

SB350 INTRODUCED



1 UESTGX-1
2 By Senator Gudger
3 RFD: Fiscal Responsibility and Economic Development
4 First Read: 23-May-23
5 2023 Regular Session



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SYNOPSIS:

This bill would create the State Board of Licensure for Massage Therapists in the office of the Secretary of State and would provide for the transfer of certain records and property to the Department of Examiners of Public Accounts on a temporary basis and then, after the transition, all powers, duties, rights, records, and property to the State Board of Licensure for Massage Therapists.

This bill would preserve existing regulatory law and would extend the expiration date of licenses issued by the former board until the membership of the new board is established.

This bill would also terminate the Alabama Board of Massage Therapy.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.



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29 The purpose or effect of this bill would be to
30 require a new or increased expenditure of local funds
31 within the meaning of the amendment. However, the bill
32 does not require approval of a local governmental
33 entity or enactment by a 2/3 vote to become effective
34 because it comes within one of the specified exceptions
35 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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42 Relating to the practice of Massage Therapy; to add
43 Chapter 43A to Title 34 of the Code of Alabama 1975, to create
44 the State Board of Licensure for Massage Therapists in the
45 office of the Secretary of State; to provide for the
46 membership of the new board and duties of the Secretary of
47 State and that board; to provide for the transfer of the
48 powers, duties, rights, records, and property of the Alabama
49 Board of Massage Therapy to the State Board of Licensure for
50 Massage Therapists and the Chief Examiner of Public Accounts
51 temporarily during the transition; to preserve existing
52 regulatory law; to extend the expiration date of licenses
53 issued by the former board until the membership of the new
54 board is established; to repeal Chapter 43 of Title 34, Code
55 of Alabama 1975, providing for the Alabama Board of Massage
56 Therapy; and in connection therewith would have as its purpose



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57 or effect the requirement of a new or increased expenditure of
58 local funds within the meaning of Section 111.05 of the
59 Constitution of Alabama of 2022.

60 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

61 Section 1. Chapter 43A is added to Title 34 of the Code
62 of Alabama 1975, to read as follows:

63 §34-43A-1. Legislative findings.

64 Massage therapy is declared by the Legislature to be a
65 professional therapeutic health service. The Legislature finds
66 that in the practice of massage therapy, there is a necessity
67 to preserve and protect individual life and health and to
68 promote public interest and welfare by establishing licensure
69 requirements and assuring public safety. It is the intent of
70 this chapter to establish a regulatory agency and procedures
71 to ensure that the public is protected from the
72 unprofessional, improper, unauthorized, and unqualified
73 practice of massage therapy. All persons engaged in the
74 practice of massage therapy in this state shall meet the
75 requirements set forth in this chapter.

76 §34-43A-2. Definitions.

77 For purposes of this chapter, the following terms shall
78 have the following meanings:

79 (1) ADVERTISE. Distribute a card, flier, sign, or
80 device to any individual or entity, or allow any sign or
81 marking on any building, radio, television, website, social
82 media, or other electronic means or advertise by any other
83 means designed to attract public attention.

84 (2) BOARD. The State Board of Licensure for Massage



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85 Therapists created pursuant to this chapter.

86 (3) BOARD-APPROVED MASSAGE THERAPY SCHOOL. A school
87 where massage therapy is taught, which is in good standing and
88 holds a valid license that is not suspended or revoked in any
89 state, and is one of the following:

90 a. If located in Alabama, approved by the board as
91 meeting the minimum established standards of training and
92 curriculum as determined by the board.

93 b. If located outside of Alabama, recognized by the
94 board and by a regionally recognized professional accrediting
95 body.

96 c. A postgraduate training institute accredited by the
97 Commission on Accreditation for Massage Therapy.

98 (4) ESTABLISHMENT. A site, premises, or business where
99 massage therapy is practiced by a licensed massage therapist.

100 (5) EXAMINATION. A National Certification For
101 Therapeutic Massage and Bodywork Examination or Federation of
102 State Massage Therapy Boards Massage and Bodywork Licensing
103 Examination administered by an independent agency or another
104 nationally or internationally accredited exam administered by
105 an independent agency per approval of the board. The
106 examination shall be accredited by the National Committee for
107 Certifying Agencies. The board retains the right to administer
108 a written, oral, or practical examination.

109 (6) LICENSE. The credential issued by the board which
110 allows the licensee to engage in the safe and ethical practice
111 of massage therapy.

112 (7) MASSAGE THERAPIST. An individual licensed pursuant



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113 to this chapter who practices or administers massage therapy
114 or touch therapy modalities to a patron for compensation.

115 (8) MASSAGE THERAPY or RELATED TOUCH THERAPY

116 MODALITIES. a. The mobilization of the soft tissue which may
117 include skin, fascia, tendons, ligaments, and muscles, for the
118 purpose of establishing and maintaining good physical
119 condition.

120 b. The term includes effleurage, petrissage,
121 tapotement, compression, vibration, stretching, heliotherapy,
122 superficial hot and cold applications, topical applications,
123 or other therapy that involves movement either by hand,
124 forearm, elbow, or foot, for the purpose of therapeutic
125 massage; the external application and use of herbal or
126 chemical preparations and lubricants such as salts, powders,
127 liquids, nonprescription creams, mechanical devices such as
128 T-bars, thumpers, body support systems, heat lamps, hot and
129 cold packs, salt glow, steam cabinet baths, or hydrotherapy;
130 and any massage, movement therapy, massage technology,
131 myotherapy, massotherapy, oriental massage techniques,
132 structural integration, acupressure, or polarity therapy.

133 c. The term does not include laser therapy, microwave,
134 injection therapy, manipulation of the joints, or any
135 diagnosis or treatment of an illness that normally involves
136 the practice of medicine, chiropractic, physical therapy,
137 podiatry, nursing, midwifery, occupational therapy,
138 veterinary, acupuncture, osteopathy, orthopedics, hypnosis, or
139 naturopathics.

140 (9) MASSAGE THERAPY INSTRUCTOR. A licensed massage



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141 therapist approved by the board to teach the practice of
142 massage therapy.

143 (10) PERSON. Any individual, firm, corporation,
144 partnership, organization, association, or other legal entity.

145 (11) SEXUALLY ORIENTED BUSINESS. A sex parlor, massage
146 parlor, nude studio, modeling studio, love parlor, adult
147 bookstore, adult movie theater, adult video arcade, adult
148 motel, or other commercial enterprise which has the offering
149 for sale, rent, or exhibit, or the exhibit of, items or
150 services intended to provide sexual stimulation or sexual
151 gratification to the customer.

152 (12) STUDENT OF MASSAGE THERAPY. Any person currently
153 enrolled in an Alabama massage therapy school program approved
154 by the board.

155 §34-43A-3. Secretary of State; authority; transfer of
156 powers, functions, property, funds; references to Chapter 43.

157 (a) The State Board of Licensure for Massage Therapists
158 is created within office of the Secretary of State and under
159 the direction, authority, and jurisdiction of the Secretary of
160 State. The Secretary of State shall perform all administrative
161 functions of the State Board of Licensure for Massage
162 Therapists.

163 (b) (1) The existence and functioning of the former
164 Alabama Board of Massage Therapy, created pursuant to Chapter
165 43, shall terminate on September 30, 2023.

166 (2) The powers, duties, rights, and functions of the
167 State Board of Licensure for Massage Therapists created by
168 this chapter shall be as provided in this chapter and rules



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169 adopted by the board, subject to the approval of the Secretary
170 of State. Subject to the approval of the Secretary of State,
171 all administrative rules of the Alabama Board of Massage
172 Therapy existing on September 30, 2023, which reference
173 Chapter 43, shall remain in effect as rules of the State Board
174 of Licensure for Massage Therapists until amended or repealed
175 by that board.

176 (3) On September 30, 2023, all records and property,
177 real or personal, of the former Alabama Board of Massage
178 Therapy, shall transfer temporarily to the Chief Examiner of
179 Public Accounts until the membership of the State Board of
180 Licensure for Massage Therapists is appointed, assumes office,
181 and conducts their first meeting. At that time, the Chief
182 Examiner of Public Accounts and the Secretary of State shall
183 arrange for a coordinated and expedient transfer of all
184 records and property to the Secretary of State.

185 (4) On September 30, 2023, all funds of the former
186 Alabama Board of Massage Therapy shall revert to the State
187 General Fund. Appropriations to the Secretary of State for the
188 operation of the State Board of Licensure for Massage
189 Therapists for the 2024 Fiscal Year shall be through the State
190 General Fund.

191 (5) Any reference in any law, contract, or other
192 instrument to the Alabama Board of Massage Therapy under
193 Chapter 43 shall be deemed a reference to the State Board of
194 Licensure for Massage Therapists created by this chapter.

195 (6) All actions of the Alabama Board of Massage Therapy
196 lawfully taken prior to October 1, 2023, by that board or by



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197 the executive director of that board are approved, ratified,
198 and confirmed.

199 (c) The status of any individual or entity properly
200 licensed by the Alabama Board of Massage Therapy under former
201 Chapter 43, on September 30, 2023, shall continue under the
202 jurisdiction of the State Board of Licensure for Massage
203 Therapists. Any license subject to renewal on or before
204 January 1, 2024, pursuant to Section 34-43A-12, shall be
205 temporarily extended by three months until otherwise provided
206 by rule of the board, subject to the approval of the Secretary
207 of State.

208 §34-43A-4. Regulated activities.

209 Except as specifically provided by this chapter, no
210 person may do any of the following unless licensed pursuant to
211 this chapter:

212 (1) Advertise that he or she performs massage therapy
213 or related touch therapy modalities.

214 (2) Hold himself or herself out to the public as a
215 massage therapist, using any name or description denoting
216 himself or herself as a massage therapist, or purporting to
217 have the skills necessary to perform massage therapy.

218 (3) Practice massage therapy.

219 §34-43A-5. Exemptions.

220 (a) The following persons, offices, or establishments
221 shall be exempt from this chapter:

222 (1) A student of massage therapy who is rendering
223 massage therapy services under the supervision of a licensed
224 massage therapy instructor, or any other supervisory



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225 arrangement recognized and approved by the board including,
226 but not limited to, a temporary permit. A student of massage
227 therapy shall be designated by title clearly indicating the
228 training status of the student of massage therapy.

229 (2) Qualified members of other professions who are
230 licensed and regulated under state law while they are in the
231 course of rendering services within the scope of their license
232 or regulation, provided that they do not represent themselves
233 as massage therapists.

234 (3) A person giving massages to his or her immediate
235 family.

236 (4) Visiting massage therapy instructors from another
237 state, territory, or country teaching massage therapy,
238 provided that the massage therapy instructor is licensed or
239 registered as required in his or her place of residence.
240 Visiting massage therapy instructors teaching continuing
241 education courses may teach in the state up to 100 hours per
242 year without an Alabama license. One hundred hours of
243 continuing education instruction or more shall require
244 licensure.

245 (5) Members of the Massage Emergency Rescue Team (MERT)
246 or any other nationally or internationally recognized disaster
247 relief association who practice massage therapy in the state
248 only during a time declared by the Governor to be a
249 municipality, county, or state emergency. These therapists may
250 work in the state for a period of time approved by the board.

251 (6) Native American healers using traditional healing
252 practices. Native American healers who use these practices and



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253 apply for a license pursuant to this chapter shall comply with
254 all licensure requirements.

255 (7) An individual acting under the supervision of a
256 physician, a physical therapist, or a chiropractor within the
257 scope of his or her license or regulation, provided that he or
258 she does not represent himself or herself as a massage
259 therapist or primarily perform massage therapy for
260 compensation.

261 (8) The office of a chiropractor, physician, or
262 physical therapist who employs or contracts with a massage
263 therapist. It is the specific intent of this subdivision that
264 a chiropractor, physician, or physical therapist and his or
265 her office not be required to be licensed as an establishment
266 under this chapter or be required to obtain any exemption
267 under this chapter from the board.

268 (b) Nothing in this chapter shall be construed to
269 permit massage therapists licensed under this chapter to
270 administer, dispense, or prescribe drugs, or engage in the
271 practice of medicine in any manner including, but not limited
272 to, diagnosing or prescribing drugs for mental, emotional, or
273 physical diseases, illnesses, nutrition, or injuries.

274 §34-43A-6. State Board of Licensure for Massage
275 Therapists.

276 (a) There is created the State Board of Licensure for
277 Massage Therapists. The purpose of the board is to protect the
278 health, safety, and welfare of the public by ensuring that
279 licensed massage therapists, massage therapy schools, and
280 massage therapy instructors meet prescribed standards of



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281 education, competency, and practice. To accomplish this
282 mission, the board shall establish standards pursuant to this
283 chapter to complete all board functions in a timely and
284 effective manner and to provide open and immediate access to
285 all relevant public information. The board shall communicate
286 its responsibilities and services to the public as part of its
287 consumer protection duties. The board shall develop and
288 implement a long range plan to ensure effective regulation and
289 consumer protection.

290 (b) (1) The board shall consist of the following nine
291 members:

- 292 a. Three members appointed by the Governor.
- 293 b. Three members appointed by the Lieutenant Governor.
- 294 c. Three members appointed by the Speaker of the House
295 of Representatives.

296 (2) One member shall be appointed from each of the
297 seven congressional districts of the state and two members
298 shall be appointed from the state at large. One of the members
299 appointed by the Lieutenant Governor and one of the members
300 appointed by the Speaker of the House of Representatives shall
301 be appointed from a list of three names each provided by the
302 Minority Leader of the Senate and the Minority Leader of the
303 House of Representatives. The appointing authorities shall
304 coordinate their appointments to assure the board membership
305 is inclusive and reflects the racial, gender, geographic,
306 urban, rural, and economic diversity of the state.

307 (3) Of the initial nine appointees to the board, three
308 members shall be appointed for terms of two years, three



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309 members shall be appointed to terms of three years, and four
310 members shall be appointed for terms of four years as
311 determined by lottery. Thereafter, successors shall be
312 appointed for terms of four years, each term expiring on
313 September 30.

314 (4) No member of the board shall serve more than two
315 full consecutive terms.

316 (c) Vacancies on the board occurring prior to the
317 expiration of a term shall be filled by the appointing
318 authority within 30 days of the vacancy to serve for the
319 remainder of the unexpired term. Each member of the board
320 shall serve until his or her successor has been duly appointed
321 and qualified.

322 (d) The board shall hold its first meeting within 30
323 days after the initial members are appointed. At the first
324 meeting, and annually thereafter in the month of October, the
325 board shall elect a chair and vice chair from its membership.
326 The board shall hold meetings during the year as it determines
327 necessary, two of which shall be the biannual meetings for the
328 purpose of reviewing license applications. Additional meetings
329 may be held at the discretion of the chair or upon written
330 request of any three members of the board. A quorum of the
331 board shall be a majority of the appointed board members.

332 (e) Board members shall not receive compensation for
333 their services, but shall receive the same per diem and
334 allowance as provided to state employees for each day the
335 board meets and conducts business.

336 (f) An affirmative vote of a majority of the members of



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337 the board shall be required to grant, suspend, or revoke a
338 license to practice massage therapy or a license to operate a
339 massage therapy establishment.

340 (g) Each board member shall be accountable to the
341 Secretary of State for the proper performance of his or her
342 duties as a member of the board. The office of the Secretary
343 of State shall investigate any complaints or unfavorable
344 reports concerning the actions of the board and take
345 appropriate action thereon, including removal of any board
346 member for misfeasance, malfeasance, neglect of duty,
347 commission of a felony, incompetence, or permanent inability
348 to perform official duties. A board member may be removed at
349 the request of the board after failing to attend two
350 consecutive properly noticed meetings.

351 (h) Members of the board are immune from liability for
352 all good faith acts performed in the execution of their duties
353 as members of the board.

354 (i) Appointees to the board shall take the
355 constitutional oath of office and file it in the office of the
356 Secretary of State before undertaking any duties as a board
357 member. Upon receiving the oath, the Secretary of State shall
358 issue a certificate of appointment to each appointee.

359 §34-43A-7. Powers and duties of board and the Secretary
360 of State.

361 (a) All rules adopted by the board are subject to prior
362 approval by the Secretary of State. The board, by such rules,
363 shall adopt procedures to do all of the following:

364 (1) Examine and qualify for examination applicants for



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365 licensure and issue a license to each successful applicant.

366 (2) Adopt a seal, which shall be affixed to all
367 licenses issued by the board.

368 (3) Prescribe application forms for examination and
369 licensure and assess and collect fees pursuant to this
370 chapter.

371 (4) Maintain a complete record of all licensed massage
372 therapists and annually prepare a roster of the names and
373 addresses of the licensees. A copy of this roster, excluding
374 the home addresses of licensees, shall be made available to
375 any person requesting it, upon payment of a fee set by the
376 board in an amount sufficient to cover the costs of its
377 publication and distribution.

378 (5) Investigate persons who may be violating this
379 chapter.

380 (6) Address unprofessional conduct of licensees.

381 (7) Provide copies of this chapter, and rules adopted
382 pursuant to this chapter, to all persons who are licensed
383 under this chapter and to all applicants for licensure.

384 (8) Require massage therapists, massage therapy
385 establishments, and massage therapy schools to carry
386 professional and general liability insurance with an "A" rated
387 or better insurance carrier in the amount of at least one
388 million dollars (\$1,000,000). The massage therapist shall
389 produce evidence of coverage upon request of the board.

390 (9) Perform an audit of educational verification on
391 each licensee on or before October 1, 2024, and random audits
392 of educational verification on licensees thereafter.



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393 (b) The Secretary of State, may do any of the
394 following:

395 (1) Accept or deny the application of any person
396 applying for licensure as a massage therapist.

397 (2) Establish criteria for certifying massage therapy
398 instructors.

399 (3) Adopt an annual budget for the board and authorize
400 necessary expenditures from fees and other available
401 appropriations.

402 (4) Keep records of the proceedings of the board; and,
403 in any proceeding in court, civil or criminal, arising out of
404 or founded upon any provision of this chapter, copies of those
405 records certified as correct by the Secretary of State shall
406 be admissible in evidence as tending to prove the content of
407 the records.

408 (5) Employ, or use existing personnel of the office of
409 the Secretary of State including, but not limited to,
410 administrative staff, investigators, attorneys, and office
411 staff who shall be under the jurisdiction of the Secretary of
412 State, and arrange for assistance, service, and supplies as
413 the Secretary of State may require for the performance of the
414 duties of the board.

415 (6) Adopt a code of ethics for licensees.

416 (7) Provide for the inspection of the business premises
417 of any licensee during normal business hours.

418 (8) Establish a list of approved massage therapy
419 schools.

420 §34-43A-8. License required; sexually oriented



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421 businesses; limitations on advertising or offers of service.

422 (a) No individual may perform the duties of a massage
423 therapist unless he or she possesses a current license issued
424 pursuant to this chapter.

425 (b) A licensed massage therapist may not perform
426 massage therapy, whether or not for compensation, for a
427 sexually oriented business.

428 (c) A licensed massage therapist shall not advertise or
429 offer to perform services outside the scope of his or her
430 expertise, experience, and education for clients who are ill,
431 or those with a physical dysfunction, unless the services are
432 performed in conjunction with a licensed physician, physical
433 therapist, or chiropractor.

434 (d) A licensed massage therapist or licensed massage
435 therapy establishment may not advertise or offer to perform
436 services on any sexually explicit website or online platform
437 that promotes prostitution, sexually explicit services, or
438 human trafficking.

439 §34-43A-9. Application for license; licensure
440 requirements.

441 (a) An individual desiring to be licensed as a massage
442 therapist shall apply to the Secretary of State on forms
443 provided by the Secretary of State. Unless licensed pursuant
444 to subsection (b), applicants for licensure shall submit
445 evidence satisfactory to the Secretary of State that they have
446 met each of the following requirements:

447 (1)a. Satisfactorily completed a minimum of 650 hours
448 of instruction. Hybrid or online classes may only be academic



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449 and instructional, not hands-on. All hands-on classes and
450 clinics shall be performed in person and under the supervision
451 of a licensed instructor. The minimum 650 hours shall consist
452 of all of the following:

453 1. One hundred hours of anatomy and physiology to
454 include 35 hours of myology, 15 hours of osteology, 10 hours
455 of circulatory system, and 10 hours of nervous system, with
456 the remaining 30 hours to address other body systems at the
457 discretion of the school.

458 2. Two hundred fifty hours of basic massage therapy,
459 the contradistinctions of massage therapy, and related touch
460 therapy modalities, to include a minimum of 50 hours of
461 supervised massage.

462 3. Fifty hours to include business, hydrotherapy, first
463 aid, cardiopulmonary resuscitation, state regulatory law, and
464 professional ethics.

465 4. Two hundred hours of electives to be determined by
466 the school.

467 5. Fifty documented hours of student clinic training,
468 including 10 business hours.

469 b. The board may adopt a rule, subject to prior
470 approval of the Secretary of State, to further increase the
471 minimum number of hours of instruction required for licensure,
472 not to exceed the number of hours recommended by the National
473 Certification Board for Therapeutic Massage and Bodywork.

474 c. Before performing massage therapy on an animal, a
475 massage therapist shall graduate from a nationally approved
476 program and complete at least 100 hours of postgraduate



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477 training and education in animal anatomy, pathology, and
478 physiology for the type of animal upon which the massage
479 therapist wishes to perform therapeutic massage.

480 (2) Successfully passed either a national standardized
481 examination or state examination approved by the Secretary of
482 State.

483 (3) Completed a criminal history check.

484 (4) Paid all applicable fees.

485 (b) Notwithstanding the requirements in subdivisions
486 (a) (1) and (a) (2), the Secretary of State may license an
487 applicant if the applicant is licensed or registered in
488 another state that, in the opinion of the Secretary of State,
489 has standards of practice or licensure that are equal to or
490 stricter than the requirements imposed by this chapter at the
491 time of licensure in that state. The applicant may not have
492 had their license in any other state revoked, suspended, or
493 subject to disciplinary action for sexually related activities
494 or been denied a license due to a testing score revocation.

495 (c) The Secretary of State may notify each applicant of
496 the acceptance or rejection of his or her application. If the
497 application is rejected, the board shall list the reasons for
498 rejection.

499 §34-43A-10. Licensing of establishments; initial
500 inspection.

501 (a) Establishments shall be licensed by the Secretary
502 of State. A sexually oriented business may not be licensed as
503 an establishment and shall not operate as an establishment
504 licensed pursuant to this chapter. If the license of the owner



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505 or primary agent of an establishment has been revoked,
506 repealed, or denied in any other state, the owner or primary
507 agent shall be subject to a hearing before the board before
508 initial licensure may be granted in this state.

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

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

515 (d) An establishment license issued pursuant to this
516 chapter is not assignable or transferable. The board, by rule,
517 shall provide for the waiver of a new establishment license
518 fee under circumstances where a licensee is moving locations
519 and there is no change in the name or ownership of the
520 establishment.

521 (e) Each unlicensed massage therapist applying for an
522 establishment license shall be subject to a criminal history
523 check. No licensed massage therapist shall be subject to an
524 additional criminal history check when applying for an
525 establishment license.

526 (f) An establishment owned by an individual who is not
527 a resident of this state shall be subject to an initial
528 hearing and inspection before licensure.

529 §34-43A-11. Application forms; issuance of license;
530 display of license.

531 (a) Applications for licensure or renewal shall be on
532 forms provided by the Secretary of State and shall be



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533 accompanied by the proper fee. Initial applications for
534 licensure shall include a two-by-two inch photograph, taken no
535 more than six months earlier, showing a frontal view of the
536 head and shoulders of the applicant, shall be submitted with
537 the application. All documents shall be submitted in English.

538 (b) Each applicant for licensure shall be subject to a
539 criminal history check. Refusal to consent to a criminal
540 history check constitutes grounds for the board to deny an
541 application for licensure.

542 (c) The board shall issue a license to each person who
543 qualifies to be a massage therapist and to each qualified
544 massage therapy establishment. To be qualified for a license
545 as a massage therapist the applicant shall successfully pass
546 the examination, pay the examination fee, provide a copy of
547 any transcripts from the board-approved massage therapy
548 school, and pass the criminal history check as specified by
549 the rules, pay the criminal history check fee, and pay the
550 license fee. A license grants all professional rights, honors,
551 and privileges relating to the practice of massage therapy.

552 (d) Each licensed massage therapist shall display his
553 or her license in the manner specified by the Secretary of
554 State. Each establishment shall post its license and the
555 license of each massage therapist who practices in the
556 establishment in plain sight.

557 (e) A license is the property of the Secretary of State
558 and shall be surrendered upon demand of the Secretary of
559 State.

560 §34-43A-12. License renewal; reinstatement.



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561 (a) Each license shall be renewed biennially, on or
562 before the anniversary date, by forwarding to the Secretary of
563 State a renewal application accompanied by the renewal fee.
564 Unless temporarily extended pursuant to Section 34-43A-3(c),
565 any license not renewed biennially on or before the
566 anniversary date shall expire.

567 (b) Each licensee, upon application for renewal of a
568 license, shall do both of the following:

569 (1) Submit evidence of satisfactory completion of the
570 continuing education requirements contained in Section
571 34-43A-20.

572 (2) Consent to a criminal history check. Refusal to
573 consent to a criminal history check constitutes grounds for
574 the board to deny the licensee's application for renewal of
575 the license.

576 (c) Licenses are valid for two years from the date of
577 issuance. An individual whose license has expired and who has
578 ceased to practice massage therapy for a period of not longer
579 than five years may have his or her license reinstated upon
580 payment of a renewal fee and a late fee and submission of a
581 renewal application and evidence satisfactory to the board
582 that the applicant has fulfilled continuing education
583 requirements, passed a criminal history check and paid the
584 criminal history check fee, and passed the examination.

585 §34-43A-13. State Board of Licensure for Massage
586 Therapists Fund.

587 (a) (1) All monies collected as fees or fines for
588 violations of this chapter shall be paid to the Secretary of



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589 State, who shall deposit them in a special fund in the State
590 Treasury for the use of the board.

591 (2) There is created in the State Treasury a fund to be
592 known as the State Board of Licensure for Massage Therapists
593 Fund. All funds, fees, charges, costs, and collections
594 accruing to or collected under this chapter shall be deposited
595 by the Secretary of State into the State Treasury to the
596 credit of that fund.

597 (3) Monies in the State Board of Licensure for Massage
598 Therapists Fund may not be expended for any purpose whatsoever
599 unless the same shall have been allotted and budgeted in
600 accordance with Article 4 of Chapter 4 of Title 41, and only
601 in the amounts and for the purposes provided by the
602 Legislature in the general appropriation bill or other
603 appropriation bills.

604 (b) The Secretary of State, by rule, shall assess and
605 collect all of the following fees not to exceed:

606 (1) Two hundred dollars (\$200) for the initial massage
607 therapist license.

608 (2) One hundred dollars (\$100) for all biennial license
609 renewals postmarked or received at the office of the board by
610 the date in which the license expires.

611 (3) One hundred dollars (\$100) for the initial, and any
612 renewal of, an establishment license.

613 (4) One hundred fifty dollars (\$150) for the initial
614 registration, and any renewal registration, as a massage
615 therapy school in this state.

616 (5) One hundred dollars (\$100) to register and renew



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617 registration as a massage therapy instructor in this state.

618 (6) Seventy-five dollars (\$75) to reactivate an expired
619 license.

620 (7) Fifty dollars (\$50) shall be added to all license
621 fees not post-marked or received by the board before the
622 expiration date of the license.

623 (8) Twenty-five dollars (\$25) for a duplicate license
624 certificate or a name change on a license certificate. The
625 board may issue a duplicate certificate only after receiving a
626 sworn letter from the massage therapist that the original
627 certificate was lost, stolen, or destroyed. The records of the
628 board shall reflect that a duplicate certificate was issued.

629 (9) Examination fees.

630 (c) Necessary administrative fees may be charged by the
631 Secretary of State to cover reasonable costs related to
632 copying, labels, and lists.

633 §34-43A-14. Complaints; grounds for suspension,
634 revocation, etc., of license; penalties; rulemaking authority.

635 (a) Any person may file with the Secretary of State a
636 written complaint regarding an allegation of impropriety by a
637 licensee, establishment, or person. Complaints shall be made
638 in the manner prescribed by the Secretary of State. Complaints
639 received by the Secretary of State shall be investigated by
640 the office of the Secretary of State. If no probable cause is
641 found, the complaint may be dismissed and a statement, in
642 writing, of the reasons for the decision shall be provided to
643 the complainant.

644 (b) If probable cause is found, administrative



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645 proceedings shall be initiated. Upon a finding that the
646 licensee has committed any of the following instances of
647 misconduct, the Secretary of State may suspend, revoke, or
648 refuse to issue or renew a license or impose a civil penalty
649 after notice and opportunity for a hearing pursuant to the
650 Administrative Procedure Act:

651 (1) The license was obtained by means of fraud,
652 misrepresentation, or concealment of material facts, including
653 making a false statement on an application or any other
654 document required for licensure or providing a transcript from
655 a school located in another state that has a revoked license.

656 (2) The licensee sold or bartered or offered to sell or
657 barter a license for a massage therapist or a massage therapy
658 establishment.

659 (3) The licensee has engaged in unprofessional conduct
660 that has endangered or is likely to endanger the health,
661 safety, and welfare of the public, as defined by the rules
662 adopted pursuant to this chapter.

663 (4) The licensee has been convicted of a felony or of
664 any crime arising out of or connected with the practice of
665 massage therapy.

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

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

670 (7) The licensee uses controlled substances or
671 habitually and excessively uses alcohol.

672 (8) The licensee engaged in false, deceptive, or



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673 misleading advertising.

674 (9) The licensee engaged in or attempted to or offered
675 to engage a client in sexual activity including but not
676 limited to, genital contact, within the client-massage
677 therapist relationship, in this or any other state.

678 (10) The licensee has knowingly allowed the massage
679 therapy establishment to be used as an overnight sleeping
680 accommodation.

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

684 (c) (1) A person governed by this chapter who has a
685 reasonable belief that another massage therapist or
686 establishment has engaged in or attempted to or offered to
687 engage a client in sexual activity, as provided in subdivision
688 (b) (9), shall inform the Secretary of State in writing within
689 30 calendar days from the date the person discovers the
690 activity. Upon finding that a person has violated this
691 subsection, the Secretary of State may do any of the
692 following:

693 a. Impose an administrative fine of not more than ten
694 thousand dollars (\$10,000) according to a disciplinary
695 infraction fine schedule adopted by rule of the board.

696 b. Suspend or revoke the person's license to practice
697 massage therapy.

698 (2) Upon a finding that a person has committed sexual
699 acts in violation of this subsection, the Secretary of State
700 shall impose a mandatory license suspension and a fine of



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701 twenty-five thousand dollars (\$25,000).

702 (d) Any individual who has been convicted of, or
703 entered a plea of nolo contendere to, a crime or offense
704 involving prostitution or other sexual offenses is ineligible
705 to hold a license as a massage therapist. The Secretary of
706 State retains the right to revoke a license at any time if the
707 licensee is proven guilty of a crime or of sexual misconduct.

708 (e) An establishment where an individual has been
709 convicted of, or entered a plea of nolo contendere to, an
710 offense involving prostitution or any other type of sexual
711 offense may not receive a license for a massage therapy
712 establishment. The Secretary of State shall revoke the
713 establishment license of any establishment which the Secretary
714 of State determines is a sexually oriented business. The
715 Secretary of State may revoke an establishment license if an
716 individual is convicted of, or enters a plea of nolo
717 contendere to, any crime involving prostitution or any other
718 sexual offense against a client which occurred on the premises
719 of the establishment.

720 (f) Upon finding an individual, governed by this
721 chapter, performing massage therapy without having obtained a
722 license, the Secretary of State may do any or all of the
723 following:

724 (1) Impose an administrative fine of not more than ten
725 thousand dollars (\$10,000).

726 (2) Issue a cease and desist order.

727 (3) Petition the circuit court of the county where the
728 act occurred to enforce the cease and desist order and collect



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729 the assessed fine.

730 (4) Deny a future application for licensure.

731 (g) Any person aggrieved by any adverse action of the
732 board may appeal the action to the Circuit Court of Montgomery
733 County in accordance with the Alabama Administrative Procedure
734 Act.

735 (h) The Secretary of State shall present any incident
736 of misconduct to the local district attorney for review and
737 appropriate action.

738 (i) The board may adopt rules, subject to the prior
739 approval of the Secretary of State, to implement and
740 administer this section.

741 §34-43A-15. Use of certain words or other advertising
742 descriptions by non-licensed persons.

743 An individual who does not hold a license as a massage
744 therapist, physical therapist, chiropractor, or athletic
745 trainer, or a license for an establishment, may not use the
746 terms "massage," "bodywork," "acupressure," or "reflexology"
747 on any sign or other form of advertising describing services
748 performed by the individual or at the establishment. Any
749 advertisement by a massage therapist or establishment shall
750 contain the license number of the therapist or establishment.
751 Under no circumstances may a sexually oriented business hold
752 itself out as offering massage therapy services.

753 §34-43A-16. Criminal penalties.

754 Any person who violates this chapter or practices
755 massage therapy without first obtaining a license under this
756 chapter shall be guilty of a Class C misdemeanor.



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757 §34-43A-17. Injunction; civil penalty.

758 (a) In addition to the criminal penalties prescribed by
759 this chapter, the Secretary of State may seek an injunction
760 against any individual or establishment in violation of this
761 chapter.

762 (b) In an action for an injunction, the Secretary of
763 State may demand and recover a civil penalty of fifty dollars
764 (\$50) per day for each violation, reasonable attorney fees,
765 and court costs.

766 §34-43A-18. Construction with other laws.

767 (a) Except as otherwise provided in subsection (b),
768 this chapter shall supersede any regulation adopted by a
769 political subdivision of the state related to the licensing or
770 regulation of massage therapists and massage therapy
771 establishments.

772 (b) This section shall not affect:

773 (1) Local regulations relating to zoning requirements
774 or occupational license taxes pertaining to massage therapists
775 and massage therapy establishments.

776 (2) Local regulations that do not relate to the
777 practice of massage therapy by qualified individuals.

778 (c) A county, or a municipality within its
779 jurisdiction, may regulate persons licensed pursuant to this
780 chapter. Regulations and ordinances shall be consistent with
781 this chapter. This section shall not be construed to prohibit
782 a county or municipality from regulating persons not licensed
783 pursuant to this chapter.

784 §34-43A-19. Massage therapy schools; instructors.



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785 (a) To be approved by the Secretary of State, a massage
786 therapy school shall meet the following requirements:

787 (1) File a completed application prescribed by the
788 Secretary of State with the Secretary of State and pay a
789 registration fee as specified in Section 34-43A-13.

790 (2) Provide documentation of a curriculum which
791 includes a minimum number of required hours of instruction in
792 the subjects required pursuant to Section 34-43A-9.

793 (3) Register annually with the Secretary of State by
794 filing a renewal form accompanied with the renewal fee
795 pursuant to Section 34-43A-13, and submit a current curriculum
796 and a list of instructors.

797 (b) Every instructor teaching course work titled
798 massage therapy at an Alabama school approved by the Secretary
799 of State shall be licensed in Alabama as a massage therapist
800 and registered as a massage therapy instructor. Instructors
801 who are not teaching massage therapy do not need to be
802 registered, however, his or her credentials shall be submitted
803 with a school initial application or renewal application. Any
804 adjunct instructors shall be dually licensed in the state
805 where they reside, be nationally certified, or both.

806 (c) The Secretary of State shall register as a massage
807 therapy instructor any applicant who meets all of the
808 following requirements:

809 (1) Is currently licensed as a massage therapist, in
810 good standing, in the state.

811 (2) Has filed a completed application prescribed by the
812 board and paid a one-time application fee pursuant to Section



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813 34-43A-13.

814 (3) Documents three years of experience in the practice
815 of massage therapy and one year of supervised teacher
816 assisting through a board-approved massage therapy school or a
817 school approved by any other state. The documentation may be
818 considered by the board on a case-by-case basis.

819 (4) Any other requirements adopted by rule pursuant to
820 this chapter.

821 §34-43A-20. Sunset provision; continuing education.

822 (a) The board is subject to the Alabama Sunset Law of
823 1981, and is classified as an enumerated agency pursuant to
824 Section 41-20-3. The board shall automatically terminate on
825 October 1, 2025, and every four years thereafter, unless
826 continued pursuant to the Alabama Sunset Law.

827 (b) The board shall adopt a program of continuing
828 education for licensees which shall be a requisite for the
829 renewal of licenses issued pursuant to this chapter and which
830 does not exceed the requirements of the National Certification
831 For Therapeutic Massage and Bodywork Examination or Federation
832 of State Massage Therapy Boards Massage and Bodywork Licensing
833 Examination.

834 Section 2. Chapter 43 of Title 34, Code of Alabama
835 1975, providing for the creation and operation of the Alabama
836 Board of Massage Therapy, is repealed.

837 Section 3. Although this bill would have as its purpose
838 or effect the requirement of a new or increased expenditure of
839 local funds, the bill is excluded from further requirements
840 and application under Section 111.05 of the Constitution of



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841 Alabama of 2022, because the bill defines a new crime or
842 amends the definition of an existing crime.

843 Section 4. This act shall become effective October 1,
844 2023, following its passage and approval by the Governor, or
845 its otherwise becoming law.