

1 HB319
2 190166-2
3 By Representative Williams (JD)
4 RFD: Boards, Agencies and Commissions
5 First Read: 30-JAN-18

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8 SYNOPSIS: Under existing law, the Alabama Board of
9 Massage Therapy may conduct a criminal history
10 check of massage therapists under certain
11 circumstances.

12 This bill would require the board to conduct
13 a criminal history check for every person applying
14 for a license to become a message therapist and for
15 every licensee applying to renew his or her
16 license.

17 This bill would specify that proof of sexual
18 misconduct by a massage therapist with a client is
19 misconduct and is grounds for a suspension or
20 revocation of the therapist's license.

21 This bill would require a massage therapist
22 to file a report with the Alabama Board of Massage
23 Therapy if he or she has a reasonable belief that
24 another massage therapist has engaged in sexual
25 misconduct with a client and would provide
26 penalties for failure to report.

1 This bill would require the Alabama Board of
2 Massage Therapy to refer any incidents of alleged
3 misconduct to the local district attorney for
4 investigation and prosecution.

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

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

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 Relating to massage therapy; to amend Sections
4 34-43-12, 34-43-13, 34-43-14, 34-43-15, Code of Alabama 1975,
5 to require the Alabama Board of Massage Therapy to conduct
6 criminal history background checks under certain circumstances
7 and to set the fee for the background check; to further
8 provide for the suspension or revocation of a license issued
9 under the Alabama Massage Therapy Licensure Act; to require
10 the reporting of certain misconduct by certain persons; and in
11 connection therewith would have as its purpose or effect the
12 requirement of a new or increased expenditure of local funds
13 within the meaning of Amendment 621 of the Constitution of
14 Alabama of 1901, now appearing as Section 111.05 of the
15 Official Recompilation of the Constitution of Alabama of 1901,
16 as amended.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 34-43-12, 34-43-13, 34-43-14,
19 and 34-43-15, Code of Alabama 1975, are amended to read as
20 follows:

21 "§34-43-12.

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

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

3 "(b) Each applicant for licensure shall be subject
4 to a criminal history check. Refusal to consent to a criminal
5 history check constitutes grounds for the board to deny the
6 applicant's application for licensure.

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

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

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

23 "§34-43-13.

24 "(a) Each license shall be renewed biennially, on or
25 before the anniversary date, by forwarding to the board a
26 renewal application accompanied by the renewal fee. Each
27 applicant for renewal for licensure shall be subject to a

1 criminal history check. Any license not renewed biennially on
2 or before the anniversary date shall expire.

3 "(b) Each licensee, upon application for renewal of
4 a license, shall do both of the following:

5 (1) ~~submit~~ Submit evidence of satisfactory
6 completion of the continuing education requirements contained
7 in Section 34-43-21.

8 "(2) Consent to a criminal history check. Refusal to
9 consent to a criminal history check constitutes grounds for
10 the board to deny the licensee's application for renewal of
11 the license.

12 "(c) Licenses are valid for two years from the date
13 of issuance. An individual whose license has expired and who
14 has ceased to practice massage therapy for a period of not
15 longer than five years may have his or her license reinstated
16 upon payment of a renewal fee and a late fee and submission of
17 a renewal application and evidence satisfactory to the board
18 that the applicant has fulfilled continuing education
19 requirements, passed a criminal history check pursuant to
20 rules adopted by the board, paid the criminal history check
21 fee, and passed the examination.

22 "(d) Subsequent to an official complaint, the board
23 may request a criminal background check of the licensee
24 through the district attorney of the circuit in which the
25 licensee is located.

26 "§34-43-14.

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

3 "(1) One hundred sixty dollars (\$160) for the
4 examination.

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

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

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

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

17 "(6) Fifty dollars (\$50) for the biennial renewal of
18 the establishment license.

19 "(7) Fifty dollars (\$50) for the initial
20 registration as a massage therapy school in this state.

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

23 "(9) Ten dollars (\$10) to register as a massage
24 therapy instructor in this state. This is a one-time fee and
25 does not have to be renewed.

26 "(10) Seventy-five dollars (\$75) to reactivate an
27 inactive license.

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

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

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

11 "(14) A fee, set by the board, for the criminal
12 history check.

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

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

1 amounts as stipulated in the general appropriations bill or
2 other appropriations bills."

3 "§34-43-15.

4 "(a) Any person may file with the board a written
5 and signed complaint regarding an allegation of impropriety by
6 a licensee, establishment, or person. Complaints shall be made
7 in the manner prescribed by the board. Complaints received by
8 the board shall be referred to a standing investigative
9 committee consisting of a board member, the Executive
10 Director, the board attorney, and the board investigator. If
11 no probable cause is found, the investigative committee may
12 dismiss the charges and prepare a statement, in writing, of
13 the reasons for the decision.

14 ~~"(a) The~~ (b) If probable cause is found, the board
15 shall initiate an administrative proceeding. Upon a finding
16 that the licensee has committed any of the following instances
17 of misconduct, the board may suspend, revoke, or refuse to
18 issue or renew a license or impose a civil penalty after
19 notice and opportunity for a hearing pursuant to the
20 Administrative Procedure Act, upon proof of any of the
21 following:

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

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

4 "(3) The licensee has engaged in unprofessional
5 conduct that has endangered or is likely to endanger the
6 health, safety, and welfare of the public, as defined by the
7 rules of the board. As used in this subdivision,
8 unprofessional conduct includes, but is not limited to,
9 allowing any individual to remain in a massage therapy
10 establishment overnight.

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

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

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

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

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

22 "(9) The licensee engaged in or attempted to or
23 offered to engage a client in sexual activity, including but
24 not limited to genital contact, within the client-massage
25 therapist relationship.

1 "(10) The licensee has knowingly allowed the massage
2 therapy establishment to be used as an overnight sleeping
3 accommodation.

4 "~~(9)~~ (11) The licensee had a license revoked,
5 suspended, or denied in any other territory or jurisdiction of
6 the United States for any act described in this section.

7 "(c) (1) A person governed by this chapter who has a
8 reasonable belief that another massage therapist has engaged
9 in or attempted to or offered to engage a client in sexual
10 activity, as provided in subdivision (9) of subsection (b),
11 shall inform the board in writing within 30 calendar days from
12 the date the person discovers this activity. Upon finding that
13 a person has violated this subsection, the board may do any of
14 the following:

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

17 "b. Suspend or revoke the person's license to
18 practice massage therapy.

19 "(2) Upon a finding that a person has violated this
20 subsection three or more times, the board shall impose a
21 mandatory license suspension for a period of no less than
22 three years and a fine of ten thousand dollars (\$10,000).

23 "~~(b)~~ (d) Any person who has been convicted of, or
24 entered a plea of nolo contendere to, a crime or offense
25 involving prostitution or other sexual offenses is ineligible
26 to hold a license as a massage therapist for a period of at
27 least three years after the entry of the conviction or plea.

1 The board retains the right to revoke a license indefinitely
2 if the licensee is proven guilty of a crime or of sexual
3 misconduct. Reinstatement of licensure is contingent upon
4 proof of weekly counseling by a licensed professional
5 counselor.

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

18 ~~"(d)(1)~~ (f)(1) Upon finding a person, governed by
19 this chapter, performing massage therapy without having
20 obtained a license, the board may do any of the following:

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

23 "b. Issue a cease and desist order.

24 "c. Petition the circuit court of the county where
25 the act occurred to enforce the cease and desist order and
26 collect the assessed fine.

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

5 "(g) The board shall present any incident of
6 misconduct to the local district attorney for review and
7 appropriate action.

8 "(h) The board may adopt rules to implement and
9 administer this section."

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

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