

1 HB47  
2 125693-1  
3 By Representative Sanderford  
4 RFD: Boards, Agencies and Commissions  
5 First Read: 01-MAR-11  
6 PFD: 02/25/2011

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8 SYNOPSIS: Under existing law, termination dates are  
9 established for enumerated state agencies. The  
10 agencies are periodically reviewed by the Alabama  
11 Sunset Committee. After the review process is  
12 completed, the committee prepares its  
13 recommendations for the agencies to the Legislature  
14 in the form of sunset bills which either continue,  
15 terminate, or continue with modification each  
16 agency reviewed.

17 This bill would provide for the continuance  
18 of the Alabama Board of Massage Therapy, with the  
19 following changes: To delete the requirement that a  
20 massage therapy school located in Alabama be  
21 accredited by the State Department of Education and  
22 to require representation on the board from each  
23 congressional district in the state.

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25 A BILL  
26 TO BE ENTITLED  
27 AN ACT

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Relating to the Alabama Sunset Law; to continue the existence and functioning of the Alabama Board of Massage Therapy with certain modifications; to amend Sections 34-43-3 and 34-43-6, Code of Alabama 1975, so as to delete the requirement that a massage therapy school be accredited by the State Department of Education; and to require representation on the board from each state congressional district.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Pursuant to the Alabama Sunset Law, the Sunset Committee recommends the continuance of the Alabama Board of Massage Therapy, with the additional recommendations for statutory change as set out in Section 3.

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

Section 3. Sections 34-43-3 and 34-43-6 of the Code of Alabama 1975, are amended to read as follows:

"§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.

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

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

5           "a. If located in Alabama is ~~accredited by the~~  
6 ~~Department of Education~~ and approved by the board as meeting  
7 the minimum established standards of training and curriculum  
8 as determined by the board.

9           "b. If located outside of Alabama is recognized by  
10 the board and by a regionally recognized professional  
11 accrediting body.

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

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

17           "(5) EXAMINATION. A National Certification For  
18 Therapeutic Massage and Bodywork Examination administered by  
19 an independent agency or another nationally or internationally  
20 accredited exam administered by an independent agency per  
21 approval of the board. The examination will be accredited by  
22 the National Committee for Certifying Agencies. The board  
23 retains the right to administer a written, oral, or practical  
24 examination.

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

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

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

7           "(9) PERSON. Any individual, firm, corporation,  
8 partnership, organization, association, or other legal entity.

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

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

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

23           "(13) THERAPEUTIC MASSAGE AND RELATED TOUCH THERAPY  
24 MODALITIES. The mobilization of the soft tissue which may  
25 include skin, fascia, tendons, ligaments, and muscles, for the  
26 purpose of establishing and maintaining good physical  
27 condition. The term shall include effleurage, petrissage,

1 tapotement, compression, vibration, stretching, heliotherapy,  
2 superficial hot and cold applications, topical applications,  
3 or other therapy which involves movement either by hand,  
4 forearm, elbow, or foot, for the purpose of therapeutic  
5 massage. Massage therapy may include the external application  
6 and use of herbal or chemical preparations and lubricants such  
7 as salts, powders, liquids, nonprescription creams, mechanical  
8 devises such as T-bars, thumpers, body support systems, heat  
9 lamps, hot and cold packs, salt glow, steam cabinet baths or  
10 hydrotherapy. The term includes any massage, movement therapy,  
11 massage technology, myotherapy, massotherapy, oriental massage  
12 techniques, structural integration, or polarity therapy. The  
13 term shall not include laser therapy, microwave, injection  
14 therapy, manipulation of the joints, or any diagnosis or  
15 treatment of an illness that normally involves the practice of  
16 medicine, chiropractic, physical therapy, podiatry, nursing,  
17 occupational therapy, veterinary, acupuncture, osteopathy,  
18 orthopedics, hypnosis, or naturopathics.

19 "§34-43-6.

20 "(a) There is created the Alabama Board of Massage  
21 Therapy. The purpose of the board is to protect the health,  
22 safety, and welfare of the public by ensuring that licensed  
23 massage therapists, massage therapy schools, and massage  
24 therapy instructors meet prescribed standards of education,  
25 competency, and practice. To accomplish this mission, the  
26 board shall establish standards pursuant to this chapter to  
27 complete all board functions in a timely and effective manner

1 and to provide open and immediate access to all relevant  
2 public information. The board shall communicate its  
3 responsibilities and services to the public as part of its  
4 consumer protection duties. The board shall develop and  
5 implement a long range plan to ensure effective regulation and  
6 consumer protection.

7 "(b) The board shall consist of seven members  
8 appointed by the Governor, subject to confirmation by the  
9 Senate. No member of the board shall serve more than two full  
10 consecutive terms. The members initially appointed to the  
11 board shall be appointed not later than July 16, 1996. Five of  
12 the members initially appointed to the board shall have been  
13 actively engaged in the practice of massage therapy for not  
14 less than three consecutive years prior to the date of their  
15 appointment to the board. Successor members to these initial  
16 five appointees shall be licensees of the board. Two members  
17 shall be public members who shall not be licensed, nor have  
18 been licensed in the past, and shall not have any direct  
19 financial interest in the massage therapy profession. Each  
20 board member shall be a high school graduate or shall have  
21 received a graduate equivalency diploma. Each board member  
22 shall be selected upon personal merit and qualifications, not  
23 per membership or affiliation with an association. Each board  
24 member shall be a citizen of the United States and a resident  
25 of this state for two years immediately preceding the  
26 appointment. The membership of the board shall be inclusive  
27 and reflect the racial, gender, geographic, urban/rural, and

1 economic diversity of the state. As the terms of members  
2 serving on the effective date of the act amending this  
3 subsection expire, or as vacancies occur, new members shall be  
4 appointed so that not more than one member from each United  
5 States Congressional District is appointed to serve at the  
6 same time.

7 "(c) Of the initial seven appointees to the board,  
8 three members shall be appointed for terms ending September  
9 30, 1997, and four members shall be appointed for terms ending  
10 September 30, 1999. Thereafter, successors shall be appointed  
11 for terms of four years, each term expiring on September 30.

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

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

20 "(f) The board shall hold its first meeting within  
21 30 days after the initial members are appointed. The board  
22 shall hold meetings during the year as it determines  
23 necessary, two of which shall be the biannual meetings for the  
24 purpose of reviewing license applications. Additional meetings  
25 may be held at the discretion of the chair or upon written  
26 request of any three members of the board. A quorum of the



1 board shall be a majority of the current appointed board  
2 members.

3 "(g) Board members shall not receive compensation  
4 for their services, but shall receive the same per diem and  
5 allowance as provided to state employees for each day the  
6 board meets and conducts business.

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

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

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

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

24 "(l) Each board member shall be accountable to the  
25 Governor for the proper performance of his or her duties as a  
26 member of the board. The board shall report to the Governor  
27 annually and at other times as requested by the Governor. The

1 Governor shall investigate any complaints or unfavorable  
2 reports concerning the actions of the board and take  
3 appropriate action thereon, including removal of any board  
4 member for misfeasance, malfeasance, neglect of duty,  
5 commission of a felony, incompetence, or permanent inability  
6 to perform official duties. A board member may be removed at  
7 the request of the board after failing to attend two  
8 consecutive properly noticed meetings.

9 "(m) Members of the board are immune from liability  
10 for all good faith acts performed in the execution of their  
11 duties as members of the board.

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

17 Section 4. The Legislature concurs in the  
18 recommendations of the Sunset Committee as provided in  
19 Sections 1, 2, and 3.

20 Section 5. This act shall become effective  
21 immediately upon its passage and approval by the Governor, or  
22 its otherwise becoming law.