

1 SB220
2 147807-1
3 By Senator Brewbaker
4 RFD: Small Business
5 First Read: 19-FEB-13

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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 expand the persons exempt
12 from the chapter and would delete any reference to
13 a temporary permit to practice massage therapy.

14 This bill would delete antiquated language.

15 This bill would provide compensation to
16 board members and would change the makeup of the
17 board.

18 This bill would change the name of the
19 executive secretary to executive director.

20 This bill would list reasons for excused
21 absences from board meetings.

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

26 This bill would increase the minimum hours
27 of supervised course instruction for licensure.

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

7 This bill would delete a limit on the number
8 of times a retest may be given for an applicant who
9 fails to pass the board examination. This bill
10 would delete the requirement that a record of each
11 board exam be filed with the board office and
12 available for inspection for two years.

13 This bill would authorize the board to
14 assess and collect certain fees.

15 This bill would increase the discretion of
16 the board to license establishments.

17 This bill would expand the authority of the
18 board to revoke or suspend licenses.

19 Under existing law, a violation of the
20 Alabama Massage Therapy Licensure Act is a Class C
21 misdemeanor.

22 This bill would increase the penalty for a
23 violation to a Class A misdemeanor.

24 This bill would also repeal Section
25 34-43-10, Code of Alabama 1975, relating to the
26 examination of massage therapists.

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

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

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 Relating to the Alabama Massage Therapy Licensure
27 Act; to amend Sections 34-43-3, 34-43-5, 34-43-6, 34-43-7,

1 34-43-9, 34-43-11, 34-43-12, 34-43-14, 34-43-15, 34-43-17,
2 34-43-20, and 34-43-21, Code of Alabama 1975, and to repeal
3 Section 34-43-10, Code of Alabama 1975; to delete any
4 reference to a temporary permit to practice massage therapy;
5 to expand the definition of therapeutic massage and extend
6 exemptions to the act; to delete antiquated language; to
7 provide compensation for board members; to change the name of
8 the executive secretary to executive director; to provide an
9 excuse for absences from board meetings; to delete
10 requirements that the oath of office of board members be filed
11 with the Governor and that certificates of appointments be
12 issued; to remove a retesting limit; to increase the minimum
13 hours of supervised course instruction for licensure; to
14 require that applicants for licensure be 18 years old with a
15 high school diploma, or the equivalent, and be subject to
16 criminal history information background checks; to authorize
17 the board to assess and collect certain fees; to increase the
18 discretion of the board to license establishments; to expand
19 the authority of the board to revoke or suspend licenses; to
20 increase the penalty violating the act from a Class C
21 misdemeanor to a Class A misdemeanor; and in connection
22 therewith to have as its purpose or effect the requirement of
23 a new or increased expenditure of local funds within the
24 meaning of Amendment 621 of the Constitution of Alabama of
25 1901, now appearing as Section 111.05 of the Official
26 Recompilation of the Constitution of Alabama of 1901, as
27 amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 34-43-3, 34-43-5, 34-43-6,
3 34-43-7, 34-43-9, 34-43-11, 34-43-12, 34-43-14, 34-43-15,
4 34-43-17, 34-43-20, and 34-43-21 of the Code of Alabama 1975,
5 are amended to read as follows:

6 "§34-43-3.

7 "For purposes of this chapter, the following terms
8 shall have the following meanings:

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

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

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

17 "a. If located in Alabama, is approved by the board
18 as meeting the minimum established standards of training and
19 curriculum as determined by the board.

20 "b. If located outside of Alabama, is recognized by
21 the board and by a regionally recognized professional
22 accrediting body.

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

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

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

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

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

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

18 "~~(7)~~(9) MASSAGE THERAPIST. A person licensed
19 pursuant to this chapter who practices or administers massage
20 therapy or touch therapy modalities to a patron for
21 compensation.

22 "~~(8)~~(10) MASSAGE THERAPY INSTRUCTOR. A licensed
23 massage therapist approved by the board to teach the practice
24 of massage therapy.

25 "~~(9)~~(11) PERSON. Any individual, firm, corporation,
26 partnership, organization, association, trustee, lessee,
27 agent, assignee, or other legal entity.

1 "~~(10)~~(12) SEXUALLY ORIENTED BUSINESS. A sex parlor,
2 massage parlor, nude studio, modeling studio, love parlor,
3 adult bookstore, adult movie theater, adult video arcade,
4 adult motel, or other commercial enterprise which has ~~as its~~
5 ~~primary~~ any business ~~the~~ offering for sale, rent, or exhibit,
6 or the exhibit of, items or services intended to provide
7 sexual stimulation or sexual gratification to the customer.

8 "~~(11)~~(13) STUDENT OF MASSAGE THERAPY. Any person
9 currently enrolled in an Alabama massage therapy school
10 program approved by the board.

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

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

1 lamps, hot and cold packs, salt glow, steam cabinet baths, or
2 hydrotherapy. The term includes any massage, movement therapy,
3 massage technology, myotherapy, accupressure, deep tissue
4 therapy, neuromuscular therapy, or reflexology ~~massotherapy,~~
5 ~~oriental massage techniques, structural integration, or~~
6 ~~polarity therapy.~~ The term does not include directed movement
7 therapy including, but not limited to, the Feldenkrais method
8 of somatic education, the Trager approach to movement
9 education, the Rosen method, and body-mind centering and
10 energy field work including, but not limited to, Polarity
11 Therapy, Reiki, Reflexology, Touch for Health, or Jin Shin Do,
12 provided these services are not designated or implied to be
13 massage or massage therapy. The term ~~shall~~ also does not
14 include laser therapy, microwave, injection therapy,
15 manipulation of the joints, or any diagnosis or treatment of
16 an illness that normally involves the practice of medicine,
17 chiropractic, physical therapy, podiatry, nursing,
18 occupational therapy, veterinary, acupuncture, osteopathy,
19 orthopedics, hypnosis, ~~or naturopathics,~~ or any other modality
20 designated by the board.

21 "§34-43-5.

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

24 "(1) A student of massage therapy who is rendering
25 massage therapy services under the supervision of a licensed
26 massage therapy instructor, or any other supervisory
27 arrangement recognized and approved by the board, ~~including,~~

1 ~~but not limited to, a temporary permit.~~ The student shall be
2 designated by title clearly indicating the training status of
3 the student.

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

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

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

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

25 "(6) Native American healers using traditional
26 healing practices, ~~provided, however,~~ Native American healers

1 who use these practices but apply for a license pursuant to
2 this chapter shall comply with all licensure requirements.

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

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

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

21 "(10) Persons who use touch, words, and directed
22 movement to deepen awareness of existing patterns of movement
23 in the body as well as to suggest new possibilities of
24 movement while engaged in the scope of practice of a
25 profession with established standards and ethics, provided
26 that their services are not designated or implied to be
27 massage or massage therapy and involve only incidental contact

1 or manipulation of soft tissue. These practices include, but
2 are not limited to, the Feldenkrais method of somatic
3 education, the Trager approach to movement education, the
4 Rosen method, and body-mind centering.

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

11 "§34-43-6.

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

26 "(b) The board shall consist of seven members
27 appointed by the Governor, subject to confirmation by the

1 Senate. No member of the board shall serve more than two full
2 consecutive terms. The members initially appointed to the
3 board shall be appointed not later than July 16, 1996. Five of
4 the members initially appointed to the board shall have been
5 actively engaged in the practice of massage therapy for not
6 less than three consecutive years prior to the date of their
7 appointment to the board. Successor members to these initial
8 five appointees shall be licensees of the board. Two members
9 shall be public members who shall not be licensed, nor have
10 been licensed in the past, and shall not have any direct
11 financial interest in the massage therapy profession. Each
12 board member shall be a high school graduate or shall have
13 received a graduate equivalency diploma. Each board member
14 shall be selected upon personal merit and qualifications, not
15 per membership or affiliation with an association. Each board
16 member shall be a citizen of the United States and this state
17 and a resident of this state for two years immediately
18 preceding the appointment. The membership of the board shall
19 be inclusive and reflect the racial, gender, geographic,
20 urban/rural, and economic diversity of the state. As the terms
21 of members serving on April 28, 2011, expire, or as vacancies
22 occur, new members shall be appointed so that not more than
23 one member from each United States Congressional District is
24 appointed to serve at the same time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 "§34-43-7.

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

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

25 "(2) Adopt a seal, which shall be affixed to all
26 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 be
7 made available to any person requesting it, upon payment of a
8 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 "~~(2)~~ (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.~~ In no event shall the
12 expenditures of the board exceed the revenues in any fiscal
13 year.

14 "~~(4)~~ (5) Adopt a code of ethics.

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

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

22 "§34-43-9.

23 "(a) A person desiring to be licensed as a massage
24 therapist shall apply to the board on forms provided by the
25 board. Unless licensed pursuant to subsection (b), applicants
26 for licensure shall submit evidence satisfactory to the board
27 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 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~~ a board approved
19 exam for therapeutic massage and bodywork.

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

26 "(c) Notwithstanding any other provision of this
27 section to the contrary, each applicant for licensure shall be

1 ~~a citizen of the United States or, if not a citizen of the~~
2 ~~United States, a person who is legally present in the United~~
3 ~~States with appropriate documentation from the federal~~
4 ~~government 18 years of age, with a high school diploma or~~
5 ~~graduate equivalency diploma, and be subject to a criminal~~
6 ~~history background information check.~~

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

11 "§34-43-11.

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

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

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

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

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

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

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

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

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

22 "§34-43-12.

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

1 six months earlier, showing a frontal view of the head and
2 shoulders of the applicant, shall be submitted with the
3 application. All documents shall be submitted in English.

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

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

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

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

25 "§34-43-14.

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

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

3 "~~(2) One hundred dollars (\$100)~~ (1) Two hundred
4 dollars (\$200) for ~~the~~ an initial massage therapist license
5 which shall be issued for one year. The initial licensing fee
6 shall be assessed in the month when the applicant is notified
7 that the license has been approved. The board may not increase
8 this fee by more than fifty dollars (\$50) per licensing
9 period.

10 "~~(3) One hundred dollars (\$100)~~ (2) Three hundred
11 dollars (\$300) for all biennial license renewals postmarked or
12 received at the office of the board by the date in which the
13 license expires. The board may not increase this fee by more
14 than fifty dollars (\$50) per licensing period.

15 "~~(4)~~ (3) Twenty-five dollars (\$25) for ~~the~~ an initial
16 application for licensure or the resubmission of ~~the~~ an
17 initial application.

18 "~~(5) One hundred dollars (\$100)~~ (4) Two hundred
19 dollars (\$200) for ~~the~~ an initial establishment license. The
20 board may not increase this fee by more than fifty dollars
21 (\$50) per licensing period.

22 "~~(6) Fifty dollars (\$50)~~ (5) Three hundred dollars
23 (\$300) for the biennial renewal of ~~the~~ an establishment
24 license. The board may not increase this fee by more than
25 fifty dollars (\$50) per licensing period.

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

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

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

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

12 "~~(11)~~ (10) Twenty-five dollars (\$25) shall be added
13 to all license fees not post-marked or received by the board
14 before the expiration date of the license.

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

16 "~~(13)~~ (12) Ten dollars (\$10) for a duplicate license
17 certificate or a name change on a license certificate. ~~The~~
18 ~~board may issue a duplicate certificate only after receiving a~~
19 ~~sworn letter from the massage therapist that the original~~
20 ~~certificate was lost, stolen, or destroyed. The records of the~~
21 ~~board shall reflect that a duplicate certificate was issued.~~

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

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

1 "~~(c)~~ (d) There is hereby established a separate
2 special revenue trust fund in the State Treasury to be known
3 as the Alabama Board of Massage Therapy Fund. All receipts
4 collected by the board under ~~the provisions of~~ this chapter
5 are to be deposited in this fund and used only to carry out
6 ~~the provisions of~~ this chapter. ~~Such receipts~~ Receipts shall
7 be disbursed only by warrant of the ~~state~~ Comptroller, upon
8 itemized vouchers approved by the chair of the board; provided
9 that no funds shall be withdrawn except as budgeted and
10 allotted according to ~~the provisions of~~ Sections 41-4-80 to
11 41-4-96, inclusive, 41-19-1, and 41-19-12, as amended, and
12 only in amounts as stipulated in the general appropriations
13 bill or other appropriations bills.

14 "§34-43-15.

15 "(a) The board may suspend, or revoke, ~~or refuse to~~
16 ~~issue or renew~~ a license or and impose a civil penalty after
17 notice and opportunity for a hearing pursuant to the
18 Administrative Procedure Act, upon proof of any of the
19 following:

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

24 "(2) The licensee sold or bartered, or offered to
25 sell or barter, or a license for a massage therapist or a massage
26 therapy establishment.

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

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

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

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

12 "(7) The licensee uses controlled substances or
13 habitually and excessively uses alcohol.

14 "(8) The licensee engaged in false, deceptive, or
15 misleading advertising.

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

21 "(10) The licensee is practicing or offering to
22 practice beyond the scope permitted by law or accepting and
23 performing professional responsibilities which the licensee
24 knows or has reason to know that she or he is not competent to
25 perform.

26 "(11) The licensee is delegating professional
27 responsibilities to a person when the licensee delegating such

1 responsibilities knows or has reason to know that such person
2 is not qualified by training, experience, or licensure to
3 perform.

4 "(12) The licensee is violating a lawful order of
5 the board previously entered in a disciplinary hearing or is
6 failing to comply with a lawfully issued subpoena of the
7 board.

8 "(13) The licensee has failed to permit the board to
9 inspect the business premises of the licensee during regular
10 business hours.

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

14 "(b) Any person who has been convicted of, or
15 entered a plea of nolo contendere to, a crime or offense
16 involving prostitution or other sexual offenses is ineligible
17 to hold a license as a massage therapist for a period of at
18 least three years after the entry of the conviction or plea.
19 The board retains the right to revoke a license indefinitely
20 if the licensee is proven guilty of a crime or of sexual
21 misconduct. Reinstatement of licensure is contingent upon
22 proof of weekly counseling by a licensed professional
23 counselor.

24 "(c) Any person who has been convicted of, or
25 entered a plea of nolo contendere to, an offense involving
26 prostitution or any other type of sexual offense may not
27 receive a license for a massage therapy establishment for a

1 period of three years after the date of conviction or entry of
2 the plea. The board shall revoke the establishment license of
3 any establishment which the board determines is a sexually
4 oriented business. The board may revoke an establishment
5 license if a person is convicted of, or enters a plea of nolo
6 contendere to, any crime involving prostitution or any other
7 sexual offense against a client which occurred on the premises
8 of the establishment.

9 "(d) (1) Upon finding a person, licensee, or
10 establishment guilty of any violation governed by this
11 chapter, ~~performing massage therapy without having obtained a~~
12 ~~license,~~ the board may do any of the following:

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

15 "b. Issue a cease and desist order.

16 "c. Petition the circuit court of the county where
17 the ~~act~~ violation occurred to enforce the cease and desist
18 order and collect the assessed fine.

19 "(2) Any person aggrieved by any adverse action of
20 the board ~~must~~ shall appeal the action to the Circuit Court of
21 Montgomery County in accordance with the Alabama
22 Administrative Procedure Act.

23 "§34-43-17.

24 "Any person who violates this chapter shall be
25 guilty of a Class € A misdemeanor.

26 "§34-43-20.

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

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

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

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

13 "(b) Every instructor teaching course work ~~titled in~~
14 massage ~~therapy~~ modalities at a board approved school located
15 in Alabama shall be licensed in Alabama as a massage therapist
16 and registered as a massage therapy instructor. Instructors
17 who are not teaching massage therapy do not need to be
18 registered. Any adjunct instructors shall be dually licensed
19 in the state where they reside, be nationally certified, or
20 both.

21 "(c) The board shall register as a massage therapy
22 instructor any applicant who meets all of the following
23 requirements:

24 "(1) Is currently licensed as a massage therapist in
25 Alabama.

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

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

7 "§34-43-21.

8 "(a) Every massage therapist licensed pursuant to
9 this chapter shall be required to complete 16 hours of
10 continuing education as a condition for renewing his or her
11 license. The continuing education courses shall be offered by
12 providers approved by the board. The courses shall have been
13 completed within the 24 months preceding the date renewal is
14 due. Hours in excess of the total number required may not be
15 carried over to future renewals. The continuing education
16 requirements shall not apply to a massage therapist within the
17 biennium when the massage therapist is first licensed, but
18 shall apply to licensees every biennium thereafter. The board
19 may accept for compliance with the continuing education
20 requirement any of the following:

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

23 "(2) Courses, seminars, workshops, and classes in
24 areas related to the practice of massage therapy such as:
25 Massage, bodywork, allied health care fields (including
26 psychology and medicine), anatomy and physiology, business,

1 insurance, movement therapy, stress management, yoga, CPR, and
2 advanced first aid.

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

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

10 "(1) Teaching a qualifying class, course, seminar,
11 or workshop.

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

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

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

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

17 "(6) Two hours of professional ethics.

18 "(c) Each of the areas listed in subsection (b) may
19 be used for up to four hours of credit depending on the actual
20 contact hours. One continuing education credit is defined as
21 no less than 50 uninterrupted minutes of learning, except that
22 publishing an article will automatically count for four hours.
23 Continuing education credit may not be awarded for programs
24 which do not relate to subjects listed in this section, or for
25 repeated courses submitted the previous biennium, except for
26 courses listed in subsection (b). The board may select, in a
27 random manner, license renewal applications for audit of

1 continuing education credit. Each licensee shall be
2 responsible for maintaining in his or her personal files the
3 certificates or records of credit from continuing education
4 programs received from approved program providers. Each
5 licensee selected for audit shall be required to produce
6 documentation of attendance at those continuing education
7 activities listed on his or her renewal application.

8 ~~"(1) The board shall send to each licensee selected~~
9 ~~for audit, a notice of audit.~~ The licensee shall provide
10 satisfactory documentation of attendance at, or participation
11 in, the approved continuing education programs listed in the
12 renewal application.

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

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

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

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

26 "(e) The board is subject to the Alabama Sunset Law
27 of 1981, and is classified as an enumerated agency pursuant to

1 Section 41-20-3. The board shall automatically terminate on
2 October 1, 2007, and every four years thereafter, unless
3 continued pursuant to the Alabama Sunset Law."

4 Section 2. Although this bill would have as its
5 purpose or effect the requirement of a new or increased
6 expenditure of local funds, the bill is excluded from further
7 requirements and application under Amendment 621, now
8 appearing as Section 111.05 of the Official Recompilation of
9 the Constitution of Alabama of 1901, as amended, because the
10 bill defines a new crime or amends the definition of an
11 existing crime.

12 Section 3. All laws or parts of laws which conflict
13 with this act are repealed, and specifically, Section
14 34-43-10, Code of Alabama 1975, providing for the massage
15 therapist examination, is repealed.

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