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2014 AL H 119

Author: Hubbard J
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Rep(s). By Representative Hubbard (J)

HB119

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. 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 of the Code of Alabama 1975, are amended to read as follows:

Section 34-43-3.

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

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

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

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

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

"b. If located outside of Alabama is recognized by the board ~~and~~ and/or by a regionally recognized professional accrediting body.

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

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

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

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

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

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

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

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

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

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

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

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

~~"(13)(14)~~ (14) THERAPEUTIC MASSAGE AND RELATED TOUCH THERAPY MODALITIES. The mobilization of the soft tissue which may include skin, fascia, tendons, ligaments, and muscles, for the purpose of establishing and maintaining good physical condition. The term shall include effleurage, petrissage, tapotement, compression, vibration, stretching, heliotherapy, superficial hot and cold applications, topical applications, or other therapy which involves movement either by hand, forearm, elbow, or foot, for the purpose of therapeutic massage. Massage therapy may include the external application and use of herbal or chemical preparations and lubricants such as salts, powders, liquids, nonprescription creams, mechanical ~~devices~~ devices such as T-bars, thumpers, body support systems, heat lamps, hot and cold packs, salt glow, steam cabinet baths or hydrotherapy. The term includes any massage, movement therapy, massage technology, myotherapy, acupressure, deep tissue therapy, neuromuscular therapy, or reflexology ~~massotherapy, oriental massage techniques, structural integration, or polarity therapy~~. The term does not include directed movement therapy including, but not limited to, the Feldenkrais method of somatic education, the Trager approach to movement education, the Rosen method, and body-mind centering and energy field work including, but not limited to, Polarity Therapy, Reiki, Reflexology, Touch for Health, or Jin Shin Do, provided these services are not designated or implied to be massage or massage therapy. The term ~~shall~~ also does not include laser therapy, microwave, injection therapy, manipulation of the joints, or any diagnosis or treatment of an illness that normally involves the practice of medicine, chiropractic, physical therapy, podiatry, nursing, occupational therapy, veterinary, acupuncture, osteopathy, orthopedics, hypnosis, ~~or~~ naturopathics, or any other modality designated by the board.

Section 34-43-5.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 34-43-6.

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

"(b) The board shall consist of seven members appointed by the Governor, ~~subject to confirmation by the Senate~~. No member of the board shall serve more than two full consecutive terms. The members initially appointed to the board shall be appointed not later than July 16, 1996. ~~Five Six~~ of the members initially appointed to the board shall have been actively engaged in the practice of massage therapy for not less than three consecutive years prior to the date of their appointment to the board. Successor members to these initial ~~five six~~ appointees shall be licensees of the board. ~~Two members~~ One member shall be a public members member who shall not be licensed, nor have been licensed in the past, and shall not have any direct financial interest in the massage therapy profession. Each board member shall be a high school graduate or shall have received a graduate equivalency diploma. Each board member shall be selected upon personal merit and qualifications, not per membership or affiliation with an association. Each

board member shall be a citizen of the United States ~~and this state~~ and a resident of this state for two years immediately preceding the appointment. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. ~~As the terms of members serving on April 28, 2011, expire, or as vacancies occur, new members shall be appointed so that not more than one member from each United States Congressional District is appointed to serve at the same time.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 34-43-7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(4) Adopt a code of ethics.

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

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

Section 34-43-9.

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

"(1) Satisfactorily completed a minimum of ~~500~~ 650 hours of supervised courses of instruction ~~which shall include, but not be limited to, anatomy, pathology, physiology, massage techniques, clinical practices, ethics, health, hygiene, and related subjects. The board shall determine how the 500 hours of instruction shall be broken down. The course of instruction may be provided by a massage therapy school approved by the board. The minimum 500 hours shall consist of the following: 325 hours dedicated to the study of basic massage therapy techniques and clinical practice related modalities; 125 hours dedicated to the study of anatomy, pathology, and physiology; and an additional 50 hours of discretionary related course work, including, but not limited to, hydrotherapy, business practices and professional ethics, health and hygiene, and cardiopulmonary resuscitation and first aid. Beginning January 1, 1998, applicants for licensure shall be required to complete a minimum of 650 hours of instruction. By rule of the board, the minimum 650 hours shall consist of the following: 100 hours of anatomy and physiology to include 35 hours of myology, 15 hours of osteology, 10 hours of circulatory system, and 10 hours of nervous system, with the remaining 30 hours to address other body systems at the discretion of the school; 250 hours of basic massage therapy, the contradistinctions of massage therapy, and related touch therapy modalities, to include a minimum of 50 hours of supervised massage; 50 hours to include business, hydrotherapy, first aid, cardiopulmonary resuscitation, and professional ethics; and 250 hours of electives to be determined by the school~~ the content of which shall be determined by rule of the board . The board may adopt a rule to further increase the minimum number of hours of instruction required for licensure ~~, not to exceed the number of hours recommended by the National Certification Board for Therapeutic Massage and Bodywork~~ . Before performing therapeutic massage on an animal, a massage therapist shall

graduate from a nationally approved program and complete at least 100 hours of postgraduate training and education in animal anatomy, pathology, and physiology for the type of animal upon which the massage therapist wishes to perform therapeutic massage.

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

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

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

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

Section 34-43-11.

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

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

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

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

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

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

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

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

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

Section 34-43-12.

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

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

" ~~(c)~~ (d) The board shall specify the elements of the criminal history background information check, the amount of the fee assessed for performing the criminal history background information check, and shall formulate the process and procedures for conducting criminal history background information checks.

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

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

Section 34-43-14.

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

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

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

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

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

" ~~(5)~~ (4) Two hundred dollars (\$200) for ~~the an~~ initial establishment license. The board may not increase this fee by more than fifty dollars (\$50) per licensing period.

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

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

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

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

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

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

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

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

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

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

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

Section 34-43-15.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"b. Issue a cease and desist order.

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

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

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

Section 34-43-17.

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

Section 34-43-20.

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

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

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

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

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

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

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

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

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

Section 34-43-21.

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

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

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

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

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

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

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

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

"(4) Being a panelist discussing massage therapy.

"(5) Participating in a personal growth class.

"(6) Two hours of professional ethics.

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

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

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

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

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

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

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

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

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

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

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