

1 HB541
2 149615-2
3 By Representatives England and McMillan
4 RFD: Boards, Agencies and Commissions
5 First Read: 02-APR-13

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8 SYNOPSIS: Under existing law, there are no
9 requirements authorizing the licensure or
10 regulation of persons practicing acupuncture or
11 other techniques of oriental medicine.

12 This bill would establish the Alabama Board
13 of Acupuncture and Oriental Medicine to grant
14 licensure to practice acupuncture and oriental
15 medicine techniques.

16 This bill would provide for the composition
17 of the board; would provide for the functions of
18 the board; would specify requirements for rules for
19 licensed acupuncturists; and would provide for
20 penalties for violating this bill.

21 Amendment 621 of the Constitution of Alabama
22 of 1901, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of
24 Alabama of 1901, as amended, prohibits a general
25 law whose purpose or effect would be to require a
26 new or increased expenditure of local funds from
27 becoming effective with regard to a local

1 governmental entity without enactment by a 2/3 vote
2 unless: it comes within one of a number of
3 specified exceptions; it is approved by the
4 affected entity; or the Legislature appropriates
5 funds, or provides a local source of revenue, to
6 the entity for the purpose.

7 The purpose or effect of this bill would be
8 to require a new or increased expenditure of local
9 funds within the meaning of the amendment. However,
10 the bill does not require approval of a local
11 governmental entity or enactment by a 2/3 vote to
12 become effective because it comes within one of the
13 specified exceptions contained in the amendment.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To provide for the licensing and regulation of the
20 practice of acupuncture and other oriental medicine
21 techniques; and in connection therewith would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds within the meaning of Amendment 621
24 of the Constitution of Alabama of 1901, now appearing as
25 Section 111.05 of the Official Recompilation of the
26 Constitution of Alabama of 1901, as amended.
27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. The following words and phrases shall
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (1) ACUPUNCTURE. The procedure of inserting an
5 acupuncture needle into a specific site of the body. Other
6 names for acupuncture may include, but are not limited to, dry
7 needling, myofascial trigger point dry needling, ear needling,
8 and aricular detox needling.

9 (2) ACUPUNCTURIST. A practitioner who is licensed
10 under this act to practice acupuncture and other oriental
11 medicine techniques, as determined by the Alabama Board of
12 Acupuncture and Oriental Medicine. An acupuncturist performs a
13 form of independent health care based on classical and
14 traditional Chinese/Oriental/Asian medical concepts and
15 techniques as well as Western anatomy, physiology, modern
16 science, and research, that employs acupuncture diagnosis and
17 treatment, adjunctive therapies, and diagnostic techniques to
18 prevent or modify the perception of pain or to normalize
19 physiological functions, including pain control and the
20 promotion, maintenance, and restoration of health and the
21 prevention and treatment of certain diseases. This practice
22 shall include, but not be limited to, the insertion of
23 acupuncture needles and the application of moxibustion to
24 specific areas of the human body; the use of
25 electroacupuncture and electrodermal assessment; light; laser;
26 Qi Gong; oriental massage; cupping; herbal therapy; dietary,

1 nutritional, or lifestyle guidance; and other adjunctive
2 therapies, as defined by board rule.

3 (3) BOARD. The Alabama Board of Acupuncture and
4 Oriental Medicine.

5 Section 2. (a) There is created and established the
6 Alabama Board of Acupuncture and Oriental Medicine to
7 implement and administer this act.

8 (b) The board shall consist of four members
9 appointed by the Governor. Three members shall hold valid
10 certifications from the National Certification Commission for
11 Acupuncture and Oriental Medicine or be licensed to practice
12 acupuncture as provided in this act, and the fourth member
13 shall be a member of the public. Vacancies shall be filled by
14 the Governor in the same manner as other appointments are
15 made. In the case of a vacancy, the new appointee shall serve
16 for the remainder of the unexpired term.

17 (c) Two of the initial members of the board shall be
18 appointed for a term of two years, and two of the initial
19 members shall be appointed for a term of four years. Terms of
20 subsequent members shall be for four years. A member whose
21 term has expired shall serve until a successor is appointed.

22 (d) The board shall meet at least twice each year,
23 conducting its business in person or by electronic methods,
24 including proxy voting.

25 (e) The board shall elect one of its members to
26 serve as chair for a two-year term. The chair may not serve
27 consecutive terms.

1 (f) All members of the board shall be immune from
2 individual civil liability while acting within the scope of
3 their duties as board members.

4 (g) Members of the board shall serve without
5 compensation but shall be allowed travel and per diem expenses
6 at the same rate paid to state employees, to be paid from the
7 funds collected for the administration of this act, as funds
8 are available.

9 (h) The board may employ, subject to the state Merit
10 System, those agents, employees, or assistants as may from
11 time to time be necessary, and may work or collaborate with or
12 contract services with any existing board as deemed necessary
13 and appropriate.

14 Section 3. All funds received by the board under the
15 provisions of this act shall be deposited in the State
16 Treasury to the credit of the Alabama Board of Acupuncture and
17 Oriental Medicine and all such funds are to be appropriated to
18 the board to defray the expenses incurred in carrying out the
19 provisions of this act. In all cases, any fee which is
20 received by the board shall not be refunded, and no applicant
21 shall have the right to recover any part of a fee accompanying
22 his or her application for licensure or otherwise paid to the
23 board except on the death, disability, or retirement from
24 practice of any applicant or licensee between payment of any
25 fee and the expiration of his or her current renewal or the
26 issuance of the initial license. The books and records of the
27 board shall be subject to state audit in the same manner and

1 to the same extent as any other state agency. The board shall
2 keep a true and accurate account of all funds received by the
3 board and all expenditures made by the board.

4 Section 4. (a) The board shall be responsible for
5 the regulation and licensing of acupuncturists in the state,
6 including the approval, renewal, denial, restriction,
7 revocation, and suspension of licenses.

8 (b) The board shall maintain a record of its
9 proceedings regarding the regulation and licensing of
10 acupuncturists in a register maintained for that purpose.

11 (c) The board shall maintain an up-to-date roster of
12 every person licensed to practice acupuncture in the state and
13 persons whose licenses have been suspended or revoked. A copy
14 of the roster shall be made available to any person requesting
15 it upon payment of a fee established by the board as
16 sufficient to cover the copying cost. The roster shall include
17 the name of the person, the address, and the date the license
18 was issued, renewed, suspended, or revoked.

19 (d) The board shall promulgate and publish rules in
20 accordance with the Alabama Administrative Procedure Act to
21 administer this act. Rules shall include, but not be limited
22 to, a code of ethics, licensing procedures, minimum competency
23 requirements, and minimum standards of practice in accordance
24 with those developed and generally accepted by the profession.

25 Section 5. (a) (1) Any person wishing to obtain the
26 right to practice acupuncture in this state shall make

1 application to the board upon such form and in such manner as
2 prescribed by the board.

3 (2) Unless a person has first obtained a valid
4 license, it shall be unlawful and a violation of this act for
5 him or her to practice acupuncture or other oriental medicine
6 technique.

7 (b) A candidate for licensure shall furnish the
8 board with satisfactory evidence of all of the following:

9 (1) He or she is at least 21 years of age.

10 (2) He or she is of good moral character.

11 (3) He or she can communicate proficiently in
12 English.

13 (4) He or she is a citizen of the United States or,
14 if not a citizen, a person who is legally present in the
15 United States with appropriate documentation from the federal
16 government.

17 (5) He or she successfully passes one or more
18 examinations as the board prescribes, unless exempt under
19 subsection (c).

20 (6) He or she holds an active certification from the
21 National Certification Commission for Acupuncture and Oriental
22 Medicine as a diplomat in acupuncture, oriental medicine, or
23 Chinese herbology, or otherwise demonstrates competency in
24 acupuncture or other oriental medicine technique as recognized
25 and approved by the board.

26 (c) The board may issue a license to any candidate
27 who holds a current license for practicing acupuncture or

1 other oriental medicine technique under the laws of another
2 state, territory, or foreign country, and who applies to the
3 board, provided the candidate shall furnish the board with
4 satisfactory evidence of all of the following:

5 (1) He or she is at least 21 years of age.

6 (2) He or she is of good moral character.

7 (3) He or she can communicate proficiently in
8 English.

9 (4) He or she is a citizen of the United States or,
10 if not a citizen, a person who is legally present in the
11 United States with appropriate documentation from the federal
12 government.

13 (5) That the state under which he or she is licensed
14 gives similar recognition and reciprocal licensing to licensed
15 acupuncturists in this state, or otherwise meets requirements
16 prescribed by the board.

17 (d) The board shall renew licenses annually. The
18 board may require continuing education coursework as a
19 condition of renewal.

20 Section 6. (a) The board may require as a condition
21 to determining an applicant's fitness to practice acupuncture
22 that the applicant pass one or more competency examinations,
23 either administered by a national accreditation commission for
24 acupuncture and oriental medicine or administered by the
25 board.

26 (b) If the board chooses to administer examinations
27 as a condition of licensure, it shall adopt rules prescribing

1 the manner in which an examination will be given and the
2 subject matter that will be included. For any examination so
3 administered, the board shall appoint three or more persons
4 who are licensed to practice acupuncture to assist in the
5 preparation and administration of the examination.

6 (c) The board may charge a fee to cover the costs of
7 administering the examination.

8 (d) Any applicant who fails an examination and is
9 therefore refused licensure may retake the examination upon
10 application and payment of an additional examination fee.

11 Section 7. (a) The board shall collect the following
12 fees as determined by the board:

13 (1) An application and license fee not to exceed two
14 hundred dollars (\$200).

15 (2) An annual license renewal fee not to exceed one
16 hundred fifty dollars (\$150).

17 (3) A reissuance fee for a lost or destroyed license
18 not to exceed fifty dollars (\$50).

19 (b) In addition to the fees provided in subsection
20 (a), the board shall collect an examination fee as determined
21 by the board.

22 (c) Each applicant who applies for the renewal of a
23 license after his or her license has expired shall pay a late
24 fee of not more than twenty-five dollars (\$25).

25 Section 8. The board may suspend, restrict, revoke,
26 or refuse to issue or renew any license issued or applied for
27 in accordance with this act, or otherwise discipline a

1 licensed acupuncturist after notice and opportunity for a
2 hearing as provided in this section, whenever the board finds
3 by a preponderance of the evidence that the person has engaged
4 in any of the following acts or offenses:

5 (1) Fraud or deception in applying for or procuring
6 a license or in passing an examination under this act.

7 (2) Failure to fulfill continuing education
8 requirements mandated by the board.

9 (3) Impersonation of another person holding an
10 acupuncturist license or allowing another person to use his or
11 her license.

12 (4) Violation of the code of ethics adopted by the
13 board.

14 (5) Conviction of a felony, the record of the
15 conviction being conclusive evidence thereof.

16 (6) The practice of acupuncture or other oriental
17 medicine technique in such a manner as to endanger the welfare
18 of clients or patients.

19 (7) Has been legally adjudicated as mentally
20 incompetent, the record of adjudication being conclusive
21 evidence thereof.

22 (8) Willful or negligent violation of any provision
23 of this act or rule adopted thereof.

24 (9) Performance of an act that exceeds the scope of
25 practice granted to the licensed acupuncturist.

26 (b) Notice of denial, revocation, or suspension of a
27 license or of disciplinary action shall be sent to the

1 applicant or licensee by registered mail or served personally
2 on the applicant or licensee. The notice shall state the
3 particular reasons for the proposed action and shall set a
4 date at which the applicant or licensee shall be given an
5 opportunity for a prompt and fair hearing. The written notice
6 shall be sent to the person's last known address, but the
7 nonappearance of the person shall not prevent a hearing. For
8 the purposes of the hearing, the board may subpoena persons,
9 books, and papers on its own behalf or on behalf of the
10 applicant or licensee who may appear by counsel or personally
11 on his or her own behalf.

12 (c) On the basis of any hearing or upon default of
13 the applicant or licensee, the board shall make a
14 determination specifying its findings of fact and conclusions
15 of law. A copy of the determination shall be sent by
16 registered mail or served personally upon the applicant or
17 licensee. A decision of the board to deny, revoke, or suspend
18 a license shall become final 30 days after being mailed or
19 served unless within that period the applicant or licensee
20 appeals the decision as provided by the Administrative
21 Procedure Act. No appeal, while pending appropriate court
22 action, shall supersede the denial, revocation, or suspension.
23 All proceedings and evidence presented at hearings before the
24 board may be admissible during appellate proceedings.

25 (d) Every order or judgment of the board shall take
26 effect immediately on its promulgation unless the board in the
27 order or judgment sets a probationary period for the applicant

1 or licensee. The order or judgment shall continue in effect
2 until expiration of any specified time period or termination
3 by a court of competent jurisdiction. The board shall notify
4 all licensees of any action taken against a licensee and may
5 make public its orders and judgments in the manner and form it
6 considers appropriate.

7 Section 9. The board shall have the power to
8 recognize areas of specialization for practice and to ensure
9 through rules and enforcement that licensees limit their
10 practice to demonstrated areas of competence. The board may
11 designate appropriate titles, including, but not limited to,
12 "Acupuncturist," "Licensed Acupuncturist," "Doctor of Oriental
13 Medicine," "Oriental Medicine Practitioner," or "Practitioner
14 of Oriental Medicine," as well as abbreviations such as "LAc,"
15 "DOM," or "OMD," as the board deems appropriate.

16 Section 10. (a) Effective July 1, 2013, a person may
17 not practice acupuncture or any other oriental medicine
18 technique, or assume or use the title or designation
19 "acupuncturist," "oriental medicine practitioner," or similar
20 title, abbreviation, or designation unless he or she holds a
21 valid license issued by the board pursuant to this act. A
22 person that violates this section shall be guilty of a Class C
23 misdemeanor, and upon conviction, shall be punished as
24 prescribed by law.

25 (b) The board, through its proper officer, may cause
26 to issue, in any competent court, a writ of injunction
27 enjoining any person from practicing as an acupuncturist until

1 the person obtains a license under the provisions of this act,
2 or for any other violation of this act or the rules
3 promulgated by this act.

4 (c) In case of violation of any injunction issued
5 under this section, the court may punish the offender for
6 contempt of court.

7 (d) The injunctive proceedings shall be in addition
8 to, and not in lieu of, all penalties and other remedies
9 provided in this act.

10 (e) In the suit for an injunction, the board may
11 demand a civil penalty, payable to the board, of not more than
12 one thousand dollars (\$1,000) and attorney fees not to exceed
13 four hundred dollars (\$400) in addition to the court costs, as
14 determined by the board. This judgment for penalty, attorney
15 fees, and court costs may be rendered in the same judgment in
16 which the injunction is made absolute.

17 (f) An action for injunctive relief shall be
18 determined by a judge without a jury.

19 Section 11. The provisions of this act shall not be
20 construed to interfere with or prevent any other class of
21 health care practitioner licensed in this state from
22 practicing within the scope of his or her license.

23 Section 12. Although this bill would have as its
24 purpose or effect the requirement of a new or increased
25 expenditure of local funds, the bill is excluded from further
26 requirements and application under Amendment 621, now
27 appearing as Section 111.05 of the Official Recompilation of

1 the Constitution of Alabama of 1901, as amended, because the
2 bill defines a new crime or amends the definition of an
3 existing crime.

4 Section 13. This act shall become effective on the
5 first day of the third month following its passage and
6 approval by the Governor, or its otherwise becoming law.