

1 HB228
2 136304-1
3 By Representative Hubbard (J)
4 RFD: Boards, Agencies and Commissions
5 First Read: 08-FEB-12

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8 SYNOPSIS: Under existing law, the Alabama Massage
9 Therapy Licensure Act governs the practice of
10 massage therapy in this state.

11 This bill would delete the requirement that
12 a massage therapy school located in Alabama be
13 accredited by the State Department of Education.

14 This bill would expand the persons exempt
15 from the chapter and would delete any reference to
16 a temporary permit to practice massage therapy.

17 This bill would delete antiquated language.

18 This bill would provide the board with
19 compensation.

20 This bill would change the name of the
21 executive secretary to executive director.

22 This bill would list reasons for excused
23 absences from board meetings.

24 This bill would remove the requirements that
25 the oath of office of board members be filed with
26 the Governor and that the Governor issue
27 certificates of appointment to board members.

1 This bill would increase the minimum hours
2 of supervised course instruction for licensure.

3 This bill would require that an applicant
4 for licensure be 18 years of age with a high school
5 diploma or equivalent and be subject to a criminal
6 history background information check and would
7 remove the requirement that an applicant be a
8 United States citizen.

9 This bill would delete the limit placed on
10 the number of times an applicant can take the board
11 examination. This bill would delete the requirement
12 that a record of each board exam be filed with the
13 board office and available for inspection for two
14 years.

15 This bill would authorize the board to
16 assess and collect certain fees.

17 This bill would increase the discretion of
18 the board to provide for licensure to
19 establishments. This bill would expand the board's
20 authority to revoke or suspend licenses.

21 Under existing law, violations of this
22 chapter are a Class C misdemeanor.

23 This bill would change the penalties to a
24 Class A misdemeanor.

25 Amendment 621 of the Constitution of Alabama
26 of 1901, now appearing as Section 111.05 of the
27 Official Recompilation of the Constitution of

1 Alabama of 1901, as amended, prohibits a general
2 law whose purpose or effect would be to require a
3 new or increased expenditure of local funds from
4 becoming effective with regard to a local
5 governmental entity without enactment by a 2/3 vote
6 unless: it comes within one of a number of
7 specified exceptions; it is approved by the
8 affected entity; or the Legislature appropriates
9 funds, or provides a local source of revenue, to
10 the entity for the purpose.

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

18
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22
23 Relating to the Alabama Massage Therapy Licensure
24 Act; to amend Sections 34-43-3, 34-43-5, 34-43-6, 34-43-7,
25 34-43-9, 34-43-10, 34-43-11, 34-43-12, 34-43-14, 34-43-15,
26 34-43-17, 34-43-20, and 34-43-21, Code of Alabama 1975, to
27 delete the requirement that a massage therapy school be

1 accredited by the State Department of Education; to delete any
2 reference to a temporary permit to practice massage therapy;
3 to expand the definition of therapeutic massage and extend
4 exemptions to the act; to delete antiquated language; to
5 provide the board with compensation; to change the name of the
6 executive secretary to executive director; to provide excuse
7 for absences from board meetings; to delete requirements that
8 the oath of office of board members be filed with the Governor
9 and that certificates of appointments be issued; to increase
10 the minimum hours of supervised course instruction for
11 licensure; to require that applicants for licensure be 18
12 years old with a high school diploma or equivalent and be
13 subject to a criminal history information background check; to
14 authorize the board to assess and collect certain fees; to
15 increase the discretion of the board to provide for licensure
16 to establishments; to expand the board's authority to revoke
17 or suspend licenses; to change the penalty violating the act
18 from a Class C misdemeanor to a Class A misdemeanor; and in
19 connection therewith would have as its purpose or effect the
20 requirement of a new or increased expenditure of local funds
21 within the meaning of Amendment 621 of the Constitution of
22 Alabama of 1901, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of Alabama of 1901,
24 as amended.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Sections 34-43-3, 34-43-5, 34-43-6,
27 34-43-7, 34-43-9, 34-43-10, 34-43-11, 34-43-12, 34-43-14,

1 34-43-15, 34-43-17, 34-43-20, and 34-43-21 of the Code of
2 Alabama 1975, are amended to read as follows:

3 "§34-43-3.

4 "For purposes of this chapter, the following terms
5 shall have the following meanings:

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

10 "(2) BOARD. The Alabama Board of Massage Therapy
11 created pursuant to this chapter.

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

14 "a. If located in Alabama is approved by the board
15 as meeting the minimum established standards of training and
16 curriculum as determined by the board.

17 "b. If located outside of Alabama is recognized by
18 the board and by a regionally recognized professional
19 accrediting body.

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

22 "(4) ESTABLISHMENT. A site, premises, or business
23 where massage therapy is practiced by a licensed massage
24 therapist.

25 "(5) EXAMINATION. A ~~National~~ Certification Exam For
26 Therapeutic Massage and Bodywork ~~Examination~~ administered by
27 an independent agency or another ~~nationally or internationally~~

1 ~~accredited~~ national or international exam administered by an
2 independent agency per approval of the board. ~~The examination~~
3 ~~will be accredited by the National Committee for Certifying~~
4 ~~Agencies.~~ The board retains the right to administer a written,
5 oral, or practical examination.

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

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

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

14 "~~(7)~~ (9) MASSAGE THERAPIST. A person licensed
15 pursuant to this chapter who practices or administers massage
16 therapy or touch therapy modalities to a patron for
17 compensation.

18 "~~(8)~~ (10) MASSAGE THERAPY INSTRUCTOR. A licensed
19 massage therapist approved by the board to teach the practice
20 of massage therapy.

21 "~~(9)~~ (11) PERSON. Any individual, firm, corporation,
22 partnership, organization, association, trustee, lessee,
23 agent, assignee, or other legal entity.

24 "~~(10)~~ (12) SEXUALLY ORIENTED BUSINESS. A sex parlor,
25 massage parlor, nude studio, modeling studio, love parlor,
26 adult bookstore, adult movie theater, adult video arcade,
27 adult motel, or other commercial enterprise which has ~~as its~~

1 ~~primary~~ any business ~~the~~ offering for sale, rent, or exhibit,
2 or the exhibit of, items or services intended to provide
3 sexual stimulation or sexual gratification to the customer.

4 "~~(11)~~ (13) STUDENT OF MASSAGE THERAPY. Any person
5 currently enrolled in an Alabama massage therapy school
6 program approved by the board.

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

11 "~~(13)~~ (14) THERAPEUTIC MASSAGE AND RELATED TOUCH
12 THERAPY MODALITIES. The mobilization of the soft tissue which
13 may include skin, fascia, tendons, ligaments, and muscles, for
14 the purpose of establishing and maintaining good physical
15 condition. The term shall include effleurage, petrissage,
16 tapotement, compression, vibration, stretching, heliotherapy,
17 superficial hot and cold applications, topical applications,
18 or other therapy which involves movement either by hand,
19 forearm, elbow, or foot, for the purpose of therapeutic
20 massage. Massage therapy may include the external application
21 and use of herbal or chemical preparations and lubricants such
22 as salts, powders, liquids, nonprescription creams, mechanical
23 devices such as T-bars, thumpers, body support systems, heat
24 lamps, hot and cold packs, salt glow, steam cabinet baths or
25 hydrotherapy. The term includes any massage, movement therapy,
26 massage technology, myotherapy, accupressure, deep tissue
27 therapy, or massotherapy, ~~oriental massage techniques,~~

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

16 "§34-43-5.

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

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

26 "(2) Qualified members of other professions who are
27 licensed and regulated under Alabama law while they are in the

1 course of rendering services within the scope of their license
2 or regulation, provided that they do not represent themselves
3 as massage therapists.

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

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

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

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

24 "(7) A person acting under the supervision of a
25 physician, a physical therapist, or a chiropractor within the
26 scope of their license or regulation, provided that they do
27 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 who restrict their manipulation of the
9 soft tissue of the human body to the hands, feet, or ears and
10 do not hold themselves out to be massage therapists or to do
11 massage or massage therapy.

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

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

1 education, the Trager approach to movement education, the
2 Rosen method, and body-mind centering.

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

9 "§34-43-6.

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

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

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

23 ~~"(c) Of the initial seven appointees to the board,~~
24 ~~three members shall be appointed for terms ending September~~
25 ~~30, 1997, and four members shall be appointed for terms ending~~
26 ~~September 30, 1999. Thereafter, successors shall be appointed~~
27 ~~for terms of four years, each term expiring on September 30.~~

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

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

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

18 "~~(g)~~ (f) Board members shall ~~not receive~~
19 ~~compensation for their services, but shall receive the same~~
20 ~~per diem and allowance as provided to state employees for each~~
21 ~~day the board meets and conducts business~~ receive one hundred
22 dollars (\$100) per day for attending sessions of the board or
23 its committees and, in addition, shall be reimbursed for such
24 necessary travel expenses as are paid to state employees, to
25 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
15 income accruing to ~~it~~ the board from fees, licenses, other
16 charges and funds collected by ~~it~~ the board, and any monies
17 that are appropriated to it by the Legislature.

18 "~~(l)~~ (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 the following situations: (1)
4 Medical problems of a board member or a board member's family
5 including, but not limited to, illness, surgery, care, and
6 hospitalization; (2) death of a family member and attendance
7 at the family member's funeral; and (3) any conflict,
8 extraordinary circumstance, or event approved by the chair of
9 the board.

10 ~~"(m)~~ (l) Members of the board are immune from
11 liability for all good faith acts performed in the execution
12 of their duties as members of the board.

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

18 "§34-43-7.

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

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

24 "(2) Adopt a seal, which shall be affixed to all
25 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:

1 "(1) Accept or deny the application of any person
2 applying for licensure as a massage therapist upon an
3 affirmative vote of a majority of the board.

4 "(2) Allow the executive director to accept or deny
5 the application of any person applying for licensure as a
6 massage therapist.

7 "(3) Establish criteria for certifying massage
8 therapy instructors.

9 "~~(3)~~ (4) Adopt an annual budget and authorize
10 necessary expenditures from fees and other available
11 appropriations, provided, in no event shall the expenditures
12 of the board exceed the revenues in any fiscal year.

13 "~~(4)~~ (5) Adopt a code of ethics.

14 "~~(5)~~ (6) Provide for the inspection during normal
15 business hours of the business premises of any licensee ~~during~~
16 ~~normal business hours, individual, or business holding itself~~
17 ~~out as licensed by the board, including, but not limited to,~~
18 advertising as performing massage therapy services.

19 "~~(6)~~ (7) Establish a list of approved massage
20 therapy schools.

21 "§34-43-9.

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

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

1 ~~resuscitation, and professional ethics; and 250 hours of~~
2 ~~electives to be determined by the school~~ the content of which
3 shall be determined by rule of the board. The board may adopt
4 a rule to further increase the minimum number of hours of
5 instruction required for licensure, ~~not to exceed the number~~
6 ~~of hours recommended by the National Certification Board for~~
7 ~~Therapeutic Massage and Bodywork.~~ Before performing
8 therapeutic massage on an animal, a massage therapist shall
9 graduate from a nationally approved program and complete at
10 least 100 hours of postgraduate training and education in
11 animal anatomy, pathology, and physiology for the type of
12 animal upon which the massage therapist wishes to perform
13 therapeutic massage.

14 "(2) Passed ~~the~~ a National Certification Exam for
15 Therapeutic Massage and Bodywork ~~offered by the National~~
16 ~~Certification Board for Therapeutic Massage and Bodywork~~ or an
17 examination of equivalent stature that is accredited by the
18 National Committee for Certifying Agencies.

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

25 "(c) Notwithstanding any other provision of this
26 section to the contrary, each applicant for licensure shall be
27 ~~a citizen of the United States or, if not a citizen of the~~

1 ~~United States, a person who is legally present in the United~~
2 ~~States with appropriate documentation from the federal~~
3 ~~government 18 years of age, with a high school diploma or~~
4 ~~graduate equivalency diploma, and be subject to a criminal~~
5 ~~history background information check.~~

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

10 "§34-43-10.

11 "(a) In the event that a massage therapist's
12 examination is ~~required~~ administered by the board, it shall be
13 conducted at the times and places and under the supervision
14 determined by the board. The board shall notify each applicant
15 of the time and place of the examination.

16 "(b) The board may determine by rule the scope,
17 form, and content of the examination, which shall consist of a
18 written examination and a practical examination or oral
19 interview. The examination shall adequately measure the
20 knowledge of the applicant of the practice of massage therapy.
21 Professional testing services may be utilized.

22 "(c) An applicant shall successfully pass ~~the~~ an
23 approved examination in order to be eligible for licensure as
24 a massage therapist. The board shall notify each applicant in
25 writing of the results of the examination. Any applicant who
26 fails to pass the examination may take the examination again
27 upon application and payment of an additional examination fee.

1 ~~No applicant shall be allowed to take the examination more~~
2 ~~than twice in a two-year period.~~

3 ~~"(d) All examinations shall be conducted in a manner~~
4 ~~so that the applicants are known to the board by number until~~
5 ~~the examination is completed and the grade determined. A~~
6 ~~record of each examination shall be filed with the board~~
7 ~~office and available for inspection for a period of two years~~
8 ~~following the examination.~~

9 "§34-43-11.

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

14 "(b) Establishments shall employ only licensed
15 massage therapists to perform massage therapy.

16 "(c) The board shall provide by rule, for a fair and
17 reasonable procedure to grant exemptions from the licensure
18 requirement of this section ~~when the applicant can show that~~
19 ~~the advertising of massage therapy services is incidental to~~
20 ~~the primary function of his or her business. No such exemption~~
21 ~~shall be granted to a sexually oriented business.~~

22 "(d) The board shall have the power to revoke or
23 suspend the license of a massage therapy establishment
24 licensed under this chapter, or to deny licensure of such
25 establishment, in any of the following cases:

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

1 "(2) Upon proof that the holder of a license is
2 guilty of fraud or deceit or of gross negligence,
3 incompetency, or misconduct in the operation of the
4 establishment so licensed.

5 ~~"(d)~~ (e) An establishment license issued pursuant to
6 this chapter is not assignable or transferable.

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

12 "(g) The board shall specify the elements of the
13 criminal history background information checks and shall
14 formulate the process and procedures to conduct such checks.

15 "(h) Renewal of license registration for massage
16 therapy establishments shall be accomplished pursuant to rules
17 adopted by the board. The board is further authorized to adopt
18 rules governing delinquent renewal of licenses and may impose
19 penalty fees for delinquent renewal.

20 "§34-43-12.

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

1 shoulders of the applicant, shall be submitted with the
2 application. All documents shall be submitted in English.

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

12 "(c) The board shall specify the elements of the
13 criminal history background information checks and shall
14 formulate the process and procedures to conduct such checks.

15 "~~(c)~~ (d) Each licensed therapist shall display his
16 or her license in the manner specified by the board. Each
17 establishment shall post its license in plain sight and the
18 license of each massage therapist who practices in the
19 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)~~ Two hundred
2 dollars (\$200) for the initial massage therapist license which
3 shall be issued for one year. The initial licensing fee shall
4 be assessed in the month when the applicant is notified that
5 the license has been approved.

6 "~~(3)~~ (2) ~~One hundred dollars (\$100)~~ Three hundred
7 dollars (\$300) for all biennial license renewals postmarked or
8 received at the office of the board by the date in which the
9 license expires.

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

13 "~~(5)~~ (4) ~~One hundred dollars (\$100)~~ Two hundred
14 dollars (\$200) for the initial establishment license.

15 "~~(6)~~ (5) ~~Fifty dollars (\$50)~~ Three hundred dollars
16 (\$300) for the biennial renewal of the establishment license.

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

20 "~~(8)~~ (7) ~~Ten dollars (\$10)~~ One hundred dollars
21 (\$100) to renew the registration as a massage therapy school.

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

26 "~~(10)~~ (9) ~~Seventy-five dollars (\$75)~~ ~~to reactivate~~
27 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
5 license.

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

12 "(b) Fees assessed in subdivisions (1) to (5),
13 inclusive, shall not be increased more than fifty dollars
14 (\$50) per licensing period.

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

20 "~~(c)~~ (d) There is hereby established a separate
21 special revenue trust fund in the State Treasury to be known
22 as the Alabama Board of Massage Therapy Fund. All receipts
23 collected by the board under the provisions of this chapter
24 are to be deposited in this fund and used only to carry out
25 the provisions of this chapter. Such receipts shall be
26 disbursed only by warrant of the state Comptroller, upon
27 itemized vouchers approved by the chair of the board; provided

1 that no funds shall be withdrawn except as budgeted and
2 allotted according to the provisions of Sections 41-4-80 to
3 41-4-96, inclusive, 41-19-1, and 41-19-12, as amended, and
4 only in amounts as stipulated in the general appropriations
5 bill or other appropriations bills.

6 "§34-43-15.

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

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

16 "(2) The licensee sold or bartered or offered to
17 sell or barter a license for a massage therapist or a massage
18 therapy establishment.

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

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

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

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

3 "(7) The licensee uses controlled substances or
4 habitually and excessively uses alcohol.

5 "(8) The licensee engaged in false, deceptive, or
6 misleading advertising.

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

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

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

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

25 "(13) The licensee has failed to permit the board
26 to inspect the business premises of the licensee during
27 regular 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 occurred to enforce the cease and desist order and
8 collect the assessed fine.

9 "(2) Any person aggrieved by any adverse action of
10 the board must appeal the action to the Circuit Court of
11 Montgomery County in accordance with the Alabama
12 Administrative Procedure Act.

13 "§34-43-17.

14 Any person who violates this chapter shall be guilty
15 of a Class C A misdemeanor.

16 "§34-43-20.

17 "(a) To be approved by the board, a massage therapy
18 school shall meet the following requirements:

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

22 "(2) Provide documentation of a curriculum which
23 includes a minimum number of required hours of instruction ~~in~~
24 ~~the subjects~~ required pursuant to Section 34-43-9.

25 "(3) Register annually with the board by filing a
26 renewal form accompanied with the renewal fee pursuant to

1 Section 34-43-14, and submit a current curriculum and a list
2 of instructors.

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

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

14 "(1) Is currently licensed as a massage therapist in
15 Alabama.

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

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

22 "§34-43-21.

23 "(a) Every massage therapist licensed pursuant to
24 this chapter shall be required to complete 16 hours of
25 continuing education as a condition for renewing his or her
26 license. The continuing education courses shall be offered by
27 providers approved by the board. The courses shall have been

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

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

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

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

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

24 "(1) Teaching a qualifying class, course, seminar,
25 or workshop.

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

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

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

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

4 "(6) Two hours of professional ethics.

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

22 "~~(1) The board shall send to each licensee selected~~
23 ~~for audit, a notice of audit.~~ The licensee shall provide
24 satisfactory documentation of attendance at, or participation
25 in, the approved continuing education programs listed in the
26 renewal application.

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

3 "(d) (1) The board shall evaluate applications from
4 all providers of continuing education programs, including
5 massage therapy schools and instructors, in order to determine
6 if approval shall be granted or denied.

7 "~~(1)~~ (2) The provider or licensee shall submit to
8 the board an application on a form provided by the board. Only
9 applications which are complete will be considered.

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

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

19 Section 2. Although this bill would have as its
20 purpose or effect the requirement of a new or increased
21 expenditure of local funds, the bill is excluded from further
22 requirements and application under Amendment 621, now
23 appearing as Section 111.05 of the Official Recompilation of
24 the Constitution of Alabama of 1901, as amended, because the
25 bill defines a new crime or amends the definition of an
26 existing crime.

1 Section 3. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.