

# Senate Study Bill 3038

## Bill Text

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1 1 Section 1. Section [147.2](#), Code 1999, is amended to read as  
1 2 follows:

1 3 [147.2](#) LICENSE REQUIRED.

1 4 A person shall not engage in the practice of medicine and  
1 5 surgery, podiatry, osteopathy, osteopathic medicine and  
1 6 surgery, psychology, chiropractic, physical therapy, nursing,  
1 7 dentistry, dental hygiene, optometry, speech pathology,  
1 8 audiology, occupational therapy, respiratory care, pharmacy,  
1 9 cosmetology, barbering, social work, dietetics, marital and  
1 10 family therapy or mental health counseling, massage therapy,  
1 11 or mortuary science or shall not practice as a physician  
1 12 assistant as defined in the following chapters of this  
1 13 subtitle, unless the person has obtained from the department a  
1 14 license for that purpose.

1 15 Sec. 2. Section [152C.1](#), subsection 2, Code 1999, is  
1 16 amended to read as follows:

1 17 2. "Massage therapist" means a person licensed to practice  
1 18 the health care service of the healing art of massage therapy  
1 19 under this chapter.

1 20 Sec. 3. Section [152C.4](#), Code 1999, is amended by striking  
1 21 the section and inserting in lieu thereof the following:

1 22 [152C.4](#) PRACTICING AS A MESSAGE THERAPIST WITHOUT A LICENSE  
1 23 EMPLOYMENT OF PERSON NOT LICENSED CIVIL PENALTY.

1 24 1. The board, or its authorized agents, may inspect any  
1 25 facility that advertises or offers the services of massage  
1 26 therapy. The board may, by order, impose a civil penalty upon  
1 27 a person who practices as a massage therapist without a  
1 28 license issued under this chapter or a person or business that  
1 29 employs an individual who is not licensed under this chapter.  
1 30 The penalty shall not exceed one thousand dollars for each  
1 31 offense. Each day of a continued violation after an order or  
1 32 citation by the board constitutes a separate offense. In  
1 33 determining the amount of a civil penalty, the board may  
1 34 consider the following:

1 35 a. Whether the amount imposed will be a substantial  
2 1 economic deterrent to the violation.

2 2 b. The circumstances leading to or resulting in the  
2 3 violation.

2 4 c. The severity of the violation and the risk of harm to  
2 5 the public.

2 6 d. The economic benefits gained by the violator as a  
2 7 result of noncompliance.

2 8 e. The welfare or best interest of the public.

2 9 2. Before issuing an order or citation under this section,  
2 10 the board shall provide written notice and the opportunity to  
2 11 request a hearing on the record. The hearing must be  
2 12 requested within thirty days of the issuance of the notice and  
2 13 shall be conducted as provided in chapter 17A. The board may,  
2 14 in connection with a proceeding under this section, issue  
2 15 subpoenas to compel the attendance and testimony of witnesses  
2 16 and the disclosure of evidence and may request the attorney  
2 17 general to bring an action to enforce the subpoena.

2 18 3. A person aggrieved by the imposition of a civil penalty  
2 19 under this section may seek judicial review in accordance with  
2 20 section 17A.19. The board shall notify the attorney general  
2 21 of the failure to pay a civil penalty within thirty days after

2 22 entry of an order pursuant to subsection 1, or within ten days  
2 23 following final judgment in favor of the board if an order has  
2 24 been stayed pending appeal. The attorney general may commence  
2 25 an action to recover the amount of the penalty, including  
2 26 reasonable attorney fees and costs. An action to enforce an  
2 27 order under this section may be joined with an action for an  
2 28 injunction.

2 29 Sec. 4. Section [152C.5](#), Code 1999, is amended by striking  
2 30 the section and inserting in lieu thereof the following:

2 31 152C.5 PRACTICE OR USE OF TITLE LICENSE REQUIRED.

2 32 The practice of massage therapy as defined in section  
2 33 152C.1 is strictly prohibited by unlicensed individuals. It  
2 34 is unlawful for a person to engage in or offer to engage in  
2 35 the practice of massage therapy, or use in connection with the  
3 1 person's name, the initials "L.M.T." or the words "licensed  
3 2 massage therapist", "massage therapist", "masseur",  
3 3 "masseuse", or any other word or title that implies or  
3 4 represents that the person practices massage therapy, unless  
3 5 the person possesses a license issued under the provisions of  
3 6 section 152C.3.

3 7 Sec. 5. NEW SECTION. 152C.8 TRANSITION PROVISIONS.

3 8 1. An applicant for a license to practice massage therapy  
3 9 applying prior to July 1, 2002, shall not be required to meet  
3 10 the completion of curriculum of massage therapy requirements  
3 11 contained in section 152C.3, subsection 1, paragraph "a". The  
3 12 applicant shall, however, be required to pass the board-  
3 13 approved national certification examination and pay the  
3 14 applicable licensing fee.

3 15 2. Applicants with a license that has lapsed prior to July  
3 16 1, 2000, who apply for reinstatement prior to July 1, 2002,  
3 17 shall be required to complete a reinstatement application and  
3 18 pay a renewal fee and reinstatement fee pursuant to section  
3 19 147.11 and section 147.80, subsections 26. Penalty fees  
3 20 otherwise incurred pursuant to section 147.10, and continuing  
3 21 education requirements applicable to the period prior to  
3 22 licensure reinstatement, shall be waived by the board.

3 23 3. Applicants with a license that has lapsed prior to July  
3 24 1, 2000, who do not apply for reinstatement prior to July 1,  
3 25 2002, shall be required to apply for reinstatement in  
3 26 accordance with lapsed license reinstatement provisions  
3 27 established by rule of the board.

3 28 EXPLANATION

3 29 This bill provides that an individual shall not engage in  
3 30 the health care service of the healing art of massage therapy  
3 31 without having obtained a license for that purpose.

3 32 The bill provides that the practice of massage therapy is  
3 33 strictly prohibited by unlicensed individuals, and that it is  
3 34 unlawful to use the initials "L.M.T." or the words "licensed  
3 35 massage therapist", "massage therapist", "masseur",  
4 1 "masseuse", or any other word or title that implies or  
4 2 represents that the person practices massage therapy, unless  
4 3 the person possesses a license issued pursuant to Code section  
4 4 152C.3.

4 5 The bill additionally provides that the board may impose a  
4 6 civil penalty upon a person who practices as a massage  
4 7 therapist without a license, or upon a person or business that  
4 8 employs an individual who is not licensed, in an amount not  
4 9 exceeding \$1,000 for each offense, with each day of a  
4 10 continued violation after an order or citation from the board  
4 11 has been received constituting a separate offense. The bill  
4 12 specifies several factors which the board may consider in  
4 13 determining the amount of a civil penalty, and also prescribes  
4 14 notice, hearing, judicial review, and penalty for nonpayment  
4 15 provisions.

4 16 The bill additionally provides transition provisions  
4 17 governing situations regarding an applicant for a new license  
4 18 to practice massage therapy applying prior to July 1, 2002, an

4 19 applicant with a license that has lapsed prior to July 1,  
4 20 2000, who applies for reinstatement prior to July 1, 2002, and  
4 21 an applicant with a license that has lapsed prior to July 1,  
4 22 2000, who does not apply for reinstatement prior to July 1,  
4 23 2002.  
4 24 LSB 5324DP 78  
4 25 rn/as/5