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SYNOPSIS:

Under existing law, termination dates are established for enumerated state agencies. The agencies are periodically reviewed by the Alabama Sunset Committee. After the review process is completed, the committee prepares its recommendation for the agencies to the Legislature in the form of sunset bills which either continue, terminate, or continue with modification each agency reviewed.

This bill would provide for the continuance of the Alabama Board of Massage Therapy, with the following changes: To require representation on the board from each Congressional District; to require meetings to be recorded, upon request; to require the publication of proposed rules and related proceedings on the board website; and to cap certain fees charged by the board.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Sunset Law; to continue the existence and functioning of the Alabama Board of Massage



29 Therapy until October 1, 2024, with certain modifications: To
30 amend Sections 34-43-6, 34-43-9, 34-43-11, 34-43-14, 34-43-15,
31 34-43-20, and 34-43-21, Code of Alabama 1975, as amended by
32 Act 2022-408, 2022 Regular Session; to require representation
33 on the board from each Congressional District; to require
34 meetings to be recorded, upon request; to require the
35 publication of proposed rules and related proceedings on the
36 board website; and to cap certain fees charged by the board.

37 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

38 Section 1. Pursuant to the Alabama Sunset Law, the
39 Sunset Committee recommends the continuance of the Alabama
40 Board of Massage Therapy until October 1, 2024, with the
41 additional recommendation for statutory change as set out in
42 Section 3.

43 Section 2. The existence and functioning of the Alabama
44 Board of Massage Therapy, created and functioning pursuant to
45 Sections 34-43-1 to 34-43-21, inclusive, Code of Alabama 1975,
46 is continued until October 1, 2024, and those code sections
47 are expressly preserved.

48 Section 3. Sections 34-43-6, 34-43-9, 34-43-11,
49 34-43-14, 34-43-15, 34-43-20, and 34-43-21 of the Code of
50 Alabama 1975, as amended by Act 2022-408, 2022 Regular
51 Session, are amended to read as follows:

52 "§34-43-6

53 (a) There is created the Alabama Board of Massage
54 Therapy. The purpose of the board is to protect the health,
55 safety, and welfare of the public by ensuring that licensed
56 massage therapists, massage therapy schools, and massage



57 therapy instructors meet prescribed standards of education,
58 competency, and practice. To accomplish this mission, the
59 board shall establish standards pursuant to this chapter to
60 complete all board functions in a timely and effective manner
61 and to provide open and immediate access to all relevant
62 public information. The board shall communicate its
63 responsibilities and services to the public as part of its
64 consumer protection duties. The board shall develop and
65 implement a long range plan to ensure effective regulation and
66 consumer protection.

67 (b) The board shall consist of seven members appointed
68 by the Governor, subject to confirmation by the Senate. No
69 member of the board shall serve more than two full consecutive
70 terms. The members initially appointed to the board shall be
71 appointed not later than July 16, 1996. Five of the members
72 initially appointed to the board shall have been actively
73 engaged in the practice of massage therapy for not less than
74 three consecutive years prior to the date of their appointment
75 to the board. Successor members to these initial five
76 appointees shall be licensees of the board. Two members shall
77 be public members who shall not be licensed, nor have been
78 licensed in the past, and shall not have any direct financial
79 interest in the massage therapy profession. Each board member
80 shall be a high school graduate or shall have received a
81 graduate equivalency diploma. Each board member shall be
82 selected upon personal merit and qualifications, not per
83 membership or affiliation with an association. Each board
84 member shall be a citizen of the United States ~~and this state~~



85 and a resident of this state for two years immediately
86 preceding the appointment. The Governor shall coordinate his
87 or her appointments to assure that the membership of the board
88 ~~shall be~~ is inclusive and ~~reflect~~ reflects the racial, gender,
89 geographic, ~~urban/rural~~ urban, rural, and economic diversity
90 of the state. As the terms of members serving on the board on
91 the effective date of the act amending this subsection expire,
92 or as vacancies occur, new members shall be appointed so that
93 not more than one member from each United States Congressional
94 District in the state is appointed to serve at the same time.

95 (c) Of the initial seven appointees to the board, three
96 members shall be appointed for terms ending September 30,
97 1997, and four members shall be appointed for terms ending
98 September 30, 1999. Thereafter, successors shall be appointed
99 for terms of four years, each term expiring on September 30.

100 (d) Vacancies on the board occurring prior to the
101 expiration of a term shall be filled by the Governor within 30
102 days of the vacancy to serve for the remainder of the
103 unexpired term. Each member of the board shall serve until his
104 or her successor has been duly appointed and qualified.

105 (e) At the first meeting, and annually thereafter in
106 the month of October, the board shall elect a chair and vice
107 chair from its membership.

108 (f) The board shall hold its first meeting within 30
109 days after the initial members are appointed. The board shall
110 hold meetings during the year as ~~it~~ the board determines
111 necessary, two of which shall be the biannual meetings for the
112 purpose of reviewing license applications. Additional meetings



113 may be held at the discretion of the chair or upon written
114 request of any three members of the board. A quorum of the
115 board shall be a majority of the current appointed board
116 members. Upon the written request of any person, submitted to
117 the board at least 24 hours in advance of a scheduled meeting,
118 the meeting shall be recorded.

119 (g) Board members shall not receive compensation for
120 their services, but shall receive the same per diem and
121 allowance as provided to state employees for each day the
122 board meets and conducts business.

123 (h) The board shall adopt the rules necessary to
124 implement this chapter pursuant to the Administrative
125 Procedure Act. Proposed rules, and a schedule of proceedings
126 relating to their adoption, shall be conspicuously posted and
127 routinely updated on the website of the board.

128 (i) The board may employ, and at its pleasure
129 discharge, an executive secretary and other officers and
130 employees which may be necessary, including an attorney, to
131 implement this chapter. The board shall also outline the
132 duties and fix the compensation and expense allowances of the
133 employees.

134 (j) An affirmative vote of a majority of the members of
135 the board shall be required to grant, suspend, or revoke a
136 license to practice massage therapy or a license to operate a
137 massage therapy establishment. ~~The board may grant authority~~
138 ~~to the executive director to approve licenses.~~

139 (k) The board shall be financed only from income
140 accruing to ~~it~~ the board from fees, licenses, other charges



141 and funds collected by ~~it~~ the board, and any monies that are
142 appropriated to ~~it~~ the board by the Legislature.

143 (l) Each board member shall be accountable to the
144 Governor for the proper performance of his or her duties as a
145 member of the board. The board shall report to the Governor
146 annually and at other times as requested by the Governor. The
147 Governor shall investigate any complaints or unfavorable
148 reports concerning the actions of the board and take
149 appropriate action thereon, including removal of any board
150 member for misfeasance, malfeasance, neglect of duty,
151 commission of a felony, incompetence, or permanent inability
152 to perform official duties. A board member may be removed at
153 the request of the board after failing to attend two
154 consecutive properly noticed meetings.

155 (m) Members of the board are immune from liability for
156 all good faith acts performed in the execution of their duties
157 as members of the board.

158 (n) Appointees to the board shall take the
159 constitutional oath of office and file it in the office of the
160 Governor before undertaking any duties as a board member. Upon
161 receiving the oath, the Governor shall issue a certificate of
162 appointment to each appointee."

163 "§34-43-9

164 (a) A person desiring to be licensed as a massage
165 therapist shall apply to the board on forms provided by the
166 board. Unless licensed pursuant to subsection (b), applicants
167 for licensure shall submit evidence satisfactory to the board
168 that they have met each of the following requirements:



169 (1) Satisfactorily completed a minimum of 650 hours of
170 instruction. By rule of the board, the minimum 650 hours shall
171 consist of the following: 100 hours of anatomy and physiology
172 to include 35 hours of myology, 15 hours of osteology, 10
173 hours of circulatory system, and 10 hours of nervous system,
174 with the remaining 30 hours to address other body systems at
175 the discretion of the school; 250 hours of basic massage
176 therapy, the contradistinctions of massage therapy, and
177 related touch therapy modalities, to include a minimum of 50
178 hours of supervised massage; 50 hours to include business,
179 hydrotherapy, first aid, cardiopulmonary resuscitation, and
180 professional ethics; and 250 hours of electives to be
181 determined by the school. The board may adopt a rule to
182 further increase the minimum number of hours of instruction
183 required for licensure, not to exceed the number of hours
184 recommended by the National Certification Board for
185 Therapeutic Massage and Bodywork. Before performing
186 therapeutic massage on an animal, a massage therapist shall
187 graduate from a nationally approved program and complete at
188 least 100 hours of postgraduate training and education in
189 animal anatomy, pathology, and physiology for the type of
190 animal upon which the massage therapist wishes to perform
191 therapeutic massage.

192 (2) Successfully passed a national standardized
193 examination approved by the board.

194 (3) Completed a criminal history check.

195 (4) Paid all applicable fees.

196 (b) Notwithstanding the requirements in subdivisions



197 (1) and (2) of subsection (a), the board may license an
198 applicant if the applicant is licensed or registered in
199 another state, which, in the opinion of the board, has
200 standards of practice or licensure that are equal to or
201 stricter than the requirements imposed by this chapter at the
202 time of licensure in that state.

203 (c) Notwithstanding any other provision of this section
204 to the contrary, each applicant for licensure shall be a
205 citizen of the United States or, if not a citizen of the
206 United States, a person who is legally present in the United
207 States with appropriate documentation from the federal
208 government.

209 (d) The board ~~may~~ shall notify each applicant that his
210 or her application has been received and is pending and shall
211 also notify each applicant of the acceptance or rejection of
212 his or her application. If the application is rejected, the
213 board shall list the reasons for rejection."

214 "§34-43-11

215 (a) Establishments shall be licensed by the board. A
216 sexually oriented business may not be licensed as an
217 establishment and shall not operate as an establishment
218 licensed pursuant to this chapter.

219 (b) Establishments shall contract with or employ only
220 licensed massage therapists to perform massage therapy.

221 (c) Each establishment shall contract with or employ at
222 least one licensed massage therapist who is registered with
223 the board as the individual designated to ensure the
224 establishment follows state law and administrative rules.



225 (d) An establishment license issued pursuant to this
226 chapter is not assignable or transferable. The board, by rule,
227 shall provide for the waiver of a new establishment license
228 fee under circumstances where a licensee is moving locations
229 and there is no change in the name or ownership of the
230 establishment.

231 (e) Each unlicensed massage therapist applying for an
232 establishment license shall be subject to a criminal history
233 check. No licensed massage therapist shall be subject to an
234 additional criminal history check when applying for an
235 establishment license.

236 (f) An establishment owned by an individual who is not
237 a resident of this state shall be subject to an initial
238 inspection before licensure. ~~The amount of the initial~~
239 ~~inspection fee shall be determined by rule of the board."~~

240 "§34-43-14

241 (a) By rule, the board shall assess and collect the
242 following fees not to exceed:

243 (1) ~~Two hundred fifty dollars (\$250)~~ One hundred
244 dollars (\$100) for the initial massage therapist license.

245 (2) ~~Three hundred dollars (\$300)~~ One hundred dollars
246 (\$100) for all biennial license renewals postmarked or
247 received at the office of the board by the date ~~in~~ on which
248 the license expires.

249 (3) ~~Three hundred dollars (\$300)~~ One hundred dollars
250 (\$100) for the initial, and fifty dollars (\$50) for any
251 renewal of, an establishment license.

252 (4) ~~Five hundred dollars (\$500)~~ One hundred fifty



253 dollars (\$150) for the initial registration, and any renewal
254 registration, as a massage therapy school in this state.

255 (5) ~~Two hundred fifty dollars (\$250)~~ One hundred
256 dollars (\$100) to register and renew registration as a massage
257 therapy instructor in this state.

258 (6) ~~One hundred fifty dollars (\$150)~~ Seventy-five
259 dollars (\$75) to reactivate an expired license.

260 (7) ~~One hundred dollars (\$100)~~ Twenty-five dollars
261 (\$25) shall be added to all license fees not post-marked or
262 received by the board before the expiration date of the
263 license.

264 ~~(8) Twenty-five dollars (\$25) to verify a license.~~

265 ~~(9) Twenty-five dollars (\$25)~~ (8) Ten dollars (\$10) for
266 a duplicate license certificate or a name change on a license
267 certificate. The board may issue a duplicate certificate for
268 each establishment on file with the board where the massage
269 therapist practices massage therapy. The board may issue
270 additional duplicate certificates only after receiving a sworn
271 letter from the massage therapist that ~~the~~ an original
272 certificate was lost, stolen, or destroyed. The records of the
273 board shall reflect that a duplicate certificate was issued.

274 ~~(10) A fee, set by the board, for the criminal history~~
275 ~~check.~~

276 ~~(11) A fee, set by the board, for an establishment~~
277 ~~inspection.~~

278 (b) Necessary administrative fees may be charged by the
279 board, including, but not limited to, reasonable costs for
280 copying, labels, and lists. Examination and license fees may



281 be adjusted ~~as by rule of~~ the board ~~shall deem appropriate~~.

282 (c) There is ~~hereby~~ established a separate special
283 revenue trust fund in the State Treasury to be known as the
284 Alabama Board of Massage Therapy Fund. All receipts collected
285 by the board under this chapter ~~are to~~ shall be deposited in
286 this fund and used only to carry out this chapter. ~~Such~~
287 ~~receipts~~ Receipts shall be disbursed only by warrant of the
288 state Comptroller, upon itemized vouchers approved by the
289 chair of the board; ~~provided that no~~. No funds shall be
290 withdrawn except as budgeted and allotted according to ~~the~~
291 ~~provisions of~~ Sections 41-4-80 to 41-4-96, inclusive, 41-19-1,
292 and 41-19-12, as amended, and only in amounts as stipulated in
293 the general appropriations bill or other appropriations
294 bills."

295 "§34-43-15

296 (a) Any person may file with the board a written
297 complaint regarding an allegation of impropriety by a
298 licensee, establishment, or person. Complaints shall be made
299 in the manner prescribed by the board. Complaints received by
300 the board shall be referred to a standing investigative
301 committee consisting of a board member, the Executive
302 Director, the board attorney, and the board investigator. If
303 no probable cause is found, the investigative committee may
304 dismiss the charges and prepare a statement, in writing, of
305 the reasons for the decision.

306 (b) If probable cause is found, the board shall
307 initiate an administrative proceeding. Upon a finding that the
308 licensee has committed any of the following instances of



309 misconduct, the board may suspend, revoke, or refuse to issue
310 or renew a license or impose a civil penalty after notice and
311 opportunity for a hearing pursuant to the Administrative
312 Procedure Act:

313 (1) The license was obtained by means of fraud,
314 misrepresentation, or concealment of material facts, including
315 making a false statement on an application or any other
316 document required by the board for licensure.

317 (2) The licensee sold or bartered or offered to sell or
318 barter a license for a massage therapist or a massage therapy
319 establishment.

320 (3) The licensee has engaged in unprofessional conduct
321 that has endangered or is likely to endanger the health,
322 safety, and welfare of the public, as defined by the rules of
323 the board. ~~As used in this subdivision, unprofessional conduct~~
324 ~~includes, but is not limited to, allowing any individual to~~
325 ~~remain in a massage therapy establishment overnight.~~

326 (4) The licensee has been convicted of a felony or of
327 any crime arising out of or connected with the practice of
328 massage therapy.

329 (5) The licensee has violated or aided and abetted in
330 the violation of this chapter.

331 (6) The licensee is adjudicated as mentally incompetent
332 by a court of law.

333 (7) The licensee uses controlled substances or
334 habitually and excessively uses alcohol.

335 (8) The licensee engaged in false, deceptive, or
336 misleading advertising.



337 (9) The licensee engaged in or attempted to or offered
338 to engage a client in sexual activity, including, but not
339 limited to, genital contact, within the client-massage
340 therapist relationship.

341 (10) The licensee has knowingly allowed the massage
342 therapy establishment to be used as an overnight sleeping
343 accommodation.

344 (11) The licensee had a license revoked, suspended, or
345 denied in any other territory or jurisdiction of the United
346 States for any act described in this section.

347 (c) (1) A person governed by this chapter who has a
348 reasonable belief that another massage therapist has engaged
349 in or attempted to or offered to engage a client in sexual
350 activity, as provided in subdivision ~~(9) of subsection~~ (b) (9),
351 shall inform the board in writing within 30 calendar days from
352 the date the person discovers this activity. Upon finding that
353 a person has violated this subsection, the board shall alert
354 local law enforcement and may do any of the following:

355 a. Impose an administrative fine of not more than
356 ~~twenty-five thousand dollars (\$25,000)~~ ten thousand dollars
357 (\$10,000) according to a disciplinary infraction fine schedule
358 adopted by rule of the board.

359 b. Suspend or revoke the person's license to practice
360 massage therapy.

361 (2) Upon a finding that a person has violated this
362 subsection three or more times, the board shall impose a
363 mandatory license suspension for a period of no less than
364 three years and a fine of ~~twenty-five thousand dollars~~



365 ~~(\$25,000)~~ ten thousand dollars (\$10,000).

366 (d) Any person who has been convicted of, or entered a
367 plea of nolo contendere to, a crime or offense involving
368 prostitution or other sexual ~~offenses~~ offense is ineligible to
369 hold a license as a massage therapist for a period of at least
370 three years after the entry of the conviction or plea. The
371 board retains the right to revoke a license indefinitely if
372 the licensee is proven guilty of a crime or of sexual
373 misconduct. Reinstatement of licensure is contingent upon
374 proof of weekly counseling by a licensed professional
375 counselor.

376 (e) An establishment where a person has been convicted
377 of, or entered a plea of nolo contendere to, an offense
378 involving prostitution or any other type of sexual offense may
379 not receive a license for a massage therapy establishment for
380 a period of three years after the date of conviction or entry
381 of the plea. The board shall revoke the establishment license
382 of any establishment which the board determines is a sexually
383 oriented business. The board may revoke an establishment
384 license if a person is convicted of, or enters a plea of nolo
385 contendere to, any crime involving prostitution or any other
386 sexual offense against a client which occurred on the premises
387 of the establishment. ~~The violation is attached to the address~~
388 ~~of the establishment.~~

389 (f) (1) Upon finding a person, who is governed by this
390 chapter, performing massage therapy without having obtained a
391 license, the board may do any of the following:

392 a. Impose an administrative fine of not more than



393 ~~twenty-five thousand dollars (\$25,000)~~ ten thousand dollars
394 (\$10,000).

395 b. Issue a cease and desist order.

396 c. Petition the circuit court of the county where the
397 act occurred to enforce the cease and desist order and collect
398 the assessed fine.

399 (2) Any person aggrieved by any adverse action of the
400 board ~~must~~ shall appeal the action to the Circuit Court of
401 Montgomery County in accordance with the Alabama
402 Administrative Procedure Act.

403 (g) The board shall present any incident of misconduct
404 to the local district attorney for review and appropriate
405 action.

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

408 "§34-43-20

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

411 (1) File a completed application prescribed by the
412 board with the board and pay a registration fee as specified
413 in Section 34-43-14.

414 (2) Provide documentation of a curriculum which
415 includes a minimum number of required hours of instruction in
416 the subjects required pursuant to Section 34-43-9.

417 (3) Register annually with the board by filing a
418 renewal form, accompanied ~~with~~ by the renewal fee pursuant to
419 Section 34-43-14, and submit a current curriculum and a list
420 of instructors.



421 (b) Every instructor teaching course work titled
422 massage therapy at a board approved school located in Alabama
423 shall be licensed in Alabama as a massage therapist and
424 registered as a massage therapy instructor. Instructors who
425 are not teaching massage therapy do not need to be registered.
426 Any adjunct instructors shall be dually licensed in the state
427 where they reside, or be nationally certified, or both.

428 (c) The board shall register as a massage therapy
429 instructor any applicant who meets all of the following
430 requirements:

431 (1) Is currently licensed as a massage therapist in
432 Alabama.

433 (2) Has filed a completed application prescribed by the
434 board and paid a one-time application fee pursuant to Section
435 34-43-14.

436 (3) Documents three years of experience in the practice
437 of massage therapy. The documentation may be considered by the
438 board on a case-by-case basis.

439 ~~(4) Any other requirements adopted by rule of the~~
440 ~~board."~~

441 "§34-43-21

442 (a) The board is subject to the Alabama Sunset Law of
443 1981, and is classified as an enumerated agency pursuant to
444 Section 41-20-3. The board shall automatically terminate on
445 October 1, 2007, and every four years thereafter, unless
446 continued pursuant to the Alabama Sunset Law.

447 (b) The board shall adopt a program of continuing
448 education for licensees which shall be a requisite for the



449 renewal of licenses issued pursuant to this chapter and not
450 exceed the requirements of a board-approved nationally
451 recognized board certification organization such as the
452 National Certification Board of Therapeutic Massage and
453 Bodywork."

454 Section 4. This act shall become effective on July 1,
455 2023, following its passage and approval by the Governor, or
456 its otherwise becoming law.