

HOUSE BILL NO. 328

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES NAGEAK, Tuck, Muñoz

Introduced: 2/21/14

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Board of Massage Therapists; relating to the licensing of
2 massage therapists; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 08.01.010 is amended by adding a new paragraph to read:

5 (39) Board of Massage Therapists (AS 08.61.010).

6 * **Sec. 2.** AS 08.02.010(a) is amended to read:

7 (a) An acupuncturist licensed under AS 08.06, an audiologist or speech-
8 language pathologist licensed under AS 08.11, a person licensed in the state as a
9 chiropractor under AS 08.20, a professional counselor licensed under AS 08.29, a
10 dentist under AS 08.36, a dietitian or nutritionist licensed under AS 08.38, **a massage**
11 **therapist licensed under AS 08.61**, a marital and family therapist licensed under
12 AS 08.63, a medical practitioner or osteopath under AS 08.64, a direct-entry midwife
13 certified under AS 08.65, a registered nurse under AS 08.68, an optometrist under
14 AS 08.72, a licensed pharmacist under AS 08.80, a physical therapist or occupational

1 therapist licensed under AS 08.84, a psychologist under AS 08.86, or a clinical social
 2 worker licensed under AS 08.95, shall use as professional identification appropriate
 3 letters or a title after that person's name that represents the person's specific field of
 4 practice. The letters or title shall appear on all signs, stationery, or other advertising in
 5 which the person offers or displays personal professional services to the public. In
 6 addition, a person engaged in the practice of medicine or osteopathy as defined in
 7 AS 08.64.380, or a person engaged in any manner in the healing arts who diagnoses,
 8 treats, tests, or counsels other persons in relation to human health or disease and uses
 9 the letters "M.D." or the title "doctor" or "physician" or another title that tends to show
 10 that the person is willing or qualified to diagnose, treat, test, or counsel another
 11 person, shall clarify the letters or title by adding the appropriate specialist designation,
 12 if any, such as "dermatologist," [,] "radiologist," [,] "audiologist," [,] "naturopath," [,]
 13 or the like.

14 * **Sec. 3.** AS 08.03.010(c) is amended by adding a new paragraph to read:

15 (22) Board of Massage Therapists (AS 08.61.010) - June 30, 2018.

16 * **Sec. 4.** AS 08 is amended by adding a new chapter to read:

17 **Chapter 61. Massage Therapists.**

18 **Sec. 08.61.010. Board established.** The Board of Massage Therapists is
 19 established in the department. The board consists of five members appointed by the
 20 governor as follows:

21 (1) four licensed massage therapists who have been engaged in the
 22 practice of massage therapy in the state for the three years immediately preceding
 23 appointment and who shall remain actively engaged in the practice of massage therapy
 24 while serving on the board; not more than one member appointed under this paragraph
 25 may have an ownership or partnership interest in a massage school; and

26 (2) one public member; the governor may not appoint as a public
 27 member

28 (A) a licensed health care provider;

29 (B) an employee of the state; or

30 (C) a current or former member of another occupational
 31 licensing board established under AS 08.

1 **Sec. 08.61.020. Duties and powers of board.** In addition to the duties
2 specified in AS 08.01, the board shall

3 (1) provide for the examination of applicants by the board or through a
4 nationally recognized competency examination approved by the board and issue
5 licenses to applicants the board finds qualified;

6 (2) adopt regulations governing

7 (A) licensing of massage therapists; and

8 (B) the practice of massage therapy;

9 (3) establish standards of professional competence and ethical conduct
10 for massage therapists;

11 (4) establish standards for continuing education for massage therapists;
12 standards adopted by the board under this paragraph must allow for approval of
13 Internet-based continuing education courses;

14 (5) make available to the public a list of massage therapists licensed
15 under this chapter;

16 (6) determine which states have educational and licensing
17 requirements equivalent to the requirements of this state;

18 (7) enforce the provisions of this chapter and adopt and enforce
19 regulations necessary to implement this chapter; and

20 (8) approve one or more nationally recognized competency
21 examinations and publish and periodically update the list of approved examinations.

22 **Sec. 08.61.030. Qualifications for license.** The board shall issue a license to
23 practice massage therapy to a person who

24 (1) applies on a form provided by the board;

25 (2) pays the fees established under AS 08.61.090;

26 (3) furnishes evidence satisfactory to the board that the person has
27 completed a course of study of at least 500 hours of in-class supervised instruction and
28 clinical work from an approved massage school;

29 (4) is 18 years of age or older;

30 (5) has been fingerprinted and has provided the fees required by the
31 Department of Public Safety under AS 12.62.160 for criminal justice information and

1 a national criminal history record check; the fingerprints and fees shall be forwarded
 2 to the Department of Public Safety to obtain a report of criminal justice information
 3 under AS 12.62 and a national criminal history record check under AS 12.62.400;

4 (6) has a current cardiopulmonary resuscitation certification;

5 (7) has received at least four hours of safety education covering
 6 bloodborne pathogens and universal precautions in the two years preceding the
 7 application for the license; in this paragraph, "bloodborne pathogens" has the meaning
 8 given in AS 18.15.450;

9 (8) has successfully completed a nationally recognized competency
 10 examination approved by the board; and

11 (9) has not been convicted of, or pled guilty or no contest to, a crime
 12 involving moral turpitude, or who has been convicted of, or pled guilty or no contest
 13 to, a crime involving moral turpitude if the board finds that the conviction does not
 14 affect the person's ability to practice competently and safely.

15 **Sec. 08.61.040. Licensure by credentials.** The board shall issue a license to
 16 practice massage therapy to a person who

17 (1) is 18 years of age or older;

18 (2) applies on a form provided by the board;

19 (3) pays the fees established under AS 08.61.090;

20 (4) has submitted the person's fingerprints and the fees required by the
 21 Department of Public Safety under AS 12.62.160 for criminal justice information and
 22 a national criminal history record check; the fingerprints and fees shall be forwarded
 23 to the Department of Public Safety to obtain a report of criminal justice information
 24 under AS 12.62 and a national criminal history record check under AS 12.62.400;

25 (5) is not the subject of an unresolved complaint or disciplinary action
 26 before a regulatory authority in this state or another jurisdiction;

27 (6) has not had a certificate or license to practice massage therapy
 28 revoked, suspended, or voluntarily surrendered in this state or another jurisdiction;

29 (7) has not been convicted of, or pled guilty or no contest to, a crime
 30 involving moral turpitude, or has been convicted of, or pled guilty or no contest to, a
 31 crime involving moral turpitude if the board finds that the conviction does not affect

1 the person's ability to practice competently and safely;

2 (8) has a current cardiopulmonary resuscitation certification; and

3 (9) is currently

4 (A) licensed to practice massage therapy in another state or
5 country that has licensing requirements that are substantially equal to or greater
6 than the requirements of this state; or

7 (B) certified by a certification entity approved by the board.

8 **Sec. 08.61.050. Standards for license renewal.** The board shall renew a
9 license issued under this chapter to a licensee who

10 (1) pays the required fee;

11 (2) meets the continuing education requirements established by the
12 board;

13 (3) has not been convicted of, or pled guilty or no contest to, a crime
14 involving moral turpitude, or has been convicted of, or pled guilty to or no contest to,
15 a crime involving moral turpitude if the board finds that the conviction does not affect
16 the person's ability to practice competently and safely;

17 (4) has a current cardiopulmonary resuscitation certification; and

18 (5) has been fingerprinted and has provided the fees required by the
19 Department of Public Safety under AS 12.62.160 for criminal justice information and
20 a national criminal history record check; the fingerprints and fees shall be forwarded
21 to the Department of Public Safety to obtain a report of criminal justice information
22 under AS 12.62 and a national criminal history record check under AS 12.62.400.

23 **Sec. 08.61.060. Grounds for imposition of disciplinary sanctions.** After a
24 hearing, the board may impose a disciplinary sanction under AS 08.01.075 on a person
25 licensed under this chapter if the board finds that the person

26 (1) secured a license through deceit, fraud, or intentional
27 misrepresentation;

28 (2) engaged in deceit, fraud, or intentional misrepresentation in the
29 course of providing massage therapy services or engaging in massage therapy;

30 (3) advertised massage therapy services in a false or misleading
31 manner;

1 (4) has been convicted of a felony or another crime that affects the
2 licensee's ability to continue to practice competently and safely;

3 (5) intentionally or negligently engaged in, or permitted a person under
4 the licensed massage therapist's supervision to engage in, client care that did not
5 conform to minimum professional standards, whether or not actual injury to the client
6 occurred;

7 (6) failed to comply with a provision of this chapter, a regulation
8 adopted under this chapter, or an order of the board;

9 (7) continued to practice after becoming unfit because of

10 (A) professional incompetence; or

11 (B) addiction or severe dependency on alcohol or another drug
12 that impairs the ability to practice safely; or

13 (8) engaged in unethical conduct or sexual misconduct in connection
14 with the delivery of massage therapy services to a client.

15 **Sec. 08.61.070. Practice of massage therapy without license prohibited.** (a)

16 A person may not practice massage therapy or represent that the person is a massage
17 therapist unless the person holds a valid license under this chapter. In this subsection,
18 a person represents that the person is a massage therapist when the person adopts or
19 uses a title or description of services that incorporates one or more of the following
20 terms or designations: massage, massage practitioner, massage therapist, massage
21 therapy, therapeutic massage, massage technician, massage technology, massagist,
22 masseur, masseuse, myotherapist, myotherapy, or another term describing a traditional
23 European or contemporary western massage method, or a derivation of a term that
24 implies a massage technique or method.

25 (b) A person who knowingly violates (a) of this section is guilty of a class B
26 misdemeanor.

27 **Sec. 08.61.080. Exceptions to application of chapter.** This chapter does not
28 apply to a

29 (1) person licensed in the state under a statute outside this chapter who
30 performs massage therapy within the scope of practice for which the person's license
31 was issued;

1 (2) person who, while acting in an official capacity as an employee of
2 the United States government, performs massage therapy;

3 (3) person who is licensed, registered, or certified in another state,
4 territory, the District of Columbia, or a foreign country while the person is temporarily

5 (A) practicing massage therapy in this state in connection with
6 teaching a course related to massage therapy; or

7 (B) consulting with a person licensed under this chapter;

8 (4) student enrolled in an approved massage school or course of study
9 who is completing a clinical requirement for graduation under the general supervision
10 of a person licensed under this chapter if the student is clearly identified as a student
11 while performing massage therapy services on members of the public and is not
12 compensated for the massage therapy services;

13 (5) person only performing massage therapy on members of the
14 person's family;

15 (6) person only performing techniques that do not involve contact with
16 the body of another person;

17 (7) person only performing techniques that involve resting the hands
18 on the surface of the body of another person without delivering pressure to or
19 manipulating the person's soft tissues;

20 (8) person only performing services such as herbal body wraps, skin
21 exfoliation treatments, or the topical application of products to the skin for
22 beautification purposes when the services do not involve direct manipulation of the
23 soft tissues of the body;

24 (9) person only performing massage therapy for the athletic
25 department of an institution maintained by public funds of the state or a political
26 subdivision of the state or only practicing massage therapy for the athletic department
27 of a school or college approved by the board using recognized national professional
28 standards;

29 (10) person engaged only in the practice of structural integration for
30 restoring postural balance and functional ease by integrating the body in gravity using
31 a system of fascial manipulation, awareness, and education developed by Ida P. Rolf;

1 (11) person using only touch, words, and directed movement to deepen
 2 awareness of existing patterns of movement in the body as well as to suggest new
 3 possibilities of movement, including the Feldenkrais method of somatic education, the
 4 Trager approach to movement education, and body-mind centering;

5 (12) person using only touch to affect the energy systems, acupoints,
 6 or chi meridians of the human body, including polarity, polarity therapy, polarity
 7 bodywork therapy, Asian bodywork therapy, acupressure, jin shin do, chi gong, reiki,
 8 and shiatsu;

9 (13) person performing only the traditional practices of Native
 10 American traditional healers;

11 (14) person practicing only the manipulation of the soft tissues of the
 12 hands, feet, or ears and not holding out to be a massage therapist.

13 **Sec. 08.61.090. Fees.** The department shall set fees under AS 08.01.065 for
 14 application, license issuance, license renewal, and investigation under this chapter.

15 **Sec. 08.61.100. Definitions.** In this chapter,

16 (1) "approved massage school" means a massage therapy school or
 17 program that

18 (A) has an authorization to operate from the Alaska
 19 Commission on Postsecondary Education or a similar entity in another state; or

20 (B) is accredited by a nationally recognized accrediting agency;

21 (2) "board" means the Board of Massage Therapists;

22 (3) "massage therapist" means a person licensed under this chapter;

23 (4) "practice of massage therapy" means the provision, for
 24 compensation, of a service involving the systematic manipulation and treatment of the
 25 soft tissues, including the muscular and connective tissues of the human body, to
 26 enhance the functions of those tissues and promote relaxation and well-being; in this
 27 paragraph, "manipulation and treatment"

28 (A) includes manual techniques applied with the intent to
 29 physically affect local soft tissues, such as pressure, friction, stroking,
 30 percussion, kneading, vibration, muscular assessment by palpation, range of
 31 motion for purposes of demonstrating muscle exertion for muscle flexibility,

1 nonspecific stretching, and application of superficial heat, cold, water,
2 lubricants, or salts;

3 (B) does not include diagnosis, the prescription of drugs or
4 medicines, attempts to manipulate any articulation of the body or spine, or
5 mobilization of these articulations by use of a thrusting force.

6 * **Sec. 5.** AS 12.62.400(a) is amended by adding a new paragraph to read:

7 (16) licensure as a massage therapist under AS 08.61.

8 * **Sec. 6.** AS 29.10.200 is amended by adding a new paragraph to read:

9 (63) AS 29.35.146 (licensing of massage therapists).

10 * **Sec. 7.** AS 29.35 is amended by adding a new section to read:

11 **Sec. 29.35.146. Licensing of massage therapists.** (a) The authority to license
12 massage therapists is reserved to the state, and, except as specifically provided by
13 statute, a municipality may not enact or enforce an ordinance requiring professional
14 licensure of massage therapists.

15 (b) This section applies to home rule and general law municipalities.

16 * **Sec. 8.** AS 44.62.330(a) is amended by adding a new paragraph to read:

17 (49) Board of Massage Therapists.

18 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **APPLICABILITY.** (a) AS 08.61.030 - 08.61.050, enacted by sec. 4 of this Act,

21 (1) apply on and after the effective date of sec. 4 of this Act to persons who

22 (A) have not practiced massage therapy, as defined in AS 08.61.100,
23 enacted by sec. 4 of this Act, in the state, on or after the effective date of sec. 4 of this
24 Act; or

25 (B) have practiced massage therapy in the state but do not meet the
26 requirements of (2) of this section; and

27 (2) apply on and after the date that is two years after the effective date of sec.
28 4 of this Act to a person who has been practicing massage therapy in the state and meets the
29 requirements of AS 08.61.040, enacted by sec. 4 of this Act.

30 (b) In this section, "massage therapy" has the meaning given in AS 08.61.100,
31 enacted by sec. 4 of this Act.

1 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 TRANSITION. (a) Notwithstanding AS 08.61.030, enacted by sec. 4 of this Act, the
4 Board of Massage Therapists shall waive the course of study and examination requirements
5 and issue a license to practice massage therapy to a person who

6 (1) applies for the license before the date that is two years after the effective
7 date of sec. 4 of this Act;

8 (2) proves that the person owned, operated, or worked for a massage therapy
9 business and performed the practice of massage therapy before the effective date of sec. 4 of
10 this Act by submitting

11 (A) copies of the person's signed federal income tax returns for one of
12 the five years immediately preceding the effective date of sec. 4 of this Act, listing the
13 person's occupation as massage therapy in this state;

14 (B) copies of the person's signed schedule C federal income tax returns
15 for one of the five years immediately preceding the effective date of sec. 4 of this Act,
16 demonstrating that the person has reported income from the practice of massage
17 therapy in this state;

18 (C) a sworn statement from the person's employer in this state attesting
19 that the person has practiced massage therapy within the five years immediately
20 preceding the effective date of sec. 4 of this Act, a copy of the business license of the
21 person's employer, and a copy of the person's Form W-2 or Form 1099-MISC from the
22 same employer;

23 (D) a copy of a municipal occupational license that was current on the
24 day before the effective date of sec. 4 of this Act from a municipality in this state,
25 stating the person's occupation as massage therapist;

26 (E) documentation that the person has, for at least one year
27 immediately preceding the effective date of sec. 4 of this Act, been an active member,
28 as a massage therapist, in a national professional massage therapy association that was
29 established before 2000, offers professional liability insurance as a benefit of
30 membership, and has an established code of professional ethics; or

31 (F) other documentation satisfactory to the board; and

1 (3) meets the requirements of AS 08.61.030(1) - (6) and (9), enacted by sec. 4
2 of this Act.

3 (b) A license issued under this section is considered to be a license issued under
4 AS 08.61, enacted by sec. 4 of this Act.

5 (c) In this section, "board" and "massage therapy" have the meanings given in
6 AS 08.61.100, enacted by sec. 4 of this Act.

7 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 BOARD OF MASSAGE THERAPISTS; TRANSITION; STAGGERED TERMS. (a)
10 In making initial appointments to the Board of Massage Therapists, the governor shall
11 consider a massage therapist to be licensed for the purpose of AS 08.61.010, enacted by sec. 4
12 of this Act, if the massage therapist has practiced massage therapy in this state for the three
13 years immediately preceding appointment.

14 (b) The governor shall appoint the initial members of the board to staggered terms as
15 follows:

16 (1) two members shall be appointed to serve four years;

17 (2) two members shall be appointed to serve three years; and

18 (3) one member shall be appointed to serve two years.

19 (c) Notwithstanding AS 08.61.010, added by sec. 4 of this Act, a member appointed
20 to the Board of Massage Therapists who is not a public member may be unlicensed under
21 AS 08.61, added by sec. 4 of this Act, for the first year of the member's initial appointment or
22 until 30 days after the Department of Commerce, Community, and Economic Development
23 begins issuing licenses, whichever occurs first. A member of the board that does not obtain a
24 license as required by this subsection shall be removed from the board and the governor shall
25 appoint a replacement to serve the unexpired term.

26 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 TRANSITIONAL PROVISIONS: REGULATIONS. The Department of Community,
29 Commerce, and Economic Development and the Board of Massage Therapists may adopt
30 regulations necessary to implement the changes made by this Act. The regulations take effect
31 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law

1 implemented by the regulation.

2 * **Sec. 13.** AS 08.61.010 and 08.61.020, enacted by sec. 4 of this Act, and secs. 11 and 12 of
3 this Act take effect immediately under AS 01.10.070(c).

4 * **Sec. 14.** Except as provided in sec. 13 of this Act, this Act takes effect July 1, 2015.