

1 SB382
2 165427-2
3 By Senator Smitherman
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 14-APR-15

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the Alabama Massage Therapy Licensure
12 Act; to amend Sections 34-43-3, 34-43-5, 34-43-6, 34-43-7,
13 34-43-9, 34-43-11, 34-43-12, 34-43-14, 34-43-15, 34-43-17,
14 34-43-20, and 34-43-21, Code of Alabama 1975, and to repeal
15 Section 34-43-10, Code of Alabama 1975; to delete any
16 reference to a temporary permit to practice massage therapy;
17 to expand the definition of therapeutic massage and extend
18 exemptions to the act; to delete antiquated language; to
19 provide compensation for board members; to change the name of
20 the executive secretary to executive director; to provide an
21 excuse for absences from board meetings; to delete
22 requirements that the oath of office of board members be filed
23 with the Governor and that certificates of appointments be
24 issued; to remove a retesting limit; to increase the minimum
25 hours of supervised course instruction for licensure; to
26 require that applicants for licensure be 18 years old with a
27 high school diploma, or the equivalent, and be subject to

1 criminal history information background checks; to authorize
2 the board to assess and collect certain fees; to increase the
3 discretion of the board to license establishments; to expand
4 the authority of the board to revoke or suspend licenses; to
5 increase the penalty violating the act from a Class C
6 misdemeanor to a Class A misdemeanor; and in connection
7 therewith would have as its purpose or effect the requirement
8 of a new or increased expenditure of local funds within the
9 meaning of Amendment 621 of the Constitution of Alabama of
10 1901, now appearing as Section 111.05 of the Official
11 Recompilation of the Constitution of Alabama of 1901, as
12 amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 34-43-3, 34-43-5, 34-43-6,
15 34-43-7, 34-43-9, 34-43-11, 34-43-12, 34-43-14, 34-43-15,
16 34-43-17, 34-43-20, and 34-43-21 of the Code of Alabama 1975,
17 are amended to read as follows:

18 "§34-43-3.

19 "For purposes of this chapter, the following terms
20 shall have the following meanings:

21 "(1) ADVERTISE. Distributing a card, flier, sign, or
22 device to any person or organization, or allowing any sign or
23 marking on any building, radio, television, or by advertising
24 by any other means designed to attract public attention.

25 "(2) BOARD. The Alabama Board of Massage Therapy
26 ~~created pursuant to this chapter.~~

1 "(3) BOARD-APPROVED MASSAGE THERAPY SCHOOL. A school
2 where massage therapy is taught which is one of the following:

3 "a. If located in Alabama is approved by the board
4 as meeting the minimum established standards of training and
5 curriculum as determined by the board.

6 "b. If located outside of Alabama is recognized by
7 the board ~~and~~ and/or by a regionally recognized professional
8 accrediting body.

9 ~~"c. Is a postgraduate training institute accredited
10 by the Commission on Accreditation for Massage Therapy.~~

11 "(4) ESTABLISHMENT. A site, premises, or business
12 where massage therapy is practiced by a licensed massage
13 therapist.

14 "(5) EXAMINATION. A ~~National Certification For
15 Therapeutic Massage and Bodywork Examination~~ administered by
16 an independent agency or another nationally or internationally
17 accredited exam administered by an independent agency per
18 approval of the board. The examination will be accredited by
19 the ~~National Committee for Certifying Agencies~~ nationally
20 recognized competency examination in massage and bodywork that
21 meets acceptable psychometric principles, is statistically
22 validated through a job-task analysis under current standards
23 for educational and professional testing, and has been
24 approved by the board. The board retains the right to
25 administer a written, oral, or practical examination.

1 "(6) LICENSE. The credential issued by the board
2 which allows the licensee to engage in the safe and ethical
3 practice of massage therapy.

4 "(7) LICENSEE. Any person, business, establishment,
5 or school holding a license issued by the board.

6 "(8) LICENSURE. The procedure by which an applicant
7 applies to the board for approval to practice massage therapy
8 or to operate an establishment.

9 "~~(7)~~(9) MESSAGE THERAPIST. A person licensed
10 pursuant to this chapter who practices or administers massage
11 therapy or touch therapy modalities to a patron for
12 compensation.

13 "~~(8)~~(10) MESSAGE THERAPY INSTRUCTOR. A licensed
14 massage therapist approved by the board to teach the practice
15 of massage therapy.

16 "~~(9)~~(11) PERSON. Any individual, firm, corporation,
17 partnership, organization, association, trustee, lessee,
18 agent, assignee, or other legal entity.

19 "~~(10)~~(12) SEXUALLY ORIENTED BUSINESS. A sex parlor,
20 massage parlor, nude studio, modeling studio, love parlor,
21 adult bookstore, adult movie theater, adult video arcade,
22 adult motel, or other commercial enterprise which has ~~as its~~
23 ~~primary~~ any business ~~the~~ offering for sale, rent, or exhibit,
24 or the exhibit of, items or services intended to provide
25 sexual stimulation or sexual gratification to the customer.

1 "~~(11)~~(13) STUDENT OF MASSAGE THERAPY. Any person
2 currently enrolled in an Alabama massage therapy school
3 program approved by the board.

4 "~~(12)~~ TEMPORARY PERMIT. A temporary permit issued at
5 the request of a massage therapist who is qualified according
6 to the Alabama massage therapy law prior to approval by the
7 board and not to exceed six months.

8 "~~(13)~~(14) THERAPEUTIC MASSAGE AND RELATED TOUCH
9 THERAPY MODALITIES. The mobilization of the soft tissue which
10 may include skin, fascia, tendons, ligaments, and muscles, for
11 the purpose of establishing and maintaining good physical
12 condition. The term shall include effleurage, petrissage,
13 tapotement, compression, vibration, stretching, heliotherapy,
14 superficial hot and cold applications, topical applications,
15 or other therapy which involves movement either by hand,
16 forearm, elbow, or foot, for the purpose of therapeutic
17 massage. Massage therapy may include the external application
18 and use of herbal or chemical preparations and lubricants such
19 as salts, powders, liquids, nonprescription creams, mechanical
20 ~~devises~~ devices such as T-bars, thumpers, body support
21 systems, heat lamps, hot and cold packs, salt glow, steam
22 cabinet baths or hydrotherapy. The term includes any massage,
23 movement therapy, massage technology, myotherapy, acupressure
24 massage, deep tissue massage, or reflexology massage
25 massotherapy, oriental massage techniques, structural
26 integration, or polarity therapy. The term does not include
27 directed movement therapy including, but not limited to, the

1 Feldenkrais method of somatic education, the Trager approach
2 to movement education, the Rosen method, and body-mind
3 centering and energy field work including, but not limited to,
4 Polarity Therapy, Reiki, Reflexology, Touch for Health, or Jin
5 Shin Do, provided these services are not designated or implied
6 to be massage or massage therapy. The term ~~shall~~ also does not
7 include laser therapy, microwave, injection therapy,
8 manipulation of the joints, or any diagnosis or treatment of
9 an illness that normally involves the practice of medicine,
10 chiropractic, physical therapy, podiatry, nursing,
11 occupational therapy, veterinary, acupuncture, osteopathy,
12 orthopedics, hypnosis, ~~or~~ naturopathics, or any other modality
13 designated by the board.

14 "§34-43-5.

15 "(a) The following persons, offices, or
16 establishments shall be exempt from this chapter:

17 "(1) A student of massage therapy who is rendering
18 massage therapy services under the supervision of a licensed
19 massage therapy instructor, or any other supervisory
20 arrangement recognized and approved by the board, ~~including,~~
21 ~~but not limited to, a temporary permit.~~ The student shall be
22 designated by title clearly indicating the training status of
23 the student.

24 "(2) Qualified members of other professions who are
25 licensed and regulated under Alabama law while they are in the
26 course of rendering services within the scope of their license

1 or regulation, provided that they do not represent themselves
2 as massage therapists.

3 "(3) A person giving massages to his or her
4 immediate family.

5 "(4) Visiting massage therapy instructors from
6 another state, territory, or country teaching massage therapy,
7 provided that the massage therapy instructor is licensed or
8 registered as required in his or her place of residence.
9 Visiting massage instructors teaching continuing education
10 courses may teach in the state for up to 100 hours per year
11 without an Alabama license. One hundred hours of continuing
12 education instruction or more shall require licensure.

13 "(5) Members of the Massage Emergency Rescue Team
14 (MERT) or any other nationally or internationally recognized
15 disaster relief association who practice massage therapy in
16 the state only during a time declared by the Governor to be a
17 city, county, or state emergency. These therapists may work in
18 the state for a period of time approved by the board.

19 "(6) Native American healers using traditional
20 healing practices, ~~provided, however,~~ Native American healers
21 who use these practices but apply for a license pursuant to
22 this chapter shall comply with all licensure requirements.

23 "(7) A person acting under the supervision of a
24 physician, a physical therapist, or a chiropractor within the
25 scope of their license or regulation, provided that they do
26 not represent themselves as massage therapists.

1 "(8) The office of a chiropractor, physician, or
2 physical therapist who employs or contracts with a massage
3 therapist. It is the specific intent of this subdivision that
4 a chiropractor, physician, or physical therapist and his or
5 her office not be required to be licensed as an establishment
6 under this chapter or be required to obtain any exemption
7 under this chapter from the board.

8 "(9) Persons using methods which involve only
9 techniques which are specifically intended to affect the human
10 energy fields or systems, without intentional soft tissue
11 manipulation including, but not limited to, Polarity Therapy,
12 Reiki, Touch for Health, or Jin Shin Do, in which their
13 services are not designated or implied to be massage or
14 massage therapy.

15 "(10) Persons who use touch, words, and directed
16 movement to deepen awareness of existing patterns of movement
17 in the body as well as to suggest new possibilities of
18 movement while engaged in the scope of practice of a
19 profession with established standards and ethics, provided
20 that their services are not designated or implied to be
21 massage or massage therapy and involve only incidental contact
22 or manipulation of soft tissue. These practices include, but
23 are not limited to, the Feldenkrais method of somatic
24 education, the Trager approach to movement education, the
25 Rosen method, and body-mind centering.

26 "(11) A hospital licensed by the Department of
27 Public Health, including any wellness center and any

1 outpatient facility or clinic that is located at the main
2 campus of the hospital or separated from the hospital and
3 owned, operated, or controlled by the licensed hospital.

4 "(b) Nothing in this chapter shall be construed to
5 permit massage therapists licensed under this chapter to
6 administer, dispense, or prescribe drugs, or engage in the
7 practice of medicine in any manner, including, but not limited
8 to, diagnosing or prescribing drugs for mental, emotional, or
9 physical diseases, illnesses, or injuries.

10 "§34-43-6.

11 "(a) There is created the Alabama Board of Massage
12 Therapy. The purpose of the board is to protect the health,
13 safety, and welfare of the public by ensuring that licensed
14 massage therapists, massage therapy schools, and massage
15 therapy instructors meet prescribed standards of education,
16 competency, and practice. To accomplish this mission, the
17 board shall establish standards pursuant to this chapter to
18 complete all board functions in a timely and effective manner
19 and to provide open and immediate access to all relevant
20 public information. The board shall communicate its
21 responsibilities and services to the public as part of its
22 consumer protection duties. The board shall develop and
23 implement a long range plan to ensure effective regulation and
24 consumer protection.

25 "(b) The board shall consist of seven members
26 appointed by the Governor, ~~subject to confirmation by the~~
27 ~~Senate~~. No member of the board shall serve more than two full

1 consecutive terms. The members initially appointed to the
2 board shall be appointed not later than July 16, 1996. ~~Five~~
3 Six of the members initially appointed to the board shall have
4 been actively engaged in the practice of massage therapy for
5 not less than three consecutive years prior to the date of
6 their appointment to the board. Successor members to these
7 initial ~~five~~ six appointees shall be licensees of the board.
8 ~~Two members~~ One member shall be a public members member who
9 shall not be licensed, nor have been licensed in the past, and
10 shall not have any direct financial interest in the massage
11 therapy profession. Each board member shall be a high school
12 graduate or shall have received a graduate equivalency
13 diploma. Each board member shall be selected upon personal
14 merit and qualifications, not per membership or affiliation
15 with an association. Each board member shall be a citizen of
16 the United States ~~and this state~~ and a resident of this state
17 for two years immediately preceding the appointment. The
18 membership of the board shall be inclusive and reflect the
19 racial, gender, geographic, urban/rural, and economic
20 diversity of the state. ~~As the terms of members serving on~~
21 ~~April 28, 2011, expire, or as vacancies occur, new members~~
22 ~~shall be appointed so that not more than one member from each~~
23 ~~United States Congressional District is appointed to serve at~~
24 ~~the same time.~~

25 ~~"(c) Of the initial seven appointees to the board,~~
26 ~~three members shall be appointed for terms ending September~~
27 ~~30, 1997, and four members shall be appointed for terms ending~~

1 ~~September 30, 1999. Thereafter, successors shall be appointed~~
2 ~~for terms of four years, each term expiring on September 30.~~

3 ~~"(d) (c)~~ Vacancies on the board occurring prior to
4 the expiration of a term shall be filled by the Governor
5 within 30 days of the vacancy to serve for the remainder of
6 the unexpired term. Each member of the board shall serve until
7 his or her successor has been duly appointed and qualified.

8 ~~"(e) At the first meeting, and annually thereafter~~
9 ~~in the month of October, the~~ (d) The board shall annually
10 elect a chair and vice chair from its membership.

11 ~~"(f) The board shall hold its first meeting within~~
12 ~~30 days after the initial members are appointed.~~ (e) The board
13 shall hold meetings during the year as it determines
14 necessary, ~~two of which shall be the biannual meetings for the~~
15 ~~purpose of reviewing license applications.~~ Additional meetings
16 may be held at the discretion of the chair or upon written
17 request of any three members of the board. A quorum of the
18 board shall be a majority of the current appointed board
19 members.

20 ~~"(g) (f)~~ Board members shall ~~not receive compensation~~
21 ~~for their services, but shall receive the same per diem and~~
22 ~~allowance as provided to state employees for each day the~~
23 ~~board meets and conducts business~~ receive one hundred dollars
24 (\$100) per day for attending sessions of the board or board
25 committees and, in addition, shall be reimbursed for such
26 necessary travel expenses as are paid to state employees, to
27 be paid from fees collected.

1 "~~(h)~~(g) The board shall promulgate the rules
2 necessary to implement this chapter pursuant to the
3 Administrative Procedure Act.

4 "~~(i)~~(h) The board may employ, and at its pleasure
5 discharge, an executive ~~secretary~~ director and other officers
6 and employees which may be necessary, including an attorney,
7 to implement this chapter. The board shall also outline the
8 duties and fix the compensation and expense allowances of the
9 employees.

10 "~~(j)~~(i) An affirmative vote of a majority of the
11 members of the board shall be required to grant, suspend, or
12 revoke a license to practice massage therapy or a license to
13 operate a massage therapy establishment.

14 "~~(k)~~(j) The board shall be financed only from income
15 accruing to ~~it~~ the board from fees, licenses, other charges,
16 and funds collected by ~~it~~ the board, and any monies that are
17 appropriated to it by the Legislature.

18 "~~(i)~~(k) Each board member shall be accountable to
19 the Governor for the proper performance of his or her duties
20 as a member of the board. The board shall report to the
21 Governor annually and at other times as requested by the
22 Governor. The Governor shall investigate any complaints or
23 unfavorable reports concerning the actions of the board and
24 take appropriate action thereon, including removal of any
25 board member for misfeasance, malfeasance, neglect of duty,
26 commission of a felony, incompetence, or permanent inability
27 to perform official duties. A board member may be removed at

1 the request of the board after failing to attend two
2 consecutive properly noticed meetings. Excused absences of a
3 board member are absences due to any of the following:

4 "(1) Medical problems of a board member or a family
5 member of the board member including, but not limited to,
6 illness, surgery, care, and hospitalization.

7 "(2) Death of a family member and attendance of his
8 or her funeral.

9 "(3) Any conflict, extraordinary circumstance, or
10 event as approved by the chair.

11 "~~(m)~~ (l) Members of the board are immune from
12 liability for all good faith acts performed in the execution
13 of their duties as members of the board, unless they fail to
14 act in a reasonably prudent manner.

15 "~~(n)~~ (m) Appointees to the board shall take the
16 constitutional oath of office and file it in the board office
17 ~~of the Governor before undertaking any duties as a board~~
18 ~~member. Upon receiving the oath, the Governor shall issue a~~
19 ~~certificate of appointment to each appointee.~~

20 "§34-43-7.

21 "(a) By rule, the board shall make provisions to do
22 all of the following:

23 "(1) Examine and qualify for examination applicants
24 for licensure and issue a license to each successful
25 applicant.

26 "(2) Adopt a seal, which shall be affixed to all
27 licenses issued by the board.

1 "(3) Prescribe application forms for examination and
2 licensure and assess and collect fees pursuant to this
3 chapter.

4 "(4) Maintain a complete record of all licensed
5 massage therapists and annually prepare a roster of the names
6 and addresses of the licensees. A copy of this roster shall
7 be made available to any person requesting it, upon payment of
8 a fee set by the board in an amount sufficient to cover the
9 costs of its publication and distribution.

10 "(5) Provide for the investigation of persons who
11 may be violating this chapter.

12 "(6) Adopt and revise rules and regulations pursuant
13 to the Administrative Procedure Act, including the adoption of
14 rules concerning unprofessional conduct.

15 "(7) Provide a copy of this chapter to all persons
16 licensed under this chapter and to all applicants for
17 licensure.

18 "(8) Adopt rules that require massage therapists to
19 carry professional and general liability insurance with an "A"
20 rated or better insurance carrier in the amount of at least
21 one million dollars (\$1,000,000). The massage therapist shall
22 produce evidence of coverage upon request of the board.

23 "(9) Have other powers necessary and proper for the
24 performance of official duties.

25 "(b) By rule, the board may do any of the following:

26 "(1) Accept or deny the application of any person
27 applying for licensure as a massage therapist upon an

1 affirmative vote of a majority of the board or the decision of
2 a designee of the board.

3 "(2) Establish criteria for certifying massage
4 therapy instructors.

5 "(3) Adopt an annual budget and authorize necessary
6 expenditures from fees and other available appropriations,
7 ~~provided, in.~~ In no event shall the expenditures of the board
8 exceed the revenues in any fiscal year.

9 "(4) Adopt a code of ethics.

10 "(5) Provide for the inspection, during normal
11 business hours, of the business premises of any licensee
12 ~~during normal business hours,~~ individual, or business holding
13 itself out as licensed by the board including, but not limited
14 to, advertising as performing massage therapy services.

15 "(6) Establish a list of approved massage therapy
16 schools.

17 "§34-43-9.

18 "(a) A person desiring to be licensed as a massage
19 therapist shall apply to the board on forms provided by the
20 board. Unless licensed pursuant to subsection (b), applicants
21 for licensure shall submit evidence satisfactory to the board
22 that they have met each of the following requirements:

23 "(1) Satisfactorily completed a minimum of ~~500~~ 650
24 hours of supervised courses of instruction ~~which shall~~
25 ~~include, but not be limited to, anatomy, pathology,~~
26 ~~physiology, massage techniques, clinical practices, ethics,~~
27 ~~health, hygiene, and related subjects. The board shall~~

1 determine how the 500 hours of instruction shall be broken
2 down. The course of instruction may be provided by a massage
3 therapy school approved by the board. The minimum 500 hours
4 shall consist of the following: 325 hours dedicated to the
5 study of basic massage therapy techniques and clinical
6 practice related modalities; 125 hours dedicated to the study
7 of anatomy, pathology, and physiology; and an additional 50
8 hours of discretionary related course work, including, but not
9 limited to, hydrotherapy, business practices and professional
10 ethics, health and hygiene, and cardiopulmonary resuscitation
11 and first aid. Beginning January 1, 1998, applicants for
12 licensure shall be required to complete a minimum of 650 hours
13 of instruction. By rule of the board, the minimum 650 hours
14 shall consist of the following: 100 hours of anatomy and
15 physiology to include 35 hours of myology, 15 hours of
16 osteology, 10 hours of circulatory system, and 10 hours of
17 nervous system, with the remaining 30 hours to address other
18 body systems at the discretion of the school; 250 hours of
19 basic massage therapy, the contradistinctions of massage
20 therapy, and related touch therapy modalities, to include a
21 minimum of 50 hours of supervised massage; 50 hours to include
22 business, hydrotherapy, first aid, cardiopulmonary
23 resuscitation, and professional ethics; and 250 hours of
24 electives to be determined by the school the content of which
25 shall be determined by rule of the board. The board may adopt
26 a rule to further increase the minimum number of hours of
27 instruction required for licensure, not to exceed the number

1 of hours recommended by the National Certification Board for
2 Therapeutic Massage and Bodywork. Before performing
3 therapeutic massage on an animal, a massage therapist shall
4 graduate from a nationally approved program and complete at
5 least 100 hours of postgraduate training and education in
6 animal anatomy, pathology, and physiology for the type of
7 animal upon which the massage therapist wishes to perform
8 therapeutic massage.

9 "(2) Passed ~~the National Certification Exam for~~
10 ~~Therapeutic Massage and Bodywork offered by the National~~
11 ~~Certification Board for Therapeutic Massage and Bodywork or an~~
12 ~~examination of equivalent stature that is accredited by the~~
13 ~~National Committee for Certifying Agencies~~ a board approved
14 exam for therapeutic massage and bodywork.

15 "(b) Notwithstanding the requirements in
16 subdivisions (1) and (2) of subsection (a), the board may
17 license an applicant if the applicant is licensed or
18 registered in another state, which, in the opinion of the
19 board, has standards of practice or licensure that are equal
20 to or stricter than the requirements imposed by this chapter.

21 "(c) Notwithstanding any other provision of this
22 section to the contrary, each applicant for licensure shall ~~be~~
23 ~~a citizen of the United States or, if not a citizen of the~~
24 ~~United States, a person who is legally present in the United~~
25 ~~States with appropriate documentation from the federal~~
26 ~~government~~ comply with federal and state immigration law
27 requirements and be 18 years of age, with a high school

1 diploma or graduate equivalency diploma, and be subject to a
2 criminal history background information check.

3 "(d) The board may notify each applicant of the
4 acceptance or rejection of his or her application. If the
5 application is rejected, the board shall list the reasons for
6 rejection.

7 "§34-43-11.

8 "(a) Establishments shall be licensed by the board.
9 A sexually oriented business may not be licensed as an
10 establishment and shall not operate as an establishment
11 licensed pursuant to this chapter.

12 "(b) Establishments shall employ only licensed
13 massage therapists to perform massage therapy.

14 ~~"(c) The board shall provide by rule, for a fair and~~
15 ~~reasonable procedure to grant exemptions from the licensure~~
16 ~~requirement of this section when the applicant can show that~~
17 ~~the advertising of massage therapy services is incidental to~~
18 ~~the primary function of his or her business. No such exemption~~
19 ~~shall be granted to a sexually oriented business. The board~~
20 ~~shall have the power to revoke or suspend the license of a~~
21 ~~massage therapy establishment licensed under this chapter, or~~
22 ~~to deny licensure of such establishment, in any of the~~
23 ~~following cases:~~

24 "(1) Upon proof that a license has been obtained by
25 fraud or misrepresentation.

26 "(2) Upon proof that the holder of a license is
27 guilty of fraud or deceit or of gross negligence,

1 incompetency, or misconduct in the operation of the
2 establishment so licensed.

3 "(d) An establishment license issued pursuant to
4 this chapter is not assignable or transferable.

5 "~~Subsequent to an official complaint, the~~ The
6 board may conduct or request a criminal history background
7 information check of the establishment's licensees of an
8 establishment through the district attorney of the circuit in
9 which the licensee is located.

10 "(f) The board shall specify the elements of the
11 criminal history background information check and shall
12 formulate the process and procedures to conduct such checks.

13 "(g) The renewal of the license of a massage therapy
14 establishment shall be accomplished pursuant to rules adopted
15 by the board. The board may also adopt rules governing
16 delinquent renewal of licenses and may impose penalty fees for
17 delinquent renewal.

18 "§34-43-12.

19 "(a) Applications for licensure or renewal shall be
20 on forms provided by the board and shall be accompanied by the
21 proper fee. The application shall be legible, either printed
22 in black ink or typed. Applications sent by facsimile shall
23 not be accepted. A two-by-two photograph, taken no more than
24 six months earlier, showing a frontal view of the head and
25 shoulders of the applicant, shall be submitted with the
26 application. All documents shall be submitted in English.

1 "(b) The board shall issue a license to each person
2 who qualifies to be a massage therapist and to each qualified
3 massage therapy establishment. To be qualified for a license
4 as a massage therapist the applicant shall be subject to a
5 criminal history background information check, successfully
6 pass the examination, pay the examination fee, and pay the
7 license fee. A license grants all professional rights, honors,
8 and privileges relating to the practice of massage therapy.

9 "(c) The board shall specify the elements of the
10 criminal history background information check, the amount of
11 the fee assessed for performing the criminal history
12 background information check, and shall formulate the process
13 and procedures for conducting criminal history background
14 information checks.

15 "~~(c)~~ (d) Each licensed massage therapist shall
16 display his or her license in the manner specified by the
17 board. Each establishment shall post its license in plain
18 sight and the license of each massage therapist who practices
19 in the establishment.

20 "~~(d)~~ (e) A license is the property of the board and
21 shall be surrendered upon demand of the board.

22 "§34-43-14.

23 "(a) By rule, the board shall initially assess and
24 collect the following fees not to exceed:

25 "~~(1) One hundred sixty dollars (\$160) for the~~
26 ~~examination.~~

1 "~~(2)~~(1) One hundred dollars (\$100) for ~~the~~ an
2 initial massage therapist license which shall be issued for
3 one year. The initial licensing fee shall be assessed in the
4 month when the applicant is notified that the license has been
5 approved.

6 "~~(3)~~(2) One hundred dollars (\$100) for all biennial
7 license renewals postmarked or received at the office of the
8 board by the date in which the license expires.

9 "~~(4)~~(3) Twenty-five dollars (\$25) for ~~the~~ an initial
10 application for licensure or the resubmission of ~~the~~ an
11 initial application.

12 "~~(5)~~(4) One hundred dollars (\$100) for ~~the~~ an
13 initial establishment license.

14 "~~(6)~~(5) Fifty dollars (\$50) for the biennial renewal
15 of ~~the~~ an establishment license.

16 "~~(7)~~(6) Fifty dollars (\$50) for ~~the~~ initial
17 registration as a massage therapy school ~~in this state~~.

18 "~~(8)~~ ~~Ten dollars (\$10)~~ (7) Fifty dollars (\$50) to
19 renew ~~the~~ registration as a massage therapy school.

20 "~~(9)~~ ~~Ten dollars (\$10)~~ ~~to register~~ (8) Twenty-five
21 dollars (\$25) for initial and renewal licenses as a massage
22 therapy instructor ~~in this state~~. ~~This is a one-time fee and~~
23 ~~does not have to be renewed~~.

24 "~~(10)~~(9) Seventy-five dollars (\$75) ~~to reactivate~~
25 biennially to receive an inactive license.

1 "~~(11)~~(10) Twenty-five dollars (\$25) shall be added
2 to all license fees not post-marked or received by the board
3 before the expiration date of the license.

4 "~~(12)~~(11) Fifteen dollars (\$15) to verify a license.

5 "~~(13)~~(12) Ten dollars (\$10) for a duplicate license
6 certificate or a name change on a license certificate. ~~The~~
7 ~~board may issue a duplicate certificate only after receiving a~~
8 ~~sworn letter from the massage therapist that the original~~
9 ~~certificate was lost, stolen, or destroyed. The records of the~~
10 ~~board shall reflect that a duplicate certificate was issued.~~

11 "(b) The continuing education provider fee charged
12 by the board may not exceed two hundred dollars (\$200).

13 "~~(b)~~(c) Necessary administrative fees may be charged
14 by the board, including, but not limited to, reasonable costs
15 for copying, labels, and lists. Examination and license fees
16 may be adjusted as the board shall deem appropriate.

17 "~~(c)~~(d) There is hereby established a separate
18 special revenue trust fund in the State Treasury to be known
19 as the Alabama Board of Massage Therapy Fund. All receipts
20 collected by the board under ~~the provisions of~~ this chapter
21 are to be deposited in this fund and used only to carry out
22 the provisions of this chapter. ~~Such receipts~~ Receipts shall
23 be disbursed only by warrant of the ~~state~~ Comptroller, upon
24 itemized vouchers approved by the chair of the board; provided
25 that no funds shall be withdrawn except as budgeted and
26 allotted according to ~~the provisions of~~ Sections 41-4-80 to
27 41-4-96, inclusive, 41-19-1, and 41-19-12, as amended, and

1 only in amounts as stipulated in the general appropriations
2 bill or other appropriations bills.

3 "§34-43-15.

4 "(a) The board may suspend, or revoke, ~~or refuse to~~
5 ~~issue or renew~~ a license or and impose a civil penalty after
6 notice and opportunity for a hearing pursuant to the
7 Administrative Procedure Act, upon proof of any of the
8 following:

9 "(1) The license was obtained by means of fraud,
10 misrepresentation, or concealment of material facts, including
11 making a false statement on an application or any other
12 document required by the board for licensure.

13 "(2) The licensee sold or bartered, or offered to
14 sell or barter, or a license for a massage therapist or a massage
15 therapy establishment.

16 "(3) The licensee has engaged in unprofessional
17 conduct that has endangered or is likely to endanger the
18 health, safety, and welfare of the public, as defined by the
19 rules of the board.

20 "(4) The licensee has been convicted of a felony or
21 of any crime involving a sexual offense or any crime arising
22 out of or connected with the practice of massage therapy.

23 "(5) The licensee has violated or aided and abetted
24 in the violation of this chapter.

25 "(6) The licensee is adjudicated as mentally
26 incompetent by a court of law.

1 "(7) The licensee uses controlled substances or
2 habitually and excessively uses alcohol.

3 "(8) The licensee engaged in false, deceptive, or
4 misleading advertising.

5 "(9) The licensee had a license revoked, suspended,
6 or denied in any other territory or jurisdiction of the United
7 States for any act described in this section or was convicted
8 of practicing massage therapy without a license in another
9 state.

10 "(10) The licensee is practicing or offering to
11 practice beyond the scope permitted by law or accepting and
12 performing professional responsibilities which the licensee
13 knows or has reason to know that she or he is not competent to
14 perform.

15 "(11) The licensee is delegating professional
16 responsibilities to a person when the licensee delegating such
17 responsibilities knows or has reason to know that such person
18 is not qualified by training, experience, or licensure to
19 perform.

20 "(12) The licensee is violating a lawful order of
21 the board previously entered in a disciplinary hearing or is
22 failing to comply with a lawfully issued subpoena of the
23 board.

24 "(13) The licensee has failed to permit the board to
25 inspect the business premises of the licensee during regular
26 business hours.

1 "(14) The licensee is practicing massage therapy at
2 a site, location, or place which is not duly licensed as a
3 massage therapy establishment.

4 "(b) Any person who has been convicted of, or
5 entered a plea of nolo contendere to, a crime or offense
6 involving prostitution or other sexual offenses is ineligible
7 to hold a license as a massage therapist for a period of at
8 least three years after the entry of the conviction or plea.
9 The board retains the right to revoke a license indefinitely
10 if the licensee is proven guilty of a crime or of sexual
11 misconduct. Reinstatement of licensure is contingent upon
12 proof of weekly counseling by a licensed professional
13 counselor.

14 "(c) Any person who has been convicted of, or
15 entered a plea of nolo contendere to, an offense involving
16 prostitution or any other type of sexual offense may not
17 receive a license for a massage therapy establishment for a
18 period of three years after the date of conviction or entry of
19 the plea. The board shall revoke the establishment license of
20 any establishment which the board determines is a sexually
21 oriented business. The board may revoke an establishment
22 license if a person is convicted of, or enters a plea of nolo
23 contendere to, any crime involving prostitution or any other
24 sexual offense against a client which occurred on the premises
25 of the establishment.

26 "(d) (1) Upon finding a person, licensee, or
27 establishment guilty of any violation governed by this

1 chapter, ~~performing massage therapy without having obtained a~~
2 ~~license,~~ the board may do any of the following:

3 "a. Impose an administrative fine of not more than
4 ten thousand dollars (\$10,000).

5 "b. Issue a cease and desist order.

6 "c. Petition the circuit court of the county where
7 the ~~act~~ violation occurred to enforce the cease and desist
8 order and collect the assessed fine.

9 "d. Assess all reasonable costs related to the
10 investigation and prosecution of the violation against the
11 guilty person, licensee, or establishment.

12 "(2) ~~Any~~ An appeal by a person aggrieved by any an
13 adverse action of the board ~~must appeal the action~~ shall be to
14 the Circuit Court of Montgomery County in accordance with the
15 Alabama Administrative Procedure Act.

16 "§34-43-17.

17 "Any person who violates this chapter shall be
18 guilty of a Class ~~C~~ A misdemeanor.

19 "§34-43-20.

20 "(a) To be approved by the board, a massage therapy
21 school shall meet all of the following requirements:

22 "(1) File a completed application prescribed by the
23 board with the board and pay a registration fee as specified
24 in Section 34-43-14.

25 "(2) Provide documentation of a curriculum which
26 includes a minimum number of required hours of instruction in
27 the subjects required pursuant to Section 34-43-9.

1 "(3) Register annually with the board by filing a
2 renewal form accompanied with the renewal fee pursuant to
3 Section 34-43-14, and submit a current curriculum and a list
4 of instructors.

5 "(b) Every instructor teaching course work ~~titled in~~
6 massage ~~therapy~~ modalities at a board approved school located
7 in Alabama shall be licensed in Alabama as a massage therapist
8 and registered as a massage therapy instructor. Instructors
9 who are not teaching massage therapy do not need to be
10 registered. Any adjunct instructors shall be dually licensed
11 in the state where they reside, be nationally certified, or
12 both.

13 "(c) The board shall register as a massage therapy
14 instructor any applicant who meets all of the following
15 requirements:

16 "(1) Is currently licensed as a massage therapist in
17 Alabama.

18 "(2) Has filed a completed application prescribed by
19 the board and paid a ~~one-time application~~ fee pursuant to
20 Section 34-43-14.

21 "(3) Documents ~~two~~ four years of experience in the
22 practice of massage therapy. The documentation may be
23 considered by the board on a case-by-case basis.

24 "§34-43-21.

25 "(a) Every massage therapist licensed pursuant to
26 this chapter shall be required to complete 16 hours of
27 continuing education as a condition for renewing his or her

1 license. The continuing education courses shall be offered by
2 providers approved by the board. The courses shall have been
3 completed within the 24 months preceding the date renewal is
4 due. Hours in excess of the total number required may not be
5 carried over to future renewals. The continuing education
6 requirements shall not apply to a massage therapist within the
7 biennium when the massage therapist is first licensed, but
8 shall apply to licensees every biennium thereafter. The board
9 may accept for compliance with the continuing education
10 requirement any of the following:

11 "(1) Courses or providers which contribute directly
12 to the massage therapy education of the licensee.

13 "(2) Courses, seminars, workshops, and classes in
14 areas related to the practice of massage therapy such as:
15 Massage, bodywork, allied health care fields (including
16 psychology and medicine), anatomy and physiology, business,
17 insurance, movement therapy, stress management, yoga, CPR, and
18 advanced first aid.

19 "(3) Courses of study offered by registered massage
20 therapy schools in Alabama, or by massage therapy instructors
21 registered with the board, or by any national organization in
22 the field of massage therapy or related touch therapy field.

23 "(b) Up to 25 percent, or four hours of credit, of
24 the required number of hours of continuing education may be
25 earned in each of the following areas:

26 "(1) Teaching a qualifying class, course, seminar,
27 or workshop.

1 "(2) Publishing an article in the field relating to
2 massage therapy.

3 "(3) Speaking on the subject of massage therapy.

4 "(4) Being a panelist discussing massage therapy.

5 "(5) Participating in a personal growth class.

6 "(6) Two hours of professional ethics.

7 "(c) Each of the areas listed in subsection (b) may
8 be used for up to four hours of credit depending on the actual
9 contact hours. One continuing education credit is defined as
10 no less than 50 uninterrupted minutes of learning, except that
11 publishing an article will automatically count for four hours.
12 Continuing education credit may not be awarded for programs
13 which do not relate to subjects listed in this section, or for
14 repeated courses submitted the previous biennium, except for
15 courses listed in subsection (b). The board may select, in a
16 random manner, license renewal applications for audit of
17 continuing education credit. Each licensee shall be
18 responsible for maintaining in his or her personal files the
19 certificates or records of credit from continuing education
20 programs received from approved program providers. Each
21 licensee selected for audit shall be required to produce
22 documentation of attendance at those continuing education
23 activities listed on his or her renewal application.

24 ~~"(1) The board shall send to each licensee selected~~
25 ~~for audit, a notice of audit.~~ The licensee shall provide
26 satisfactory documentation of attendance at, or participation

1 in, the approved continuing education programs listed in the
2 renewal application.

3 "(2) The licensee shall ascertain that the
4 continuing education program is approved by the board.

5 "(d) The board shall evaluate applications from all
6 providers of continuing education programs, including massage
7 therapy schools and instructors, in order to determine if
8 approval shall be granted or denied.

9 ~~"(1) The provider or licensee shall submit to the~~
10 ~~board an application on a form provided by the board. Only~~
11 ~~applications which are complete will be considered.~~

12 ~~"(2) The provider or licensee shall submit a~~
13 ~~complete application to the board at least 60 days prior to~~
14 ~~the date on which the training event is to be given to gain~~
15 ~~approval before the program is presented.~~

16 "(e) The board is subject to the Alabama Sunset Law
17 of 1981, and is classified as an enumerated agency pursuant to
18 Section 41-20-3. The board shall automatically terminate on
19 October 1, 2007, and every four years thereafter, unless
20 continued pursuant to the Alabama Sunset Law."

21 Section 2. All laws or parts of laws which conflict
22 with this act are repealed, and specifically, Section
23 34-43-10, Code of Alabama 1975, providing for the massage
24 therapist examination, is repealed.

25 Section 3. Although this bill would have as its
26 purpose or effect the requirement of a new or increased
27 expenditure of local funds, the bill is excluded from further

1 requirements and application under Amendment 621, now
2 appearing as Section 111.05 of the Official ReCompilation of
3 the Constitution of Alabama of 1901, as amended, because the
4 bill defines a new crime or amends the definition of an
5 existing crime.

6 Section 4. This act shall become effective on the
7 first day of the third month following its passage and
8 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Fiscal Responsibility and Economic
Development..... 14-APR-15

Read for the second time and placed on the calen-
dar 1 amendment..... 28-APR-15

Read for the third time and passed as amended 05-MAY-15

Yeas 27
Nays 0

Patrick Harris
Secretary