

1 HB310
2 126504-2
3 By Representative Hubbard (J)
4 RFD: Education Policy
5 First Read: 22-MAR-11

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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 and the requirement that appointees to the Alabama
19 Board of Massage Therapy be confirmed by the
20 Senate.

21 This bill would provide the board with
22 compensation and change the makeup of the board.

23 This bill would change the name of the
24 executive secretary to executive director.

25 This bill would list reasons for excused
26 absentees from board meetings.

1 This bill would remove the requirements that
2 the oath of office of board members be filed with
3 the Governor and that the Governor issue
4 certificates of appointment to board members.

5 This bill would increase the minimum hours
6 of supervised course instruction for licensure.

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

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

19 This bill would authorize the board to
20 assess and collect certain fees.

21 This bill would increase the discretion of
22 the board to provide for licensure to
23 establishments. This bill would expand the board's
24 authority to revoke or suspend licenses.

25 Under existing law, violations of this
26 chapter are a Class C misdemeanor.

1 This bill would change the penalties to a
2 Class A misdemeanor.

3 Amendment 621 of the Constitution of Alabama
4 of 1901, now appearing as Section 111.05 of the
5 Official Recompilation of the Constitution of
6 Alabama of 1901, as amended, prohibits a general
7 law whose purpose or effect would be to require a
8 new or increased expenditure of local funds from
9 becoming effective with regard to a local
10 governmental entity without enactment by a 2/3 vote
11 unless: it comes within one of a number of
12 specified exceptions; it is approved by the
13 affected entity; or the Legislature appropriates
14 funds, or provides a local source of revenue, to
15 the entity for the purpose.

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

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to the Alabama Massage Therapy Licensure
2 Act; to amend Sections 34-43-3, 34-43-5, 34-43-6, 34-43-7,
3 34-43-9, 34-43-10, 34-43-11, 34-43-12, 34-43-14, 34-43-15,
4 34-43-17, 34-43-20, and 34-43-21, Code of Alabama 1975, to
5 delete the requirement that a massage therapy school be
6 accredited by the State Department of Education; to delete any
7 reference to a temporary permit to practice massage therapy;
8 to expand the definition of therapeutic massage and extend
9 exemptions to the act; to delete antiquated language and the
10 requirement that board appointees be confirmed by the Senate;
11 to provide the board with compensation; to change the name of
12 the executive secretary to executive director; to provide
13 excuse for absences from board meetings; to delete
14 requirements that the oath of office of board members be filed
15 with the Governor and that certificates of appointments be
16 issued; to increase the minimum hours of supervised course
17 instruction for licensure; to require that applicants for
18 licensure be 18 years old with a high school diploma or
19 equivalent and be subject to a criminal history information
20 background check; to authorize the board to assess and collect
21 certain fees; to increase the discretion of the board to
22 provide for licensure to establishments; to expand the board's
23 authority to revoke or suspend licenses; to change the penalty
24 violating the act from a Class C misdemeanor to a Class A
25 misdemeanor; and in connection therewith would have as its
26 purpose or effect the requirement of a new or increased
27 expenditure of local funds within the meaning of Amendment 621

1 of the Constitution of Alabama of 1901, now appearing as
2 Section 111.05 of the Official ReCompilation of the
3 Constitution of Alabama of 1901, as amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 34-43-3, 34-43-5, 34-43-6,
6 34-43-7, 34-43-9, 34-43-10, 34-43-11, 34-43-12, 34-43-14,
7 34-43-15, 34-43-17, 34-43-20, and 34-43-21 of the Code of
8 Alabama 1975, are amended to read as follows:

9 "§34-43-3.

10 "For purposes of this chapter, the following terms
11 shall have the following meanings:

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

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

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

20 "a. If located in Alabama is ~~accredited by the~~
21 ~~Department of Education~~ and approved by the board as meeting
22 the minimum established standards of training and curriculum
23 as determined by the board.

24 "b. If located outside of Alabama is recognized by
25 the board and by a regionally recognized professional
26 accrediting body.

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

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

6 "(5) EXAMINATION. A ~~National~~ Certification Exam For
7 Therapeutic Massage and Bodywork ~~Examination~~ administered by
8 an independent agency or another ~~nationally or internationally~~
9 ~~accredited~~ national or international exam administered by an
10 independent agency per approval of the board. ~~The examination~~
11 ~~will be accredited by the National Committee for Certifying~~
12 ~~Agencies.~~ The board retains the right to administer a written,
13 oral, or practical examination.

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

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

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

22 "~~(7)~~ (9) MASSAGE THERAPIST. A person licensed
23 pursuant to this chapter who practices or administers massage
24 therapy or touch therapy modalities to a patron for
25 compensation.

1 "~~(8)~~(10) MASSAGE THERAPY INSTRUCTOR. A licensed
2 massage therapist approved by the board to teach the practice
3 of massage therapy.

4 "~~(9)~~(11) PERSON. Any individual, firm, corporation,
5 partnership, organization, association, trustee, lessee,
6 agent, assignee, or other legal entity.

7 "~~(10)~~(12) SEXUALLY ORIENTED BUSINESS. A sex parlor,
8 massage parlor, nude studio, modeling studio, love parlor,
9 adult bookstore, adult movie theater, adult video arcade,
10 adult motel, or other commercial enterprise which has ~~as its~~
11 primary any business ~~the~~ offering for sale, rent, or exhibit,
12 or the exhibit of, items or services intended to provide
13 sexual stimulation or sexual gratification to the customer.

14 "~~(11)~~(13) STUDENT OF MASSAGE THERAPY. Any person
15 currently enrolled in an Alabama massage therapy school
16 program approved by the board.

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

21 "~~(13)~~(14) THERAPEUTIC MASSAGE AND RELATED TOUCH
22 THERAPY MODALITIES. The mobilization of the soft tissue which
23 may include skin, fascia, tendons, ligaments, and muscles, for
24 the purpose of establishing and maintaining good physical
25 condition. The term shall include effleurage, petrissage,
26 tapotement, compression, vibration, stretching, heliotherapy,
27 superficial hot and cold applications, topical applications,

1 or other therapy which involves movement either by hand,
2 forearm, elbow, or foot, for the purpose of therapeutic
3 massage. Massage therapy may include the external application
4 and use of herbal or chemical preparations and lubricants such
5 as salts, powders, liquids, nonprescription creams, mechanical
6 devises such as T-bars, thumpers, body support systems, heat
7 lamps, hot and cold packs, salt glow, steam cabinet baths or
8 hydrotherapy. The term includes any massage, ~~movement therapy,~~
9 massage technology, myotherapy, accupressure, deep tissue
10 therapy, neuromusuclar therapy, or massotherapy, ~~oriental~~
11 ~~massage techniques, structural integration, or polarity~~
12 ~~therapy.~~ The term shall not include directed movement therapy,
13 including, but not limited to, the Feldenkrais method of
14 somatic education, the Trager approach to movement education,
15 the Rosen method, and body-mind centering and energy field
16 work, including, but not limited to, Polarity Therapy, Reiki,
17 Reflexology, Touch for Health, or Jin Shin Do, provided these
18 services are not designated or implied to be massage or
19 massage therapy. The term shall not include laser therapy,
20 microwave, injection therapy, manipulation of the joints, or
21 any diagnosis or treatment of an illness that normally
22 involves the practice of medicine, chiropractic, physical
23 therapy, podiatry, nursing, occupational therapy, veterinary,
24 acupuncture, osteopathy, orthopedics, hypnosis, or
25 naturopathics or any other modality designated by the board.

26 "§34-43-5.

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

3 "(1) A student of massage therapy who is rendering
4 massage therapy services under the supervision of a licensed
5 massage therapy instructor, or any other supervisory
6 arrangement recognized and approved by the board, ~~including,~~
7 ~~but not limited to, a temporary permit.~~ The student shall be
8 designated by title clearly indicating the training status of
9 the student.

10 "(2) Qualified members of other professions who are
11 licensed and regulated under Alabama law while they are in the
12 course of rendering services within the scope of their license
13 or regulation, provided that they do not represent themselves
14 as massage therapists.

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

17 "(4) Visiting massage therapy instructors from
18 another state, territory, or country teaching massage therapy,
19 provided that the massage therapy instructor is licensed or
20 registered as required in his or her place of residence.
21 Visiting massage instructors teaching continuing education
22 courses may teach in the state up to 100 hours per year
23 without an Alabama license. One hundred hours of continuing
24 education instruction or more shall require licensure.

25 "(5) Members of the Massage Emergency Rescue Team
26 (MERT) or any other nationally or internationally recognized
27 disaster relief association who practice massage therapy in

1 the state only during a time declared by the Governor to be a
2 city, county, or state emergency. These therapists may work in
3 the state for a period of time approved by the board.

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

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

12 "(8) The office of a chiropractor, physician, or
13 physical therapist who employs or contracts with a massage
14 therapist. It is the specific intent of this subdivision that
15 a chiropractor, physician, or physical therapist and his or
16 her office not be required to be licensed as an establishment
17 under this chapter or be required to obtain any exemption
18 under this chapter from the board.

19 "(9) Persons who restrict their manipulation of the
20 soft tissue of the human body to the hands, feet, or ears and
21 do not hold themselves out to be massage therapists or to do
22 massage or massage therapy.

23 "(10) Persons using methods which involve only
24 techniques which are specifically intended to affect the human
25 energy fields or systems, without intentional soft tissue
26 manipulation, including, but not limited to, Polarity Therapy,
27 Reiki, Touch for Health, or Jin Shin Do, in which their

1 services are not designated or implied to be massage or
2 massage therapy.

3 "(11) Persons who use touch, words, and directed
4 movement to deepen awareness of existing patterns of movement
5 in the body as well as to suggest new possibilities of
6 movement while engaged in the scope of practice of a
7 profession with established standards and ethics, provided
8 that their services are not designated or implied to be
9 massage or massage therapy and involve only incidental contact
10 or manipulation of soft tissue. These practices include, but
11 are not limited to, the Feldenkrais method of somatic
12 education, the Trager approach to movement education, the
13 Rosen method, and body-mind centering.

14 "(b) Nothing in this chapter shall be construed to
15 permit massage therapists licensed under this chapter to
16 administer, dispense, or prescribe drugs, or engage in the
17 practice of medicine in any manner, including, but not limited
18 to, diagnosing or prescribing drugs for mental, emotional, or
19 physical diseases, illnesses, or injuries.

20 "§34-43-6.

21 "(a) There is created the Alabama Board of Massage
22 Therapy. The purpose of the board is to protect the health,
23 safety, and welfare of the public by ensuring that licensed
24 massage therapists, massage therapy schools, and massage
25 therapy instructors meet prescribed standards of education,
26 competency, and practice. To accomplish this mission, the
27 board shall establish standards pursuant to this chapter to

1 complete all board functions in a timely and effective manner
2 and to provide open and immediate access to all relevant
3 public information. The board shall communicate its
4 responsibilities and services to the public as part of its
5 consumer protection duties. The board shall develop and
6 implement a long range plan to ensure effective regulation and
7 consumer protection.

8 "(b) The board shall consist of seven members
9 appointed by the Governor, ~~subject to confirmation by the~~
10 ~~Senate. No member of the board shall serve more than two full~~
11 ~~consecutive terms. The members initially appointed to the~~
12 ~~board shall be appointed not later than July 16, 1996. Five of~~
13 ~~the members initially appointed to the board shall have been~~
14 ~~actively engaged in the practice of massage therapy for not~~
15 ~~less than three consecutive years prior to the date of their~~
16 ~~appointment to the board. Successor members to these initial~~
17 ~~five appointees shall be licensees of the board. Two members~~
18 ~~shall be public members who shall not be licensed, nor have~~
19 ~~been licensed in the past, and shall not have any direct~~
20 ~~financial interest in the massage therapy profession. Each~~
21 ~~board member shall be a high school graduate or shall have~~
22 ~~received a graduate equivalency diploma. Each board member~~
23 ~~shall be selected upon personal merit and qualifications, not~~
24 ~~per membership or affiliation with an association. Each board~~
25 ~~member shall be a citizen of the United States and a resident~~
26 ~~of this state for two years immediately preceding the~~
27 ~~appointment. The membership of the board shall be inclusive~~

1 and reflect the racial, gender, geographic, urban/rural, and
2 economic diversity of the state.

3 ~~"(c) Of the initial seven appointees to the board,~~
4 ~~three members shall be appointed for terms ending September~~
5 ~~30, 1997, and four members shall be appointed for terms ending~~
6 ~~September 30, 1999. Thereafter, successors shall be appointed~~
7 ~~for terms of four years, each term expiring on September 30.~~

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

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

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

25 ~~"(g) (f)~~ Board members shall ~~not receive compensation~~
26 ~~for their services, but shall receive the same per diem and~~
27 ~~allowance as provided to state employees for each day the~~

1 ~~board meets and conducts business~~ receive one hundred dollars
2 (\$100) per day for attending sessions of the board or its
3 committees and, in addition, shall be reimbursed for such
4 necessary travel expenses as are paid to state employees, to
5 be paid from fees collected.

6 ~~"(h)(g)~~ The board shall promulgate the rules
7 necessary to implement this chapter pursuant to the Alabama
8 Administrative Procedure Act.

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

15 ~~"(j)(i)~~ An affirmative vote of a majority of the
16 members of the board shall be required to grant, suspend, or
17 revoke a license to practice massage therapy or a license to
18 operate a massage therapy establishment.

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

23 ~~"(i)(k)~~ Each board member shall be accountable to
24 the Governor for the proper performance of his or her duties
25 as a member of the board. The board shall report to the
26 Governor annually and at other times as requested by the
27 Governor. The Governor shall investigate any complaints or

1 unfavorable reports concerning the actions of the board and
2 take appropriate action thereon, including removal of any
3 board member for misfeasance, malfeasance, neglect of duty,
4 commission of a felony, incompetence, or permanent inability
5 to perform official duties. A board member may be removed at
6 the request of the board after failing to attend two
7 consecutive properly noticed meetings. Excused absences of a
8 board member are absences due to the following situations: (1)
9 Medical problems of a board member or a board member's family
10 including, but not limited to, illness, surgery, care, and
11 hospitalization; (2) death of a family member and attendance
12 at the family member's funeral; and (3) any conflict,
13 extraordinary circumstance, or event approved by the chair of
14 the board.

15 ~~"(m)(1)~~ Members of the board are immune from
16 liability for all good faith acts performed in the execution
17 of their duties as members of the board.

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

23 "§34-43-7.

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

1 "(1) Examine and qualify for examination applicants
2 for licensure and issue a license to each successful
3 applicant.

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

6 "(3) Prescribe application forms for examination and
7 licensure and assess and collect fees pursuant to this
8 chapter.

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

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

17 "(6) Adopt and revise rules and regulations pursuant
18 to the Administrative Procedure Act, including the adoption of
19 rules concerning unprofessional conduct.

20 "(7) Provide a copy of this chapter to all persons
21 licensed under this chapter and to all applicants for
22 licensure.

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

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

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

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

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

10 "(3) Establish criteria for certifying massage
11 therapy instructors.

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

16 "~~(4)~~(5) Adopt a code of ethics.

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

23 "~~(6)~~(7) Establish a list of approved massage therapy
24 schools.

25 "§34-43-9.

26 "(a) A person desiring to be licensed as a massage
27 therapist shall apply to the board on forms provided by the

1 board. Unless licensed pursuant to subsection (b), applicants
2 for licensure shall submit evidence satisfactory to the board
3 that they have met each of the following requirements:

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

1 ~~therapy, and related touch therapy modalities, to include a~~
2 ~~minimum of 50 hours of supervised massage; 50 hours to include~~
3 ~~business, hydrotherapy, first aid, cardiopulmonary~~
4 ~~resuscitation, and professional ethics; and 250 hours of~~
5 ~~electives to be determined by the school~~ the content of which
6 shall be determined by rule of the board. The board may adopt
7 a rule to further increase the minimum number of hours of
8 instruction required for licensure, ~~not to exceed the number~~
9 ~~of hours recommended by the National Certification Board for~~
10 ~~Therapeutic Massage and Bodywork.~~ Before performing
11 therapeutic massage on an animal, a massage therapist shall
12 graduate from a nationally approved program and complete at
13 least 100 hours of postgraduate training and education in
14 animal anatomy, pathology, and physiology for the type of
15 animal upon which the massage therapist wishes to perform
16 therapeutic massage.

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

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

1 "(c) Notwithstanding any other provision of this
2 section to the contrary, each applicant for licensure shall be
3 18 years of age, with a high school diploma or graduate
4 equivalency diploma, and be subject to a criminal history
5 background information check ~~a citizen of the United States~~
6 ~~or, if not a citizen of the United States, a person who is~~
7 ~~legally present in the United States with appropriate~~
8 ~~documentation from the federal government.~~

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

13 "§34-43-10.

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

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

25 "(c) An applicant shall successfully pass ~~the~~ an
26 approved examination in order to be eligible for licensure as
27 a massage therapist. The board shall notify each applicant in

1 writing of the results of the examination. Any applicant who
2 fails to pass the examination may take the examination again
3 upon application and payment of an additional examination fee.
4 ~~No applicant shall be allowed to take the examination more~~
5 ~~than twice in a two-year period.~~

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

12 "§34-43-11.

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

17 "(b) Establishments shall employ only licensed
18 massage therapists to perform massage therapy.

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

25 "(d) The board shall have the power to revoke or
26 suspend the license of a massage therapy establishment

1 licensed under this chapter, or to deny licensure of such
2 establishment, in any of the following cases:

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

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

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

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

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

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

24 "§34-43-12.

25 "(a) Applications for licensure or renewal shall be
26 on forms provided by the board and shall be accompanied by the
27 proper fee. The application shall be legible, either printed

1 in black ink or typed. Applications sent by facsimile shall
2 not be accepted. A two-by-two photograph, taken no more than
3 six months earlier, showing a frontal view of the head and
4 shoulders of the applicant, shall be submitted with the
5 application. All documents shall be submitted in English.

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

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

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

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

24 "§34-43-14.

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

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

3 "~~(2) (1) One hundred dollars (\$100) Two hundred~~
4 ~~dollars (\$200) for the initial massage therapist license which~~
5 ~~shall be issued for one year. The initial licensing fee shall~~
6 ~~be assessed in the month when the applicant is notified that~~
7 ~~the license has been approved.~~

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

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

15 "~~(5) (4) One hundred dollars (\$100) Two hundred~~
16 ~~dollars (\$200) for the initial establishment license.~~

17 "~~(6) (5) Fifty dollars (\$50) Three hundred dollars~~
18 ~~(\$300) for the biennial renewal of the establishment license.~~

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

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

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

1 "~~(10)~~(9) Seventy-five dollars (\$75) ~~to reactivate~~
2 biennially to receive an inactive license.

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

6 "~~(12)~~(11) Fifteen dollars (\$15) to verify a license.

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

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

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

1 amounts as stipulated in the general appropriations bill or
2 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 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 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
15 guilty 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) The board shall evaluate applications from all
4 providers of continuing education programs, including massage
5 therapy schools and instructors, in order to determine if
6 approval shall be granted or denied.

7 "~~(1)~~ The provider or licensee shall submit to the
8 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.