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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 374*
133rd General Assembly

Occupational Regulation Report

[Click here for H.B. 374's Bill Analysis / Fiscal Note](#)

Primary Sponsors: Reps. Plummer and Manchester

Impacted Profession: Massage therapist

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.¹

SUMMARY OF PROPOSED REGULATIONS

The bill standardizes terminology within, and makes changes to, the laws governing massage therapy as they relate to (1) professions regulated by the State Medical Board and (2) the authority of townships and municipal corporations to regulate massage establishments and their employees. The bill appears to centralize regulation of massage therapists by extending state regulations, including licensure requirements, to a broader range of massage practices and retracting the authority of townships to require local licensure of massage therapists. The bill also eliminates express statutory authorization for municipal corporations to require local licensure, but the effect of that provision is unclear due to the Home Rule Amendment to the Ohio Constitution.²

For a full explanation of the bill's provisions, see the [H.B. 374 Bill Analysis](#).

* This report addresses the "As Introduced" version of H.B. 374. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

² R.C. 503.40(A), 715.61, and 4731.04(D).

Regulation by the State Medical Board

Under continuing law, the State Medical Board regulates massage therapy as a limited branch of medicine. It is a licensed profession. A prospective massage therapist must be a high school graduate (or equivalent) who is at least 18 years old, has completed a massage therapy curriculum approved by the Board (or has an out-of-state license that has been active for the preceding five years), and has passed the Massage and Bodywork Licensing Examination (MBLEx). The initial licensure fee is \$150. A \$100 renewal fee is due every two years.³

The bill broadens the definition of “massage therapy,” thereby increasing the types of massage practices that are subject to licensure and regulation by the Board. Current law confines state regulations to practices that treat disorders of the human body. The bill eliminates this limitation and, consequently, extends state regulations to any manipulation of soft tissue through the systemic external application of massage techniques including touch, stroking, friction, vibration, percussion, kneading, stretching, compression, and joint movements within the normal physiologic range of motion, as well as external application of water, heat, cold, topical preparations, and mechanical devices, as used adjunctive to manipulating soft tissue and joint movements. The bill clarifies, however, that the following are not required to obtain a massage therapist license:

- A person authorized to practice any of the following regulated professions, if the person’s scope of practice authorizes the person to use massage techniques: barbers, cosmetologists, nurses, physician assistants, chiropractors, occupational therapists, physical therapists, athletic trainers, acupuncturists, and oriental medicine practitioners;
- A student practicing massage therapy in a program of study that is in good standing as determined by the Board;
- A person issued a certificate by the Board to practice cosmetic therapy and whose practice may include massage techniques.⁴

Regulation by townships

The bill eliminates a township’s authority to issue licenses to individuals who perform massage therapy,⁵ and requires townships that opt to regulate massage establishments to include in the regulations a requirement that all massage therapy be performed by licensed individuals or by an individual who is permitted to practice massage therapy without a license, as described above. Townships may continue to require registration of massage establishments.⁶ Additionally, the bill specifically allows townships to: require massage

³ Ohio State Medical Board, “[Massage Therapists Licensing Requirements.](#)”

⁴ R.C. 4731.15(F) and 4731.41(A).

⁵ R.C. 503.45 and 503.46, repealed.

⁶ R.C. 503.41.

establishments to comply with zoning resolutions, establish prohibited hours of operation, and promulgate regulations for the health, safety, and welfare of the township residents.⁷

Authority of municipal corporations

The bill expressly authorizes a municipal corporation to regulate and license massage establishments within its jurisdiction and permits the registration of persons performing massage therapy at a massage establishment. It further provides that if a municipal corporation regulates massage establishments, it must require all massage therapy to be performed by a licensed individual or an individual who is permitted to practice without a massage therapy license, as described above. The bill eliminates a provision in current law that expressly authorizes municipal corporations to license massage therapists.⁸

The effect of these changes is unclear. Municipal corporations have authority under the Home Rule Amendment to the Ohio Constitution to adopt police, sanitary, and similar regulations that are not in conflict with general laws.⁹ A court could determine this authority includes regulating a massage establishment to the extent it does not conflict with the state’s general laws.

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio’s general regulatory policy

The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from “present, significant, and substantiated harms that threaten health, safety, or welfare,” the state’s expressed intent is to enact the “least restrictive regulation that will adequately protect consumers from such harms.”¹⁰

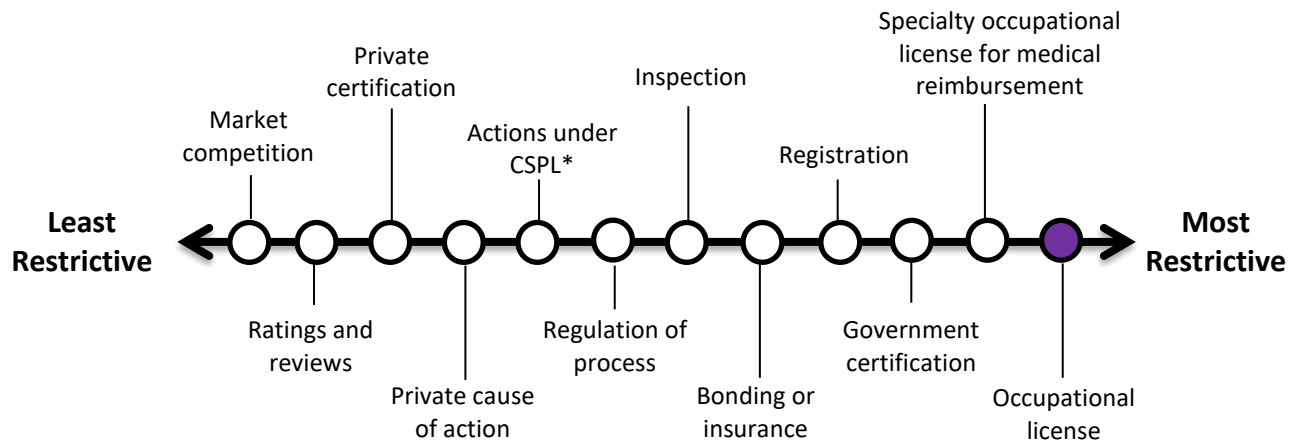
The degree of “restrictiveness” of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state’s policy by least to most restrictive:

⁷ R.C. 503.411(c).

⁸ R.C. 715.61.

⁹ Ohio Constitution, Article XVIII, Section 3.

¹⁰ Section 3 of the bill and R.C. 4798.01 and 4798.02, neither in the bill.



The bill is analyzed here as a licensure requirement because, by broadening the definition of “massage therapy,” it appears to require more practitioners to obtain a state massage therapist license. The bill refers to the massage therapist license as a “certificate to practice massage therapy.” Regardless of name, it functions as an occupational license for the purposes of the state’s occupational regulation policy. Under that policy, a government “certification” does not confer authority; it is merely a formal recognition that an individual meets certain qualifications prescribed by state law. In contrast, a “license” sanctions an individual – based on personal qualifications – to perform occupational duties that are otherwise prohibited.¹¹

Necessity of regulations

Representative Manchester, one of H.B. 374’s sponsors, testified that the bill is needed to close a “loophole” in current law that allows unlicensed individuals to perform the same services as licensed massage therapists. The testimony suggests that a massage therapist can circumvent state regulation through strategic marketing – specifically, by avoiding terms like “medical” or “therapeutic massage.” The prevalence of this marketing strategy produces significant disadvantages for massage therapists who properly avail themselves to the state’s regulations and licensing requirements. It also might endanger consumers and the general public. Unlicensed massage therapists are not required to adhere to the education and safety requirements prescribed by the State Medical Board. Furthermore, unlicensed massage establishments have been used to conceal illegal activity such as human trafficking and prostitution.¹²

Restrictiveness of regulations

Licensure is the most restrictive of all regulatory options identified within the state’s general policy on occupational regulations. Accordingly, the policy prescribes a narrow range of

¹¹ R.C. 4798.01, not in the bill.

¹² Representative Susan Manchester, *H.B. 374 Sponsor Testimony*, December 11, 2019.

situations in which it is appropriate. Specifically, when all of the following circumstances are present: (1) the occupation involves providing a service regulated by both state and federal law, (2) the licensing framework allows individuals licensed in other states and territories to practice in Ohio, and (3) the licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.¹³

Massage therapists are not regulated by federal law but, according to the Federation of State Massage Therapy Boards, 49 states and territories regulate the profession in some way or another.¹⁴ Neither the bill nor current law allows massage therapists licensed in other states to practice in Ohio. However, continuing law waives education requirements for individuals who have had an active out-of-state license for the preceding five years. Furthermore, individuals who passed the MBLEx in order to obtain licensure in another state are not required to retake the exam in Ohio.¹⁵ The Associated Bodyworks and Massage Professionals reports that 43 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands require licensure of massage therapists. There does not appear to be a uniform licensing law but certain standard elements, such as using the MBLEx to satisfy testing requirements, have been widely adopted by those states and territories.¹⁶

The massage therapist license modified by the bill does not appear to be entirely consistent with the state's general policy on occupational regulations. However, the bill's standardization of terminology and centralization of the licensing process might be relevant to this evaluation. The licensing "loophole" described by the bill's sponsor is addressed in current law by a fragmented array of local massage therapy regulations. Extension of the state license to a broader range of massage therapy practices would displace some of these local regulations and create greater consistency in the profession throughout the state. (As noted earlier, the effect of the bill on municipal regulation of massage therapists is unclear.) Whether this centralization and consistency offsets the incongruence of the state license with the general policy on occupational regulation is a policy judgment.

Other regulatory policies

The bill modifies an established regulatory framework that applies to massage therapists and other limited branches of medicine practiced in Ohio.¹⁷ The law does not contain a general statement explaining the state's intent in regulating massage therapists. However, the mission and goals of the State Medical Board are somewhat instructive in that regard. The Board's mission is "to protect and enhance the health and safety of the public through effective medical regulation." The Board's goals are as follows:

¹³ R.C. 4798.02, not in the bill.

¹⁴ Federation of State Massage Therapy Boards, [States that Regulate Massage](#).

¹⁵ R.C. 4731.19, not in the bill.

¹⁶ Associated Bodywork and Massage Professionals, ["Massage and Bodywork State Licensing Requirements."](#)

¹⁷ See, e.g., R.C. Chapter 4731 and Ohio Administrative Code (O.A.C.) 4731-1-05 and 4731-1-12.

- “Ensure persons practicing medicine meet sufficient standards of education, training, competence, and ethics;
 - Define and advocate for standards of safe medical practice;
 - Prohibit persons from practicing medicine whose violations are so egregious as to forfeit the privilege or who otherwise lack the legal authority;
 - Provide information about the licensees of the Medical Board, the Board’s functions and operations, and the laws governing the practice of medicine;
 - Achieve and maintain the highest possible levels of organizational efficacy.”¹⁸
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IMPACT STATEMENT

Opportunities for employment

The bill’s elimination of townships’ authority to issue licenses may decrease employment opportunities for massage therapists in Ohio. The State Medical Board licensed 11,638 massage therapists in FY 2019; the number of massage therapists licensed by townships under current law is unknown. In order to renew a state license, good for two years, a therapist must pay a \$100 renewal fee. Due to the number of state-licensed therapists and the amount of the renewal fee, LSC believes it is unlikely that the new licensing requirements will significantly decrease participation in the occupation.

Consumer choice and cost and market competition

Should the centralization of licensure to the state government significantly reduce the number of licensed massage therapists, there could be a reduction in the number of massage establishments due to staffing difficulties; because townships and municipalities retain the authority to regulate massage establishments, there would be no other reason for the bill to cause a change in the number of establishments. In the event of such a reduction, there could be a shift in the consumer market toward providers of substitutable services, such as cosmetologists, barbers, acupuncturists, chiropractors, or physical therapists. Because LSC expects the bill’s effect on the number of licensed massage therapists to be minimal, LSC believes the bill’s impact on consumer choice, cost, and market competition to be minimal. It is possible, however, that some smaller communities served by just one or two establishments currently, might experience a decrease in consumer choice due to even a small reduction in licensees.

Cost to government

For the costs of the bill to government, please see the [LBO fiscal note](#).

¹⁸ State Medical Board of Ohio, “Agency Mission and Goals.”

STATE BY STATE COMPARISON

All five states bordering Ohio (Indiana, Kentucky, Michigan, Pennsylvania, and West Virginia) license and regulate the massage therapy industry. The license requirements and exceptions differ slightly in each state. Each has reciprocity, accepting any applicant from states with equal or stricter requirements. Only Indiana has a professional liability insurance requirement. Three of the states, Indiana, Kentucky, and Pennsylvania, have provisions superseding any local ordinances. The table below summarizes the massage therapy license requirements of Ohio and the surrounding states in greater detail.

Massage Therapist Licensure in Surrounding States					
State	Occupational license qualifications	License requirement exceptions	Fees and insurance	Reciprocity	Local ordinances
Ohio ¹⁹	At least 18 years old. High school diploma or equivalent. Of good moral character. Submit to criminal records check. 750 hours of instruction on massage therapy at a school, college or institution in good standing as determined by the State Medical Board. Taken and passed the MBLEx.	Massage that is not intended to treat disorders of the human body. (Current law.) Students practicing massage therapy in a program of study that is in good standing with the State Medical Board. Persons acting within the scope of another Ohio license, such as barbers, cosmetologists, nurses, physician assistants,	\$150 for initial licensure. \$100 (biennially) for renewal.	Education requirements waived for persons with an active out-of-state license for the preceding five years.	Townships and municipal corporations may regulate and require local licensure of massage therapists. (Current law.) Townships may regulate massage establishments but may not require local licensure.

¹⁹ R.C. 4731.15 and 4731.19; O.A.C. 4731-1-5 and 4731-1-16.

Massage Therapist Licensure in Surrounding States					
State	Occupational license qualifications	License requirement exceptions	Fees and insurance	Reciprocity	Local ordinances
		chiropractors, occupational therapists, physical therapists, athletic trainers, acupuncturists, oriental medicine practitioners, and cosmetic therapy practitioners. (Under the bill.)			Municipal corporations may regulate massage establishments. No explicit authorization to require local licensure, but might still be permitted under Home Rule powers.
Indiana ²⁰	At least 18 years old. High school diploma or equivalent. 625 hours of instruction on massage therapy in an accredited school or program in good standing. Taken and passed a licensure examination approved by the State Board of Massage Therapy. No criminal history of prostitution, rape, or sexual misconduct; not a	Acting within the scope of another state license, registration, certificate, or permit. Student of an approved massage therapy school or training program. Approved practice in certain areas that does not involve intentional soft tissue manipulation. Approved practice in which	Professional liability insurance with minimum coverage of \$2 million per claim and \$6 million in aggregate. Fees established by the Board (\$100 for licensure;	Standards are substantially equivalent to or exceed Indiana's standards, with no pending disciplinary actions; in good standing; no criminal history of prostitution, rape, or sexual misconduct; and	State law supersedes any ordinance, resolution, rule, or policy adopted by a municipality, county, or other governmental unit relating to the licensure, certification, or registration of massage therapists, except zoning or

²⁰ Ind. Code Ann. 25-21.8; <https://www.in.gov/pla/3709.htm>.

Massage Therapist Licensure in Surrounding States					
State	Occupational license qualifications	License requirement exceptions	Fees and insurance	Reciprocity	Local ordinances
	<p>registered sex offender.</p> <p>License is valid for four years.</p> <p>24 hours of continuing education instruction required every four years.</p>	<p>the individual provides service marked bodywork approaches that involve intentional soft tissue manipulation.</p> <p>Employee of a physician, chiropractor, or podiatrist, with restrictions.</p> <p>Dramatic portrayal or other artistic performance or expression.</p> <p>If licensed in another state, duties for a non-Indiana based team or organization, or for a national athletic event held in Indiana.</p> <p>Member of an emergency response team for active emergency response.</p> <p>Massage therapist from other state or country providing educational programs in Indiana for not more than 30 days a year.</p>	<p>\$150 for renewal).</p>	<p>not a registered sex offender.</p>	<p>business licenses.</p>

Massage Therapist Licensure in Surrounding States					
State	Occupational license qualifications	License requirement exceptions	Fees and insurance	Reciprocity	Local ordinances
Kentucky ²¹	<p>At least 18 years old.</p> <p>Of good moral character.</p> <p>600 hours of supervised instruction in a massage therapy training program approved by the Kentucky Board of Licensure for Massage Therapy.</p> <p>Examination administered by the National Certification Board for Therapeutic Massage and Bodywork or other examinations approved by the Board.</p> <p>If the Board determines that the applicant practiced on an expired license, it may require one continuing education credit per month of expiration.</p> <p>24 hours of continuing education training for every 2-years.</p>	<p>Massage therapists licensed in another jurisdiction teaching a massage therapy course or consulting with a Kentucky licensee.</p> <p>Students enrolled in a Board-recognized program.</p> <p>Persons administering a massage to members of the person's immediate family.</p> <p>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.</p> <p>Persons who use procedures within the scope of practice of certain professions that use touch, words, and directed movement to deepen</p>	<p>Application fee of \$50 (credited to the initial license fee for successful applicants) and an initial license fee of \$125, and biennial renewal fee of \$100 (with a schedule of late fees).</p>	<p>Any person licensed, certified, or registered in another state that has standards at least as stringent as Kentucky.</p> <p>For states with lesser standards than Kentucky, the Board may grant a license by endorsement if the applicant's combined training, experience, education, or other credentials are equivalent to Kentucky standards.</p>	<p>State law supersedes all ordinances or regulations regulating massage therapists in any city, county, urban county, charter county, or consolidated local government, except zoning requirements or occupational license fees pertaining to health care professions.</p>

²¹ Ky. Rev. Stat. 309.350 to 309.364; 201 Ky. Admin. Reg. 42:020.

Massage Therapist Licensure in Surrounding States					
State	Occupational license qualifications	License requirement exceptions	Fees and insurance	Reciprocity	Local ordinances
		<p>awareness of existing patterns of body movement and to suggest new possibilities of movement.</p> <p>Persons practicing a profession in which touch is limited to what is essential for palpation and affecting the human energy system.</p> <p>If licensed in another jurisdiction, 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.</p> <p>Licensed practitioners within the scope of their practice: physicians, osteopaths, podiatrists, athletic trainers, chiropractors, registered and practical nurses, barbers, cosmetologists, estheticians, occupational therapists, and physical therapists.</p>			

Massage Therapist Licensure in Surrounding States					
State	Occupational license qualifications	License requirement exceptions	Fees and insurance	Reciprocity	Local ordinances
Michigan ²²	<p>At least 18 years old.</p> <p>Of good moral character.</p> <p>Has passed an examination.</p> <p>Program of instruction with at least 500 hours of approved classroom instruction if enrolled before August 1, 2017, or 625 hours if enrolled after.</p> <p>18 hours, or the equivalent acceptable to the Michigan Board of Massage Therapy, of continuing education every three years.</p>	<p>The use of touch, words, or directed movement to deepen awareness of patterns of movement in the body.</p> <p>The affectation of the human energy system or acupoints or qi meridians of the human body while engaged within the scope of practice of certain professions.</p> <p>An individual licensed under other laws from performing massage therapy services if those activities are within the individual's scope of practice and if the individual does not use the titles, words, or initials that advertise massage therapy.</p> <p>The practice of massage</p>	<p>\$102.70 fee for license by reciprocity or by exam.</p> <p>\$122.70 for relicensure.</p>	<p>Clinical massage education in a substantially equivalent program in another jurisdiction that, on a case-by-case review, is found by the Board and, if the applicant is or was enrolled in the school before August 1, 2017, at least 500 hours or, if after, at least 625 hours.</p>	<p>No provision.</p>

²² Mich. Compiled Laws Ch. 333, Act 368, Art. 15, Pt. 179A; https://www.michigan.gov/lara/0,4601,7-154-89334_72600_72603_27529_53660---,00.html.

Massage Therapist Licensure in Surrounding States					
State	Occupational license qualifications	License requirement exceptions	Fees and insurance	Reciprocity	Local ordinances
		<p>therapy that is an integral part of a program of study by students, if they are identified as students and provide massage therapy services only under the supervision of a licensed massage therapist.</p> <p>Self-care by a patient or uncompensated care by a friend or family member who does not represent or hold himself or herself out to be a licensed massage therapist.</p>			

Massage Therapist Licensure in Surrounding States					
State	Occupational license qualifications	License requirement exceptions	Fees and insurance	Reciprocity	Local ordinances
Pennsylvania ²³	<p>Of good moral character.</p> <p>High school diploma or equivalent.</p> <p>At least 600 hours of in-class instruction approved by the State Board of Massage Therapy.</p> <p>Passed the examination.</p> <p>Has not been convicted of a felony under Pennsylvania's drug laws, unless at least 10 years have elapsed from the date of conviction, the applicant demonstrates significant progress in rehabilitation, and no substantial risk of harm to the health and safety to the public.</p> <p>24 hours of continuing education every two years.</p>	<p>Practice of a profession by an individual licensed, certified or registered by a Commonwealth agency under other law and who is performing services or advertising within the scope of that practice.</p> <p>Practice of massage therapy by an individual employed by the federal government while performing duties under federal law.</p> <p>Student enrolled in a massage therapy education program who is conducting massage therapy activities under the supervision of a licensee or instructors or supervisors who meet the licensing criteria of the Department of Education or the Board, and enrolled in a</p>	<p>Application fees (\$100 for initial licensure, \$15 for verification of licensure or letter of good standing, \$25 for certification of licensure history, \$100 for approval of continuing education program, \$125 biennial renewal fee, increasing every two years.)</p>	<p>Licensed or certified in another state and has demonstrated qualifications which equal or exceed those required in PA;</p> <p>State in which the applicant is licensed affords reciprocal treatment to individuals who are Pennsylvania residents.</p> <p>In good standing and no disciplinary action taken by the jurisdiction's licensing authority.</p> <p>Passed the MBLEx, NCETM, NCETMB,</p>	<p>State law preempts and supersedes any ordinance relating to the licensure or regulation of massage therapists by a political subdivision in effect before the law's effective date.</p>

²³ 63 Penn. Stat. Ann. 627.1 to 627.50; 49 Pa. Code 20.3.

Massage Therapist Licensure in Surrounding States					
State	Occupational license qualifications	License requirement exceptions	Fees and insurance	Reciprocity	Local ordinances
		<p>Board-approved program.</p> <p>Practice by an individual while performing reflexology.</p> <p>Practice of an individual who uses touch, words and directed movement to deepen awareness of existing patterns of movement in the body and to suggest new possibilities of movement, while engaged within the scope of practice of a profession with established standards and ethics.</p> <p>Practice of an individual who uses touch to affect the energy systems, acupoints, qi meridians or channels of energy of the human body while engaged within the scope of practice of a profession with established standards.</p>		<p>or successfully completed the NESL option, or equivalent test.</p>	

Massage Therapist Licensure in Surrounding States					
State	Occupational license qualifications	License requirement exceptions	Fees and insurance	Reciprocity	Local ordinances
West Virginia ²⁴	<p>High school diploma.</p> <p>Complete 500 hours of supervised academic instruction at a school approved by the West Virginia Council for Community and Technical College Education, by another jurisdiction that meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork.</p> <p>Pass the NCTMB examination, or other West Virginia Massage Therapy Licensure Board-approved examination.</p> <p>24 hours of continuing education every 2-years.</p>	<p>Practice of a profession by persons who are licensed, certified, or registered under West Virginia laws and are performing services within their authorized scope of practice, including: any branch of medicine, nursing, osteopathy, chiropractic and podiatry, and licensed, certified or registered barbers, cosmetologists, athletic trainers, physical and occupational therapists.</p> <p>Any student enrolled in a program of massage education at a school approved by the West Virginia State College System Board or by another jurisdiction that meets qualifications for the National Certification Exam</p>	<p>\$50 application fee.</p> <p>\$300 licensing fee.</p> <p>\$200 renewal fee.</p> <p>\$50 late fee.</p>	<p>Requirements equal to those of West Virginia.</p> <p>Evidence that the massage therapist has pursued continuing education if the massage therapist has been licensed for more than two years.</p>	No provision.

²⁴ W. Va. Code Ch. 30, Art. 37; W. Va. Code R. 194.

Massage Therapist Licensure in Surrounding States					
State	Occupational license qualifications	License requirement exceptions	Fees and insurance	Reciprocity	Local ordinances
		<p>administered through the NCTMB.</p> <p>The activities of any resort spa that has been operating on a continuing basis since January 1, 1975, or any employees of the resort spa. The “spa” exemption set forth does not extend to any person, corporation or association providing escort services, nude dancing, or other sexually oriented services not falling within the scope of massage therapy.</p>			