normal anatomical range of  
10 movement;

11 (b) Complementary methods, including the external application of wa-  
12 ter, heat, cold, lubricants and other topical preparations; or

13 (c) The use of mechanical devices that mimic or enhance actions that may  
14 be done by the hands.

15 (8) "Professional massage and bodywork therapy association" means a  
16 state or nationally chartered professional membership organization offer-  
17 ing services to massage therapists that has been in existence for at least  
18 thirty-six (36) months prior to the effective date of this act, that cur-  
19 rently has at least five hundred (500) members in good standing, and whose  
20 membership requirements include the following:

21 (a) The organization requires that its members meet minimum eligibil-  
22 ity criteria, which include massage or bodywork education completion  
23 standards. Required education must include the subject areas of  
24 anatomy, physiology, hygiene, sanitation, ethics and application of  
25 techniques; and

26 (b) The organization has an established code of ethics and standards of  
27 practice, and requires members to agree to that code and those standards  
28 and has disciplinary procedures for the membership suspension and revo-  
29 cation of members violating the code of ethics.

30 54-4003. EXEMPTIONS. (1) Nothing in this chapter shall be construed  
31 to restrict any person licensed or regulated by the state of Idaho from en-  
32 gaging in the profession or practice for which they are licensed or regulated  
33 including, but not limited to, acupuncture, athletic training, barbering,  
34 chiropractic, cosmetology, dentistry, electrology, esthetics, manicuring,  
35 medicine, naturopathic medicine, nursing, occupational therapy, osteopa-  
36 thy, physical therapy, podiatry, professional counseling, psychology, so-  
37 cial work or veterinary medicine or any other licensed or regulated profes-  
38 sion by the state of Idaho.

39 (2) Nothing in this chapter shall prohibit:

40 (a) The practice of massage therapy by a person employed by the govern-  
41 ment of the United States while the person is engaged in the performance  
42 of duties prescribed by the laws and regulations of the United States.

43 (b) The practice of massage therapy by persons duly licensed, reg-  
44 istered or certified in another state, territory, the District of  
45 Columbia or a foreign country when incidentally called into this state  
46 to teach a course related to massage therapy or to consult with a person  
47 licensed under this chapter.

48 (c) Students enrolled in a board-approved course of instruction while  
49 completing a clinical requirement or supervised massage therapy field-

1 work experience for graduation performed under the supervision of a  
 2 person licensed under this chapter, provided the student does not hold  
 3 himself or herself out as a licensed massage therapist and does not re-  
 4 ceive compensation for services performed.

5 (d) Any persons performing massage therapy services in the state, if  
 6 those services are performed without compensation and are performed in  
 7 cooperation with a charitable organization or as part of an emergency  
 8 response team working in conjunction with disaster relief officials.

9 (e) Persons giving massage to members of his or her immediate or ex-  
 10 tended family without compensation.

11 (f) Nothing in this chapter shall be construed to prevent or restrict  
 12 the practice of any person in this state who uses touch, words and di-  
 13 rected movement to deepen awareness of existing patterns of movement in  
 14 the body as well as to suggest new possibilities of movement while en-  
 15 gaged within the scope of practice of a profession provided that their  
 16 services are not designated or implied to be massage or massage therapy.  
 17 Such practices include, but are not limited to, the Feldenkrais method®  
 18 of somatic education, the Trager approach® to movement education, and  
 19 body-mind centering®.

20 (g) Persons who restrict their practice to manipulation of the soft  
 21 tissues of the human body to the hands, feet or ears and do not hold them-  
 22 selves out to be massage therapists or to do massage or massage therapy.

23 (h) Nothing in this chapter shall be construed to prevent or restrict  
 24 the practice of any person in this state who uses touch to affect the  
 25 energy systems, acupoints or qi meridians, channels of energy, of the  
 26 human body while engaged within the scope of practice of a profession,  
 27 provided that their services are not designated or implied to be mas-  
 28 sage or massage therapy. Such practices include, but are not limited  
 29 to, polarity, polarity therapy, polarity bodywork therapy, Asian body-  
 30 work therapy, acupressure, jin shin do®, qi gong, reiki and shiatsu.

31 (i) Persons engaged in the profession of structural integration,  
 32 restoring postural balance and functional ease by integrating the body  
 33 in gravity based on a system of fascial manipulation, awareness, and  
 34 education developed by Dr. Ida P. Rolf, provided their services are not  
 35 designated or implied to be massage or massage therapy. Such practices  
 36 include, but are not limited to: Rolfing® structural integration, the  
 37 guild for structural integration, Hellerwork®.

38 (j) Massage therapists licensed under this chapter may provide ser-  
 39 vices classified as exempt practices listed under this section if they  
 40 have received training and are qualified to provide such services.

41 54-4004. PROHIBITIONS. Massage therapists shall not perform any of  
 42 the following:

- 43 (1) Diagnosis of injury, illness or disease;
- 44 (2) Chiropractic adjustment or skeletal manipulative procedures or any  
 45 other procedures as defined in section 54-704, Idaho Code, except as allowed  
 46 in section 54-4002(7), Idaho Code;
- 47 (3) Electrical stimulation or application of ultrasound;
- 48 (4) Dispensation of, application of or issuance of prescriptions for  
 49 pharmaceutical agents.

1           54-4005. LICENSE REQUIRED. (1) A person shall not practice or hold  
2 himself or herself out to others as a massage therapist without first receiv-  
3 ing from the board a license to engage in that practice.

4           (2) A person holds himself or herself out to others as a massage ther-  
5 apist when the person adopts or uses any title or description including  
6 "massage therapist," "massagist," "massotherapist," "myotherapist," "body  
7 therapist," "massage technician," "massage practitioner" or any derivation  
8 of those terms that implies this practice.

9           (3) It shall be unlawful for any person who is not a licensed massage  
10 therapist under this chapter to advertise using the term "massage thera-  
11 pist." Any person who holds a license to practice as a massage therapist in  
12 this state may use the title "licensed massage therapist." No other person  
13 shall assume this title or use an abbreviation or any other words, letters,  
14 signs or figures to indicate that the person using the title is a licensed  
15 massage therapist.

16           54-4006. BOARD OF MASSAGE THERAPY. (1) There is hereby established in  
17 the department of self-governing agencies, bureau of occupational licenses,  
18 the board of massage therapy. The members thereof shall be appointed by the  
19 governor subject to confirmation by the senate.

20           (2) The board shall consist of five (5) members, four (4) of whom shall  
21 be licensed pursuant to this chapter and one (1) of whom shall be a member of  
22 the public with an interest in the rights of the consumers of massage therapy  
23 services. At no time shall more than one (1) board member be an owner of, an  
24 instructor of, or otherwise affiliated with a board-approved course of in-  
25 struction or any other massage therapy school or course of instruction.

26           (3) Appointments to the board shall be made by the governor. Profes-  
27 sional massage therapy associations may provide nominations to the governor  
28 of no more than four (4) persons qualified for each position to be filled.

29           (4) All members of the board shall be residents of the state of Idaho for  
30 the duration of their appointment and shall have been residents of the state  
31 of Idaho for a minimum of three (3) years immediately preceding appointment.

32           (5) The initial three (3) licensed massage therapist members of the  
33 board shall be persons with at least three (3) years of experience in the  
34 practice of massage therapy who are eligible to become licensed pursuant to  
35 this chapter.

36           (6) The initial board shall be appointed for staggered terms, the  
37 longest of which shall not exceed three (3) years. After the initial ap-  
38 pointments, all terms shall be for three (3) years, and a member may be  
39 reappointed for a second term. No member shall serve more than two (2) terms.  
40 In the event of death, resignation or removal of any member before the expi-  
41 ration of the term to which appointed, the vacancy shall be filled for the  
42 unexpired portion of the term in the same manner as the original appointment.

43           (7) The governor may remove any member of the board for cause, prior to  
44 the expiration of the member's term.

45           (8) The board, within thirty (30) days after its initial appointment  
46 and at least annually thereafter, shall hold a meeting and elect a chairman.  
47 The board may hold additional meetings on the call of the chairman or at the  
48 written request of any three (3) members of the board. The board may appoint

1 such committees as it considers necessary to carry out its duties. A major-  
2 ity of the members of the board shall constitute a quorum.

3 (9) Each member of the board shall be compensated as provided in section  
4 59-509(n), Idaho Code.

5 54-4007. POWERS AND DUTIES OF THE BOARD. The board shall have the au-  
6 thority to:

7 (1) Determine the qualifications of persons applying for licensure  
8 pursuant to this chapter and define, by rule, the appropriate scope of mas-  
9 sassage therapy in this state, provided however, that the scope of practice may  
10 not exceed that defined in section 54-4002(7), Idaho Code;

11 (2) Authorize, by written agreement, the bureau of occupational li-  
12 censes as agent to act in its interest;

13 (3) Promulgate such rules as are necessary for the administration of  
14 this chapter, including standards of professional conduct;

15 (4) Conduct investigations and hold hearings;

16 (5) Collect fees and other funds as prescribed by this chapter;

17 (6) Contract, sue and be sued, and pursue other matters lawful in this  
18 state relating to massage therapy;

19 (7) Provide such other services and perform such other functions as are  
20 necessary and desirable to fulfill its purposes;

21 (8) Establish requirements for renewal of license and approval of con-  
22 tinuing education courses as set forth in section 54-4011, Idaho Code;

23 (9) The board shall establish rules for the approval of massage therapy  
24 entry-level curriculum. The basic curriculum standards shall ensure gradu-  
25 ates have the education and skills necessary to carry out the safe and effec-  
26 tive practice of massage therapy.

27 54-4008. FEES. (1) All fees received under the provisions of this  
28 chapter shall be paid to the department of self-governing agencies, bureau  
29 of occupational licenses, and deposited in the state treasury to the credit  
30 of the occupational licenses fund. All costs and expenses incurred under  
31 the provisions of this chapter shall be a charge against and paid from said  
32 fund. In no case shall any salary, expense or other obligation of the board  
33 be charged against the general fund.

34 (2) The board, by rule, may impose fees to provide for the administra-  
35 tion of this section including, but not limited to, the following:

36 (a) Original license fee;

37 (b) Application fee;

38 (c) License renewal fee;

39 (d) License by endorsement;

40 (e) Duplicate license; and

41 (f) Reinstatement fee.

42 54-4009. REQUIREMENTS FOR ISSUANCE OF LICENSE. Upon application to  
43 the board and the payment of the required fees, an applicant may be licensed  
44 as a massage therapist if the applicant meets all the requirements of this  
45 chapter and provides documentation acceptable to the board that he or she:

46 (1) Has obtained a high school diploma or equivalent;

47 (2) Is eighteen (18) years of age or older;

1 (3) Is of good moral character;

2 (4) Has successfully completed an approved course of instruction con-  
3 sisting of at least five hundred (500) in-classroom hours of supervised in-  
4 struction, including massage therapy technique and theory, contraindica-  
5 tions, ethics, sanitation, hygiene, business training, anatomy, physiology  
6 and pathology; and

7 (5) Has successfully passed a nationally recognized competency exami-  
8 nation in massage therapy that meets acceptable psychometric principles, is  
9 statistically validated through a job-task analysis under current standards  
10 for educational and professional testing and has been approved by the board.  
11 The passage of this exam may have occurred prior to the effective date of this  
12 chapter.

13 54-4010. ENDORSEMENT LICENSURE. The board may grant a license without  
14 examination to any person who, at the time of application, is licensed or  
15 certified by a board of massage therapy of another state, provided the re-  
16 quirements for such certification or licensure are substantially equivalent  
17 to the requirements of this chapter, and upon payment of a fee to be deter-  
18 mined by the board.

19 54-4011. LICENSE RENEWAL. (1) A license shall be issued for a period  
20 of not less than two (2) years nor more than four (4) years, in conformance  
21 with rules adopted by the board. Each license shall set forth the expiration  
22 date. The failure of any licensee to renew his or her license, as required  
23 herein and by the rules of the board, shall not deprive such person of the  
24 right to renewal, except as provided for in section 54-4012(2), Idaho Code.

25 (2) When renewing a license, each licensee shall submit to the board evi-  
26 dence of the successful completion of board-approved continuing education  
27 study in the field of massage therapy. The number of hours of continuing ed-  
28 ucation study required shall be determined by rule of the board for continued  
29 practitioner competency.

30 (3) All licensed massage therapists shall report to the board any name  
31 change or changes in business and home addresses within thirty (30) days of  
32 such change.

33 54-4012. REINSTATEMENT OF LICENSE. (1) Reinstatement of an expired  
34 license shall require the payment of a renewal fee and reinstatement fee in  
35 accordance with rules adopted by the board.

36 (2) Reinstatement of a license that has expired for a period of more  
37 than two (2) consecutive years may require reapplying for a license and pay-  
38 ment of fees in accordance with rules adopted by the board. The board may re-  
39 quire an individual whose license has expired for a period of more than two  
40 (2) consecutive years to successfully demonstrate to the board competency in  
41 the practice of massage therapy. The board may also require the applicant to  
42 take an examination, remedial courses, or both, as may be determined by the  
43 board.

44 54-4013. LICENSING OF EXISTING MASSAGE PRACTITIONERS. For a period of  
45 no more than two (2) years after applications for licensure become avail-

1 able, the board may issue a license to any individual who meets the following  
2 requirements:

3 (1) He or she has completed a minimum of five hundred (500) hours of su-  
4 pervised classroom and hands-on instruction relating to massage therapy;

5 (2) He or she has completed at least three hundred (300) hours of for-  
6 mal training in massage therapy as determined by the board and has practiced  
7 massage therapy for at least five (5) hours per week on average for at least  
8 three (3) years prior to the date of application;

9 (3) He or she has completed at least two hundred (200) hours of formal  
10 training in massage therapy as determined by the board and has practiced mas-  
11 sage therapy for at least five (5) hours per week on average for at least five  
12 (5) years prior to the date of application;

13 (4) He or she has been an active member in good standing as a massage  
14 therapist for a period of at least twelve (12) months of a national profes-  
15 sional massage association/organization that offers professional liability  
16 insurance;

17 (5) He or she has successfully passed an examination meeting the re-  
18 quirements of section 54-4009(5), Idaho Code. The passage of this examina-  
19 tion may have occurred before the effective date of this section.

20 54-4014. DISCIPLINARY ACTION. The board may deny, suspend, revoke or  
21 refuse to issue a license for any of the following:

22 (1) The employment of fraud, deceit or misrepresentation in obtaining  
23 or attempting to obtain a license or the renewal of a license;

24 (2) Practicing as a massage therapist when physical or mental abilities  
25 are impaired as determined by the board;

26 (3) Conviction of a felony, a crime involving moral turpitude or a crime  
27 under any municipal, state or federal narcotic or controlled substance law,  
28 provided that the board has taken into consideration the rehabilitation of  
29 the applicant or licensee and other mitigating circumstances;

30 (4) Having been adjudged mentally incompetent by a court of competent  
31 jurisdiction;

32 (5) Engaging in any act or practice in violation of any of the provi-  
33 sions of this chapter or any of the rules adopted by the board, or aiding,  
34 abetting or assisting any other person in such a violation;

35 (6) The commission of an act of malpractice, gross negligence or incom-  
36 petence;

37 (7) Practice without a valid license;

38 (8) Engaging in any lewd, indecent, obscene or unlawful behavior with a  
39 client;

40 (9) The employment of fraud, deceit, or misrepresentation when commu-  
41 nicating with the general public, health care professionals or other busi-  
42 ness professionals;

43 (10) Having had a license revoked or suspended, other disciplinary ac-  
44 tion taken or an application for licensure refused, revoked or suspended by  
45 the proper authorities of another state, territory or country, or omitting  
46 such information from any application to the board, or failing to divulge  
47 such information when requested by the board;

48 (11) A violation of the code of ethics or standards of practice as  
49 adopted by the board.

1           54-4015. ENFORCEMENT -- PENALTIES. A person who violates any provi-  
2 sion of this chapter shall, upon conviction, be guilty of a misdemeanor.  
3 The board may seek an injunction against any person who practices massage  
4 therapy in violation of the provisions of this chapter and may, in the event  
5 a permanent injunction is entered against such person or a plea or verdict  
6 of guilty is entered in any criminal matter, impose a civil penalty in the  
7 amount of all costs and fees incurred by the board in prosecuting the matter.

8           54-4016. PREEMPTION OF LOCAL REGULATION. Beginning on the date appli-  
9 cations for licensure become available pursuant to this chapter, a local  
10 unit of government shall not establish or maintain professional licensing  
11 requirements for a massage therapist licensed under this chapter.

12           SECTION 2. This act shall be in full force and effect on and after July  
13 1, 2011, except that the provisions of Sections 54-4005 and 54-4016, Idaho  
14 Code, shall not take effect until no more than sixty (60) days after applica-  
15 tions for licensure become available.