

**HB192 ENROLLED**



1 U9HEXX-2  
2 By Representative Reynolds  
3 RFD: Conference Committee on HB192  
4 First Read: 23-Mar-23  
5 2023 Regular Session



## HB192 Enrolled

1 Enrolled, An Act,

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4 Relating to the Alabama Sunset Law; to continue the  
5 existence and functioning of the Alabama Board of Massage  
6 Therapy until October 1, 2024, with certain modifications: To  
7 amend Sections 34-43-6, 34-43-9, 34-43-11, 34-43-14, 34-43-15,  
8 34-43-20, and 34-43-21, Code of Alabama 1975, as amended by  
9 Act 2022-408, 2022 Regular Session; to require representation  
10 on the board from each Congressional District; to require  
11 meetings to be recorded, upon request; to require the  
12 publication of proposed rules and related proceedings on the  
13 board website; and to cap certain fees charged by the board.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Pursuant to the Alabama Sunset Law, the  
16 Sunset Committee recommends the continuance of the Alabama  
17 Board of Massage Therapy until October 1, 2024, with the  
18 additional recommendation for statutory change as set out in  
19 Section 3.

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

25 Section 3. Sections 34-43-6, 34-43-9, 34-43-11,  
26 34-43-14, 34-43-15, 34-43-20, and 34-43-21 of the Code of  
27 Alabama 1975, as amended by Act 2022-408, 2022 Regular  
28 Session, are amended to read as follows:



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29           "§34-43-6

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

44           (b) The board shall consist of seven members appointed  
45    by the Governor, subject to confirmation by the Senate. No  
46    member of the board shall serve more than two full consecutive  
47    terms. The members initially appointed to the board shall be  
48    appointed not later than July 16, 1996. Five of the members  
49    initially appointed to the board shall have been actively  
50    engaged in the practice of massage therapy for not less than  
51    three consecutive years prior to the date of their appointment  
52    to the board. Successor members to these initial five  
53    appointees shall be licensees of the board. Two members shall  
54    be public members who shall not be licensed, nor have been  
55    licensed in the past, and shall not have any direct financial  
56    interest in the massage therapy profession. Each board member



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57 shall be a high school graduate or shall have received a  
58 graduate equivalency diploma. Each board member shall be  
59 selected upon personal merit and qualifications, not per  
60 membership or affiliation with an association. Each board  
61 member shall be a citizen of the United States ~~and this state~~  
62 and a resident of this state for two years immediately  
63 preceding the appointment. The Governor shall coordinate his  
64 or her appointments to assure that the membership of the board  
65 ~~shall be is~~ inclusive and ~~reflect~~ reflects the racial, gender,  
66 geographic, ~~urban/rural~~ urban, rural, and economic diversity  
67 of the state. As the terms of members serving on the board on  
68 the effective date of the act amending this subsection expire,  
69 or as vacancies occur, new members shall be appointed so that  
70 not more than one member from each United States Congressional  
71 District in the state is appointed to serve at the same time.

72 (c) Of the initial seven appointees to the board, three  
73 members shall be appointed for terms ending September 30,  
74 1997, and four members shall be appointed for terms ending  
75 September 30, 1999. Thereafter, successors shall be appointed  
76 for terms of four years, each term expiring on September 30.

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

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



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85           (f) The board shall hold its first meeting within 30  
86 days after the initial members are appointed. The board shall  
87 hold meetings during the year as ~~it~~ the board determines  
88 necessary, two of which shall be the biannual meetings for the  
89 purpose of reviewing license applications. Additional meetings  
90 may be held at the discretion of the chair or upon written  
91 request of any three members of the board. A quorum of the  
92 board shall be a majority of the current appointed board  
93 members. Upon the written request of any person, submitted to  
94 the board at least 24 hours in advance of a scheduled meeting,  
95 the meeting shall be recorded.

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

100           (h) The board shall adopt the rules necessary to  
101 implement this chapter pursuant to the Administrative  
102 Procedure Act. Proposed rules, and a schedule of proceedings  
103 relating to their adoption, shall be conspicuously posted and  
104 routinely updated on the website of the board.

105           (i) The board may employ, and at its pleasure  
106 discharge, an executive secretary and other officers and  
107 employees which may be necessary, including an attorney, to  
108 implement this chapter. The board shall also outline the  
109 duties and fix the compensation and expense allowances of the  
110 employees.

111           (j) An affirmative vote of a majority of the members of  
112 the board shall be required to grant, suspend, or revoke a



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113 license to practice massage therapy or a license to operate a  
114 massage therapy establishment. ~~The board may grant authority~~  
115 ~~to the executive director to approve licenses.~~

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

120 (l) Each board member shall be accountable to the  
121 Governor for the proper performance of his or her duties as a  
122 member of the board. The board shall report to the Governor  
123 annually and at other times as requested by the Governor. The  
124 Governor shall investigate any complaints or unfavorable  
125 reports concerning the actions of the board and take  
126 appropriate action thereon, including removal of any board  
127 member for misfeasance, malfeasance, neglect of duty,  
128 commission of a felony, incompetence, or permanent inability  
129 to perform official duties. A board member may be removed at  
130 the request of the board after failing to attend two  
131 consecutive properly noticed meetings.

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

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

140 "§34-43-9



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

146 (1) Satisfactorily completed a minimum of 650 hours of  
147 instruction. By rule of the board, the minimum 650 hours shall  
148 consist of the following: 100 hours of anatomy and physiology  
149 to include 35 hours of myology, 15 hours of osteology, 10  
150 hours of circulatory system, and 10 hours of nervous system,  
151 with the remaining 30 hours to address other body systems at  
152 the discretion of the school; 250 hours of basic massage  
153 therapy, the contradistinctions of massage therapy, and  
154 related touch therapy modalities, to include a minimum of 50  
155 hours of supervised massage; 50 hours to include business,  
156 hydrotherapy, first aid, cardiopulmonary resuscitation, and  
157 professional ethics; and 250 hours of electives to be  
158 determined by the school. The board may adopt a rule to  
159 further increase the minimum number of hours of instruction  
160 required for licensure, not to exceed the number of hours  
161 recommended by the National Certification Board for  
162 Therapeutic Massage and Bodywork. Before performing  
163 therapeutic massage on an animal, a massage therapist shall  
164 graduate from a nationally approved program and complete at  
165 least 100 hours of postgraduate training and education in  
166 animal anatomy, pathology, and physiology for the type of  
167 animal upon which the massage therapist wishes to perform  
168 therapeutic massage.



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169 (2) Successfully passed a national standardized  
170 examination approved by the board.

171 (3) Completed a criminal history check.

172 (4) Paid all applicable fees.

173 (b) Notwithstanding the requirements in subdivisions

174 (1) and (2) of subsection (a), the board may license an  
175 applicant if the applicant is licensed or registered in  
176 another state, which, in the opinion of the board, has  
177 standards of practice or licensure that are equal to or  
178 stricter than the requirements imposed by this chapter at the  
179 time of licensure in that state.

180 (c) Notwithstanding any other provision of this section  
181 to the contrary, each applicant for licensure shall be a  
182 citizen of the United States or, if not a citizen of the  
183 United States, a person who is legally present in the United  
184 States with appropriate documentation from the federal  
185 government.

186 (d) The board ~~may~~ shall notify each applicant that his  
187 or her application has been received and is pending and shall  
188 also notify each applicant of the acceptance or rejection of  
189 his or her application. If the application is rejected, the  
190 board shall list the reasons for rejection."

191 "§34-43-11

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

196 (b) Establishments shall contract with or employ only





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197 licensed massage therapists to perform massage therapy.

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

202 (d) An establishment license issued pursuant to this  
203 chapter is not assignable or transferable. The board, by rule,  
204 shall provide for the waiver of a new establishment license  
205 fee under circumstances where a licensee is moving locations  
206 and there is no change in the name or ownership of the  
207 establishment.

208 (e) Each unlicensed massage therapist applying for an  
209 establishment license shall be subject to a criminal history  
210 check. No licensed massage therapist shall be subject to an  
211 additional criminal history check when applying for an  
212 establishment license.

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

217 "§34-43-14

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

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

222 (2) ~~Three hundred dollars (\$300)~~ One hundred dollars  
223 (\$100) for all biennial license renewals postmarked or  
224 received at the office of the board by the date ~~in~~ on which



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225 the license expires.

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

229 (4) ~~Five hundred dollars (\$500)~~ One hundred fifty  
230 dollars (\$150) for the initial registration, and any renewal  
231 registration, as a massage therapy school in this state.

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

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

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

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

242 ~~(9) Twenty-five dollars (\$25)~~ (8) Ten dollars (\$10) for  
243 a duplicate license certificate or a name change on a license  
244 certificate. The board may issue a duplicate certificate for  
245 each establishment on file with the board where the massage  
246 therapist practices massage therapy. The board may issue  
247 additional duplicate certificates only after receiving a sworn  
248 letter from the massage therapist that ~~the~~ an original  
249 certificate was lost, stolen, or destroyed. The records of the  
250 board shall reflect that a duplicate certificate was issued.

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



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

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

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

272 "§34-43-15

273 (a) Any person may file with the board a written  
274 complaint regarding an allegation of impropriety by a  
275 licensee, establishment, or person. Complaints shall be made  
276 in the manner prescribed by the board. Complaints received by  
277 the board shall be referred to a standing investigative  
278 committee consisting of a board member, the Executive  
279 Director, the board attorney, and the board investigator. If  
280 no probable cause is found, the investigative committee may



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281 dismiss the charges and prepare a statement, in writing, of  
282 the reasons for the decision.

283 (b) If probable cause is found, the board shall  
284 initiate an administrative proceeding. Upon a finding that the  
285 licensee has committed any of the following instances of  
286 misconduct, the board may suspend, revoke, or refuse to issue  
287 or renew a license or impose a civil penalty after notice and  
288 opportunity for a hearing pursuant to the Administrative  
289 Procedure Act:

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

294 (2) The licensee sold or bartered or offered to sell or  
295 barter a license for a massage therapist or a massage therapy  
296 establishment.

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

303 (4) The licensee has been convicted of a felony or of  
304 any crime arising out of or connected with the practice of  
305 massage therapy.

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

308 (6) The licensee is adjudicated as mentally incompetent



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309 by a court of law.

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

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

314 (9) The licensee engaged in or attempted to or offered  
315 to engage a client in sexual activity~~r~~, including~~l~~, but not  
316 limited to~~l~~, genital contact, within the client-massage  
317 therapist relationship.

318 (10) The licensee has knowingly allowed the massage  
319 therapy establishment to be used as an overnight sleeping  
320 accommodation.

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

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

332 a. Impose an administrative fine of not more than  
333 ~~twenty-five thousand dollars (\$25,000)~~ ten thousand dollars  
334 (\$10,000) according to a disciplinary infraction fine schedule  
335 adopted by rule of the board.

336 b. Suspend or revoke the person's license to practice



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337 massage therapy.

338 (2) Upon a finding that a person has violated this  
339 subsection three or more times, the board shall impose a  
340 mandatory license suspension for a period of no less than  
341 three years and a fine of ~~twenty-five thousand dollars~~  
342 ~~(\$25,000)~~ ten thousand dollars (\$10,000).

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

353 (e) An establishment where a person has been convicted  
354 of, or entered a plea of nolo contendere to, an offense  
355 involving prostitution or any other type of sexual offense may  
356 not receive a license for a massage therapy establishment for  
357 a period of three years after the date of conviction or entry  
358 of the plea. The board shall revoke the establishment license  
359 of any establishment which the board determines is a sexually  
360 oriented business. The board may revoke an establishment  
361 license if a person is convicted of, or enters a plea of nolo  
362 contendere to, any crime involving prostitution or any other  
363 sexual offense against a client which occurred on the premises  
364 of the establishment. ~~The violation is attached to the address~~



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365 ~~of the establishment.~~

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

369 a. Impose an administrative fine of not more than  
370 ~~twenty-five thousand dollars (\$25,000)~~ ten thousand dollars  
371 (\$10,000).

372 b. Issue a cease and desist order.

373 c. Petition the circuit court of the county where the  
374 act occurred to enforce the cease and desist order and collect  
375 the assessed fine.

376 (2) Any person aggrieved by any adverse action of the  
377 board ~~must~~ shall appeal the action to the Circuit Court of  
378 Montgomery County in accordance with the Alabama  
379 Administrative Procedure Act.

380 (g) The board shall present any incident of misconduct  
381 to the local district attorney for review and appropriate  
382 action.

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

385 "§34-43-20

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

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

391 (2) Provide documentation of a curriculum which  
392 includes a minimum number of required hours of instruction in



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393 the subjects required pursuant to Section 34-43-9.

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

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

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

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

410 (2) Has filed a completed application prescribed by the  
411 board and paid a one-time application fee pursuant to Section  
412 34-43-14.

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

416 ~~(4) Any other requirements adopted by rule of the~~  
417 ~~board."~~

418 "§34-43-21

419 (a) The board is subject to the Alabama Sunset Law of  
420 1981, and is classified as an enumerated agency pursuant to





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421 Section 41-20-3. The board shall automatically terminate on  
422 October 1, 2007, and every four years thereafter, unless  
423 continued pursuant to the Alabama Sunset Law.

424 (b) The board shall adopt a program of continuing  
425 education for licensees which shall be a requisite for the  
426 renewal of licenses issued pursuant to this chapter and not  
427 exceed the requirements of a board-approved nationally  
428 recognized board certification organization such as the  
429 National Certification Board of Therapeutic Massage and  
430 Bodywork."

431 Section 4. This act shall become effective on July 1,  
432 2023, following its passage and approval by the Governor, or  
433 its otherwise becoming law.



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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 06-Apr-23.

John Treadwell  
Clerk

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Senate	<u>18-Apr-23</u>	Amended and Passed
House	<u>03-May-23</u>	Passed, as amended by Conference Committee
Senate	<u>06-Jun-23</u>	Passed, as amended by Conference Committee