

2021 Regular Session

HOUSE BILL NO. 531

BY REPRESENTATIVES PRESSLY AND HILFERTY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

BOARDS/COMMISSIONS: Provides relative to the Louisiana Board of Massage Therapy

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AN ACT

To amend and reenact R.S. 37:3552(10), 3553(C), 3555(A)(4), 3556(A)(6), (B)(2), and (D), 3561(A), and 3562(A)(1) through (3), to enact R.S. 15:587(A)(1)(k) and R.S. 37:3555(A)(6) through (14), 3556(B)(3), 3563(E) through (G), and 3568, and to repeal R.S. 37:3562(A)(8) and (B), relative to massage therapists; to provide for massage therapy techniques; to provide for persons who are not licensed or certified as a massage therapist; to revise the powers and duties of the Louisiana Board of Massage Therapy; to provide for the performance of state and federal criminal background checks on prospective licensees; to provide for military personnel and their spouses who relocate to this state; to provide for the issuance of a license to a licensee; to provide for continuing education requirements; to increase certain fees assessed by the board; to provide for inspections of massage establishments; to provide discipline for those massage establishments that operate as a sexually oriented business; to provide for fines and penalties to be imposed by the board; to provide for violations and grounds for discipline of massage therapists and massage establishments; to provide for human trafficking training; to provide an effective date; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 15:587(A)(1)(k) is hereby enacted to read as follows:

3 §587. Duty to provide information; processing fees; Louisiana Bureau of Criminal
4 Identification and Information

5 A.(1)

6 * * *

7 (k) The Louisiana Board of Massage Therapy shall submit fingerprint cards
8 and other identifying information of persons seeking licensure pursuant to R.S.
9 37:3551 et seq. to the bureau. The bureau shall, upon request and after receipt of
10 fingerprint cards and other identifying information from the Louisiana Board of
11 Massage Therapy, make available to the Louisiana Board of Massage Therapy all
12 conviction information contained in the bureau's criminal history record and
13 identification files which pertain to the person seeking licensure with the Louisiana
14 Board of Massage Therapy. In addition, the fingerprints shall be forwarded by the
15 bureau to the Federal Bureau of Investigation for a national criminal history record
16 check.

17 * * *

18 Section 2. R.S. 37:3552(10), 3553(C), 3555(A)(4), 3556(A)(6), (B)(2), and (D), and
19 3562(A)(2) and (3) are hereby amended and reenacted and R.S. 37:3555(A)(6) through (14),
20 3556(B)(3), 3561(A)(1), 3563(E) through (G), and 3568 are hereby enacted to read as
21 follows:

22 §3552. Definitions

23 As used in this Chapter:

24 * * *

25 (10) "Practice of massage therapy" means the manipulation of soft tissue for
26 the purpose of maintaining good health and establishing and maintaining good
27 physical condition. The practice of massage therapy shall include advertising or
28 offering to engage in the practice of massage therapy and holding oneself out or
29 designating oneself to the public as a massage therapist or massage establishment.

1 The practice of massage therapy shall include effleurage (stroking), petrissage
 2 (kneading), tapotement (percussion), compression, vibration, friction (active/passive
 3 range of motion), stretching activities as they pertain to massage therapy, Shiatsu,
 4 acupressure, reflexology, trigger point massage, and Swedish massage either by
 5 hand, forearm, elbow, foot, or with mechanical appliances for the purpose of body
 6 massage. Massage therapy may include, with appropriate training, the use of
 7 lubricants such as salts, powders, liquids, creams with the exception of prescriptive
 8 or medicinal creams, heat lamps, hot and cold stones, whirlpool, hot and cold packs,
 9 salt glow, body wraps, ~~or steam cabinet baths~~, and the use of non-prescriptive, off-
 10 the-shelf commercially available electromechanical devices for which they are
 11 trained which mimic or enhance the actions possible by the hands. It shall not
 12 include ~~electrotherapy~~ ultrasound, laser therapy, microwave, colonic therapy,
 13 injection therapy, ~~or manipulation of the joints~~, the use of electrical muscle
 14 stimulation, or transcutaneous electrical nerve stimulation except micro current.
 15 Equivalent terms for massage therapy are massage, therapeutic massage, massage
 16 technology, body work, or any derivation of those terms. As used in this Chapter,
 17 the terms "therapy" and "therapeutic" shall not include diagnosis, the treatment of
 18 illness or disease, or any service or procedure for which a license to practice
 19 medicine, chiropractic, physical therapy, or podiatry is required by law.

* * *

21 §3553. Application of Chapter; exceptions and exemptions

* * *

23 C. Nothing in this Chapter shall be construed as preventing or restricting the
 24 practice of any person licensed or certified in this state under any other law from
 25 engaging in the profession or occupation for which he is licensed or certified.
 26 However, a person licensed or certified in this state under any other law shall not
 27 hold himself out to the public as a licensed massage therapist under the provisions
 28 of this Chapter.

* * *

1 §3555. Powers and duties of the board

2 A. The board shall:

3 * * *

4 (4) Adopt and revise rules and regulations pursuant to the Administrative
5 Procedure Act for the purpose of administering the provisions of this Chapter. The
6 Board shall initiate promulgation of such rules and regulations within one hundred
7 twenty days following any new changes to provisions of this Chapter.

8 * * *

9 (6) Prioritize inspections and incorporate risk factors for complaints made
10 to the board regarding any unlicensed activity by massage therapists or massage
11 establishments.

12 (7) Utilize all legally available news outlets as resources to identify
13 unauthorized activity of a massage therapist or establishment.

14 (8) Evaluate the performance of inspection contractors who inspect massage
15 establishments.

16 (9) Include in the inspection protocol a list of observations for inspectors to
17 determine whether there is a strong possibility that an establishment is operating as
18 a sexually-oriented business and forward to law enforcement, if appropriate.

19 (10) Develop a process to identify any unlicensed activity of a person who
20 is not licensed by the board.

21 (11) Develop a process to review all complaints made to the board.

22 (12) Develop a process to monitor massage establishments who have been
23 notified of violations in accordance with R.S. 37:3563.

24 (13) Develop guidance to follow a consistent and objective approach to
25 properly protect the public from massage therapists who are disciplined in
26 accordance with R.S. 37:3563.

27 (14)(a) Submit the names of new applicants for licensure to the Louisiana
28 Bureau of Criminal Identification and Information, located within the Department
29 of Public Safety and Corrections, for criminal history background checks. Upon the

1 board's submission of an applicant's fingerprints and such other identifying
 2 information as may be required, the Louisiana Bureau of Criminal Identification and
 3 Information shall survey its criminal history record and identification files and shall
 4 make available to the board all conviction information contained in the Louisiana
 5 Bureau of Criminal Identification and Information's criminal history record and
 6 identification files which pertain to the applicant for licensure. In addition, the
 7 fingerprints shall be forwarded by the Louisiana Bureau of Criminal Identification
 8 and Information to the Federal Bureau of Investigation for a national criminal history
 9 record check.

10 (b) The costs of providing the information required pursuant to this Section
 11 shall be charged by the Louisiana Bureau of Criminal Identification, as specified in
 12 R.S. 15:587(B), to the board for furnishing the information contained in the
 13 Louisiana Bureau of Criminal Identification and Information's criminal history
 14 record and identification files, including any additional costs of providing the
 15 national criminal history records checks, which pertains to the applicant for
 16 licensure.

* * *

18 §3556. Licensure; qualifications

19 A. No person shall engage in the practice of massage therapy without a
 20 current license issued pursuant to this Chapter unless such person is exempt under
 21 the provisions of this Chapter. To receive a massage therapist license in the state of
 22 Louisiana, an applicant shall pay the application fee pursuant to R.S. 37:3562 and
 23 shall submit evidence satisfactory to the board of meeting the following
 24 requirements:

* * *

26 (6) Has submitted to and cleared a background check as set forth in R.S.
 27 37:3555(A)(14).

1 B. The requirements set forth in R.S. 37:3556(A)(1) and (2) shall not apply
2 to either of the following:

3 * * *

4 (2) Persons who hold a valid, current, and unexpired license or registration
5 to engage in the practice of massage therapy in another state, territory,
6 commonwealth, or the District of Columbia that has and maintains standards and
7 requirements of practice and licensure or registration that substantially conform to
8 the requirements in force in this state, as determined by the board. The board shall
9 verify the validity of the documents submitted with that state's licensing or
10 registration agency and obtain any transcript information directly from the school
11 identified by the applicant.

12 (3) Persons who are active or retired military personnel and relocate to this
13 state or his spouse who possesses a license from another state with substantially
14 equivalent licensing requirements pursuant to the provisions of this Chapter.

15 * * *

16 D. The board shall issue and deliver, by United States Postal Service or any
17 other nonelectronic delivery option, a license to each person who meets the
18 qualifications provided for in this Section upon payment of the professional license
19 fee provided pursuant to R.S. 37:3562. The license shall include a recent photo of
20 the licensee. The license, in the form of a Licensed Massage Therapist Identification
21 Card (LMT-ID Card), which contains an available anti-copy watermark or
22 lamination, shall ~~grants~~ grant all professional rights, honors, and privileges to the
23 licensed massage therapist.

24 * * *

25 §3561. License renewal requirements

26 A.(1) Each license shall be renewed annually, on or before its expiration date
27 by submitting a renewal application form, payment of the renewal fee specified in
28 R.S. 37:3562, and providing evidence that the licensee has completed continuing
29 education requirements, as established by rule of the board.

1 (2)(a) Beginning with the renewal cycle of April 1, 2022, any excess
2 continuing education credits may only be applied to the following year after a
3 licensee has satisfied the license renewal requirements.

4 (b) In the renewal cycle beginning April 1, 2022, and in this cycle only, each
5 renewing applicant shall submit to a background check as described in R.S.
6 37:3555(A)(14). In order to renew, an applicant must not have pled guilty to or been
7 convicted of any sex-related crime, crime of violence, or crime related to the practice
8 of massage therapy.

9 * * *

10 §3562. Fees

11 A. The board shall assess and collect fees as provided in this Section,
12 including the following fees:

13 * * *

14 (1)	Application fee	\$75.00 <u>100.00</u>
15 (2)	Original massage therapist license fee	\$125.00 <u>150.00</u>
16 (3)	Annual license renewal fee	\$125.00 <u>150.00</u>

17 * * *

18 §3563. Grounds for discipline

19 * * *

20 E. The board shall perform a review of any massage therapist that has been
21 disciplined in accordance with this Section within one calendar year of the infraction
22 or reinstatement of license. The board shall immediately suspend a license pending
23 a disciplinary hearing for any review of a massage therapist that reveals any
24 violations of this Section.

25 F. The board shall perform an inspection of any massage establishment that
26 has been disciplined in accordance with this Section within one calendar year of the
27 infraction or reinstatement of license. The board shall immediately suspend a license
28 or registration of such an establishment upon the establishment's failure of a

1 follow-up inspection indicating continued or new violations of this Section, pending
2 a disciplinary hearing.

3 G. The board shall impose a fine or penalty on massage establishments that
4 continue to operate without a license. The board shall promulgate in rule the amount
5 of the fine or penalty to be incurred.

6 * * *

7 §3568. Human trafficking training

8 A. The board shall provide training opportunities for its board members,
9 staff, and contract inspectors to help identify signs of human trafficking.

10 B. The board shall coordinate with law enforcement agencies and other
11 stakeholders to help identify and address any illicit activity related to human
12 trafficking in the massage industry.

13 Section 3. R.S. 37:3562(A)(8) and (B) are repealed in their entirety.

14 Section 4. This Act shall become effective upon signature by the governor or, if not
15 signed by the governor, upon expiration of the time for bills to become law without signature
16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
18 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 531 Engrossed

2021 Regular Session

Pressly

Abstract: Revises laws providing further duties and functions of the La. Board of Massage Therapy.

Proposed law mandates the Louisiana Board of Massage Therapy to submit fingerprint cards and other identifying information of persons seeking licensure to the bureau and requires the bureau to, upon receipt of the fingerprints and other identifying information, produce all conviction information contained within its criminal history record and identification files.

Proposed law mandates that the fingerprints obtained by the Louisiana Board of Massage Therapy be forwarded to the Federal Bureau of Investigation from the bureau in order to have a nation-wide criminal history record check performed.

Present law provides that the practice of 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.

Proposed law clarifies present law and states that the practice of massage therapy may include, with appropriate training, 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, certain electromechanical devices.

Present law provides that electrotherapy shall not be identified as a practice of massage therapy.

Proposed law deletes present law and adds that ultrasound, the use of electrical muscle stimulation, or transcutaneous electrical nerve stimulation shall not be identified as a practice of massage therapy.

Present law provides that a license for massage therapist shall not be applied to the following:

- (1) Persons who are licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally present in the state to teach a course of instruction related to massage and bodywork therapy as a continuing education course.
- (2) Persons giving massage and bodywork to their immediate family without compensation.
- (3) Persons incidentally present in the state to provide services as part of an emergency response team working in conjunction with relief officials during a disaster, provided such persons are properly licensed in the state from which they originate.

Further provides that notwithstanding the provisions of present law, a person who is licensed or certified in this state under any other provision of present law shall not be prevented or restricted from engaging in the profession for which he is licensed and which he may provide massage or bodywork therapy to a person.

Proposed law retains present law and adds that a person licensed or certified in this state under any other provision of present law shall not hold himself out to the public as a licensed or certified massage therapist pursuant to present law.

Present law sets forth the powers and duties of the board.

Present law provides that the board shall adopt and revise rules and regulations pursuant to the Administrative Procedure Act for the purpose of administering the provisions of present law.

Proposed law retains present law and adds that such rules and regulations shall be promulgated within 120 days following any new changes to provisions of present law.

Proposed law retains present law and adds additional powers and duties to the board. Those powers and duties include the following:

- (1) Prioritize inspections and incorporate risk factors for complaints made to the board regarding any unlicensed activity by massage therapists or massage establishments.

- (2) Utilize all legally available news outlets to identify unauthorized activity of a massage therapist or massage establishment.
- (3) Evaluate the performance of inspection contractors who inspect massage establishments.
- (4) Include a list of observations for inspections to determine if a massage establishment is operating as a sexually oriented business.
- (5) Develop a process to identify any unlicensed activity of a person who is not licensed by the board.
- (6) Develop a process to review all complaints made to the board.
- (7) Develop a process to monitor massage establishments who have been notified to cease operations in accordance with present law.
- (8) Develop guidance to follow a consistent and objective approach and properly protect the public unqualified licensees when massage therapists are discipline in accordance with present law.
- (9) Submit the names of new applicants for licensure to the La. Bureau of Criminal Identification and Information within the Dept. of Public Safety and Corrections to conduct state and federal criminal background checks. Further provides that the Louisiana Bureau of Criminal Identification may charge the board a fee in accordance with present law (R.S.15:587) for conducting and reporting a search.

Present law provides that a person who holds a valid, current, and unexpired license or registration to engage in the practice of massage therapy in another state, territory, commonwealth, or the District of Columbia and has maintained the standards and requirements of practice and licensure or registration that substantially conform to the requirements enforced in this state shall not have to pay the application fee and submit evidence satisfactory to the board to become licensed in this state.

Proposed law retains present law and adds that the board shall verify the validity of the documents submitted with that state's licensing or registration agency and obtain any transcript information directly from the school identified by the applicant.

Present law provides that the board shall issue a license to each person who meets the qualifications and submit payment to obtain such license. Further provides that the license will be identified as a Licensed Massage Therapist Identification Card.

Proposed law retains present law and adds that the license shall be issued and delivered by United States Postal Service or other nonelectronic delivery options to the licensee and that the license shall contain an anti-copy watermark or lamination.

Present law provides that a licensee has to renew his license annually and meet the continuing education requirements provided for in the Administrative Procedure Act.

Proposed law retains present law and states that any excess continuing education credits may only be applied to the year following a licensee satisfying the renewal requirements. Further provides that proposed law shall become effective with the renewal cycle of April 1, 2022.

Proposed law further requires renewing applicants to submit to background check.

Present law provides the board shall assess a \$125 fee for a original massage therapist license and annual renewal license.

Proposed law changes the original massage therapist license and an annual license renewal fee from \$125 to \$150.

Present law provides an application fee of \$75.

Proposed law changes the application fee from \$75 to \$100.

Present law sets forth the grounds for and methods of discipline of a licensee and by the board.

Proposed law adds the board shall perform a review of any massage therapist that has been disciplined in accordance with present law within one calendar year of the infraction or reinstatement of license. The board shall immediately suspend a license pending a disciplinary hearing for any review of a massage therapist which reveal any violations of present law.

Further provides the board shall also perform an inspection of any massage establishment that has been disciplined in accordance with present law within one calendar year of the infraction or reinstatement of license. The board shall immediately suspend a license or registration of an establishment for failure of a follow-up inspection.

Proposed law adds to present law that the board shall impose a fine or penalty on massage establishments who continue to operate without a license. The board shall promulgate in rule the amount of the fine or penalty to be incurred.

Proposed law provides that the board shall conduct training for its board members, staff, and contract inspectors on how to identify human trafficking. Further provides that the board shall coordinate with law enforcement agencies or other stakeholders to help address any activity related to human trafficking in the massage industry.

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

(Amends R.S. 37:3552(10), 3553(C), 3555(A)(4), 3556(A)(6), (B)(2), and (D), 3561(A), and 3562 (A)(1)-(3); Adds R.S. 15:587(A)(1)(K), R.S. 37:3555(A)(6) through (14), 3556(B)(3), and 3563(E) through (G) and 3568; Repeals R.S. 37:3562(A)(8) and (B))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Requires persons seeking licensure from the Louisiana Board of Massage Therapy to submit fingerprints and other identifying information to the Louisiana Bureau of Criminal Identification and Information and the Federal Bureau of Investigation.
2. Delete proposed law and add utilizing legally available news outlets as resources to identify unauthorized activities of massage therapists and establishments.
3. Mandates a 120-day prescriptive period for promulgation of rules by the board.
4. Revises the criminal background check procedures enforced by the Louisiana Bureau of Criminal Identification and Information.
5. Adds proposed law establishing a license renewal cycle commencement date on April 1, 2022.
6. Change the application fee for board licenses from \$75 to \$100.

7. Revise proposed law requiring the board to monitor the performance of inspection contractors to instead require the board evaluate the performance of such contractors.
8. Delete "micro-current devices" from proposed law and add language regarding the use of non-prescriptive, off-the-shelf commercially available electromechanical devices as forms of massage therapy.
9. Adds language regarding electrical muscle stimulation, or transcutaneous electrical nerve stimulation, except micro-current as treatments that are not considered massage therapy.
10. Make technical changes.