

1 HB167
2 173289-4
3 By Representative Hill (M)
4 RFD: Boards, Agencies and Commissions
5 First Read: 09-FEB-16

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Massage Therapy Licensure Act; to amend Sections 34-43-3, 34-43-5, 34-43-6, 34-43-7, 34-43-9, 34-43-11, 34-43-12, 34-43-14, 34-43-15, 34-43-17, 34-43-20, and 34-43-21, Code of Alabama 1975, and to repeal Section 34-43-10, Code of Alabama 1975; to delete any reference to a temporary permit to practice massage therapy; to expand the definition of therapeutic massage and extend exemptions to the act; to delete antiquated language; to provide compensation for board members; to change the name of the executive secretary to executive director; to provide an excuse for absences from board meetings; to delete requirements that the oath of office of board members be filed with the Governor and that certificates of appointments be issued; to remove a retesting limit; to increase the minimum hours of supervised course instruction for licensure; to require that applicants for licensure be 18 years old with a high school diploma, or the equivalent, and be subject to criminal history information background checks; to authorize the board to assess and collect certain fees; to increase the discretion of the board to license establishments; to expand

1 the authority of the board to revoke or suspend licenses; to
2 increase the penalty violating the act from a Class C
3 misdemeanor to a Class A misdemeanor; and in connection
4 therewith would have as its purpose or effect the requirement
5 of a new or increased expenditure of local funds within the
6 meaning of Amendment 621 of the Constitution of Alabama of
7 1901, now appearing as Section 111.05 of the Official
8 Recompile of the Constitution of Alabama of 1901, as
9 amended.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 34-43-3, 34-43-5, 34-43-6,
12 34-43-7, 34-43-9, 34-43-11, 34-43-12, 34-43-14, 34-43-15,
13 34-43-17, 34-43-20, and 34-43-21 of the Code of Alabama 1975,
14 are amended to read as follows:

15 "§34-43-3.

16 "For purposes of this chapter, the following terms
17 shall have the following meanings:

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

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

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

1 "a. If located in Alabama is approved by the board
2 as meeting the minimum established standards of training and
3 curriculum as determined by the board.

4 "b. If located outside of Alabama is recognized by
5 the board ~~and~~ or by a regionally recognized professional
6 accrediting body, or both.

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

9 "(4) ESTABLISHMENT. A site, premises, or business
10 where massage therapy is practiced by a licensed massage
11 therapist.

12 "(5) EXAMINATION. ~~A National Certification For~~
13 ~~Therapeutic Massage and Bodywork Examination administered by~~
14 ~~an independent agency or another nationally or internationally~~
15 ~~accredited exam administered by an independent agency per~~
16 ~~approval of the board. The examination will be accredited by~~
17 ~~the National Committee for Certifying Agencies~~ nationally
18 recognized competency examination in massage and bodywork that
19 meets acceptable psychometric principles, is statistically
20 validated through a job-task analysis under current standards
21 for educational and professional testing, and has been
22 approved by the board. The board retains the right to
23 administer a written, oral, or practical examination.

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

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

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

6 "~~(7)~~ (9) MESSAGE THERAPIST. A person licensed
7 pursuant to this chapter who practices or administers massage
8 therapy or touch therapy modalities to a patron for
9 compensation.

10 "~~(8)~~ (10) MESSAGE THERAPY INSTRUCTOR. A licensed
11 massage therapist approved by the board to teach the practice
12 of massage therapy.

13 "~~(9)~~ (11) PERSON. Any individual, firm, corporation,
14 partnership, organization, association, trustee, lessee,
15 agent, assignee, or other legal entity.

16 "~~(10)~~ (12) SEXUALLY ORIENTED BUSINESS. A sex parlor,
17 massage parlor, nude studio, modeling studio, love parlor,
18 adult bookstore, adult movie theater, adult video arcade,
19 adult motel, or other commercial enterprise which has ~~as its~~
20 ~~primary~~ any business ~~the~~ offering for sale, rent, or exhibit,
21 or the exhibit of, items or services intended to provide
22 sexual stimulation or sexual gratification to the customer.

23 "~~(11)~~ (13) STUDENT OF MASSAGE THERAPY. Any person
24 currently enrolled in an Alabama massage therapy school
25 program approved by the board.

26 "~~(12)~~ TEMPORARY PERMIT. ~~A temporary permit issued at~~
27 ~~the request of a massage therapist who is qualified according~~

1 ~~to the Alabama massage therapy law prior to approval by the~~
2 ~~board and not to exceed six months.~~

3 "~~(13)~~ (14) THERAPEUTIC MASSAGE AND RELATED TOUCH
4 THERAPY MODALITIES. The mobilization of the soft tissue which
5 may include skin, fascia, tendons, ligaments, and muscles, for
6 the purpose of establishing and maintaining good physical
7 condition. The term shall include effleurage, petrissage,
8 tapotement, compression, vibration, stretching, heliotherapy,
9 superficial hot and cold applications, topical applications,
10 or other therapy which involves movement either by hand,
11 forearm, elbow, or foot, for the purpose of therapeutic
12 massage. Massage therapy may include the external application
13 and use of herbal or chemical preparations and lubricants such
14 as salts, powders, liquids, nonprescription creams, mechanical
15 ~~devices~~ devices such as T-bars, thumpers, body support
16 systems, heat lamps, hot and cold packs, salt glow, steam
17 cabinet baths or hydrotherapy. The term includes any massage,
18 movement therapy, massage technology, myotherapy, acupressure
19 massage, deep tissue massage, reflexology massage, or
20 massotherapy, oriental massage techniques, structural
21 integration, or polarity therapy. The term does not include
22 directed movement therapy including, but not limited to, the
23 Feldenkrais method of somatic education, the Trager approach
24 to movement education, the Rosen method, and body-mind
25 centering and energy field work including, but not limited to,
26 Polarity Therapy, Reiki, Reflexology, Touch for Health, or Jin
27 Shin Do, provided these services are not designated or implied

1 to be massage or massage therapy. The term ~~shall~~ also does not
2 include laser therapy, microwave, injection therapy,
3 manipulation of the joints, or any diagnosis or treatment of
4 an illness that normally involves the practice of medicine,
5 chiropractic, physical therapy, podiatry, nursing,
6 occupational therapy, veterinary, acupuncture, osteopathy,
7 orthopedics, hypnosis, ~~or~~ naturopathics, or any other modality
8 designated by the board.

9 "§34-43-5.

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

12 "(1) A student of massage therapy who is rendering
13 massage therapy services under the supervision of a licensed
14 massage therapy instructor, or any other supervisory
15 arrangement recognized and approved by the board, ~~including,~~
16 ~~but not limited to, a temporary permit.~~ The student shall be
17 designated by title clearly indicating the training status of
18 the student.

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

24 "(3) A person giving massages to his or her
25 immediate family.

26 "(4) Visiting massage therapy instructors from
27 another state, territory, or country teaching massage therapy,

1 provided that the massage therapy instructor is licensed or
2 registered as required in his or her place of residence.
3 Visiting massage instructors teaching continuing education
4 courses may teach in the state for up to 100 hours per year
5 without an Alabama license. One hundred hours of continuing
6 education instruction or more shall require licensure.

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

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

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

21 "(8) The office of a chiropractor, physician, or
22 physical therapist who employs or contracts with a massage
23 therapist. It is the specific intent of this subdivision that
24 a chiropractor, physician, or physical therapist and his or
25 her office not be required to be licensed as an establishment
26 under this chapter or be required to obtain any exemption
27 under this chapter from the board.

1 "(9) Persons using methods which involve only
2 techniques which are specifically intended to affect the human
3 energy fields or systems, without intentional soft tissue
4 manipulation including, but not limited to, Polarity Therapy,
5 Reiki, Touch for Health, or Jin Shin Do, in which their
6 services are not designated or implied to be massage or
7 massage therapy.

8 "(10) Persons who use touch, words, and directed
9 movement to deepen awareness of existing patterns of movement
10 in the body as well as to suggest new possibilities of
11 movement while engaged in the scope of practice of a
12 profession with established standards and ethics, provided
13 that their services are not designated or implied to be
14 massage or massage therapy and involve only incidental contact
15 or manipulation of soft tissue. These practices include, but
16 are not limited to, the Feldenkrais method of somatic
17 education, the Trager approach to movement education, the
18 Rosen method, and body-mind centering.

19 "(11) A hospital licensed by the Department of
20 Public Health, including any wellness center and any
21 outpatient facility or clinic that is located at the main
22 campus of the hospital or separated from the hospital and
23 owned, operated, or controlled by the licensed hospital.

24 "(b) Nothing in this chapter shall be construed to
25 permit massage therapists licensed under this chapter to
26 administer, dispense, or prescribe drugs, or engage in the
27 practice of medicine in any manner, including, but not limited

1 to, diagnosing or prescribing drugs for mental, emotional, or
2 physical diseases, illnesses, or injuries.

3 "§34-43-6.

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

18 "(b) The board shall consist of seven members
19 appointed by the Governor, ~~subject to confirmation by the~~
20 ~~Senate~~. No member of the board shall serve more than two full
21 consecutive terms. The members initially appointed to the
22 board shall be appointed not later than July 16, 1996. ~~Five~~
23 Six of the members initially appointed to the board shall have
24 been actively engaged in the practice of massage therapy for
25 not less than three consecutive years prior to the date of
26 their appointment to the board. Successor members to these
27 initial ~~five~~ six appointees shall be licensees of the board.

1 ~~Two members~~ One member shall be a public members member who
2 shall not be licensed, nor have been licensed in the past, and
3 shall not have any direct financial interest in the massage
4 therapy profession. Each board member shall be a high school
5 graduate or shall have received a graduate equivalency
6 diploma. Each board member shall be selected upon personal
7 merit and qualifications, not per membership or affiliation
8 with an association. Each board member shall be a citizen of
9 the United States ~~and this state~~ and a resident of this state
10 for two years immediately preceding the appointment. The
11 membership of the board shall be inclusive and reflect the
12 racial, gender, geographic, urban/rural, and economic
13 diversity of the state. ~~As the terms of members serving on~~
14 ~~April 28, 2011, expire, or as vacancies occur, new members~~
15 ~~shall be appointed so that not more than one member from each~~
16 ~~United States Congressional District is appointed to serve at~~
17 ~~the same time.~~

18 ~~"(c) Of the initial seven appointees to the board,~~
19 ~~three members shall be appointed for terms ending September~~
20 ~~30, 1997, and four members shall be appointed for terms ending~~
21 ~~September 30, 1999. Thereafter, successors shall be appointed~~
22 ~~for terms of four years, each term expiring on September 30.~~

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

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

4 ~~"(f) The board shall hold its first meeting within~~
5 ~~30 days after the initial members are appointed.~~ (e) The board
6 shall hold meetings during the year as it determines
7 ~~necessary, two of which shall be the biannual meetings for the~~
8 ~~purpose of reviewing license applications.~~ Additional meetings
9 may be held at the discretion of the chair or upon written
10 request of any three members of the board. A quorum of the
11 board shall be a majority of the current appointed board
12 members.

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

21 ~~"(h) (g)~~ The board shall promulgate the rules
22 necessary to implement this chapter pursuant to the
23 Administrative Procedure Act.

24 ~~"(i) (h)~~ The board may employ, and at its pleasure
25 discharge, an executive ~~secretary~~ director and other officers
26 and employees which may be necessary, including an attorney,
27 to implement this chapter. The board shall also outline the

1 duties and fix the compensation and expense allowances of the
2 employees.

3 "~~(j)~~ (i) An affirmative vote of a majority of the
4 members of the board shall be required to grant, suspend, or
5 revoke a license to practice massage therapy or a license to
6 operate a massage therapy establishment.

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

11 "~~(l)~~ (k) Each board member shall be accountable to
12 the Governor for the proper performance of his or her duties
13 as a member of the board. The board shall report to the
14 Governor annually and at other times as requested by the
15 Governor. The Governor shall investigate any complaints or
16 unfavorable reports concerning the actions of the board and
17 take appropriate action thereon, including removal of any
18 board member for misfeasance, malfeasance, neglect of duty,
19 commission of a felony, incompetence, or permanent inability
20 to perform official duties. A board member may be removed at
21 the request of the board after failing to attend two
22 consecutive properly noticed meetings. Excused absences of a
23 board member are absences due to any of the following:

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

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

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

5 "~~(m)~~ (1) Members of the board are immune from
6 liability for all good faith acts performed in the execution
7 of their duties as members of the board, unless they fail to
8 act in a reasonably prudent manner.

9 "~~(n)~~ (m) Appointees to the board shall take the
10 constitutional oath of office and file it in the board office
11 ~~of the Governor before undertaking any duties as a board~~
12 ~~member. Upon receiving the oath, the Governor shall issue a~~
13 ~~certificate of appointment to each appointee.~~

14 "§34-43-7.

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

17 "(1) Examine and qualify for examination applicants
18 for licensure and issue a license to each successful
19 applicant.

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

22 "(3) Prescribe application forms for examination and
23 licensure and assess and collect fees pursuant to this
24 chapter.

25 "(4) Maintain a complete record of all licensed
26 massage therapists and annually prepare a roster of the names
27 and addresses of the licensees. A copy of this roster shall

1 be made available to any person requesting it, upon payment of
2 a fee set by the board in an amount sufficient to cover the
3 costs of its publication and distribution.

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

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

9 "(7) Provide a copy of this chapter to all persons
10 licensed under this chapter and to all applicants for
11 licensure.

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

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

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

20 "(1) Accept or deny the application of any person
21 applying for licensure as a massage therapist upon an
22 affirmative vote of a majority of the board or the decision of
23 a designee of the board.

24 "(2) Establish criteria for certifying massage
25 therapy instructors.

26 "(3) Adopt an annual budget and authorize necessary
27 expenditures from fees and other available appropriations,

1 ~~provided, in.~~ In no event shall the expenditures of the board
2 exceed the revenues in any fiscal year.

3 "(4) Adopt a code of ethics.

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

9 "(6) Establish a list of approved massage therapy
10 schools.

11 "§34-43-9.

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

17 "(1) Satisfactorily completed a minimum of ~~500~~ 650
18 hours of supervised courses of instruction ~~which shall~~
19 ~~include, but not be limited to, anatomy, pathology,~~
20 ~~physiology, massage techniques, clinical practices, ethics,~~
21 ~~health, hygiene, and related subjects. The board shall~~
22 ~~determine how the 500 hours of instruction shall be broken~~
23 ~~down. The course of instruction may be provided by a massage~~
24 ~~therapy school approved by the board. The minimum 500 hours~~
25 ~~shall consist of the following: 325 hours dedicated to the~~
26 ~~study of basic massage therapy techniques and clinical~~
27 ~~practice related modalities; 125 hours dedicated to the study~~

1 of anatomy, pathology, and physiology; and an additional 50
2 hours of discretionary related course work, including, but not
3 limited to, hydrotherapy, business practices and professional
4 ethics, health and hygiene, and cardiopulmonary resuscitation
5 and first aid. Beginning January 1, 1998, applicants for
6 licensure shall be required to complete a minimum of 650 hours
7 of instruction. By rule of the board, the minimum 650 hours
8 shall consist of the following: 100 hours of anatomy and
9 physiology to include 35 hours of myology, 15 hours of
10 osteology, 10 hours of circulatory system, and 10 hours of
11 nervous system, with the remaining 30 hours to address other
12 body systems at the discretion of the school; 250 hours of
13 basic massage therapy, the contradistinctions of massage
14 therapy, and related touch therapy modalities, to include a
15 minimum of 50 hours of supervised massage; 50 hours to include
16 business, hydrotherapy, first aid, cardiopulmonary
17 resuscitation, and professional ethics; and 250 hours of
18 electives to be determined by the school the content of which
19 shall be determined by rule of the board. The board may adopt
20 a rule to further increase the minimum number of hours of
21 instruction required for licensure, ~~not to exceed the number~~
22 ~~of hours recommended by the National Certification Board for~~
23 ~~Therapeutic Massage and Bodywork.~~ Before performing
24 therapeutic massage on an animal, a massage therapist shall
25 graduate from a nationally approved program and complete at
26 least 100 hours of postgraduate training and education in
27 animal anatomy, pathology, and physiology for the type of

1 animal upon which the massage therapist wishes to perform
2 therapeutic massage.

3 "(2) ~~Passed the National Certification Exam for~~
4 ~~Therapeutic Massage and Bodywork offered by the National~~
5 ~~Certification Board for Therapeutic Massage and Bodywork or an~~
6 ~~examination of equivalent stature that is accredited by the~~
7 ~~National Committee for Certifying Agencies~~ a board approved
8 exam for therapeutic massage and bodywork.

9 "(b) Notwithstanding the requirements in
10 subdivisions (1) and (2) of subsection (a), the board may
11 license an applicant if the applicant is licensed or
12 registered in another state, which, in the opinion of the
13 board, has standards of practice or licensure that are equal
14 to or stricter than the requirements imposed by this chapter.

15 "(c) Notwithstanding any other provision of this
16 section to the contrary, each applicant for licensure shall ~~be~~
17 ~~a citizen of the United States or, if not a citizen of the~~
18 ~~United States, a person who is legally present in the United~~
19 ~~States with appropriate documentation from the federal~~
20 ~~government~~ comply with federal and state immigration law
21 requirements and be 18 years of age, with a high school
22 diploma or graduate equivalency diploma, and be subject to a
23 criminal history background information check.

24 "(d) The board may notify each applicant of the
25 acceptance or rejection of his or her application. If the
26 application is rejected, the board shall list the reasons for
27 rejection.

1 "§34-43-11.

2 "(a) Establishments shall be licensed by the board.
3 A sexually oriented business may not be licensed as an
4 establishment and shall not operate as an establishment
5 licensed pursuant to this chapter.

6 "(b) Establishments shall employ only licensed
7 massage therapists to perform massage therapy.

8 "~~(c) The board shall provide by rule, for a fair and~~
9 ~~reasonable procedure to grant exemptions from the licensure~~
10 ~~requirement of this section when the applicant can show that~~
11 ~~the advertising of massage therapy services is incidental to~~
12 ~~the primary function of his or her business. No such exemption~~
13 ~~shall be granted to a sexually oriented business. The board~~
14 shall have the power to revoke or suspend the license of a
15 massage therapy establishment licensed under this chapter, or
16 to deny licensure of such establishment, in any of the
17 following cases:

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

20 "(2) Upon proof that the holder of a license is
21 guilty of fraud or deceit or of gross negligence,
22 incompetency, or misconduct in the operation of the
23 establishment so licensed.

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

26 "~~Subsequent to an official complaint, the~~ The
27 board may conduct or request a criminal history background

1 information check of the ~~establishment's~~ licensees of an
2 establishment ~~through the district attorney of the circuit in~~
3 ~~which the licensee is located.~~

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

7 "(g) The renewal of the license of a massage therapy
8 establishment shall be accomplished pursuant to rules adopted
9 by the board. The board may also adopt rules governing
10 delinquent renewal of licenses and may impose penalty fees for
11 delinquent renewal.

12 "§34-43-12.

13 "(a) Applications for licensure or renewal shall be
14 on forms provided by the board and shall be accompanied by the
15 proper fee. The application shall be legible, either printed
16 in black ink or typed. Applications sent by facsimile shall
17 not be accepted. A two-by-two photograph, taken no more than
18 six months earlier, showing a frontal view of the head and
19 shoulders of the applicant, shall be submitted with the
20 application. All documents shall be submitted in English.

21 "(b) The board shall issue a license to each person
22 who qualifies to be a massage therapist and to each qualified
23 massage therapy establishment. To be qualified for a license
24 as a massage therapist the applicant shall be subject to a
25 criminal history background information check, successfully
26 pass the examination, pay the examination fee, and pay the

1 license fee. A license grants all professional rights, honors,
2 and privileges relating to the practice of massage therapy.

3 "(c) The board shall specify the elements of the
4 criminal history background information check, the amount of
5 the fee assessed for performing the criminal history
6 background information check, and shall formulate the process
7 and procedures for conducting criminal history background
8 information checks.

9 ~~"(c)~~ (d) Each licensed massage therapist shall
10 display his or her license in the manner specified by the
11 board. Each establishment shall post its license in plain
12 sight and the license of each massage therapist who practices
13 in the establishment.

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

16 "§34-43-14.

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

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

21 ~~"(2)~~ (1) One hundred dollars (\$100) for ~~the~~ an
22 initial massage therapist license which shall be issued for
23 one year. The initial licensing fee shall be assessed in the
24 month when the applicant is notified that the license has been
25 approved.

1 "~~(3)~~(2) One hundred dollars (\$100) for all biennial
2 license renewals postmarked or received at the office of the
3 board by the date in which the license expires.

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

7 "~~(5)~~(4) One hundred dollars (\$100) for ~~the~~ an
8 initial establishment license.

9 "~~(6)~~(5) Fifty dollars (\$50) for the biennial renewal
10 of ~~the~~ an establishment license.

11 "~~(7)~~(6) Fifty dollars (\$50) for ~~the~~ an initial
12 registration as a massage therapy school ~~in this state~~.

13 "~~(8)~~ ~~Ten dollars (\$10)~~ (7) Fifty dollars (\$50) to
14 renew ~~the~~ registration as a massage therapy school.

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

19 "~~(10)~~(9) Seventy-five dollars (\$75) ~~to reactivate~~
20 biennially to receive an inactive license.

21 "~~(11)~~(10) Twenty-five dollars (\$25) shall be added
22 to all license fees not post-marked or received by the board
23 before the expiration date of the license.

24 "~~(12)~~(11) Fifteen dollars (\$15) to verify a license.

25 "~~(13)~~(12) Ten dollars (\$10) for a duplicate license
26 certificate or a name change on a license certificate. ~~The~~
27 ~~board may issue a duplicate certificate only after receiving a~~

1 ~~sworn letter from the massage therapist that the original~~
2 ~~certificate was lost, stolen, or destroyed. The records of the~~
3 ~~board shall reflect that a duplicate certificate was issued.~~

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

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

10 ~~"(c) (d)~~ There is ~~hereby~~ established a separate
11 special revenue trust fund in the State Treasury to be known
12 as the Alabama Board of Massage Therapy Fund. All receipts
13 collected by the board under ~~the provisions of~~ this chapter
14 are to be deposited in this fund and used only to carry out
15 the provisions of this chapter. ~~Such receipts~~ Receipts shall
16 be disbursed only by warrant of the ~~state~~ Comptroller, upon
17 itemized vouchers approved by the chair of the board; provided
18 that no funds shall be withdrawn except as budgeted and
19 allotted according to ~~the provisions of~~ Sections 41-4-80 to
20 41-4-96, inclusive, 41-19-1, and 41-19-12, as amended, and
21 only in amounts as stipulated in the general appropriations
22 bill or other appropriations bills.

23 "§34-43-15.

24 "(a) The board may suspend, or revoke, ~~or refuse to~~
25 ~~issue or renew~~ a license ~~or~~ and impose a civil penalty after
26 notice and opportunity for a hearing pursuant to the

1 Administrative Procedure Act, upon proof of any of the
2 following:

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

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

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

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

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

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

21 "(7) The licensee uses controlled substances or
22 habitually and excessively uses alcohol.

23 "(8) The licensee engaged in false, deceptive, or
24 misleading advertising.

25 "(9) The licensee had a license revoked, suspended,
26 or denied in any other territory or jurisdiction of the United
27 States for any act described in this section or was convicted

1 of practicing massage therapy without a license in another
2 state.

3 "(10) The licensee is practicing or offering to
4 practice beyond the scope permitted by law or accepting and
5 performing professional responsibilities which the licensee
6 knows or has reason to know that she or he is not competent to
7 perform.

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

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

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

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

23 "(b) 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) 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) Upon finding a person, licensee, or
19 establishment guilty of any violation governed by this
20 chapter, ~~performing massage therapy without having obtained a~~
21 ~~license,~~ the board may do any of the following:

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

24 "b. Issue a cease and desist order.

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

1 "d. Assess all reasonable costs related to the
2 investigation and prosecution of the violation against the
3 guilty person, licensee, or establishment.

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

8 "§34-43-17.

9 "Any person who violates this chapter shall be
10 guilty of a Class ~~C~~ A misdemeanor.

11 "§34-43-20.

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

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

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

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

24 "(b) Every instructor teaching course work ~~titled in~~
25 massage ~~therapy~~ modalities at a board approved school located
26 in Alabama shall be licensed in Alabama as a massage therapist
27 and registered as a massage therapy instructor. Instructors

1 who are not teaching massage therapy do not need to be
2 registered. Any adjunct instructors shall be dually licensed
3 in the state where they reside, be nationally certified, or
4 both.

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

8 "(1) Is currently licensed as a massage therapist in
9 Alabama.

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

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

16 "§34-43-21.

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

1 may accept for compliance with the continuing education
2 requirement any of the following:

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

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

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

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

18 "(1) Teaching a qualifying class, course, seminar,
19 or workshop.

20 "(2) Publishing an article in the field relating to
21 massage therapy.

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

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

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

25 "(6) Two hours of professional ethics.

26 "(c) Each of the areas listed in subsection (b) may
27 be used for up to four hours of credit depending on the actual

1 contact hours. One continuing education credit is defined as
2 no less than 50 uninterrupted minutes of learning, except that
3 publishing an article will automatically count for four hours.
4 Continuing education credit may not be awarded for programs
5 which do not relate to subjects listed in this section, or for
6 repeated courses submitted the previous biennium, except for
7 courses listed in subsection (b). The board may select, in a
8 random manner, license renewal applications for audit of
9 continuing education credit. Each licensee shall be
10 responsible for maintaining in his or her personal files the
11 certificates or records of credit from continuing education
12 programs received from approved program providers. Each
13 licensee selected for audit shall be required to produce
14 documentation of attendance at those continuing education
15 activities listed on his or her renewal application.

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

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

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

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

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

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

13 Section 2. All laws or parts of laws which conflict
14 with this act are repealed. Specifically, Section 34-43-10,
15 Code of Alabama 1975, relating to the examination of massage
16 therapists, is repealed.

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Boards, Agencies
and Commissions..... .09-FEB-16

Read for the second time and placed
on the calendar 1 amendment 17-FEB-16

Read for the third time and passed
as amended..... 23-MAR-16

Yeas 79, Nays 16, Abstains 2

Jeff Woodard
Clerk