

CHAPTER 112**(HB 180)**

AN ACT relating to massage therapy.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 309.350 is amended to read as follows:

As used in KRS 309.350 to 309.364 unless the context otherwise requires:

- (1) "Board" means the Kentucky Board of Licensure for Massage Therapy;
- (2) "Board-approved massage program" means one which meets minimum standards for training and curriculum as determined by the board;
- (3) **"Compensation" means the direct or indirect payment, loan, advance, donation, contribution, deposit, barter, gratuity, or gift of money or anything of value;**
- (4) "Feldenkrais Method" means a system of somatic education in which touch and words are used to eliminate faulty habits, learn new patterns of self-organization and action, and improve a person's own functional movement patterns. The method is based on principles of physics, biomechanics and an understanding of, or learning about, human development. The practice is federally trademarked and requires permission from the Feldenkrais Guild to use the term and methodology;
- ~~(5)(4)~~ "Massage therapist" means a person who is licensed by the board to administer massage or massage therapy to the public for compensation;
- ~~(6)(5)~~ "Polarity therapy" means diverse applications affecting the human energy system. These applications include energetic approaches to somatic contact, verbal facilitation, nutrition, exercise, and health education. Polarity therapy does not make medical claims, diagnose physical ailments, or allow prescription of medications. Standards for schools, education, and practice, the administration of a code of ethics, and a registration process are provided by the American Polarity Therapy Association;
- ~~(7)(6)~~ "Practice of massage therapy" means the application, by a massage therapist licensed by the board, of a system of structured touch, pressure, movement, and holding to the soft tissues of the human body with the intent to enhance or restore the health and well-being of the client. The practice includes the external application of water, heat, cold, lubricants, salt scrubs, or other topical preparations; use of electromechanical devices that mimic or enhance the actions of the hands; and determination of whether massage therapy is appropriate or contraindicated, or whether referral to another health care practitioner is appropriate; and
- ~~(8)(7)~~ "Trager Approach" means a form of movement education that uses subtle directed movements and the skilled touch of a practitioner. The Trager Approach combines physical movement with sensory awareness and internal imagery designed to increase the client's self-awareness and generate physiological changes in the body tissues so as to allow the client to experience a new way of moving his or her body. The practice is federally trademarked.

➔Section 2. KRS 309.352 is amended to read as follows:

KRS 309.350 to 309.364 shall not preclude:

- (1) Persons duly licensed, registered, or certified as massage therapists in another state or territory, the District of Columbia, or a foreign country **teaching**~~[when invited to this state to teach]~~ a course related to massage therapy or **consulting**~~[to consult]~~ with a person licensed under KRS 309.350 to 309.364;
- (2) Students~~[practicing massage therapy while]~~ enrolled in a program recognized by the board and completing a clinical requirement for graduation while under the supervision of a board-licensed massage therapist **or other licensed health-care professional as defined by the board in administrative regulation**;
- (3) A person administering a massage to members of the person's immediate family;
- (4) Persons who restrict manipulation of the soft tissues of the human body to the hands, feet, or ears, and do not hold themselves out to be massage therapists;

- (5) Persons who use procedures within the scope of practice of their profession, which has established standards and ethics, provided that their services use touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged, but who are not designated or implied to administer massage or to be massage therapists. These practices include, but are not limited to, the Feldenkrais Method and the Trager Approach;
- (6) Persons engaged within the scope of practice of a profession with established standards and ethics in which touch is limited to what is essential for palpation and affecting of the human energy system, provided that their services are not designated or implied to be massage or massage therapy. These practices include but are not limited to polarity therapy;
- (7) Persons duly licensed, certified, or registered in another state or territory, the District of Columbia, or a foreign country when incidentally in this state to provide service as a part of an emergency response team working in conjunction with disaster relief officials or as part of a charity event, *athletic event, or artistic performance*;
- (8) Students participating in massage therapy classes or continuing education while in the classroom or practicing on a classmate and not holding themselves out as massage therapists or accepting compensation for the practice; or
- (9) Practitioners of the following occupations and professions regulated by state law while engaging in the practices for which they are duly licensed and while not holding themselves out to be massage therapists:
 - (a) Physicians, osteopaths, podiatrists, and athletic trainers regulated under KRS Chapter 311;
 - (b) Chiropractors regulated under KRS Chapter 312;
 - (c) Registered nurses and practical nurses regulated under KRS Chapter 314;
 - (d) Barbers, ~~and~~ cosmetologists, *and estheticians* regulated under KRS Chapters 317, ~~and~~ 317A, *and 317B* respectively;
 - (e) Occupational therapists regulated under KRS Chapter 319A; and
 - (f) Physical therapists regulated under KRS Chapter 327.

➔Section 3. KRS 309.354 is amended to read as follows:

- (1) There is created a board to be known as the Kentucky Board of Licensure for Massage Therapy, which shall be an independent agency attached to the Division of Occupations and Professions for administrative and clerical purposes.
- (2) The Governor shall appoint seven (7) members to serve on the board with the following representation:
 - (a) Five (5) members who are massage therapists licensed under KRS 309.350 to 309.364, who have been in the practice of massage therapy for at least five (5) of the last seven (7) years ~~[prior to June 24, 2003]~~, and who *have been* ~~are~~ residents of Kentucky *for at least one (1) year*;
 - (b) Of these five (5), at least one (1) but no more than two (2) shall own or direct a board-approved massage therapy training program; and
 - (c) Two (2) members shall be appointed by the Governor and shall serve as members at large who are neither licensed massage therapists nor spouses of persons who are licensed, or have a direct or indirect interest in the profession regulated under KRS 309.350 to 309.364. One (1) of the two (2) may hold a license in another health care profession.
- (3) Appointments shall be for three (3) years with initial appointments as follows: three (3) appointees shall serve three (3) year terms; two (2) shall serve two (2) year terms; and two (2) shall serve one (1) year terms. The Governor shall assign terms to initial members at his or her discretion.
- (4) The board shall elect initially, and annually thereafter, a chair, vice chair, and secretary from its membership and shall meet at least once per year, and more often as deemed necessary, at a time and at a place in Kentucky for the board to fulfill its duties.
- (5) Each member of the board shall receive a per diem not to exceed one hundred dollars (\$100) and other actual and necessary expenses for each day he or she is actually engaged in the discharge of the board's official duties.
- (6) Upon recommendation of the board, the Governor may remove any member of the board for a poor attendance record, neglect of duty, or malfeasance in office.

➔Section 4. KRS 309.355 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of KRS 309.350 to 309.364 and shall have the responsibility to evaluate the qualifications of applicants for licensure and to authorize issuing, renewing, suspending, and revoking licenses.
- (2) The board shall investigate alleged violations brought to its attention, conduct investigations, and schedule and conduct administrative hearings in accordance with KRS Chapter 13B to enforce the provisions of KRS 309.350 to 309.364 and administrative regulations promulgated pursuant to KRS 309.350 to 309.364. The board shall have the authority to administer oaths, receive evidence, interview persons, and require the production of books, papers, documents, or other evidence. The board may institute civil and criminal proceedings against violators of KRS 309.350 to 309.364. The Attorney General, Commonwealth's attorneys, and county attorneys shall assist the board in prosecuting violations of KRS 309.350 to 309.364.
- (3) The board shall promulgate administrative regulations, pursuant to KRS Chapter 13A, to carry out and enforce provisions of KRS 309.350 to 309.364, including creating a code of ethics, standards of practice, *standards of educational program curriculum and instructor qualification*, and continuing education requirements for licensed massage therapists.
- (4) The board shall keep a record of its proceedings and a register of all persons licensed as massage therapists. The register shall include the name, license number and date of issue, last known place of business, and residence of each licensee. The board shall publish annually a directory of licensed massage therapists and their places of business. The list shall be available to any Kentucky citizen upon request and payment of a fee not to exceed the cost of the publication.
- (5) The board shall make an annual report to the Governor and the General Assembly, which shall contain an account of its duties performed, actions taken, and appropriate recommendations.
- (6) The board may seek an injunction in *the circuit court of the county where the alleged violation occurred* ~~Franklin Circuit Court~~ against any individual who practices massage therapy in the Commonwealth without a license.

➔Section 5. KRS 309.357 is amended to read as follows:

The following fees shall be required of licensees and prospective applicants:

- (1) Application fee of fifty dollars (\$50), which shall be credited to the initial license fee for successful applicants;
- (2) Initial, nonrefundable license fee not to exceed one hundred twenty-five dollars (\$125);
- (3) Biennial renewal fees not to exceed one hundred dollars (\$100);
- (4) Late renewal fees not to exceed one hundred fifty dollars (\$150) up to sixty (60) days after expiration of license; ~~and~~
- (5) Sixty (60) *to ninety (90)* days after expiration of license, late renewal fees not to exceed two hundred dollars (\$200); *and*
- (6) *Beyond ninety (90) days after the expiration of a license:*
 - (a) *Late renewal fees not to exceed two hundred dollars (\$200) if the applicant for renewal can demonstrate to the satisfaction of the board that the applicant was unable to renew in a timely manner due to circumstances beyond his or her control; or*
 - (b) *The application and initial, nonrefundable license fees required by subsections (1) and (2) of this section, accompanied by:*
 1. *A new application for licensure; and*
 2. *Proof of compliance with all of the requirements to practice massage therapy specified in Section 6 of this Act.*

If the board determines that the applicant practiced on an expired license, the board may require one (1) continuing education credit per month of expiration, at the discretion of the board.

➔Section 6. KRS 309.358 is amended to read as follows:

~~{(1) Between June 24, 2003, and June 24, 2005, the board shall issue an initial license as a massage therapist to an applicant who:~~

- ~~(a) Is eighteen (18) years of age or older;~~
- ~~(b) Has paid the application fee and other fees required by the board;~~
- ~~(c) Is a person of good moral character;~~
- ~~(d) Has successfully completed a course of study consisting of a minimum of five hundred (500) classroom hours of supervised instruction in a massage therapy training program approved by the board; and~~
- ~~(e) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission for Certifying Agencies.~~

~~(2) On and after June 24, 2005, }The board may issue a license as a massage therapist to an applicant who:~~

- ~~(1){(a)}~~ Is eighteen (18) years of age or older;
- ~~(2){(b)}~~ Has paid the application fee and other fees required by the board;
- ~~(3){(c)}~~ Is a person of good moral character;
- ~~(4){(d)}~~ Has successfully completed a course of study consisting of a minimum of six hundred (600){classroom} hours of supervised instruction in a massage therapy training program approved by the board; and
- ~~(5){(e)}~~ Has successfully passed an examination administered by the National Certification Board for Therapeutic Massage and Bodywork or a certifying agency that has been approved by the National Commission for Certifying Agencies, **or other examinations approved by the board.**

➔Section 7. KRS 309.363 is amended to read as follows:

- (1) A person, institution, or business entity offering a massage therapy program of instruction shall file a completed application for a certificate of good standing with the board on a form prescribed by the board **and pay a fee as specified in Section 5 of this Act.** The completed application shall provide proof acceptable to the board that the following criteria have been met:
 - (a) The school is licensed to operate by the Kentucky State Board for Proprietary Education, the Council on Postsecondary Education, or their equivalent in another state;
 - (b) A curriculum statement showing clock hours devoted to each subject with the following minimums:
 - 1. One hundred twenty-five (125) hours of anatomy, physiology, or kinesiology;
 - 2. A two hundred (200) hour course to include massage theory, technique, and practice focusing on gliding strokes, kneading, direct pressure, deep friction, joint movement, superficial warming techniques, percussion, compression, vibration, jostling, shaking, and rocking;
 - 3. Two hundred (200) hours of approach to the business of massage, specifically including contraindications, benefits, business, history, ethics, client documentation, legalities of massage, and modality courses designed to meet the school's specific program objectives;
 - 4. Forty (40) hours of pathology; and
 - 5. The school may use its discretion in allotting the additional thirty-five (35) curricular hours that are required under KRS 309.358;
 - (c) A listing of instructional staff and their qualifications as follows:
 - 1. Instructors of the practical courses shall be licensed massage therapists and shall have three (3) years of experience in the practice of massage therapy;~~{-}~~
 - 2. Instructors of science courses shall be either licensed massage therapists with three (3) years of experience in the practice of massage therapy or have certification or specific higher education in the subject they are teaching; **and**
 - 3. **Instructors in adjunctive courses shall have subject-specific education and experience.**
- (2) The board shall accept National Certification Board for Therapeutic Massage and Bodywork guidelines in approving continuing education.

➔SECTION 8. A NEW SECTION OF KRS 309.350 TO 309.364 IS CREATED TO READ AS FOLLOWS:

- (1) *A person, institution, or business entity offering a massage therapy program of instruction shall renew a certificate of good standing annually.*
- (2) *During the renewal process, the person, institution, or business entity shall submit to the board documentation of program updates, personnel changes, graduation rates, and licensing examination rates.*

➔Section 9. The following KRS section is repealed;

309.360 Qualifications for license issued prior to June 24, 2005.

Signed by Governor April 12, 2010.