

1 SB431
2 159200-1
3 By Senator Smitherman
4 RFD: Health
5 First Read: 04-MAR-14

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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 would have as its purpose or effect the requirement
23 of 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~~ and/or 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~~ administered by
3 ~~an independent agency or another nationally or internationally~~
4 ~~accredited exam administered by an independent agency per~~
5 ~~approval of the board. The examination will be accredited by~~
6 ~~the National Committee for Certifying Agencies~~ nationally
7 recognized competency examination in massage and bodywork that
8 meets acceptable psychometric principles, is statistically
9 validated through a job-task analysis under current standards
10 for educational and professional testing, and has been
11 approved by the board. The board retains the right to
12 administer a written, oral, or practical examination.

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

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

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

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

25 "~~(8)~~(10) MASSAGE THERAPY INSTRUCTOR. A licensed
26 massage therapist approved by the board to teach the practice
27 of massage therapy.

1 "~~(9)~~(11) PERSON. Any individual, firm, corporation,
2 partnership, organization, association, trustee, lessee,
3 agent, assignee, or other legal entity.

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

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

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

18 "~~(13)~~(14) THERAPEUTIC MASSAGE AND RELATED TOUCH
19 THERAPY MODALITIES. The mobilization of the soft tissue which
20 may include skin, fascia, tendons, ligaments, and muscles, for
21 the purpose of establishing and maintaining good physical
22 condition. The term shall include effleurage, petrissage,
23 tapotement, compression, vibration, stretching, heliotherapy,
24 superficial hot and cold applications, topical applications,
25 or other therapy which involves movement either by hand,
26 forearm, elbow, or foot, for the purpose of therapeutic
27 massage. Massage therapy may include the external application

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

24 "§34-43-5.

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

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

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

13 "(3) A person giving massages to his or her
14 immediate family.

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

23 "(5) Members of the Massage Emergency Rescue Team
24 (MERT) or any other nationally or internationally recognized
25 disaster relief association who practice massage therapy in
26 the state only during a time declared by the Governor to be a

1 city, county, or state emergency. These therapists may work in
2 the state for a period of time approved by the board.

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

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

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

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

25 "(10) Persons who use touch, words, and directed
26 movement to deepen awareness of existing patterns of movement
27 in the body as well as to suggest new possibilities of

1 movement while engaged in the scope of practice of a
2 profession with established standards and ethics, provided
3 that their services are not designated or implied to be
4 massage or massage therapy and involve only incidental contact
5 or manipulation of soft tissue. These practices include, but
6 are not limited to, the Feldenkrais method of somatic
7 education, the Trager approach to movement education, the
8 Rosen method, and body-mind centering.

9 "(11) A hospital licensed by the Department of
10 Public Health, including any wellness center and any
11 outpatient facility or clinic that is located at the main
12 campus of the hospital or separated from the hospital and
13 owned, operated, or controlled by the licensed hospital.

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~~
13 Six of the members initially appointed to the board shall have
14 been actively engaged in the practice of massage therapy for
15 not less than three consecutive years prior to the date of
16 their appointment to the board. Successor members to these
17 initial ~~five~~ six appointees shall be licensees of the board.
18 ~~Two members~~ One member shall be a public members member who
19 shall not be licensed, nor have been licensed in the past, and
20 shall not have any direct financial interest in the massage
21 therapy profession. Each board member shall be a high school
22 graduate or shall have received a graduate equivalency
23 diploma. Each board member shall be selected upon personal
24 merit and qualifications, not per membership or affiliation
25 with an association. Each board member shall be a citizen of
26 the United States ~~and this state~~ and a resident of this state
27 for two years immediately preceding the appointment. The

1 membership of the board shall be inclusive and reflect the
2 racial, gender, geographic, urban/rural, and economic
3 diversity of the state. ~~As the terms of members serving on~~
4 ~~April 28, 2011, expire, or as vacancies occur, new members~~
5 ~~shall be appointed so that not more than one member from each~~
6 ~~United States Congressional District is appointed to serve at~~
7 ~~the same time.~~

8 ~~"(c) Of the initial seven appointees to the board,~~
9 ~~three members shall be appointed for terms ending September~~
10 ~~30, 1997, and four members shall be appointed for terms ending~~
11 ~~September 30, 1999. Thereafter, successors shall be appointed~~
12 ~~for terms of four years, each term expiring on September 30.~~

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

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

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

1 board shall be a majority of the current appointed board
2 members.

3 ~~"(g) (f)~~ Board members shall ~~not receive compensation~~
4 ~~for their services, but shall receive the same per diem and~~
5 ~~allowance as provided to state employees for each day the~~
6 ~~board meets and conducts business~~ receive one hundred dollars
7 (\$100) per day for attending sessions of the board or board
8 committees and, in addition, shall be reimbursed for such
9 necessary travel expenses as are paid to state employees, to
10 be paid from fees collected.

11 ~~"(h) (g)~~ The board shall promulgate the rules
12 necessary to implement this chapter pursuant to the
13 Administrative Procedure Act.

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

20 ~~"(j) (i)~~ An affirmative vote of a majority of the
21 members of the board shall be required to grant, suspend, or
22 revoke a license to practice massage therapy or a license to
23 operate a massage therapy establishment.

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

1 "~~(i)~~(k) Each board member shall be accountable to
2 the Governor for the proper performance of his or her duties
3 as a member of the board. The board shall report to the
4 Governor annually and at other times as requested by the
5 Governor. The Governor shall investigate any complaints or
6 unfavorable reports concerning the actions of the board and
7 take appropriate action thereon, including removal of any
8 board member for misfeasance, malfeasance, neglect of duty,
9 commission of a felony, incompetence, or permanent inability
10 to perform official duties. A board member may be removed at
11 the request of the board after failing to attend two
12 consecutive properly noticed meetings. Excused absences of a
13 board member are absences due to any of the following:

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

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

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

21 "~~(m)~~(l) Members of the board are immune from
22 liability for all good faith acts performed in the execution
23 of their duties as members of the board, unless they fail to
24 act in a reasonably prudent manner.

25 "~~(n)~~(m) Appointees to the board shall take the
26 constitutional oath of office and file it in the board office
27 ~~of the Governor before undertaking any duties as a board~~

1 ~~member. Upon receiving the oath, the Governor shall issue a~~
2 ~~certificate of appointment to each appointee.~~

3 "§34-43-7.

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

6 "(1) Examine and qualify for examination applicants
7 for licensure and issue a license to each successful
8 applicant.

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

11 "(3) Prescribe application forms for examination and
12 licensure and assess and collect fees pursuant to this
13 chapter.

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

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

22 "(6) Adopt and revise rules and regulations pursuant
23 to the Administrative Procedure Act, including the adoption of
24 rules concerning unprofessional conduct.

25 "(7) Provide a copy of this chapter to all persons
26 licensed under this chapter and to all applicants for
27 licensure.

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

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

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

9 "(1) Accept or deny the application of any person
10 applying for licensure as a massage therapist upon an
11 affirmative vote of a majority of the board or the decision of
12 a designee of the board.

13 "(2) Establish criteria for certifying massage
14 therapy instructors.

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

19 "(4) Adopt a code of ethics.

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

25 "(6) Establish a list of approved massage therapy
26 schools.

27 "§34-43-9.

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

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

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

19 "(2) ~~Passed the National Certification Exam for~~
20 ~~Therapeutic Massage and Bodywork offered by the National~~
21 ~~Certification Board for Therapeutic Massage and Bodywork or an~~
22 ~~examination of equivalent stature that is accredited by the~~
23 ~~National Committee for Certifying Agencies~~ a board approved
24 exam for therapeutic massage and bodywork.

25 "(b) Notwithstanding the requirements in
26 subdivisions (1) and (2) of subsection (a), the board may
27 license an applicant if the applicant is licensed or

1 registered in another state, which, in the opinion of the
2 board, has standards of practice or licensure that are equal
3 to or stricter than the requirements imposed by this chapter.

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

13 "(d) The board may notify each applicant of the
14 acceptance or rejection of his or her application. If the
15 application is rejected, the board shall list the reasons for
16 rejection.

17 "§34-43-11.

18 "(a) Establishments shall be licensed by the board.
19 A sexually oriented business may not be licensed as an
20 establishment and shall not operate as an establishment
21 licensed pursuant to this chapter.

22 "(b) Establishments shall employ only licensed
23 massage therapists to perform massage therapy.

24 "~~(c) The board shall provide by rule, for a fair and~~
25 ~~reasonable procedure to grant exemptions from the licensure~~
26 ~~requirement of this section when the applicant can show that~~
27 ~~the advertising of massage therapy services is incidental to~~

1 ~~the primary function of his or her business. No such exemption~~
2 ~~shall be granted to a sexually oriented business. The board~~
3 ~~shall have the power to revoke or suspend the license of a~~
4 ~~massage therapy establishment licensed under this chapter, or~~
5 ~~to deny licensure of such establishment, in any of the~~
6 ~~following cases:~~

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

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

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

15 "(e) Subsequent to an official complaint, the The
16 board may conduct or request a criminal history background
17 information check of the establishment's licensees of an
18 establishment through the district attorney of the circuit in
19 which the licensee is located.

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

23 "(g) The renewal of the license of a massage therapy
24 establishment shall be accomplished pursuant to rules adopted
25 by the board. The board may also adopt rules governing
26 delinquent renewal of licenses and may impose penalty fees for
27 delinquent renewal.

1 "§34-43-12.

2 "(a) Applications for licensure or renewal shall be
3 on forms provided by the board and shall be accompanied by the
4 proper fee. The application shall be legible, either printed
5 in black ink or typed. Applications sent by facsimile shall
6 not be accepted. A two-by-two photograph, taken no more than
7 six months earlier, showing a frontal view of the head and
8 shoulders of the applicant, shall be submitted with the
9 application. All documents shall be submitted in English.

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

18 "(c) The board shall specify the elements of the
19 criminal history background information check, the amount of
20 the fee assessed for performing the criminal history
21 background information check, and shall formulate the process
22 and procedures for conducting criminal history background
23 information checks.

24 "~~(c)~~ (d) Each licensed massage therapist shall
25 display his or her license in the manner specified by the
26 board. Each establishment shall post its license in plain

1 sight and the license of each massage therapist who practices
2 in the establishment.

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

5 "§34-43-14.

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

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

10 ~~"(2) One hundred dollars (\$100)~~ (1) Two hundred
11 dollars (\$200) for the an initial massage therapist license
12 ~~which shall be issued for one year. The initial licensing fee~~
13 ~~shall be assessed in the month when the applicant is notified~~
14 ~~that the license has been approved. The board may not increase~~
15 this fee by more than fifty dollars (\$50) per licensing
16 period.

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

22 ~~"(4)~~ (3) Twenty-five dollars (\$25) for ~~the~~ an initial
23 application for licensure or the resubmission of ~~the~~ an
24 initial application.

25 ~~"(5) One hundred dollars (\$100)~~ (4) Two hundred
26 dollars (\$200) for the an initial establishment license. The

1 board may not increase this fee by more than fifty dollars
2 (\$50) per licensing period.

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

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

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

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

16 ~~"(10)(9)~~ (9) Seventy-five dollars (\$75) to reactivate
17 biennially to receive an inactive license.

18 ~~"(11)(10)~~ (10) Twenty-five dollars (\$25) shall be added
19 to all license fees not post-marked or received by the board
20 before the expiration date of the license.

21 ~~"(12)(11)~~ (11) Fifteen dollars (\$15) to verify a license.

22 ~~"(13)(12)~~ (12) Ten dollars (\$10) for a duplicate license
23 certificate or a name change on a license certificate. The
24 board may issue a duplicate certificate only after receiving a
25 sworn letter from the massage therapist that the original
26 certificate was lost, stolen, or destroyed. The records of the
27 board shall reflect that a duplicate certificate was issued.

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

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

7 "~~(c)~~ (d) There is ~~hereby~~ established a separate
8 special revenue trust fund in the State Treasury to be known
9 as the Alabama Board of Massage Therapy Fund. All receipts
10 collected by the board under ~~the provisions of~~ this chapter
11 are to be deposited in this fund and used only to carry out
12 the provisions of this chapter. ~~Such receipts~~ Receipts shall
13 be disbursed only by warrant of the ~~state~~ Comptroller, upon
14 itemized vouchers approved by the chair of the board; provided
15 that no funds shall be withdrawn except as budgeted and
16 allotted according to ~~the provisions of~~ Sections 41-4-80 to
17 41-4-96, inclusive, 41-19-1, and 41-19-12, as amended, and
18 only in amounts as stipulated in the general appropriations
19 bill or other appropriations bills.

20 "§34-43-15.

21 "(a) The board may suspend, or revoke, ~~or refuse to~~
22 ~~issue or renew~~ a license or and impose a civil penalty after
23 notice and opportunity for a hearing pursuant to the
24 Administrative Procedure Act, upon proof of any of the
25 following:

26 "(1) The license was obtained by means of fraud,
27 misrepresentation, or concealment of material facts, including

1 making a false statement on an application or any other
2 document required by the board for licensure.

3 "(2) The licensee sold or bartered, or offered to
4 sell or barter, a license for a massage therapist or a massage
5 therapy establishment.

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

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

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

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

17 "(7) The licensee uses controlled substances or
18 habitually and excessively uses alcohol.

19 "(8) The licensee engaged in false, deceptive, or
20 misleading advertising.

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

26 "(10) The licensee is practicing or offering to
27 practice beyond the scope permitted by law or accepting and

1 performing professional responsibilities which the licensee
2 knows or has reason to know that she or he is not competent to
3 perform.

4 "(11) The licensee is delegating professional
5 responsibilities to a person when the licensee delegating such
6 responsibilities knows or has reason to know that such person
7 is not qualified by training, experience, or licensure to
8 perform.

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

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

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

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

1 proof of weekly counseling by a licensed professional
2 counselor.

3 "(c) Any person who has been convicted of, or
4 entered a plea of nolo contendere to, an offense involving
5 prostitution or any other type of sexual offense may not
6 receive a license for a massage therapy establishment for a
7 period of three years after the date of conviction or entry of
8 the plea. The board shall revoke the establishment license of
9 any establishment which the board determines is a sexually
10 oriented business. The board may revoke an establishment
11 license if a person is convicted of, or enters a plea of nolo
12 contendere to, any crime involving prostitution or any other
13 sexual offense against a client which occurred on the premises
14 of the establishment.

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

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

21 "b. Issue a cease and desist order.

22 "c. Petition the circuit court of the county where
23 the ~~act~~ violation occurred to enforce the cease and desist
24 order and collect the assessed fine.

25 "d. Assess all reasonable costs related to the
26 investigation and prosecution of the violation against the
27 guilty person, licensee, or establishment.

1 "(2) ~~Any~~ An appeal by a person aggrieved by ~~any~~ an
2 adverse action of the board ~~must appeal the action~~ shall be to
3 the Circuit Court of Montgomery County in accordance with the
4 Alabama Administrative Procedure Act.

5 "§34-43-17.

6 "Any person who violates this chapter shall be
7 guilty of a Class C misdemeanor.

8 "§34-43-20.

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

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

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

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

21 "(b) Every instructor teaching course work ~~titled in~~ in
22 massage ~~therapy~~ modalities at a board approved school located
23 in Alabama shall be licensed in Alabama as a massage therapist
24 and registered as a massage therapy instructor. Instructors
25 who are not teaching massage therapy do not need to be
26 registered. Any adjunct instructors shall be dually licensed

1 in the state where they reside, be nationally certified, or
2 both.

3 "(c) The board shall register as a massage therapy
4 instructor any applicant who meets all of the following
5 requirements:

6 "(1) Is currently licensed as a massage therapist in
7 Alabama.

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

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

14 "§34-43-21.

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

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

3 "(2) Courses, seminars, workshops, and classes in
4 areas related to the practice of massage therapy such as:
5 Massage, bodywork, allied health care fields (including
6 psychology and medicine), anatomy and physiology, business,
7 insurance, movement therapy, stress management, yoga, CPR, and
8 advanced first aid.

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

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

16 "(1) Teaching a qualifying class, course, seminar,
17 or workshop.

18 "(2) Publishing an article in the field relating to
19 massage therapy.

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

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

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

23 "(6) Two hours of professional ethics.

24 "(c) Each of the areas listed in subsection (b) may
25 be used for up to four hours of credit depending on the actual
26 contact hours. One continuing education credit is defined as
27 no less than 50 uninterrupted minutes of learning, except that

1 publishing an article will automatically count for four hours.
2 Continuing education credit may not be awarded for programs
3 which do not relate to subjects listed in this section, or for
4 repeated courses submitted the previous biennium, except for
5 courses listed in subsection (b). The board may select, in a
6 random manner, license renewal applications for audit of
7 continuing education credit. Each licensee shall be
8 responsible for maintaining in his or her personal files the
9 certificates or records of credit from continuing education
10 programs received from approved program providers. Each
11 licensee selected for audit shall be required to produce
12 documentation of attendance at those continuing education
13 activities listed on his or her renewal application.

14 ~~"(1) The board shall send to each licensee selected~~
15 ~~for audit, a notice of audit.~~ The licensee shall provide
16 satisfactory documentation of attendance at, or participation
17 in, the approved continuing education programs listed in the
18 renewal application.

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

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

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

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

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

10 Section 2. All laws or parts of laws which conflict
11 with this act are repealed, and specifically, Section
12 34-43-10, Code of Alabama 1975, providing for the massage
13 therapist examination, is repealed.

14 Section 3. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621, now
18 appearing as Section 111.05 of the Official Recompilation of
19 the Constitution of Alabama of 1901, as amended, because the
20 bill defines a new crime or amends the definition of an
21 existing crime.

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