

1 SB508  
2 140403-1  
3 By Senator Allen  
4 RFD: Health  
5 First Read: 12-APR-12

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8 SYNOPSIS: Under existing law, there are no  
9 requirements authorizing the licensing or  
10 regulation of acupuncturists.

11 This bill would authorize the Alabama Board  
12 of Medical Examiners to license and regulate the  
13 practice of acupuncture.

14 This bill would authorize the board to  
15 promulgate rules pertaining to the examination and  
16 licensing of acupuncturists.

17 This bill would prohibit unlicensed persons  
18 from practicing acupuncture and would provide  
19 penalties for violations.

20 Amendment 621 of the Constitution of Alabama  
21 of 1901, now appearing as Section 111.05 of the  
22 Official Recompilation of the Constitution of  
23 Alabama of 1901, as amended, prohibits a general  
24 law whose purpose or effect would be to require a  
25 new or increased expenditure of local funds from  
26 becoming effective with regard to a local  
27 governmental entity without enactment by a 2/3 vote

1 unless: it comes within one of a number of  
2 specified exceptions; it is approved by the  
3 affected entity; or the Legislature appropriates  
4 funds, or provides a local source of revenue, to  
5 the entity for the purpose.

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

13  
14 A BILL  
15 TO BE ENTITLED  
16 AN ACT

17  
18 To provide for the licensing and regulation of  
19 acupuncturists; to prohibit the unlicensed practice of  
20 acupuncture; to provide penalties for violations; and in  
21 connection therewith would have as its purpose or effect the  
22 requirement of a new or increased expenditure of local funds  
23 within the meaning of Amendment 621 of the Constitution of  
24 Alabama of 1901, now appearing as Section 111.05 of the  
25 Official Recompilation of the Constitution of Alabama of 1901,  
26 as amended.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. As used in this act, the following terms  
2 shall have the following meanings:

3           (1) ACUPUNCTURE. A form of primary health care,  
4 based on traditional Chinese medical concepts and modern  
5 oriental medical techniques, that employs acupuncture  
6 diagnosis and treatment, as well as adjunctive therapies and  
7 diagnostic techniques, for the promotion, maintenance, and  
8 restoration of health and the prevention of disease.  
9 Acupuncture shall include, but not be limited to, the  
10 insertion of acupuncture needles and the application of  
11 moxibustion to specific areas of the human body and the use of  
12 electroacupuncture, Qi Gong, oriental massage, herbal therapy,  
13 dietary guidelines, and other adjunctive therapies, as defined  
14 by board rule.

15           (2) ACUPUNCTURIST. Any person licensed by the  
16 Alabama Board of Medical Examiners to practice acupuncture as  
17 a primary health care provider.

18           (3) BOARD. The Alabama Board of Medical Examiners.

19           Section 2. Effective January 1, 2013, no person  
20 shall practice, or in any way hold himself or herself out, or  
21 designate himself or herself as a licensed acupuncturist  
22 unless he or she possesses a current license issued pursuant  
23 to this act or is exempt from this act.

24           Section 3. The board shall perform all of the  
25 following duties:

1           (1) Examine for, approve, withhold, deny, restrict,  
2 revoke, suspend, and renew licensure for duly qualified  
3 applicants.

4           (2) Maintain a record of its proceedings regarding  
5 the regulation and licensing of acupuncturists in a register  
6 maintained for that purpose.

7           (3) Maintain a roster of all licensed acupuncturists  
8 and annually prepare a roster of the names and addresses of  
9 all licensees. A copy of the roster shall be made available to  
10 any person requesting it upon payment of a fee established by  
11 the board as sufficient to cover the cost of the roster.

12           (4) Adopt rules, a professional code of ethics, and  
13 examination procedures as it may consider necessary to  
14 implement this act in accordance with the Alabama  
15 Administrative Procedure Act.

16           (5) Establish and publish minimum standards of  
17 practice in accordance with those developed and accepted by  
18 the profession.

19           Section 4. (a) The board shall issue a license to  
20 each applicant who files an application upon a form and in a  
21 manner as the board prescribes, accompanied by the fee as  
22 required in Section 6, and who furnishes satisfactory evidence  
23 to the board that he or she:

24           (1) Is at least 21 years of age.

25           (2) Is of good moral character.

26           (3) Is not in violation of this act and the rules  
27 adopted hereunder.

1           (4) Has submitted a complete set of fingerprints to  
2 the board. The board shall submit the fingerprints provided by  
3 each applicant for a license to practice acupuncture to the  
4 Alabama Bureau of Investigation (ABI). The fingerprints shall  
5 be forwarded by the ABI to the Federal Bureau of Investigation  
6 (FBI) for a national criminal history record check. Costs  
7 associated with conducting a criminal history background check  
8 shall be borne by the applicant. The board shall keep  
9 information received pursuant to this section confidential,  
10 except that such information received and relied upon in  
11 denying the issuance of a license to practice acupuncture in  
12 this state may be disclosed as may be necessary to support the  
13 denial.

14           (5) Has the ability to communicate in English, which  
15 is demonstrated by having passed the national written  
16 examination in English or, if such examination was passed in a  
17 foreign language, by also having passed a nationally  
18 recognized English proficiency examination.

19           (6) Has completed 60 college credits from an  
20 accredited postsecondary institution and, prior to July 30,  
21 2001, has completed a 3-year course of study in acupuncture  
22 and oriental medicine or, after July 30, 2001, has completed a  
23 4-year course of study in acupuncture and oriental medicine,  
24 which meets standards established by the board by rule, which  
25 standards include, but are not limited to, successful  
26 completion of academic courses in western anatomy, western  
27 physiology, western pathology, western biomedical terminology,

1 first aid, and cardiopulmonary resuscitation (CPR). However,  
2 any person who enrolled in an authorized course of study in  
3 acupuncture before August 1, 1997, must have completed only a  
4 2-year course of study which meets standards established by  
5 the board by rule, which standards must include, but are not  
6 limited to, successful completion of academic courses in  
7 western anatomy, western physiology, and western pathology.

8 (7) Has passed an examination to the satisfaction of  
9 the board as provided in Section 5.

10 (8) Has completed certain course work as required by  
11 the board.

12 (9) Has acquired liability insurance as required by  
13 the board.

14 (b) The board shall license and renew annually the  
15 license to practice acupuncture for all persons who present  
16 satisfactory evidence of qualifications as specified in this  
17 act and under the rules adopted by the board.

18 (c) No license shall be denied any applicant based  
19 upon the applicant's race, religion, creed, national origin,  
20 sex, or physical impairment.

21 (d) Licenses shall be renewed annually according to  
22 procedures adopted by the board. The board may require  
23 continuing education course work as a condition of renewal.

24 Section 5. (a) The board shall examine applicants  
25 for licensure as acupuncturists at the times and places as it  
26 may determine. The board shall give public notice and shall

1 notify each person who has made satisfactory application for  
2 examination of the date, time, and place of examination.

3 (b) The examination shall test the applicant's  
4 knowledge of the subjects as the board may consider useful in  
5 determining the applicant's fitness to practice acupuncture.

6 (c) When acting as a board of examiners of  
7 applicants for licenses to practice acupuncture in the state,  
8 the board shall appoint three or more persons who are licensed  
9 to practice acupuncture in accordance with this act to assist  
10 in the preparation and administration of the examination of  
11 applicants under rules adopted by the board.

12 (d) An applicant shall successfully pass the  
13 examination to be eligible for licensure as an acupuncturist.  
14 The board shall notify each applicant of the results of the  
15 examination in writing. Any applicant who fails to pass the  
16 examination and is, therefore, refused licensure may take the  
17 examination again upon application and payment of an  
18 additional examination fee.

19 Section 6. (a) The board shall collect the following  
20 fees:

21 (1) An application and license fee of two hundred  
22 dollars (\$200).

23 (2) An annual license renewal fee of one hundred  
24 fifty dollars (\$150).

25 (3) A reissuance fee for lost or destroyed license  
26 of fifty dollars (\$50).



1 (b) In addition to the fees provided in subsection  
2 (a), the board shall collect an examination fee to be  
3 determined by the board.

4 (c) Each applicant who applies for the renewal of a  
5 license after his or her license has expired shall pay a late  
6 fee of twenty-five dollars (\$25) for each late application.

7 (d) The fees established in this section shall not  
8 be refundable except under conditions as the board may  
9 establish.

10 Section 7. (a) The board may withhold, suspend,  
11 restrict, revoke, or refuse to issue or renew any license  
12 issued or applied for in accordance with this act or otherwise  
13 discipline a licensed acupuncturist after notice and  
14 opportunity for hearing, pursuant to the Alabama  
15 Administrative Procedure Act, upon proof of any of the  
16 following circumstances that the applicant or licensed  
17 acupuncturist:

18 (1) Has been convicted in a court of competent  
19 jurisdiction of a felony or any offense involving moral  
20 turpitude, the record of conviction being conclusive evidence  
21 thereof.

22 (2) Has violated the code of ethics adopted by the  
23 board.

24 (3) Is using any narcotic or any alcoholic beverage  
25 to an extent or in a manner that is dangerous to any other  
26 person or the public or to an extent that the use impairs his

1 or her ability to perform the work of a licensed  
2 acupuncturist.

3 (4) Has impersonated another person holding an  
4 acupuncturist license or allowed another person to use his or  
5 her license.

6 (5) Has used fraud or deception in applying for a  
7 license.

8 (6) Has allowed his or her name or license issued  
9 under this act to be used in connection with any person who  
10 performs acupuncture services outside of the area of his or  
11 her training, experience, or competence.

12 (7) Is legally adjudicated mentally incompetent, the  
13 record of adjudication being conclusive evidence thereof.

14 (8) Has willfully or negligently violated any  
15 provision of this act.

16 (b) Notice of denial, revocation, or suspension of a  
17 license or of disciplinary action shall be sent to the  
18 applicant or licensee by registered mail or served personally  
19 on the applicant or licensee. The notice shall state the  
20 particular reasons for the proposed action and shall set a  
21 date at which the applicant or licensee shall be given an  
22 opportunity for a prompt and fair hearing. The written notice  
23 shall be sent to the person's last known address, but the  
24 nonappearance of the person shall not prevent a hearing. For  
25 the purposes of the hearing, the board may subpoena persons,  
26 books, and papers on its own behalf or on behalf of the

1 applicant or licensee who may appear by counsel or personally  
2 in his or her own behalf.

3 (c) On the basis of any hearing or upon default of  
4 the applicant or licensee, the board shall make a  
5 determination specifying its findings of fact and conclusions  
6 of law. A copy of the determination shall be sent by  
7 registered mail or served personally upon the applicant or  
8 licensee. The decision of the board denying, revoking, or  
9 suspending the license shall become final 30 days after being  
10 mailed or served unless within that period the applicant or  
11 licensee appeals the decision as provided by the  
12 Administrative Procedure Act. No appeal, while pending  
13 appropriate court action, shall supersede the denial,  
14 revocation, or suspension. All proceedings and evidence  
15 presented at hearings before the board may be admissible  
16 during appellate proceedings.

17 (d) Every order and judgment of the board shall take  
18 effect immediately on its promulgation unless the board in the  
19 order or judgment sets a probationary period for the applicant  
20 or licensee. The order and judgment shall continue in effect  
21 until expiration of any specified time period or termination  
22 by a court of competent jurisdiction. The board shall notify  
23 all licensees of any action taken against a licensee and may  
24 make public its orders and judgments in the manner and form as  
25 it considers proper.

26 Section 8. (a) No person shall assume or use the  
27 title or designation "acupuncturist" unless he or she has in

1 his or her possession a valid license issued by the board  
2 pursuant to this act.

3 (b) Whoever violates this act shall be guilty of a  
4 Class C misdemeanor and, upon conviction, shall be fined not  
5 more than five hundred dollars (\$500).

6 Section 9. (a) The board, through its proper  
7 officer, may cause to issue in any competent court, a writ of  
8 injunction enjoining any person from practicing as an  
9 acupuncturist as defined herein until the person obtains a  
10 license under the provisions of this act. This injunction  
11 shall not be subject to being released upon bond.

12 (b) If it is established that the defendant has been  
13 or is committing an act declared to be a misdemeanor by this  
14 act, the court shall enter a decree enjoining the defendant  
15 from further committing the act.

16 (c) In case of violation of any injunction issued  
17 under the provisions of this section, the court may summarily  
18 try and punish the offender for contempt of court.

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

22 (e) In the suit for an injunction, the board may  
23 demand of the defendant a penalty of not more than five  
24 hundred dollars (\$500) and an attorney's fee not to exceed one  
25 hundred dollars (\$100) in addition to the costs of court. This  
26 judgment for penalty, attorney's fee, and costs may be

1 rendered in the same judgment in which the injunction is made  
2 absolute.

3 (f) The trial of the proceeding by injunction shall  
4 be summary and by the judge without a jury.

5 Section 10. Although this bill would have as its  
6 purpose or effect the requirement of a new or increased  
7 expenditure of local funds, the bill is excluded from further  
8 requirements and application under Amendment 621, now  
9 appearing as Section 111.05 of the Official Recompilation of  
10 the Constitution of Alabama of 1901, as amended, because the  
11 bill defines a new crime or amends the definition of an  
12 existing crime.

13 Section 11. This act shall become effective on the  
14 first day of the third month following its passage and  
15 approval by the Governor, or its otherwise becoming law.