

HOUSE BILL 287

Introduced by Whalen

1/18	Introduced
1/19	Referred to Business & Economic Development
1/20	Fiscal Note Requested
1/27	Fiscal Note Received
1/30	Fiscal Note Printed
2/03	Hearing
2/13	Committee Report--Bill Not Passed as Amended
2/14	Adverse Committee Report Adopted

1 HOUSE BILL NO. 287
2 INTRODUCED BY Whalen
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LICENSURE
5 OF MASSAGE THERAPISTS BY THE DEPARTMENT OF COMMERCE;
6 GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT TO
7 ADMINISTER AND REGULATE THE PRACTICE OF MASSAGE THERAPY;
8 IMPOSING A PENALTY FOR A VIOLATION OF THIS ACT; AND
9 EXEMPTING THIS ACT FROM THE PROVISIONS OF THE "SUNRISE LAW"
10 UNDER TITLE 2, CHAPTER 8, PART 2."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 NEW SECTION. Section 1. Short title. [Sections 1
14 through 13] may be cited as the "Massage Therapy Licensing
15 Act".
16 NEW SECTION. Section 2. Purpose. The legislature
17 finds that the practice of massage therapy affects public
18 health, safety, and welfare and that licensure and
19 regulation of the practice of massage therapy are necessary
20 to assure the public that licensed massage therapists have
21 passed an examination of their professional knowledge and
22 ability and are qualified to practice massage therapy.
23 Licensure under [this act] also ensures public access to the
24 services of licensed massage therapists by exempting the
25 practice of massage therapy from license requirements of

1 other health professions.

2 NEW SECTION. Section 3. Definitions. Unless the
3 context requires otherwise, in [this act] the following
4 definitions apply:

5 (1) "Department" means the department of commerce
6 provided for in 2-15-1801.

7 (2) "Licensed massage therapist" means a person
8 engaged in the practice of massage therapy and licensed
9 under the provisions of [this act].

10 (3) "Massage therapy" means the manipulation of skin,
11 muscles, and other soft tissues for the purpose of
12 maintaining or improving health. The term includes:

13 (a) the use of lubricants, such as oils or powders;

14 (b) hydrotherapy, such as hot and cold packs and tub,
15 shower, and cabinet baths; and

16 (c) the application of variations of nonsexual touch,
17 such as stroking, friction, kneading, vibration, percussion,
18 stretching, and gymnastics, by hand or by mechanical
19 apparatus, for therapeutic purposes.

20 (4) "Practice of massage therapy" means performance of
21 massage therapy for compensation.

22 NEW SECTION. Section 4. Exemptions. (1) The practice
23 of massage therapy is not the practice of medicine,
24 osteopathy, or chiropractic and is exempt from licensing
25 under Title 37, chapters 3, 5, and 12.

1 (2) Nothing in [this act] restricts a person who is
2 licensed in Montana to practice any profession or occupation
3 from practicing such licensed profession or occupation.

4 NEW SECTION. Section 5. Powers and duties of
5 department. (1) The department shall:

6 (a) administer and enforce the provisions of [this
7 act];

8 (b) adopt rules to carry out the provisions of [this
9 act]; and

10 (c) investigate any complaint concerning a violation
11 of [this act], unless the department determines the
12 complaint is frivolous or lacking in merit.

13 (2) The department may:

14 (a) contract with a licensed massage therapist or
15 professional massage therapy association to:

16 (i) administer the oral and practical portion of the
17 licensing examination required under [section 7(3)];

18 (ii) aid in the preparation and administration of the
19 written examination required under [section 7(2)]; and

20 (iii) aid the department, if necessary, in the
21 investigation of alleged violations of [this act]; and

22 (b) require and approve programs of continuing
23 education for license renewal, based on the recommendations
24 of professional massage therapy associations.

25 NEW SECTION. Section 6. Application for license. (1)

1 A person desiring to become a licensed massage therapist
2 shall apply in the manner prescribed by the department at
3 least 30 days prior to a scheduled examination. An
4 examination and application fee, as established in [section
5 11], must accompany the application.

6 (2) An applicant shall furnish evidence satisfactory
7 to the department that he is at least 18 years of age and of
8 good moral character. The application must indicate the
9 applicant's educational qualifications, including the place
10 and duration of his massage therapy education and a
11 certificate or diploma, if any, from a specified school or
12 association. The applicant shall request the school or
13 association to furnish the department with copies of the
14 certificate or diploma, if available. No education
15 qualification is required under this subsection for
16 licensure as a massage therapist.

17 (3) The department shall determine the applicant's
18 qualifications as a massage therapist by examination, as
19 provided in [section 7]. An applicant who passes the
20 examination must be granted a license to practice massage
21 therapy upon payment of the license fee established in
22 [section 11].

23 NEW SECTION. Section 7. Examination. (1) The
24 examination for a license to practice massage therapy must
25 consist of written questions and a practical demonstration

1 that requires the applicant to perform massage therapy on
2 another person.

3 (2) The written examination must address the following
4 subjects as they pertain to the practice of massage therapy:

- 5 (a) anatomy and physiology;
- 6 (b) hydrotherapy;
- 7 (c) hygiene;
- 8 (d) first aid;
- 9 (e) massage theory and practice;
- 10 (f) contraindications to massage; and
- 11 (g) applicable state laws and rules of the department.

12 (3) The practical demonstration of massage therapy
13 skills must be conducted by the department's contracted
14 examiner, provided for in [section 5]. During the practical
15 examination, the examiner shall observe and grade the
16 applicant in the following areas:

- 17 (a) oral questions;
- 18 (b) various massage strokes; and
- 19 (c) professional manner, including draping and use of
20 lubricants.

21 (4) An average score of 75% in all subjects listed in
22 subsection (2) and not less than 50% in any one subject is
23 required to pass the written examination. An overall score
24 of at least 70% is required to pass the practical
25 demonstration. The practical demonstration must be graded

1 based on weighted scores in each area listed in subsection
2 (3), with oral questions counting 30%, massage strokes
3 counting 60%, and professional manner counting 10%.

4 (5) An applicant who fails to pass the examination is
5 entitled to a reexamination within 6 months, upon payment of
6 the reexamination fee established under [section 11]. If the
7 applicant fails the examination three times, he may not
8 reapply for 1 year.

9 NEW SECTION. **Section 8.** Denial, suspension, or
10 revocation of license. (1) The department may deny, suspend,
11 revoke, or refuse to renew a license granted under [this
12 act] to an otherwise qualified person for:

- 13 (a) obtaining a license by fraudulent representation;
- 14 (b) incompetency in practice;
- 15 (c) use of untruthful or improbable statements to
16 patrons or in advertisements;
- 17 (d) habitual intoxication or drug abuse;
- 18 (e) unprofessional or immoral conduct;
- 19 (f) conviction of an act of prostitution or promoting
20 prostitution; or
- 21 (g) conviction of a felony.

22 (2) The department may reissue a license if in the
23 department's judgment the act or conditions that initiated
24 the disciplinary sanction have been remedied.

25 NEW SECTION. **Section 9.** Hearing. Before denying,

1 suspending, revoking, or refusing a license, the department
 2 shall notify the applicant or licensee by mail at least 30
 3 days prior to taking action. The notice must include a
 4 statement that the applicant or licensee may request a
 5 hearing within 20 days of receipt of the notice. If the
 6 applicant or licensee requests a hearing within that period,
 7 a hearing must be granted. The provisions of Title 2,
 8 chapter 4, part 6, apply to the hearing. The provisions of
 9 Title 2, chapter 4, part 7, apply to any subsequent judicial
 10 review.

11 NEW SECTION. Section 10. License renewal -- late
 12 renewal. (1) A massage therapist license expires annually on
 13 a date set by the department. The license may be renewed
 14 within 30 days prior to the expiration date upon payment of
 15 a renewal fee established under [section 11].

16 (2) A licensee who fails to renew his license within
 17 the time specified in subsection (1) shall pay a late
 18 renewal fee not to exceed \$30, in addition to the renewal
 19 fee established under [section 11]. An application for
 20 renewal may not be accepted after 90 days following the
 21 expiration date.

22 NEW SECTION. Section 11. Fees. (1) The department
 23 shall adopt rules establishing application, examination,
 24 reexamination, license issuance, and renewal fees. Fees must
 25 be commensurate with costs, as provided for licensing boards

1 under 37-1-134.

2 (2) Fees collected under this section must be
 3 deposited in the state special revenue fund for the use of
 4 the department in administering [this act].

5 NEW SECTION. Section 12. Licensure required --
 6 enjoining unlawful practice. (1) A person who wants to
 7 practice massage therapy as a profession in this state shall
 8 first obtain a license under the provisions of [this act]. A
 9 person may not claim to be or advertise as a massage
 10 therapist in this state unless he is licensed under the
 11 provisions of [this act].

12 (2) The practice of massage therapy in violation of
 13 [this act] may be enjoined in the district court upon
 14 petition of the county attorney in the county in which a
 15 violation occurs.

16 NEW SECTION. Section 13. Penalty. A person violating
 17 the provisions of [this act] is guilty of a misdemeanor and
 18 upon conviction is punishable by a fine of not less than
 19 \$500 or by imprisonment in the county jail for up to 1 year
 20 or by both such fine and imprisonment.

21 NEW SECTION. Section 14. "Sunrise" exemption. The
 22 provisions of Title 2, chapter 8, part 2, do not apply to
 23 [this act].

24 NEW SECTION. Section 15. Codification instruction.
 25 [Sections 1 through 13] are intended to be codified as an

1 integral part of Title 37, and the provisions of Title 37
2 apply to [sections 1 through 13].

3 NEW SECTION. **Section 16. Severability.** If a part of
4 [this act] is invalid, all valid parts that are severable
5 from the invalid part remain in effect. If a part of [this
6 act] is invalid in one or more of its applications, the part
7 remains in effect in all valid applications that are
8 severable from the invalid applications.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB287, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB287 would establish licensure of massage therapists by the Department of Commerce and grant rulemaking authority to the department to administer and regulate the practice of massage therapy.

ASSUMPTIONS:

1. There will be 125 licensees.
2. Because no new board is being established, it is assumed that the department will handle all of the duties of a board.
3. There will be personal services appropriated for the following staff: 0.25 FTE administrative assistant (Grade 11, Step 2) and 0.10 FTE investigator (Grade 13, Step 2).
4. Operating expenses will be \$3,015 per year including costs of two examinations per year and ten pages of rules in the first year.
5. Equipment needed in the first year is desk, chair, file cabinet and 25% of a personal computer.

FISCAL IMPACT:Expenditures:

Dept. of Commerce	Current Law	FY90 Proposed Law	Difference	Current Law	FY91 Proposed Law	Difference
Personal Services	\$-0-	\$ 7,388	\$ 7,388	\$-0-	\$ 7,388	\$ 7,388
Operating Expenses	-0-	3,015	3,015	-0-	3,015	3,015
Equipment	-0-	1,149	1,149	-0-	-0-	-0-
Total	\$-0-	\$11,552	\$11,552	\$-0-	\$10,403	\$10,403

Funding:

State Special Revenue						
License & Exam Fees	\$-0-	\$11,552	\$11,552	\$-0-	\$10,403	\$10,403

Revenue:

State Special Revenue	\$-0-	\$11,625	\$11,625	\$-0-	\$10,625	\$10,625
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Ray Shackleford

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

1/26/89

DATE

Timothy J. Whalen
TIMOTHY J. WHALEN, PRIMARY SPONSOR

1-28-89
DATE

Fiscal Note for HB287, as introduced

HB 287