February 15, 2013

SENATE BILL No. 573

DIGEST OF SB 573 (Updated February 13, 2013 3:33 pm - DI 110)

Citations Affected: IC 25-21.8; IC 35-51.

Synopsis: Massage therapists. Provides that an individual must be licensed by the state board of massage therapy to engage in the practice of massage therapy. (Under current law, massage therapists are certified by the board but certification is not required for the practice of massage therapy.) Makes it a Class B misdemeanor to practice massage therapy without a license. Provides that the massage therapy licensing requirements do not apply to a health care provider who is acting within the scope of the health care provider's license, registration, or certificate. Provides that the massage therapist licensing law preempts local ordinances, resolutions, rules, and policies concerning massage therapists except for zoning requirements and occupational license fees. Makes conforming changes.

Effective: July 1, 2013.

Landske, Arnold J, Randolph,
Lanane

January 15, 2013, read first time and referred to Committee on Public Policy.
February 14, 2013, reported favorably — Do Pass.

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February 15, 2013

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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SENATE BILL No. 573

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 25-21.8-1-5, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. "Massage therapist" means an individual who **is licensed under this article and** practices massage therapy.

SECTION 2. IC 25-21.8-2-2, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. ~~(a)~~ The board consists of five (5) members appointed by the governor as follows:

(1) Three (3) massage therapists, each of whom:

(A) is ~~certified~~ **licensed** under this article; and

(B) has been actively practicing massage therapy for at least three (3) of the five (5) years immediately preceding the individual's appointment.

(2) Two (2) members of the general public. A board member appointed under this subdivision must not:

(A) be ~~certified~~ **licensed** under this article;

(B) be the spouse of an individual who is ~~certified~~ **licensed** or

intends to be ~~certified~~ **licensed** under this article; or

(C) have a direct or an indirect financial interest in the profession regulated under this article.

~~(b) A massage therapist member of the board is not required to be a member of a professional massage therapy association. However:~~

~~(1) not more than one (1) massage therapist member appointed to the board may belong to the same professional massage therapy association; and~~

~~(2) one (1) massage therapist member must not be a member of a professional massage therapy association.~~

SECTION 3. IC 25-21.8-2-9, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. The board shall adopt rules under IC 4-22-2 **that:**

(1) ~~regarding~~ **establish** standards for the competent practice of massage therapy **and continuing education for massage therapists**; **and**

(2) are necessary for the administration and enforcement of this article.

SECTION 4. IC 25-21.8-3-1, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) The board shall do the following:

(1) Administer and enforce this article.

(2) Adopt rules under IC 4-22-2 for the administration and enforcement of this article.

(3) Judge the qualifications of applicants for ~~certification~~ **licensure** under this article.

(4) Issue, deny, or renew ~~certifications~~ **licenses** under this article.

(5) Subject to IC 4-21.5, IC 25-1-7, and IC 25-1-11, discipline individuals who are ~~certified~~ **licensed** under this article for violations of this article.

(6) Establish reasonable fees for examination, ~~certification~~ **license** applications, renewal of ~~certifications,~~ **licenses,** and other services.

(7) Maintain a record of all proceedings.

(8) Maintain records of ~~certified~~ **licensed** massage therapists.

(9) Adopt at least two (2) examinations that an applicant may use for ~~certification~~ **licensure** under this article.

(b) The board may do the following:

(1) Conduct administrative hearings.

(2) Administer oaths in matters relating to the discharge of the official duties of the board.

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(3) Approve massage therapy school curricula consistent with accepted national educational standards.

SECTION 5. IC 25-21.8-4-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 0.5. This article does not apply to a health care provider who is acting within the scope of the health care provider's license, registration, or certificate.**

SECTION 6. IC 25-21.8-4-1, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. An application for a massage therapist ~~certification~~ **license** must be:

(1) made to the board in the form and manner provided by the board; and

(2) accompanied by an application fee in the amount set by the board.

SECTION 7. IC 25-21.8-4-2, AS AMENDED BY P.L.107-2012, SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. An individual who applies for ~~certification~~ **licensure** as a massage therapist must do the following:

(1) Furnish evidence satisfactory to the board showing that the individual:

(A) is at least eighteen (18) years of age;

(B) has a high school diploma or the equivalent of a high school diploma;

(C) has successfully completed a massage therapy school or program that:

(i) requires at least five hundred (500) hours of supervised classroom and hands on instruction on massage therapy;

(ii) is in good standing with a state, regional, or national agency of government charged with regulating massage therapy schools or programs; and

(iii) is accredited by the state workforce innovation council under IC 22-4.1-21 or accredited by another state where the standards for massage therapy education are substantially the same as the standards in Indiana, or is a program at an institution of higher learning that is approved by the board; and

(D) has taken and passed ~~a~~ ~~certification~~ **an** examination approved by the board.

(2) Provide a history of any criminal convictions the individual has, including any convictions related to the practice of the profession. The board shall deny an application for ~~certification~~

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licensure if the applicant:

(A) has been convicted of:

(i) prostitution;

(ii) rape; or

(iii) sexual misconduct; or

(B) is a registered sex offender.

(3) Provide proof that the applicant has professional liability insurance in force that lists the state as an additional insured.

(4) Verify the information submitted on the application form.

(5) Pay fees established by the board.

SECTION 8. IC 25-21.8-4-3, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. **(a) It is unlawful for** an individual who is not ~~certified~~ **licensed** under this article ~~may not:~~ **to:**

(1) engage in the practice of massage therapy;

~~(1)~~ **(2)** profess to be a ~~certified~~ **licensed** massage therapist; or

~~(2)~~ **(3)** use:

(A) the title ~~"Certified Massage Therapist"~~ **"Licensed Massage Therapist",** ~~or~~ "Massage Therapist", **"Licensed Massage Practitioner", "Massage Practitioner", "Masseur", "Masseuse", "Myotherapist"; or "bodyworker";** ~~or~~

(B) the abbreviation ~~"CMT"~~ **"LMT",** ~~or~~ "MT", **or "LMP"; or**

(C) other words, initials, letters, abbreviations, or insignia indicating or implying that ~~to imply~~ the ~~person~~ **individual** is a ~~certified~~ **licensed** massage therapist.

(b) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 9. IC 25-21.8-4-4, AS ADDED BY P.L.177-2009, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. A massage therapist who is ~~certified~~ **licensed** under this article shall provide proof of ~~certification~~ **licensure** when practicing massage therapy.

SECTION 10. IC 25-21.8-4-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 5. (a) The board may classify a license as inactive if the board receives written notification from a licensed massage therapist stating that the licensed massage therapist will not practice in Indiana.**

(b) The board may reissue a license to a holder of an inactive license if the applicant:

(1) pays a reactivation fee set by the board; and

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(2) is in compliance with any other requirements set by the board.

(c) The board shall adopt rules under IC 4-22-2 to implement this section.

SECTION 11. IC 25-21.8-4-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 6. (a) If an individual is certified as a massage therapist on June 30, 2013, under this article:**

(1) the individual is considered to be licensed as a massage therapist on July 1, 2013; and

(2) the state board of massage therapy established by IC 25-21.8-2-1 shall issue a license to the individual under this article.

(b) Notwithstanding subsection (a), the state board of massage therapy and the Indiana professional licensing agency are not required to issue:

(1) a wall license to an individual described in subsection (a); or

(2) a new pocket license to an individual described in subsection (a);

until the license renewal period beginning December 1, 2013.

(c) This section expires January 1, 2014.

SECTION 12. IC 25-21.8-4-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 7. (a) A person duly licensed, certified, or registered in another state or territory, the District of Columbia, or a foreign country, when in Indiana to provide service as a part of an emergency response team working in conjunction with disaster relief officials, may practice massage therapy without an Indiana license. The ability to practice under this subsection lasts only for the duration of the emergency or disaster.**

(b) A person duly licensed, certified, or registered in another state or territory, the District of Columbia, or a foreign country, when in Indiana to provide service as part of a charity, educational, or athletic event, may practice massage therapy without an Indiana license. Persons practicing under this subsection may practice only for the period of time the event is taking place.

(c) A student practicing massage therapy while enrolled in a program recognized by the board and completing a clinical requirement for graduation may practice massage therapy without a license. If a student is practicing massage therapy under this

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subsection, the school or other entity supervising the student may receive reimbursement for the services performed by the student. The student may not receive compensation for performing services.

SECTION 13. IC 25-21.8-5-1, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) The board may grant ~~certification~~ **licensure** by endorsement to an individual who:

(1) is licensed, certified, or registered in another state having credentialing standards that are ~~at least as strict as the~~ **substantially equivalent to or exceed the** credentialing standards specified under this article;

(2) is in good standing with the standards of the other state or country;

(3) pays an application fee established by the board; and

(4) provides a history of the individual's criminal convictions, if any, including any criminal convictions relating to the practice of the profession.

(b) The board shall deny an application for ~~certification~~ **licensure by endorsement** if the applicant:

(1) has been convicted of:

(A) prostitution;

(B) rape; or

(C) sexual misconduct; or

(2) is a registered sex offender.

(c) An applicant for ~~a certification~~ **licensure** by endorsement shall cause each state that previously credentialed the applicant to provide the board with the applicant's current status in the state.

(d) The board may grant a license by endorsement to a massage therapist who is licensed or certified and in good standing in another state if the standards for massage therapy education in that other state are substantially equivalent to the standards established under this article.

SECTION 14. IC 25-21.8-6-1, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. A ~~certification~~ **license** issued by the board is valid for four (4) years. A ~~certification~~ **license** expires at midnight on the date established by the licensing agency under IC 25-1-6-4 and every four (4) years thereafter, unless renewed before that date.

SECTION 15. IC 25-21.8-6-2, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. An individual who applies to renew ~~certification~~ **licensure** as a massage therapist must:

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(1) apply for renewal in the manner required by the board; and
(2) pay a renewal fee established by the board.

SECTION 16. IC 25-21.8-7-3, AS ADDED BY P.L.200-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. If an individual ~~certified~~ **licensed** under this article is convicted of a crime, the individual is responsible for notifying the board not later than thirty (30) days after the conviction.

SECTION 17. IC 25-21.8-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 8. Preemption of Local Ordinances, Resolutions, Rules, and Policies

Sec. 1. Except as provided in section 2 of this chapter, this article supersedes any:

(1) ordinance;
(2) resolution;
(3) rule; or
(4) policy;

that has the force of law adopted by a municipality or county relating to the licensure or registration of massage therapists.

Sec. 2. This article does not affect any local ordinance, resolution, rule, or policy that has the force of law relating to:

(1) zoning; or
(2) occupational license fees;

adopted by a municipality or county pertaining to massage therapists.

SECTION 18. IC 35-51-25-1, AS ADDED BY P.L.70-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. The following statutes define crimes in IC 25:

IC 25-2.1-13-3 (Concerning accountants).
IC 25-2.5-3-4 (Concerning acupuncturists).
IC 25-5.1-4-2 (Concerning athletic trainers).
IC 25-5.2-2-12 (Concerning athlete agents).
IC 25-6.1-7-1 (Concerning auctioneers and auctions).
IC 25-6.1-7-2 (Concerning auctioneers and auctions).
IC 25-8-15.4-25 (Concerning beauty culture).
IC 25-10-1-11 (Concerning chiropractors).
IC 25-11-1-12 (Concerning collection agencies).
IC 25-13-1-3 (Concerning dental hygienists).
IC 25-14-1-25 (Concerning dentists).
IC 25-14-4-6 (Concerning dentists).
IC 25-14.5-7-2 (Concerning dietitians).

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IC 25-16-1-18 (Concerning employment services).
IC 25-17.3-5-3 (Concerning genetic counselors).
IC 25-17.6-8-2 (Concerning geologists).
IC 25-18-1-19 (Concerning distress sales).
IC 25-20-1-21 (Concerning hearing aid dealers).
IC 25-20.7-5-1 (Concerning interior designers).
IC 25-21.5-5-10 (Concerning land surveyors).
IC 25-21.5-13-2 (Concerning land surveyors).
IC 25-21.8-4-3 (Concerning massage therapists)
IC 25-21.8-7-1 (Concerning massage therapists).
IC 25-22.5-8-2 (Concerning physicians).
IC 25-22.5-8-3 (Concerning physicians).
IC 25-23-1-27 (Concerning nurses).
IC 25-23.5-3-2 (Concerning occupational therapists).
IC 25-23.6-3-3 (Concerning marriage and family therapists).
IC 25-23.6-4-4 (Concerning marriage and family therapists).
IC 25-23.6-4.5-4 (Concerning marriage and family therapists).
~~IC 25-23.6-4.7-7~~ **IC 25-23.6-7-7** (Concerning marriage and family therapists).
IC 25-23.6-10.1-6 (Concerning marriage and family therapists).
IC 25-23.6-11-1 (Concerning marriage and family therapists).
IC 25-23.6-11-2 (Concerning marriage and family therapists).
IC 25-23.6-11-3 (Concerning marriage and family therapists).
IC 25-23.7-7-5 (Concerning manufactured home installers).
IC 25-24-1-18 (Concerning optometrists).
IC 25-24-3-17 (Concerning optometrists).
IC 25-26-13-29 (Concerning pharmacists, pharmacies, and drug stores).
IC 25-26-14-23 (Concerning pharmacists, pharmacies, and drug stores).
IC 25-26-14-25 (Concerning pharmacists, pharmacies, and drug stores).
IC 25-26-14-26 (Concerning pharmacists, pharmacies, and drug stores).
IC 25-26-14-27 (Concerning pharmacists, pharmacies, and drug stores).
IC 25-26-19-9 (Concerning pharmacists, pharmacies, and drug stores).
IC 25-26-21-11 (Concerning pharmacists, pharmacies, and drug stores).
IC 25-27-1-12 (Concerning physical therapists).
IC 25-27.5-7-2 (Concerning physician assistants).

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IC 25-28.5-1-31 (Concerning plumbers).
IC 25-29-9-1 (Concerning podiatrists).
IC 25-30-1-21 (Concerning private investigator firms, security guards, and polygraph examiners).
IC 25-30-1.3-23 (Concerning private investigator firms, security guards, and polygraph examiners).
IC 25-31-1-13 (Concerning engineers).
IC 25-31-1-27 (Concerning engineers).
IC 25-31.5-8-7 (Concerning soil scientists).
IC 25-33-1-15 (Concerning psychologists).
IC 25-34.5-3-2 (Concerning respiratory care specialists).
IC 25-35.6-3-10 (Concerning speech pathologists and audiologists).
IC 25-36.1-1-2 (Concerning surgical technologists).
IC 25-36.5-1-10 (Concerning timber buyers).
IC 25-36.5-1-15 (Concerning timber buyers).
IC 25-38.1-4-10 (Concerning veterinarians).
IC 25-38.1-4-11 (Concerning veterinarians).
IC 25-39-5-1 (Concerning water well drilling contractors).
IC 25-39-5-7 (Concerning water well drilling contractors).
IC 25-41-1-2 (Concerning behavior analysts).

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COMMITTEE REPORT

Madam President: The Senate Committee on Public Policy, to which was referred Senate Bill No. 573, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 573 as introduced.)

ALTING, Chairperson

Committee Vote: Yeas 10, Nays 0.

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