

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 160

HOUSE BILL 2521

AN ACT

AMENDING SECTIONS 32-4203, 32-4221, 32-4222, 32-4223, 32-4224, 32-4225 AND
32-4253, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF MASSAGE THERAPY.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-4203, Arizona Revised Statutes, is amended to
3 read:

4 32-4203. Board; powers and duties

5 A. The board shall:

6 1. Evaluate the qualifications of applicants for licensure.

7 2. Designate at least one national examination that it requires
8 applicants to pass. THE EXAMINATION MUST BE AVAILABLE TO A GRADUATING
9 MASSAGE THERAPY OR BODYWORK THERAPY STUDENT WITHIN NINETY DAYS BEFORE THE
10 STUDENT'S EXPECTED GRADUATION DATE. THE BOARD SHALL REQUIRE THAT AN
11 EXAMINATION BE PROCESSED AND THE RESULTS RETURNED TO THE BOARD WITHIN THIRTY
12 DAYS AFTER THE EXAMINATION IS ADMINISTERED. IF, WITHIN SIX MONTHS OF THE
13 EFFECTIVE DATE OF THIS AMENDMENT OF THIS SECTION, THE TESTING AGENCY
14 ADMINISTERING THE EXAMINATION FAILS OR IS UNABLE TO COMPLY WITH THE
15 REQUIREMENTS OF THIS PARAGRAPH, THE BOARD SHALL DESIGNATE ANOTHER EXAMINATION
16 FOR APPLICANTS TO PASS.

17 3. Issue licenses to persons who meet the requirements of this
18 chapter.

19 4. Regulate the practice of massage therapy by interpreting and
20 enforcing this chapter.

21 5. Establish requirements for the education of licensees and
22 applicants, including the identification of board recognized schools,
23 continuing education programs and assessing the continuing competence of
24 licensees.

25 6. Adopt rules for ethical and professional conduct to govern the
26 practice of massage therapy in this state.

27 7. Adopt rules to enforce this chapter.

28 8. Meet at least once each quarter in compliance with the open meeting
29 requirements of title 38, chapter 3, article 3.1 and keep an official record
30 of these meetings.

31 9. At its first regular meeting after the start of each calendar year,
32 elect officers from among its members as necessary to accomplish board
33 business.

34 10. Provide for the timely orientation and training of new professional
35 and public appointees to the board regarding board licensing and disciplinary
36 procedures, this chapter, board rules and board procedures.

37 11. Maintain a current list of all licensees. This list shall include
38 the licensee's name, current business address and telephone number and
39 license number and shall be regularly accessible in electronic format to
40 public officials and agencies to verify the license status of licensees in
41 this state.

42 12. Enter into contracts for services necessary to enforce this
43 chapter.

1 13. Publish, at least annually, or make available for copying or
2 reproduction in any format, final disciplinary actions taken against a
3 licensee.

4 B. The board may:

5 1. Accept and spend federal monies and private grants, gifts,
6 contributions and devises to assist in carrying out the purposes of this
7 chapter. These monies do not revert to the state general fund at the end of
8 a fiscal year.

9 2. Administer oaths and affirmations, subpoena witnesses, take
10 evidence and require the production of documents, records or information,
11 either kept in original form or electronically stored or recorded, or other
12 items relevant to a matter within the jurisdiction of the board.

13 3. Require a criminal background check, including the fingerprinting
14 of every applicant for licensure, to assist the board in determining whether
15 grounds exist to deny a license.

16 Sec. 2. Section 32-4221, Arizona Revised Statutes, is amended to read:
17 32-4221. Licensure; persons and activities not required to be
18 licensed

19 A. Beginning ~~on January~~ JULY 1, 2005, a person who wishes to engage in
20 the practice of massage therapy must be licensed pursuant to this chapter and
21 may submit an application for licensure pursuant to this chapter not sooner
22 than the date prescribed by the board.

23 B. This chapter does not apply to:

24 1. A health care professional who is licensed pursuant to this title
25 and who practices within the scope of that person's license if that person
26 does not claim to be a massage therapist or a bodywork therapist.

27 2. A person who is pursuing a course of study leading to a degree as a
28 massage therapist in a professional education program that is approved by the
29 board if all of the following apply:

30 (a) The person is satisfying supervised clinical education
31 requirements related to the person's massage therapy education while under
32 the direct supervision of a licensed massage therapist.

33 (b) The person is practicing in an education setting in this state
34 that has been approved by the state board for private postsecondary
35 education.

36 (c) The person is practicing in an establishment, location or setting
37 that complies with applicable municipal and county ordinances.

38 (d) All persons who are present in the room during the delivery of
39 massage services, other than a student and the customer, are licensed
40 pursuant to this chapter or are health professionals as defined in section
41 32-3201.

42 3. A massage therapist who resides and is employed in another
43 jurisdiction and who possesses the qualifications for licensure in this state
44 if that person is performing massage therapy in this state in connection with
45 teaching or is participating in an educational seminar.

1 4. The practice of massage therapy by a person who is employed by the
2 government of the United States while the person is engaged in the
3 performance of duties prescribed by the laws and regulations of the United
4 States.

5 5. When the customer is fully clothed, the practice of movement
6 educators, such as dance therapists or teachers, yoga teachers, personal
7 trainers, martial arts instructors and movement repatterning practitioners.

8 6. When the customer is fully clothed, the practice of techniques that
9 are specifically intended to affect the human energy field.

10 C. A health care professional who is licensed pursuant to this title
11 and who practices within the scope of that person's license is not required
12 to be licensed pursuant to this chapter.

13 D. This chapter does not require a person acting under the
14 supervision of a person licensed pursuant to this title and permitted by this
15 title to perform functions under the direction or supervision of that
16 licensee to hold a license pursuant to this chapter.

17 Sec. 3. Section 32-4222, Arizona Revised Statutes, is amended to read:
18 32-4222. Qualifications for licensure

19 A. An applicant for a license as a massage therapist shall:

20 1. Be at least eighteen years of age.

21 2. Be a citizen or legal resident of the United States.

22 3. Satisfy the requirements of section 32-4224.

23 4. Be of good moral character.

24 5. ~~Possess~~ RECEIVE EITHER a high school diploma or general equivalency
25 diploma or a similar document or certificate OR SUBMIT PROOF THAT THE
26 APPLICANT HAS PASSED AN ABILITY TO BENEFIT EXAMINATION RECOGNIZED BY THE
27 UNITED STATES DEPARTMENT OF EDUCATION.

28 6. Pay the fees established pursuant to section 32-4227.

29 7. Not have, ~~been convicted of a felony or other offense involving~~
30 ~~moral turpitude or prostitution, solicitation or other similar offense~~ within
31 five years preceding the date of the application, BEEN CONVICTED OF: —

32 (a) A CLASS 1, 2 OR 3 FELONY.

33 (b) A CLASS 4, 5 OR 6 FELONY OFFENSE INVOLVING MORAL TURPITUDE THAT
34 HAS A REASONABLE RELATIONSHIP TO THE PRACTICE OF MASSAGE THERAPY.

35 (c) A MISDEMEANOR INVOLVING PROSTITUTION OR SOLICITATION OR OTHER
36 SIMILAR OFFENSE INVOLVING MORAL TURPITUDE THAT HAS A REASONABLE RELATIONSHIP
37 TO THE PRACTICE OF MASSAGE THERAPY.

38 8. Within the past five years not have voluntarily surrendered a
39 license under section 32-4254 or not have had a license to practice massage
40 therapy or another similar license revoked by a political subdivision of this
41 state or a regulatory board AGENCY in another jurisdiction in the United
42 States for an act that occurred in that jurisdiction that would be subject to
43 discipline pursuant to this chapter.

44 9. Not be currently under investigation, suspension or restriction by
45 a political subdivision of this state or a regulatory board in another

1 jurisdiction in the United States for an act that occurred in that
2 jurisdiction that would be subject to discipline pursuant to this
3 chapter. If the applicant is under investigation by a regulatory board
4 AGENCY in another jurisdiction, the board shall suspend the application
5 process and may not issue or deny a license to the applicant until the
6 investigation is resolved.

7 10. Submit a full set of fingerprints to the board for the purpose of
8 obtaining a state and federal criminal records check pursuant to section
9 41-1750 and Public Law 92-544. The department of public safety may exchange
10 this fingerprint data with the federal bureau of investigation. The board
11 may charge the cost of each criminal background check to the applicant.

12 B. In addition to the requirements of subsection A of this section, an
13 applicant for licensure as a massage therapist shall EITHER:

14 1. Have successfully completed a course of study of massage therapy or
15 bodywork therapy consisting of a minimum of five hundred classroom hours of
16 supervised instruction at a board recognized school IN THIS STATE THAT IS
17 ACCREDITED BY AN AGENCY RECOGNIZED BY THE SECRETARY OF THE UNITED STATES
18 DEPARTMENT OF EDUCATION. ~~On or after July 1, 2005 the board, by rule, may~~
19 ~~increase the minimum number of classroom hours of supervised instruction at a~~
20 ~~board recognized school that an applicant for licensure as a massage~~
21 ~~therapist shall have successfully completed.~~

22 2. Have DONE BOTH OF THE FOLLOWING:

23 (a) SUCCESSFULLY COMPLETED A COURSE OF STUDY OF MASSAGE THERAPY OR
24 BODYWORK THERAPY CONSISTING OF A MINIMUM OF FIVE HUNDRED CLASSROOM HOURS OF
25 SUPERVISED INSTRUCTION AT A SCHOOL IN THIS STATE THAT IS LICENSED BY THE
26 STATE BOARD OF PRIVATE POSTSECONDARY EDUCATION OR AT A SCHOOL OUTSIDE OF THIS
27 STATE THAT IS RECOGNIZED BY THE BOARD PURSUANT TO SECTION 32-4228.

28 (b) Successfully passed an examination administered by a national
29 board accredited by the certifying agency that has been approved by the
30 national commission on competency assurance and that is in good standing with
31 that agency or have successfully passed an examination that is administered
32 or approved by the board.

33 C. Notwithstanding subsection B of this section, a person who applies
34 for a provisional license ~~under this chapter~~ may be licensed by the board on
35 demonstration of the qualifications ~~set forth~~ PRESCRIBED in this subsection
36 and subsection A of this section on or before ~~July 1, 2005~~ JANUARY 1, 2006
37 AND subject to the requirements of this section. A person may qualify for a
38 license under this subsection if the person either:

39 1. Has completed a minimum of two hundred hours of education and
40 training in the study of massage therapy or bodywork therapy and the person
41 has continuously practiced massage therapy in this state for at least three
42 years before May 12, 2003. The two hundred hours of education and training
43 required by this paragraph must be taken in a massage or bodywork training
44 program that is approved by either a community college located in this state
45 or the state board for private postsecondary education or a similar agency of

1 another state that imposes requirements that are substantially equivalent to
2 the requirements of the state board for private postsecondary education. The
3 training program required by this paragraph must consist of anatomy and
4 physiology, massage theory and practice and ethics.

5 2. Demonstrates that the person has been self-supportive as a massage
6 therapist in this state since from and after December 31, 1992.

7 3. Holds a current professional license from a political subdivision
8 of this state that regulated the practice of massage therapy before May 12,
9 2003.

10 D. The board may adopt rules to allow it to consider the education and
11 experience of an applicant who came from a foreign country. ON OR AFTER JULY
12 1, 2006, THE BOARD BY RULE MAY INCREASE THE MINIMUM NUMBER OF CLASSROOM HOURS
13 OF SUPERVISED INSTRUCTION AT A BOARD RECOGNIZED SCHOOL THAT AN APPLICANT FOR
14 LICENSURE MUST SUCCESSFULLY HAVE COMPLETED.

15 E. If the board is satisfied that an applicant meets the requirements
16 of this section, the board shall issue a license to the applicant.

17 Sec. 4. Section 32-4223, Arizona Revised Statutes, is amended to read:

18 32-4223. Reciprocity

19 A. An applicant is eligible for reciprocal licensure if either of the
20 following applies:

21 1. The applicant has been licensed continuously in another state for
22 the last five years preceding the filing of the application with the board
23 and the other state has standards for massage therapists that are
24 substantially equivalent to those in this state.

25 2. The applicant holds a current certification from the national
26 certification board for therapeutic massage and bodywork or another agency
27 that meets the standards of the national ~~commission~~ ORGANIZATION on
28 competency assurance and received education and training substantially
29 equivalent to that required by this chapter.

30 B. When an applicant submits an application for reciprocity, the
31 applicant shall also submit a letter or other document acceptable to the
32 board showing whether any jurisdiction that has previously certified or
33 licensed the applicant has instituted disciplinary proceedings or has
34 unresolved complaints pending against the applicant. If a disciplinary
35 proceeding or an unresolved complaint is pending, the applicant shall not be
36 licensed until the proceeding or the complaint has been resolved in the
37 applicant's favor.

38 Sec. 5. Section 32-4224, Arizona Revised Statutes, is amended to read:

39 32-4224. Application; temporary licensure

40 A. An applicant for licensure shall file a completed application under
41 oath or affirmation containing the information required by the board. The
42 applicant shall include the application fee as prescribed in section 32-4227.

43 B. The executive director may issue a temporary license to an
44 applicant who files a completed application, who meets the applicable
45 qualifications prescribed in section 32-4222, SUBSECTION A, WHO HAS

1 SATISFACTORILY COMPLETED A COURSE IN MASSAGE THERAPY OR BODYWORK THERAPY AT
2 AN INSTITUTION THAT IS RECOGNIZED BY THE BOARD PURSUANT TO SECTION 32-4228
3 and who pays the prescribed application fee. A temporary license is not
4 effective for more than one hundred ~~twenty~~ EIGHTY days and expires on the
5 occurrence of any one of the following:

- 6 1. Issuance of a license by the board.
 - 7 2. Denial of the application by the board.
 - 8 3. Expiration of the term for which the temporary license was issued.
- 9 Sec. 6. Section 32-4225, Arizona Revised Statutes, is amended to read:
10 32-4225. License renewal; changes in personal information;

11 notification; continuing education

12 A. A license issued pursuant to this chapter is subject to renewal
13 every other year ON THE LICENSEE'S BIRTHDAY and expires unless renewed.

14 B. The executive director shall send a renewal application to each
15 licensee at least sixty days before expiration of the license and may renew
16 the license on receipt of a completed renewal application.

17 C. Each licensee is responsible for reporting to the board a name
18 change and changes in business and home addresses and phone numbers within
19 ten days after any change.

20 D. Each licensee shall notify the board in writing within ten days
21 after the issuance of a final order, judgment or conviction of a felony or
22 other offense involving moral turpitude or prostitution, solicitation or any
23 other similar offense.

24 E. When a licensee renews a license, the licensee must submit to the
25 board evidence of the successful completion of at least twenty-five hours of
26 continuing education in the practice of massage therapy, as approved by the
27 board, during the immediately preceding two years.

28 Sec. 7. Section 32-4253, Arizona Revised Statutes, is amended to read:
29 32-4253. Disciplinary action; grounds; definitions

30 A. The following are grounds for disciplinary action:

31 1. Failing to meet or maintain the requirements for an original
32 license under section 32-4222, subsection A.

33 2. Using fraud, deceit or misrepresentation in obtaining or attempting
34 to obtain a license or the renewal or reinstatement of a license.

35 3. Using drugs or intoxicating liquors to an extent that affects
36 professional competency.

37 4. ~~Conviction~~ BEING CONVICTED of a felony or other offense involving
38 moral turpitude or any conviction for prostitution, solicitation or another
39 similar offense. A conviction by a court of competent jurisdiction is
40 conclusive evidence of the commission of the crime.

41 5. ~~Having been~~ BEING found mentally incompetent by a court of
42 competent jurisdiction until proof of recovery from the condition can be
43 established.

1 6. Engaging in any act or practice in violation of this chapter or any
2 board rule or aiding, abetting or assisting any other person in the violation
3 of these provisions or rules.

4 7. Having had a license or certificate revoked or suspended or any
5 other disciplinary action taken or an application for licensure or
6 certification refused, revoked or suspended by the proper authorities of
7 another state, territory or country.

8 8. Committing an act of malpractice, gross negligence or incompetency.

9 9. Practicing as a licensee under this chapter without an active
10 license.

11 10. Engaging in conduct that could result in harm or injury to the
12 public.

13 11. Using fraud, deceit or misrepresentation when communicating with
14 the general public, health care professionals or other business
15 professionals.

16 12. Falsely holding out oneself as licensed or certified in any
17 discipline of massage therapy without successfully completing training
18 approved by the board in that specialty.

19 13. Practicing or offering to practice beyond the scope of the practice
20 of massage therapy.

21 14. Engaging in the performance of substandard care by a massage
22 therapist due to a deliberate or negligent act or failure to act, regardless
23 of whether actual injury to the person cared for is established.

24 15. Engaging in sexual activity with a client.

25 16. Failing to adhere to the recognized standards and ethics of the
26 massage therapy profession.

27 17. Charging unreasonable or fraudulent fees for services performed or
28 not performed.

29 18. Aiding or abetting a person who is not licensed in this state and
30 who directly or indirectly performs activities requiring a license.

31 19. Failing to report to the board any act or omission of a licensee or
32 applicant or any other person who violates this chapter.

33 20. Interfering with an investigation or disciplinary proceeding by
34 willful misrepresentation of facts or by the use of threats or harassment
35 against any person to prevent that person from providing evidence in a
36 disciplinary proceeding or any legal action.

37 21. Promoting an unnecessary device, treatment or service for the
38 financial gain of the massage therapist or of a third party.

39 22. Providing massage therapy services that are in any way linked to
40 the financial gain of a referral source.

41 23. Violating this chapter, board rules or a written order of the
42 board.

43 B. For the purposes of this section:

44 1. "Breast" means any portion of the female breast below a point
45 immediately above the top of the areola.

1 2. "Sexual activity" means any of the following:

2 (a) Sexual conduct.

3 (b) Offering to engage in sexual conduct.

4 (c) Making sexual advances, requesting sexual favors or engaging in
5 other verbal conduct or physical contact of a sexual nature with a client.

6 (d) Intentionally viewing a completely or partially disrobed ~~patient~~
7 MESSAGE THERAPY CLIENT in the course of treatment if the viewing is not
8 related to treatment under current practice standards AND IS INTENDED TO
9 APPEAL TO THE PRURIENT INTEREST OF THE MESSAGE THERAPY CLIENT OR THE MESSAGE
10 THERAPIST.

11 (e) Massaging, touching or applying any instrument or device by a
12 licensee in the course of practicing or engaging in massage therapy to the
13 breasts of a female client unless the client requests breast massage and
14 signs a written consent form. If the client is a minor, the consent form must
15 include the signature of the client's parent or legal guardian authorizing
16 the procedure and outlining the reason for the procedure before the procedure
17 is performed.

18 (f) Asking or directing a massage therapy client or prospective client
19 to touch the client's own anus or genitals or to touch the anus, genitals or
20 female breasts of any other person.

21 (g) Asking or directing a massage therapy client or prospective client
22 to expose the client's own anus or genitals to the massage therapist or any
23 other person WITH THE INTENTION OF APPEALING TO THE PRURIENT INTEREST OF THE
24 MESSAGE THERAPY CLIENT OR THE MESSAGE THERAPIST.

25 (h) ~~For a massage therapist to expose~~ EXPOSING the massage therapist's
26 anus or genitals to a client.

27 (i) ~~For a massage therapist to expose~~ EXPOSING her breasts to a
28 client.

29 3. "Sexual conduct" means any direct or indirect touching, fondling or
30 manipulating of any part of the genitals or anus by any part of the body or
31 by any object or causing a person to engage in that conduct.

32 Sec. 8. License expiration; initial licensees

33 Notwithstanding section 32-4225, Arizona Revised Statutes, as amended
34 by this act, a license issued before January 1, 2006 expires on the
35 licensee's birthday following the expiration of the initial two year
36 licensure period.

37 Sec. 9. Retroactivity

38 Section 32-4221, Arizona Revised Statutes, as amended by this act,
39 applies retroactively to from and after December 31, 2004.

40 Sec. 10. Emergency

41 This act is an emergency measure that is necessary to preserve the
42 public peace, health or safety and is operative immediately as provided by
43 law.

APPROVED BY THE GOVERNOR APRIL 20, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2005.

Passed the House March 8, 2005,

Passed the Senate April 12, 2005,

by the following vote: 53 Ayes,

by the following vote: 27 Ayes,

5 Nays, 2 Not Voting
With Emergency
[Signature]
Speaker of the House

3 Nays, 0 Not Voting
With Emergency
[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
_____ day of _____, 20____,
at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of _____,
_____, 20____,
at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this _____ day of _____, 20____,
at _____ o'clock _____ M.

Secretary of State

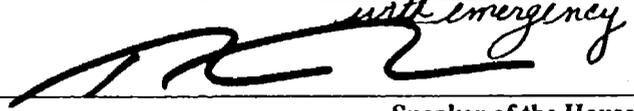
HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 14, 2005,

by the following vote: 51 Ayes,

5 Nays, 4 Not Voting

with emergency



Speaker of the House
Pro Tempore

Norman L. Spore

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

15th day of April, 2005

at 9:00 o'clock a. M.

Jennifer Lybatta
Secretary to the Governor

Approved this 20 day of

April, 2005,

at 2:15 o'clock P. M.



Governor of Arizona

H.B. 2521

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of April, 2005,

at 4:10 o'clock P. M.

Janice K. Brewer
Secretary of State