

House Engrossed

massage therapists; fingerprinting; website information

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

# HOUSE BILL 2438

AN ACT

AMENDING SECTIONS 32-4203, 32-4222, 32-4259, 41-619.51, 41-1758 AND 41-1758.01, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF MASSAGE THERAPY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 32-4203, Arizona Revised Statutes, is amended to  
3 read:  
4 32-4203. Board; powers and duties  
5 A. The board shall:  
6 1. Evaluate the qualifications of applicants for licensure.  
7 2. Designate at least one national examination that it requires  
8 applicants to pass. The examination must be available to a graduating  
9 massage therapy or bodywork therapy student within ninety days before the  
10 student's expected graduation date. The board shall require that an  
11 examination be processed and the results returned to the board within  
12 thirty days after the examination is administered. If, ~~within six months~~  
13 ~~of the effective date of this amendment of this section~~ BY OCTOBER 20,  
14 2005, the testing agency administering the examination fails or is unable  
15 to comply with the requirements of this paragraph, the board shall  
16 designate another examination for applicants to pass.  
17 3. Issue licenses to persons who meet the requirements of this  
18 chapter.  
19 4. Regulate the practice of massage therapy by interpreting and  
20 enforcing this chapter.  
21 5. Establish EDUCATION requirements for ~~the education of~~ licensees  
22 and applicants, including ~~the identification of board recognized~~  
23 IDENTIFYING BOARD-RECOGNIZED schools, AND continuing education programs  
24 and assessing the continuing competence of licensees.  
25 6. Adopt rules for ethical and professional conduct to govern the  
26 practice of massage therapy in this state.  
27 7. Adopt rules to enforce this chapter.  
28 8. Meet at least once each quarter in compliance with the open  
29 meeting requirements of title 38, chapter 3, article 3.1 and keep an  
30 official record of these meetings.  
31 9. At its first regular meeting after the start of each calendar  
32 year, elect officers from among its members as necessary to accomplish  
33 board business.  
34 10. Provide for the timely orientation and training of new  
35 professional and public appointees to the board regarding board licensing  
36 and disciplinary procedures, this chapter, board rules and board  
37 procedures.  
38 11. Maintain a current list of all licensees. ~~This list shall~~  
39 ~~include~~ THAT INCLUDES the licensee's name, current business address and  
40 telephone number and license number and ~~shall be~~ THAT IS regularly  
41 accessible in electronic format to public officials and agencies to verify  
42 the license status of licensees in this state.  
43 12. Enter into contracts for services necessary to enforce this  
44 chapter.

1 13. Publish, at least annually, or make available for copying or  
2 reproduction in any format, final disciplinary actions taken against a  
3 licensee.

4 B. The board may:

5 1. Accept and spend federal monies and private grants, gifts,  
6 contributions and devises to assist in carrying out the purposes of this  
7 chapter. These monies do not revert to the state general fund at the end  
8 of a fiscal year.

9 2. Administer oaths and affirmations, subpoena witnesses, take  
10 evidence and require the production of documents, records or information,  
11 either kept in original form or electronically stored or recorded, or  
12 other items relevant to a matter within the jurisdiction of the board.

13 3. **FOR INITIAL LICENSURE**, require a criminal background check,  
14 including the fingerprinting of every applicant for licensure, to assist  
15 the board in determining whether grounds exist to deny a license.

16 Sec. 2. Section 32-4222, Arizona Revised Statutes, is amended to  
17 read:

18 32-4222. Qualifications for licensure: fingerprint clearance  
19 card

20 A. An applicant for a license as a massage therapist shall:

21 1. Be at least eighteen years of age.

22 2. Be a citizen or legal resident of the United States.

23 3. Satisfy the requirements of section 32-4224.

24 4. Be of good moral character.

25 5. Receive either a high school diploma or general equivalency  
26 diploma or a similar document or certificate or submit proof that the  
27 applicant has passed an ability to benefit examination recognized by the  
28 United States department of education.

29 6. Pay the fees established pursuant to section 32-4227.

30 7. Within five years preceding the date of the application **FOR**  
31 **INITIAL LICENSURE**, not have been convicted of:

32 ~~(a) A class 1, 2 or 3 felony.~~

33 ~~(b) A class 4, 5 or 6 felony offense involving moral turpitude that~~  
34 ~~has a reasonable relationship to the practice of massage therapy.~~

35 ~~(c)~~ a misdemeanor involving prostitution or solicitation or ~~other~~  
36 **ANOTHER** similar offense involving moral turpitude that has a reasonable  
37 relationship to the practice of massage therapy.

38 8. Within the past five years, not have voluntarily surrendered a  
39 license under section 32-4254 or not have had a license to practice  
40 massage therapy or another similar license revoked by a political  
41 subdivision of this state or a regulatory agency in another jurisdiction  
42 in the United States for an act that occurred in that jurisdiction and  
43 that would be subject to discipline pursuant to this chapter.

44 9. Not be currently under investigation, suspension or restriction  
45 by a political subdivision of this state or a regulatory agency in another

1 jurisdiction in the United States for an act that occurred in that  
2 jurisdiction and that would be subject to discipline pursuant to this  
3 chapter. If the applicant is under investigation by a regulatory agency  
4 in another jurisdiction, the board shall suspend the application process  
5 and may not issue or deny a license to the applicant until the  
6 investigation is resolved.

7 10. FOR INITIAL LICENSURE, submit a full set of fingerprints to the  
8 board for the purpose of obtaining a state and federal criminal records  
9 check pursuant to section 41-1750 and Public Law 92-544. The department  
10 of public safety may exchange this fingerprint data with the federal  
11 bureau of investigation. The board may charge the cost of each criminal  
12 background check to the applicant.

13 11. BEGINNING JANUARY 1, 2023, POSSESS A VALID FINGERPRINT  
14 CLEARANCE CARD ISSUED PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE 3.1 FOR  
15 INITIAL LICENSURE, LICENSE RENEWAL, A TEMPORARY LICENSE OR LICENSE  
16 REINSTATEMENT PURSUANT TO THIS CHAPTER.

17 B. In addition to the requirements of subsection A of this section,  
18 an applicant for licensure as a massage therapist shall either:

19 1. Have successfully completed a course of study of massage therapy  
20 or bodywork therapy consisting of a minimum of five hundred classroom and  
21 clinical hours of supervised instruction at a board recognized school in  
22 this state that is accredited by an agency recognized by the secretary of  
23 the United States department of education.

24 2. Have done both of the following:

25 (a) Successfully completed a course of study in massage therapy or  
26 bodywork therapy consisting of a minimum of five hundred classroom and  
27 clinical hours of supervised instruction at a school in this state that is  
28 licensed by the state board for private postsecondary education or at a  
29 school outside of this state that is recognized by the board pursuant to  
30 section 32-4228.

31 (b) Successfully passed an examination administered by a national  
32 board accredited by the certifying agency that has been approved by the  
33 national commission on competency assurance and that is in good standing  
34 with that agency or have successfully passed an examination that is  
35 administered or approved by the board.

36 C. The board may adopt rules to allow it to consider the education  
37 and experience of an applicant who came from a foreign country. The board  
38 by rule may increase the minimum number of classroom hours of supervised  
39 instruction at a board recognized school that an applicant for licensure  
40 must successfully have completed.

41 D. If the board is satisfied that an applicant meets the  
42 requirements of this section, the board shall issue a license to the  
43 applicant.

1 E. The board, by rule, shall establish communication proficiency  
2 requirements related to an applicant's ability to protect health and  
3 safety in connection with the practice of massage therapy.

4 F. Subject to the board's approval, the executive director may  
5 issue licenses to applicants who meet the requirements of this chapter.

6 G. The board may deny an application for a license if the applicant  
7 committed an act that would subject a person licensed under this chapter  
8 to disciplinary action.

9 Sec. 3. Section 32-4259, Arizona Revised Statutes, is amended to  
10 read:

11 32-4259. Access to information; public website; confidential  
12 information; display of license

13 A. Any person has access to the following information, WHICH SHALL  
14 BE SEARCHABLE ON THE BOARD'S PUBLIC WEBSITE:

15 1. A list of licensees that includes the licensee's place of  
16 practice, license number, date of license expiration and status of  
17 license.

18 2. NOTWITHSTANDING ANY OTHER LAW, a list of official actions taken  
19 by the board AGAINST EACH LICENSEE, INCLUDING ADVISORY LETTERS,  
20 NONDISCIPLINARY ORDERS, CONSENT AGREEMENTS, LETTERS OF REPRIMAND, DECREES  
21 OF CENSURE, PERIODS AND TERMS OF PROBATION AND ANY OTHER DISCIPLINARY OR  
22 NONDISCIPLINARY ACTION TAKEN BY THE BOARD.

23 3. EACH PLACE OF PRACTICE OR BUSINESS THAT EMPLOYS A LICENSEE AS A  
24 MASSAGE THERAPIST.

25 B. Unless they are the only address and telephone number available,  
26 the home address and home telephone number of a massage therapist are not  
27 public records and the board shall keep this information confidential.

28 C. Except in the course of a board investigation, information  
29 pertaining to the relationship between the massage therapist and a person  
30 treated by the massage therapist is confidential and may not be  
31 communicated to a third party who is not involved in that person's care  
32 without that person's prior written consent. If the person is a minor,  
33 the person's parent or guardian must also give written consent to these  
34 communications.

35 D. The massage therapist must divulge to the board information it  
36 requires in connection with any investigation, public hearing or  
37 proceeding, including information that is otherwise confidential pursuant  
38 to this section.

39 E. The privilege established by this section does not extend to  
40 cases in which the massage therapist has a duty to report information as  
41 required by law.

42 F. The board shall provide access to the application, license,  
43 investigation and discipline files maintained by the board to law  
44 enforcement agencies and other regulatory agencies of this state.

1 G. Each licensee shall display a copy of the licensee's license or  
2 current renewal verification in an establishment, location or setting that  
3 is accessible to public view at each location at which the licensee  
4 practices massage therapy.

5 Sec. 4. Section 41-619.51, Arizona Revised Statutes, is amended to  
6 read:

7 41-619.51. Definitions

8 In this article, unless the context otherwise requires:

9 1. "Agency" means the supreme court, the department of economic  
10 security, the department of child safety, the department of education, the  
11 department of health services, the department of juvenile corrections, the  
12 department of emergency and military affairs, the department of public  
13 safety, the department of transportation, the state real estate  
14 department, the department of insurance and financial institutions, the  
15 Arizona game and fish department, the Arizona department of agriculture,  
16 the board of examiners of nursing care institution administrators and  
17 assisted living facility managers, the state board of dental examiners,  
18 the Arizona state board of pharmacy, the board of physical therapy, the  
19 state board of psychologist examiners, the board of athletic training, the  
20 board of occupational therapy examiners, the state board of podiatry  
21 examiners, ~~or~~ the state board of technical registration **OR THE BOARD OF**  
22 **MASSAGE THERAPY.**

23 2. "Board" means the board of fingerprinting.

24 3. "Central registry exception" means notification to the  
25 department of economic security, the department of child safety or the  
26 department of health services, as appropriate, pursuant to section  
27 41-619.57 that the person is not disqualified because of a central  
28 registry check conducted pursuant to section 8-804.

29 4. "Expedited review" means an examination, in accordance with  
30 board rule, of the documents an applicant submits by the board or its  
31 hearing officer without the applicant being present.

32 5. "Good cause exception" means the issuance of a fingerprint  
33 clearance card to an employee pursuant to section 41-619.55.

34 6. "Person" means a person who is required to be fingerprinted  
35 pursuant to this article or who is subject to a central registry check and  
36 any of the following:

- 37 (a) Section 3-314.
- 38 (b) Section 8-105.
- 39 (c) Section 8-322.
- 40 (d) Section 8-463.
- 41 (e) Section 8-509.
- 42 (f) Section 8-802.
- 43 (g) Section 8-804.
- 44 (h) Section 15-183.
- 45 (i) Section 15-503.

- 1 (j) Section 15-512.
- 2 (k) Section 15-534.
- 3 (l) Section 15-763.01.
- 4 (m) Section 15-782.02.
- 5 (n) Section 15-1330.
- 6 (o) Section 15-1881.
- 7 (p) Section 17-215.
- 8 (q) Section 28-3228.
- 9 (r) Section 28-3413.
- 10 (s) Section 32-122.02.
- 11 (t) Section 32-122.05.
- 12 (u) Section 32-122.06.
- 13 (v) Section 32-823.
- 14 (w) Section 32-1232.
- 15 (x) Section 32-1276.01.
- 16 (y) Section 32-1284.
- 17 (z) Section 32-1297.01.
- 18 (aa) Section 32-1904.
- 19 (bb) Section 32-1941.
- 20 (cc) Section 32-1982.
- 21 (dd) Section 32-2022.
- 22 (ee) Section 32-2063.
- 23 (ff) Section 32-2108.01.
- 24 (gg) Section 32-2123.
- 25 (hh) Section 32-2371.
- 26 (ii) Section 32-3430.
- 27 (jj) Section 32-3620.
- 28 (kk) Section 32-3668.
- 29 (ll) Section 32-3669.
- 30 (mm) Section 32-4128.
- 31 (nn) SECTION 32-4222.
- 32 ~~(mm)~~ (oo) Section 36-113.
- 33 ~~(oo)~~ (pp) Section 36-207.
- 34 ~~(pp)~~ (qq) Section 36-411.
- 35 ~~(qq)~~ (rr) Section 36-425.03.
- 36 ~~(rr)~~ (ss) Section 36-446.04.
- 37 ~~(ss)~~ (tt) Section 36-594.01.
- 38 ~~(tt)~~ (uu) Section 36-594.02.
- 39 ~~(uu)~~ (vv) Section 36-766.01.
- 40 ~~(vv)~~ (ww) Section 36-882.
- 41 ~~(ww)~~ (xx) Section 36-883.02.
- 42 ~~(xx)~~ (yy) Section 36-897.01.
- 43 ~~(yy)~~ (zz) Section 36-897.03.
- 44 ~~(zz)~~ (aaa) Section 36-3008.
- 45 ~~(aaa)~~ (bbb) Section 41-619.53.

- 1           ~~(bbb)~~ (ccc) Section 41-1964.
- 2           ~~(ccc)~~ (ddd) Section 41-1967.01.
- 3           ~~(ddd)~~ (eee) Section 41-1968.
- 4           ~~(eee)~~ (fff) Section 41-1969.
- 5           ~~(fff)~~ (ggg) Section 41-2814.
- 6           ~~(ggg)~~ (hhh) Section 46-141, subsection A or B.
- 7           ~~(hhh)~~ (iii) Section 46-321.

8           Sec. 5. Section 41-1758, Arizona Revised Statutes, is amended to  
9 read:

10           41-1758. Definitions

11           In this article, unless the context otherwise requires:

12           1. "Agency" means the supreme court, the department of economic  
13 security, the department of child safety, the department of education, the  
14 department of health services, the department of juvenile corrections, the  
15 department of emergency and military affairs, the department of public  
16 safety, the department of transportation, the state real estate  
17 department, the department of insurance and financial institutions, the  
18 board of fingerprinting, the Arizona game and fish department, the Arizona  
19 department of agriculture, the board of examiners of nursing care  
20 institution administrators and assisted living facility managers, the  
21 state board of dental examiners, the Arizona state board of pharmacy, the  
22 board of physical therapy, the state board of psychologist examiners, the  
23 board of athletic training, the board of occupational therapy examiners,  
24 the state board of podiatry examiners, ~~or~~ the state board of technical  
25 registration OR THE BOARD OF MASSAGE THERAPY.

26           2. "Division" means the fingerprinting division in the department  
27 of public safety.

28           3. "Electronic or internet-based fingerprinting services" means a  
29 secure system for digitizing applicant fingerprints and transmitting the  
30 applicant data and fingerprints of a person or entity submitting  
31 fingerprints to the department of public safety for any authorized purpose  
32 under this title. For the purposes of this paragraph, "secure system"  
33 means a system that complies with the information technology security  
34 policy approved by the department of public safety.

35           4. "Good cause exception" means the issuance of a fingerprint  
36 clearance card to an applicant pursuant to section 41-619.55.

37           5. "Person" means a person who is required to be fingerprinted  
38 pursuant to any of the following:

- 39           (a) Section 3-314.
- 40           (b) Section 8-105.
- 41           (c) Section 8-322.
- 42           (d) Section 8-463.
- 43           (e) Section 8-509.
- 44           (f) Section 8-802.
- 45           (g) Section 15-183.



- 1 (h) Section 15-503.
- 2 (i) Section 15-512.
- 3 (j) Section 15-534.
- 4 (k) Section 15-763.01.
- 5 (l) Section 15-782.02.
- 6 (m) Section 15-1330.
- 7 (n) Section 15-1881.
- 8 (o) Section 17-215.
- 9 (p) Section 28-3228.
- 10 (q) Section 28-3413.
- 11 (r) Section 32-122.02.
- 12 (s) Section 32-122.05.
- 13 (t) Section 32-122.06.
- 14 (u) Section 32-823.
- 15 (v) Section 32-1232.
- 16 (w) Section 32-1276.01.
- 17 (x) Section 32-1284.
- 18 (y) Section 32-1297.01.
- 19 (z) Section 32-1904.
- 20 (aa) Section 32-1941.
- 21 (bb) Section 32-1982.
- 22 (cc) Section 32-2022.
- 23 (dd) Section 32-2063.
- 24 (ee) Section 32-2108.01.
- 25 (ff) Section 32-2123.
- 26 (gg) Section 32-2371.
- 27 (hh) Section 32-3430.
- 28 (ii) Section 32-3620.
- 29 (jj) Section 32-3668.
- 30 (kk) Section 32-3669.
- 31 (ll) Section 32-4128.
- 32 (mm) SECTION 32-4222.
- 33 ~~(mm)~~ (nn) Section 36-113.
- 34 ~~(mm)~~ (oo) Section 36-207.
- 35 ~~(oo)~~ (pp) Section 36-411.
- 36 ~~(pp)~~ (qq) Section 36-425.03.
- 37 ~~(qq)~~ (rr) Section 36-446.04.
- 38 ~~(rr)~~ (ss) Section 36-594.01.
- 39 ~~(ss)~~ (tt) Section 36-594.02.
- 40 ~~(tt)~~ (uu) Section 36-766.01.
- 41 ~~(uu)~~ (vv) Section 36-882.
- 42 ~~(vv)~~ (ww) Section 36-883.02.
- 43 ~~(ww)~~ (xx) Section 36-897.01.
- 44 ~~(xx)~~ (yy) Section 36-897.03.
- 45 ~~(yy)~~ (zz) Section 36-3008.

1           ~~(zzz)~~ (aaa) Section 41-619.52.  
2           ~~(aaa)~~ (bbb) Section 41-619.53.  
3           ~~(bbb)~~ (ccc) Section 41-1964.  
4           ~~(ccc)~~ (ddd) Section 41-1967.01.  
5           ~~(ddd)~~ (eee) Section 41-1968.  
6           ~~(eee)~~ (fff) Section 41-1969.  
7           ~~(fff)~~ (ggg) Section 41-2814.  
8           ~~(ggg)~~ (hhh) Section 46-141, subsection A or B.  
9           ~~(hhh)~~ (iii) Section 46-321.  
10          6. "Vulnerable adult" has the same meaning prescribed in section  
11 13-3623.  
12          Sec. 6. Section 41-1758.01, Arizona Revised Statutes, is amended to  
13 read:  
14          41-1758.01. Fingerprinting division: powers and duties  
15          A. The fingerprinting division is established in the department of  
16 public safety and shall:  
17          1. Conduct fingerprint background checks for persons and applicants  
18 who are seeking licenses from state agencies, employment with licensees,  
19 contract providers and state agencies or employment or educational  
20 opportunities with agencies that require fingerprint background checks  
21 pursuant to sections 3-314, 8-105, 8-322, 8-463, 8-509, 8-802, 15-183,  
22 15-503, 15-512, 15-534, 15-763.01, 15-782.02, 15-1330, 15-1881, 17-215,  
23 28-3228, 28-3413, 32-122.02, 32-122.05, 32-122.06, 32-823, 32-1232,  
24 32-1276.01, 32-1284, 32-1297.01, 32-1904, 32-1941, 32-1982, 32-2022,  
25 32-2063, 32-2108.01, 32-2123, 32-2371, 32-3430, 32-3620, 32-3668, 32-3669,  
26 32-4128, 32-4222, 36-113, 36-207, 36-411, 36-425.03, 36-446.04, 36-594.01,  
27 36-594.02, 36-766.01, 36-882, 36-883.02, 36-897.01, 36-897.03, 36-3008,  
28 41-619.52, 41-619.53, 41-1964, 41-1967.01, 41-1968, 41-1969 and 41-2814,  
29 section 46-141, subsection A or B and section 46-321.  
30          2. Issue fingerprint clearance cards. On issuance, a fingerprint  
31 clearance card becomes the personal property of the cardholder and the  
32 cardholder shall retain possession of the fingerprint clearance card.  
33          3. On submission of an application for a fingerprint clearance  
34 card, collect the fees established by the board of fingerprinting pursuant  
35 to section 41-619.53 and deposit, pursuant to sections 35-146 and 35-147,  
36 the monies collected in the board of fingerprinting fund.  
37          4. Inform in writing each person who submits fingerprints for a  
38 fingerprint background check of the right to petition the board of  
39 fingerprinting for a good cause exception pursuant to section 41-1758.03,  
40 41-1758.04 or 41-1758.07.  
41          5. If after conducting a state and federal criminal history records  
42 check the division determines that it is not authorized to issue a  
43 fingerprint clearance card to a person, inform the person in writing that  
44 the division is not authorized to issue a fingerprint clearance card. The  
45 notice shall include the criminal history information on which the denial

1 was based. This criminal history information is subject to dissemination  
2 restrictions pursuant to section 41-1750 and Public Law 92-544.

3 6. Notify the person in writing if the division suspends, revokes  
4 or places a driving restriction notation on a fingerprint clearance card  
5 pursuant to section 41-1758.04. The notice shall include the criminal  
6 history information on which the suspension, revocation or placement of  
7 the driving restriction notation was based. This criminal history  
8 information is subject to dissemination restrictions pursuant to section  
9 41-1750 and Public Law 92-544.

10 7. Administer and enforce this article.

11 B. The fingerprinting division may contract for electronic or  
12 internet-based fingerprinting services through an entity or entities for  
13 the acquisition and transmission of applicant fingerprint and data  
14 submissions to the department, including identity verified fingerprints  
15 pursuant to section 15-106. The entity or entities contracted by the  
16 department of public safety may charge the applicant a fee for services  
17 provided pursuant to this article. The entity or entities contracted by  
18 the department of public safety shall comply with:

19 1. All information privacy and security measures and submission  
20 standards established by the department of public safety.

21 2. The information technology security policy approved by the  
22 department of public safety.

23 Sec. 7. Rulemaking exemption

24 Notwithstanding any other law, for the purposes of this act, the  
25 board of massage therapy is exempt from the rulemaking requirements of  
26 title 41, chapter 6, Arizona Revised Statutes, for one year after the  
27 effective date of this act.