HLS 16RS-1035 ENGROSSED

2016 Regular Session

HOUSE BILL NO. 792

BY REPRESENTATIVE ADAMS

MASSAGE THERAPISTS: Provides relative to the regulation of massage therapists

1 AN ACT 2 To amend and reenact R.S. 37:3552(10), 3555(B)(2), 3556(A)(introductory paragraph), 3 (1)(a), and (2) through (6) and (B), and 3566(A), to enact R.S. 37:3555(C), 4 3556(A)(7), 3558(E), 3560, 3561(F), 3564(C), and 3567(C), and to repeal R.S. 5 37:3556(B)(2) and 3556.1, relative to the regulation of massage therapists and establishments; to amend definitions; to prohibit certain acts of unlicensed support 6 7 personnel; to specify a time frame for initial inspections of establishments; to 8 provide with respect to continuing education; to provide certain revisions with 9 respect to license qualifications; to provide relative to out-of-state licensees; to 10 provide for the regulation of advertisement; to require the pursuit of an injunction; 11 to authorize and prohibit certain enforcement by state and local officials; to repeal 12 exemptions with respect to persons licensed out-of-state; to repeal an expired 13 provision of law; to require rule promulgation; to provide for an effective date; to 14 make technical corrections; and to provide for related matters. 15 Be it enacted by the Legislature of Louisiana: 16 Section 1. R.S. 37:3552(10), 3555(B)(2), 3556(A)(introductory paragraph), (1)(a), 17 and (2) through (6) and (B), and 3566(A) are hereby and amended and reenacted and R.S. 18 37:3555(C), 3556(A)(7), 3558(E), 3560, 3561(F), 3564(C), and 3567(C) are hereby enacted 19 to read as follows:

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§3552. I	Definitions
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As used in this Chapter:
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(10) "Practice of massage therapy" means the manipulation of soft tissue for the purpose of maintaining good health and establishing and maintaining good physical condition. The practice of massage therapy shall include advertising or offering to engage in the practice of massage therapy and holding oneself out or designating oneself to the public as a massage therapist or massage establishment. The practice of massage therapy shall include effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction (active/passive range of motion), stretching activities as they pertain to massage therapy, Shiatsu, acupressure, reflexology, trigger point therapy, and Swedish massage either by hand, forearm, elbow, foot, or with mechanical appliances for the purpose of body massage. Massage therapy may include the use of lubricants such as salts, powders, liquids, creams with the exception of prescriptive or medicinal creams, heat lamps, hot and cold stones, whirlpool, hot and cold packs, salt glow, body wraps, or steam cabinet baths. It shall not include electrotherapy, laser therapy, microwave, colonic therapy, injection therapy, or manipulation of the joints. Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, body work, or any derivation of those terms. As used in this Chapter, the terms "therapy" and "therapeutic" shall 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.

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§3555. Powers and duties of the board; continuing education

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B. The board may:

27 \* \* \*

(2) Establish continuing education requirements for license renewal <u>in</u> accordance with Subsection C of this Section.

1	C.(1) Proposed continuing education classes shall be approved by at least
2	one appointed board member.
3	(2) At least half of the required continuing education hours shall consist of
4	board-approved, in-class supervised training.
5	§3556. Licensure; qualifications
6	A. No person shall engage in the practice of massage therapy without a
7	current license issued pursuant to this Chapter unless such person is exempt under
8	the provisions of this Chapter. All persons with out-of-state license credentials
9	applying for a license in this state via the transfer of an existing out-of-state license
10	shall show proof of the requirements provided in Paragraphs (1) through (7) of this
11	Subsection. To receive a massage therapist license in the state of Louisiana, an
12	applicant shall pay the application fee pursuant to R.S. 37:3562 and shall submit
13	evidence satisfactory to the board of meeting the following requirements:
14	(1)(a) Has satisfactorily completed The satisfactory completion of a
15	minimum of a five hundred hour in-class supervised course of studies pursuant to
16	rules promulgated by the board in accordance with the Administrative Procedure
17	Act.
18	* * *
19	(2)(a) Has passed Passage of a national examination approved by the board
20	under R.S. 37:3557. within two years from the date the application is filed.
21	(b) All test results being presented for an initial licensure shall be directly
22	received by the board from the issuing agency such as the Federation of State
23	Massage Therapy Boards.
24	(3)(a) Is a citizen or legal resident of the United States and has the ability to
25	read, write, speak, and understand English fluently. Citizenship or legal residency
26	in the United States.
27	(b) As proof of citizenship or legal residency, the applicant shall present an
28	original government-issued form of identification, such as a drivers license or social
29	security card. The board shall ensure the validity of the submitted identification

1	through the contact information associated with the identification or through use of
2	an electronic database.
3	(4)(a) The ability to read, write, speak, and understand English fluently.
4	(b) All persons with out-of-state license credentials applying for a license in
5	this state shall pass an English proficiency test such as TOEFL or a verbal
6	jurisprudence test to be administered in person by the board or an assigned
7	representative thereof.
8	(4)(5) Has not, within Within the five years preceding the date of the
9	application, the applicant has not been convicted of a nonviolent felony.
10	(5)(6) Has The applicant has never been convicted of or pled nolo
11	contendere to a violent felony or a criminal offense involving sexual misconduct.
12	(6)(7) Has The applicant has submitted to and cleared a background check.
13	B. The requirements set forth in R.S. 37:3556(A)(1) and (2) shall not apply
14	to either of the following:
15	(1) Persons persons who have continuously held a license to engage in the
16	practice of massage therapy issued by the board since March 1, 1998.
17	§3558. Massage establishments; license; initial inspection
18	* * *
19	E. All newly licensed massage establishments shall receive an initial
20	inspection by the board no later than sixty days from the date of opening.
21	* * *
22	§3560. Unlicensed persons; prohibited acts
23	A. No support personnel unlicensed pursuant to the provisions of this
24	Chapter shall purport to be a licensed massage therapist or offer stand alone massage
25	services to the public, with or without supervision of a person who holds a
26	professional or occupational license pursuant to the provisions of Title 37 of the
27	Louisiana Revised Statutes of 1950.

1	B. The provisions of Subsection A of this Section shall not apply to massage
2	services provided in massage clinics during the course of massage therapy education
3	and training approved by the board.
4	* * *
5	§3561. License renewal requirements
6	* * *
7	F. In addition to the requirements in Subsection A of this Section, all persons
8	who received a license via the transfer of an existing out-of-state license since
9	January 1, 2013, shall provide satisfactory evidence of all requirements stated in R.S.
10	37:3556(A)(1) through (7).
11	* * *
12	§3564. Regulation of advertising
13	* * *
14	C. In all pictorial representations for any advertisement representing
15	massage therapy, including such representations through video, all persons
16	representing massage therapists shall be professionally attired and not posed in a
17	seductive fashion. Persons representing clients shall be appropriately draped and
18	posed.
19	* * *
20	§3566. Injunction
21	A. In addition to the actions and penalties otherwise provided for by this
22	Chapter, the board may shall cause to issue in any court of competent jurisdiction an
23	injunction without bond enjoining any person from violating or continuing to violate
24	the provisions of this Chapter.
25	* * *
26	§3567. Effect on local regulations
27	* * *
28	C. Nothing in this Section shall prevent local or state law enforcement
29	representatives or municipal or city officials from assisting in the enforcement of this

1 Chapter. However, such representatives and officials are prohibited from imposing 2 any additional rules or ordinances regarding zoning, educational requirements, or 3 fees for licensure. 4 Section 2. R.S. 37:3556(B)(2) and 3556.1 are hereby repealed in their entirety. 5 Section 3. The Louisiana Board of Massage Therapy shall promulgate all rules 6 necessary for the implementation of the provisions of this Act before January 1, 2017. 7 Section 4. The provisions of R.S. 37:3561(F) as enacted by this Act shall apply to 8 the 2017 license renewal cycle and all subsequent license renewals. 9 Section 5. This Act shall become effective upon signature by the governor or, if not 10 signed by the governor, upon expiration of the time for bills to become law without signature 11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If 12 vetoed by the governor and subsequently approved by the legislature, this Act shall become 13 effective on the day following such approval.

## DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 792 Engrossed

2016 Regular Session

Adams

**Abstract:** Provides for the licensure and regulation of massage therapists and massage therapy establishments.

<u>Present law</u> defines the practice of massage therapy as the manipulation of soft tissue for the purpose of maintaining good health and establishing and maintaining good physical condition and provides for certain types of massage therapy such as acupuncture and reflexology.

 $\underline{\text{Proposed law}}$  retains  $\underline{\text{present law}}$  and adds trigger point therapy as a type of massage therapy.

<u>Proposed law</u> requires the La. Board of Massage Therapy (board) to provide an initial inspection of all newly licensed massage establishments within 60 days of the date of the establishment's opening.

<u>Proposed law</u> prohibits unlicensed support personnel from purporting to be a licensed massage therapist or offering stand alone massage services to the public unless the massage services are provided in massage clinics during the course of massage therapy education and training approved by the board.

<u>Present law</u> provides for continuing education for licensed massage therapists. <u>Proposed law</u> retains <u>present law</u> and requires continuing education classes to be approved by at least one

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appointed board member. Further requires at least half of the required continuing education hours to consist of board-approved, in-class supervised training.

<u>Present law</u> provides for the licensing requirements for applicants seeking licensure by the board. <u>Proposed law</u> retains <u>present law</u>.

<u>Present law</u> requires an applicant to pass a board-approved national examination. <u>Proposed law</u> retains <u>present law</u> and further requires the board to receive applicants' test scores directly from the issuing agency of the exam.

<u>Present law</u> requires an applicant to be a U.S. citizen or legal resident. <u>Proposed law</u> retains <u>present law</u> and further requires proof of citizenship or legal residency by the applicant providing an original government-issued form of identification. Further requires the board to verify the validity of the identification.

<u>Present law</u> requires an applicant to have fluency in the English language. <u>Proposed law</u> retains <u>present law</u> and further requires applicants to pass an English proficiency test if the person is transferring an out-of-state license.

Beginning with the 2017 renewal cycle for licenses, <u>proposed law</u> requires persons who received a license by transferring an out-of-state license since Jan. 1, 2013, to show proof of all of the licensing requirements.

<u>Present law</u> regulates the advertising of massage therapy. <u>Proposed law</u> retains <u>present law</u> and requires advertisements containing pictorial representations of massage therapy, including video representations, to have depictions of massage therapists who are professionally attired and non-seductively posed. Further requires persons representing clients to be appropriately draped and posed.

<u>Present law</u> authorizes the board to seek an injunction against persons who violate <u>present</u> law.

<u>Proposed law</u> changes the authorization to a requirement that the board seek an injunction.

<u>Proposed law</u> authorizes state, municipal, or city enforcement representatives or officials to enforce provisions of <u>present law</u> and <u>proposed law</u> made applicable to massage therapists and establishments. Prohibits such representatives or officials from imposing any additional rules or ordinances regarding zoning, educational requirements, or fees for licensure.

<u>Proposed law</u> repeals a <u>present law</u> provision that exempted an out-of-state applicant from taking a certain board-approved 500-hour course and national examination.

Proposed law repeals an expired provision regarding credit hours of courses of study.

<u>Proposed law</u> requires the board to promulgate all rules necessary for the implementation of <u>proposed law</u> before Jan. 1, 2017.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 37:3552(10), 3555(B)(2), 3556(A)(intro. para.), (1)(a), and (2) through (6) and (B), and 3566(A); Adds R.S. 37:3555(C), 3556(A)(7), 3558(E), 3560, 3561(F), 3564(C), and 3567(C); Repeals R.S. 37:3556(B)(2) and 3556.1)

## Summary of Amendments Adopted by House

The Committee Amendments Proposed by <u>House Committee on Health and Welfare</u> to the original bill:

- 1. Make technical changes and corrections.
- 2. Require at least half of the required continuing education hours to consist of board-approved, in-class supervised training.
- 3. Clarify that <u>proposed law</u> applies to applicants seeking licensure via the transfer of an existing out-of-state license.
- 4. Delete the requirement that the national exam be passed within two years from date of application.
- 5. Require an applicant to present an original form of identification instead of a copy.
- 6. Provide examples of an approved English language proficiency test.
- 7. Increase the time limit for the initial inspection of an establishment <u>from</u> 45 days to 60 days.
- 8. Authorize the practice of massage therapy by nonlicensed persons if the massage services are provided in massage clinics during the course of massage therapy education and training approved by the board.
- 9. Require the board to seek an injunction against violators.
- 10. Limit the applicable time period which requires a person licensed during that time to show proof of qualification prior to renewal.
- 11. Require the board to timely promulgate administrative rules.
- 12. Make proposed law effective upon signature of the governor.