

House Bill 368

By: Representatives Hill of the 81st, Dodson of the 84th, Post 1, Barnes of the 84th, Post 2, Jordan of the 83rd, Forster of the 3rd, Post 1, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to create the Georgia Board of Massage Therapists; to provide for
3 definitions; to provide for members, officers, qualifications, duties, powers, authority,
4 appointments, terms of office, oaths, and vacancies; to provide for meetings; to provide for
5 quorums; to provide for records; to provide for rules and regulations; to provide for
6 examinations; to provide for licenses; to provide for expenses; to provide for fees; to prohibit
7 certain acts; to provide for qualifications of massage therapists; to provide for applications
8 for licenses for massage therapists; to provide for renewal of licenses; to provide for the
9 licensing and regulation of massage establishments; to regulate advertisements; to provide
10 for immunity; to provide for denial, suspension, and revocation of licenses; to provide for
11 practices and procedures; to provide for appeals; to provide for the powers of counties and
12 municipalities; to prohibit or regulate certain conduct; to provide for exemptions; to provide
13 for penalties; to provide for exceptions; to provide for related matters; to provide an effective
14 date; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
18 is amended by adding immediately following Chapter 24 a new Chapter 24A to read as
19 follows:

20 "CHAPTER 24A

21 43-24A-1.

22 This chapter shall be known and may be cited as the 'Massage Therapy Licensure Act.'

1 43-24A-2.

2 The General Assembly recognizes that the practice of massage is potentially dangerous to
3 the public in that massage therapists must have a knowledge of anatomy and physiology
4 and an understanding of the relationship between the structure and the function of the
5 tissues being treated and the total function of the body. Massage is therapeutic and
6 regulations are necessary to protect the public from unqualified practitioners. It is therefore
7 deemed necessary in the interest of public health, safety, and welfare to regulate the
8 practice of massage in this state; however, restrictions shall be imposed to the extent
9 necessary to protect the public from significant and discernible danger to health and yet not
10 in such a manner which will unreasonably affect the competitive market. Further,
11 consumer protection for both health and economic matters shall be afforded the public
12 through legal remedies provided for in this chapter.

13 43-24A-3.

14 As used in this chapter, the term:

15 (1) 'Apprentice' means a person approved by the board to study massage under the
16 instruction of a licensed massage therapist.

17 (2) 'Board' means the Georgia Board of Massage Therapists.

18 (3) 'Board approved massage school' means a facility which meets minimum standards
19 for training and curriculum as determined by rule of the board and which is regulated
20 pursuant to Part 1A of Article 7 of Chapter 3 of Title 20, known as the 'Nonpublic
21 Postsecondary Educational Institutions Act of 1990,' or the equivalent licensing authority
22 of another state or is within the public school system of this state.

23 (4) 'Chair massage or seated massage' means massage performed on site, where no oils
24 are used, and the client is seated upright and remains fully clothed.

25 (5) 'Establishment' means a site or premises, or portion thereof, wherein a massage
26 therapist practices massage. Locations offering on-site massage to their employees or
27 patrons are exempt from obtaining an establishment license.

28 (6) 'Licensure' means the procedure by which a person, otherwise referred to in this
29 chapter as a 'practitioner,' applies to the board for approval to practice massage or to
30 operate an establishment.

31 (7) 'Massage therapist' means a person who is licensed under this chapter and who
32 engages in the practice of massage therapy for compensation.

33 (8) 'Massage therapy' means intentional manipulation of the muscular structure and soft
34 tissues of the human body with the intention of positively affecting the health and
35 well-being of the client.

1 (9) 'On-site massage' means the offering of services at an exempt location other than a
2 massage establishment.

3 43-24A-4.

4 (a) There is created the Georgia Board of Massage Therapists. The board shall be
5 composed of seven members who shall be appointed by the Governor and confirmed by
6 the Senate. To qualify as a member, a person must be a citizen of the United States and a
7 resident of this state. Five members must be massage therapists and on and after July 1,
8 2004, must be massage therapists licensed by the state pursuant to this chapter. Two
9 members shall be appointed from the public at large and shall have no connection
10 whatsoever with the practice or profession of massage therapy.

11 (b) Members shall serve for a term of office of four years and until their respective
12 successors are appointed and qualified. All terms shall expire on January 31 of
13 even-numbered years. In making the initial appointments, the Governor shall appoint four
14 members for initial terms expiring in 2005 and three members for initial terms expiring in
15 2007.

16 (c) Each appointee to the board shall qualify by taking an oath of office within 15 days
17 from the date of his or her appointment. On presentation of the oath, the Secretary of State
18 shall issue commissions to appointees as evidence of their authority to act as members of
19 the board.

20 (d) In the event of death, resignation, or removal of any member, the vacancy of the
21 unexpired term shall be filled by the Governor in the same manner as other appointments.

22 43-24A-5.

23 (a) The board shall elect a chairperson and a vice chairperson from its members for a term
24 of one year and may appoint such committees as it considers necessary to carry out its
25 duties. Such election of a chairperson and vice chairperson shall be held in January of each
26 year.

27 (b) The board shall hold such meetings during the year as it may determine to be
28 necessary. Additional meetings may be held on the call of the chairperson or at the written
29 request of any two members of the board.

30 (c) A quorum shall consist of not less than four members.

31 43-24A-6.

32 The division director shall keep a record of the board's proceedings in a book maintained
33 for that purpose.

1 43-24A-7.

2 Each member of the board shall be reimbursed as provided for in subsection (f) of Code
3 Section 43-1-2.

4 43-24A-8.

5 (a) The board is authorized to promulgate and adopt rules and regulations consistent with
6 this chapter which are necessary for the performance of its duties.

7 (b) The board shall establish license fees and prescribe application forms for license
8 applications.

9 (c) The board shall establish guidelines for massage therapists in the state and the method
10 for examination of applicants for licensure to practice as massage therapists.

11 (d) The board shall adopt an official seal and the form of a license certificate of suitable
12 design.

13 43-24A-9.

14 Each board member shall be held accountable to the Governor for the proper performance
15 of all duties and obligations of such board member's office. The Governor shall cause to
16 be investigated any complaints or unfavorable reports received concerning the actions of
17 the board or its individual members and shall take appropriate action thereon, which may
18 include removal of any board member for malfeasance, misfeasance, neglect of duty,
19 commission of a felony, incompetency, or permanent inability to perform official duties.

20 43-24A-10.

21 (a) Any person is qualified for licensure as a massage therapist under this chapter who:

22 (1) Is at least 18 years of age or has received a high school diploma or general
23 educational development (GED) diploma;

24 (2) Has completed a course of study at a board approved massage school or has
25 completed an apprenticeship program that meets standards adopted by the board; and

26 (3) Has received a passing grade on an examination specified by the board.

27 (b) Every person desiring to be examined for licensure as a massage therapist shall apply
28 to the board in writing upon forms prepared and furnished by the board. Applicants may
29 take an examination administered by the board only upon meeting the requirements of this
30 Code section as determined by the board.

31 (c) Upon an applicant's passing the examination and paying the initial license fee, the
32 board shall issue to the applicant a license, valid until the next scheduled renewal date, to
33 practice massage.

34 (d) The board shall adopt rules:

- 1 (1) Establishing a minimum training program for apprentices; and
2 (2) Specifying licensing procedures for practitioners desiring to be licensed in this state
3 who hold an active license and have practiced in any other state, territory, or jurisdiction
4 of the United States or any foreign national jurisdiction which has licensing standards
5 substantially similar to, equivalent to, or more stringent than the standards of this state.

6 43-24A-11.

7 The board shall establish continuing education requirements not to exceed 25 classroom
8 hours per biennium. The board shall by rule establish criteria for the approval of
9 continuing education programs or courses. The programs or courses approved by the board
10 may include correspondence courses that meet the criteria for continuing education courses
11 held in a classroom setting.

12 43-24A-12.

13 (a) The board shall specify by rule the general areas of competency to be covered by
14 examinations for licensure. These rules shall include the relative weight assigned in
15 grading each area, the grading criteria to be used by the examiner, and the score necessary
16 to achieve a passing grade. The board shall ensure that examinations adequately measure
17 an applicant's competency. Professional testing services may be utilized to formulate the
18 examinations.

19 (b) The board shall ensure that examinations comply with state and federal equal
20 employment opportunity guidelines.

21 (c) The board shall, in accordance with rules established by the board, examine persons
22 who file applications for licensure under this chapter in all matters pertaining to the
23 practice of massage. A written examination shall be offered at least once yearly and at
24 such other times as the board shall deem necessary.

25 (d) The board shall adopt rules providing for reexamination of applicants who have failed
26 the examination.

27 (e) All licensing examinations shall be conducted in such manner that the applicant shall
28 be known to the board by number until her or his examination is completed and the proper
29 grade determined. An accurate record of each examination shall be made; and that record,
30 together with all examination papers, shall be filed with the division director and shall be
31 kept for reference and inspection for a period of not less than two years immediately
32 following the examination.

33 43-24A-13.

34 The board may require that all applications be made under oath.

1 43-24A-14.

2 (a) No massage establishment shall be allowed to operate without a license granted by the
3 board in accordance with rules adopted by the board.

4 (b) The board shall adopt rules governing the operation of establishments and their
5 facilities, personnel, safety and sanitary requirements, financial responsibility, and
6 insurance coverage and the license application and granting process.

7 (c) Any person, firm, or corporation desiring to operate a massage establishment in the
8 state shall submit to the board an application, upon forms provided by the board,
9 accompanied by any information requested by the board and an application fee.

10 (d) Upon receiving the application, the board may cause an investigation to be made of the
11 proposed massage establishment.

12 (e) If, based upon the application and any necessary investigation, the board determines
13 that the proposed establishment would fail to meet the standards adopted by the board
14 under subsection (b) of this Code section, the board shall deny the application for license.
15 Such denial shall be in writing and shall list the reasons for denial. Upon correction of any
16 deficiencies, an applicant previously denied permission to operate a massage establishment
17 may reapply for licensure.

18 (f) If, based upon the application and any necessary investigation, the board determines
19 that the proposed massage establishment may reasonably be expected to meet the standards
20 adopted by the board under subsection (b) of this Code section, the board shall grant the
21 license under such restrictions as it shall deem proper as soon as the original licensing fee
22 is paid.

23 (g)(1) Once issued, no license for operation of a massage establishment may be
24 transferred from one owner to another.

25 (2) A license may be transferred from one location to another only after inspection and
26 approval by the board and receipt of an application and inspection fee set by rule of the
27 board.

28 (3) A license may be transferred from one business name to another after approval by the
29 board and receipt of an application fee set by rule of the board.

30 (h) Renewal of license registration for massage establishments shall be accomplished
31 pursuant to rules adopted by the board. The board is further authorized to adopt rules
32 governing delinquent renewal of licenses and may impose penalty fees for delinquent
33 renewal.

34 (i) The board is authorized to adopt rules governing the periodic inspection of massage
35 establishments licensed under this chapter.

1 43-24A-15.

2 The board is authorized to set fees as provided in Code Section 43-1-7.

3 43-24A-16.

4 (a) The following acts shall constitute grounds for which disciplinary actions specified in
5 subsection (b) of this Code section may be taken against a massage therapist or massage
6 establishment licensed under this chapter:

7 (1) Attempting to procure a license to practice massage by bribery or fraudulent
8 misrepresentation;

9 (2) Having a license to practice massage revoked, suspended, or otherwise acted against,
10 including the denial of licensure, by the licensing authority of another state, territory, or
11 country;

12 (3) Being convicted or found guilty, regardless of adjudication, of a crime in any
13 jurisdiction which directly relates to the practice of massage or to the ability to practice
14 massage. Any plea of nolo contendere shall be considered a conviction for purposes of
15 this chapter;

16 (4) False, deceptive, or misleading advertising;

17 (5) Aiding, assisting, procuring, or advising any unlicensed person to practice massage
18 contrary to the provisions of this chapter or to a rule of the board;

19 (6) Making deceptive, untrue, or fraudulent representations in the practice of massage;

20 (7) Being unable to practice massage with reasonable skill and safety by reason of illness
21 or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result
22 of any mental or physical condition. In enforcing this paragraph, the board shall have,
23 upon probable cause, authority to compel a massage therapist to submit to a mental or
24 physical examination by physicians designated by the board. Failure of a massage
25 therapist to submit to such examination when so directed, unless the failure was due to
26 circumstances beyond her or his control, shall constitute an admission of the allegations
27 against her or him, consequent upon which a default and final order may be entered
28 without the taking of testimony or presentation of evidence. A massage therapist affected
29 under this paragraph shall at reasonable intervals be afforded an opportunity to
30 demonstrate that he or she can resume the competent practice of massage with reasonable
31 skill and safety to clients;

32 (8) Gross or repeated malpractice or the failure to practice massage with that level of
33 care, skill, and treatment which is recognized by a reasonably prudent massage therapist
34 as being acceptable under similar conditions and circumstances;

- 1 (9) Practicing or offering to practice beyond the scope permitted by law or accepting and
2 performing professional responsibilities which the licensee knows or has reason to know
3 that he or she is not competent to perform;
- 4 (10) Delegating professional responsibilities to a person when the licensee delegating
5 such responsibilities knows or has reason to know that such person is not qualified by
6 training, experience, or licensure to perform;
- 7 (11) Violating any provision of this chapter, a rule of the board, or a lawful order of the
8 board previously entered in a disciplinary hearing, or failing to comply with a lawfully
9 issued subpoena of the board;
- 10 (12) Refusing to permit the board or its agents to inspect the business premises of the
11 licensee during regular business hours;
- 12 (13) Failing to keep the equipment and premises of the massage establishment in a clean
13 and sanitary condition; or
- 14 (14) Practicing massage at a site, location, or place which is not duly licensed as a
15 massage establishment, except that a massage therapist, as provided by rules adopted by
16 the board, may provide massage services at the residence of a client, at the office of the
17 client, at a sports event, at a convention, or at a trade show.
- 18 (b) When the board finds any person guilty of any of the grounds set forth in subsection (a)
19 of this Code section, it may enter an order imposing one or more of the following penalties:
- 20 (1) Refusal to license an applicant;
- 21 (2) Revocation or suspension of a license;
- 22 (3) Issuance of a reprimand or censure; or
- 23 (4) Imposition of an administrative fine not to exceed \$1,000.00 for each count or
24 separate offense.
- 25 (c) The board shall have the power to revoke or suspend the license of a massage
26 establishment licensed under this chapter, or to deny subsequent licensure of such an
27 establishment, in any of the following cases:
- 28 (1) Upon proof that a license has been obtained by fraud or misrepresentation;
- 29 (2) Upon proof that the holder of a license is guilty of fraud or deceit or of gross
30 negligence, incompetency, or misconduct in the operation of the establishment so
31 licensed; or
- 32 (3) Upon proof that the licensed establishment has been used as the site of illegal activity
33 in violation of Chapter 6 of Title 16, relating to sexual offenses.
- 34 (d) Disciplinary proceedings shall be conducted pursuant to the provisions of Chapter 13
35 of Title 50, the 'Georgia Administrative Procedure Act,' or any other applicable law of this
36 state.

1 43-24A-17.

2 (a) A massage therapist's license issued by the board is the property of the board and shall
3 be surrendered on demand of the board.

4 (b) Each massage therapist licensed by the board shall display his or her license certificate
5 in a conspicuous manner at his or her place of business. Each massage therapist licensed
6 by the board shall include the number of his or her license in any advertisement of massage
7 services appearing in any newspaper, telephone directory, or other advertising medium.

8 (c) A massage therapist licensee shall inform the board of any change of his or her address.

9 43-24A-18.

10 (a) It is a misdemeanor for any person, including a person who is exempt by Code Section
11 43-24A-20, to advertise with or without any limiting qualifications as a massage therapist
12 unless the person holds a valid license under this chapter. It shall be a violation of this
13 chapter for any person to advertise:

14 (1) As a massage therapist or a massage therapy establishment unless the person holds
15 a valid license under this chapter in the classification so advertised;

16 (2) By combining advertising for a licensed massage therapy service with escort or
17 dating services;

18 (3) As performing massage in a form in which the person has not received training, or
19 of a type which is not licensed or otherwise recognized by statute or administrative rule;

20 (4) By using in any mass distribution, print advertisements such as newspaper
21 advertisements, or telephone directory listings, pictures depicting the human form other
22 than hands, wrists, and forearms;

23 (5) By using any term other than 'therapeutic massage' or 'massage therapy' to refer to
24 the service; or

25 (6) By referring to any personal physical qualities of the practitioner.

26 As used in this Code section, the term 'advertise' includes, but is not limited to, the issuance
27 of any card, sign, or device to any person; the causing, permitting, or allowing of any sign
28 or marking on or in any building, vehicle, or structure; advertising in any newspaper or
29 magazine; any listing or advertising in any directory under a classification or heading that
30 includes the word 'massage'; or commercials broadcast by airwave transmission.

31 (b) A massage therapist or massage therapy establishment may advertise in print or
32 broadcast medium, as defined in subsection (a) of this Code section, only if the massage
33 therapist or massage therapy establishment includes in the advertisement or listing the
34 massage therapist's or massage therapy establishment's applicable and current license
35 number, and provides written evidence of the number's validity to the publisher or
36 producer of the advertising medium. The publisher or producer of a print or broadcast

1 advertising medium shall refuse to publish or broadcast an advertisement or listing for a
2 massage therapist or massage therapy establishment that does not comply with the
3 provisions of this subsection. A publisher or producer who obtains a signed statement from
4 the massage therapist or massage therapy establishment which states that the massage
5 therapist or the massage therapy establishment has read the text of the advertisement or
6 listing, has an applicable and current massage therapist or massage therapy establishment
7 license for the services advertised, has included all applicable and current license numbers
8 in the advertisement or listing, and is aware of civil and criminal penalties for advertising
9 as a massage therapist or massage therapy establishment without a valid license, shall be
10 entitled to a refutable presumption of compliance with this subsection.

11 (c) A publisher or producer of a print or broadcast advertising medium shall not be liable
12 in any suit, action, or claim arising from refusal to list or accept advertisements pursuant
13 to subsection (b) of this Code section.

14 43-24A-19.

15 (a) It is unlawful for any person to:

16 (1) Hold himself or herself out as a massage therapist or to practice massage unless duly
17 licensed under this chapter or unless otherwise specifically exempted from licensure
18 under this chapter;

19 (2) Operate any massage establishment unless it has been duly licensed as provided in
20 this chapter, except that nothing in this chapter shall be construed to prevent the teaching
21 of massage in this state at a board approved massage school;

22 (3) Permit an employed person to practice massage unless duly licensed as provided in
23 this chapter;

24 (4) Present as his or her own the license of another;

25 (5) Allow the use of his or her license by an unlicensed person;

26 (6) Give false or forged evidence to the board in obtaining any license provided for in
27 this chapter;

28 (7) Falsely impersonate any other licenseholder of like or different name;

29 (8) Use or attempt to use a license that has been revoked; or

30 (9) Otherwise violate any of the provisions of this chapter.

31 (b) Any person violating the provisions of this Code section shall be guilty of a
32 misdemeanor.

33 43-24A-20.

34 (a) An exemption under this chapter is effective only to the extent that the bona fide
35 practice of the profession or business that is licensed, certified, or registered under the laws

1 of this state overlaps into the field comprehended by this chapter, and exemptions under
2 this chapter are only for those activities which are performed in the course of the bona fide
3 practice of the business or profession of the person exempted.

4 (b) Persons licensed to practice any branch of medicine, nursing, osteopathy, chiropractic,
5 or podiatry and barbers, cosmetologists, estheticians, athletic trainers, and physical and
6 occupational therapists are exempt from the provisions of this chapter.

7 (c) Any student of a board authorized massage school or public school of this state
8 provided the student does not hold himself or herself out as a licensed massage therapist
9 and does not receive compensation for massage is exempt from the provisions of this
10 chapter.

11 (d) Exempt bodywork methods include those that involve energy techniques only, without
12 intentional soft tissue manipulation of any kind; movement education or reeducation; and
13 somatic education addressing awareness, posture, and action by verbally and physically
14 guiding the student in the discovery of existing and alternative postures and actions.
15 Specific modalities included in this exemption may be Zen Therapy, Rolfing, Alexander
16 Technique, Reiki, Polarity, Feldenkrais, Trager, Shiatsu, Jin Shin Jyutsu, and Therapeutic
17 Touch.

18 (e) The following persons shall be exempt from the provisions of this chapter: persons who
19 restrict their manipulation of the soft tissues of the human body to the hands, feet, or ears;
20 persons who manipulate the human body above the neck, below the elbow, and below the
21 knee and do not disrobe the client in performing such manipulation; persons practicing the
22 healing arts with the primary purpose of their modality or practice recognized as treatment
23 of the energetic system of the body rather than treatment for the tonus system of the body
24 and who may incidentally contact or manipulate soft tissue within the practice of their
25 profession; and persons who use touch and verbal communication to deepen awareness of
26 existing patterns of movement in the human body, as well as to suggest new possibilities
27 for movement, and who may incidentally contact or manipulate soft tissue within the
28 practice of their profession.

29 (f) Nothing in this chapter shall apply to massage therapists licensed in other states or
30 countries or meeting standards set forth when providing educational programs or services
31 for a period of time not to exceed 30 days within a calendar year.

32 43-24A-21.

33 The massage therapist-patient relationship is founded on mutual trust. Sexual misconduct
34 in the practice of massage therapy means violation of the massage therapist-patient
35 relationship through which the massage therapist uses that relationship to induce or attempt
36 to induce the patient to engage, or to engage or attempt to engage the patient, in sexual

1 activity outside the scope of practice or the scope of generally accepted examination or
2 treatment of the patient. Sexual misconduct in the practice of massage therapy is
3 prohibited. A client shall be presumed to be incapable of giving free, full, and informed
4 consent to sexual activity with his or her massage therapist.

5 43-24A-22.

6 As cumulative to any other remedy or criminal prosecution, the board or the division
7 director may file a proceeding in the name of the state seeking issuance of a restraining
8 order, injunction, or writ of mandamus against any person who is or has been violating any
9 of the provisions of this chapter or the lawful rules or orders of the board.

10 43-24A-23.

11 A county or municipality within its jurisdiction may regulate persons and establishments
12 licensed under this chapter. Such regulation shall not exceed the powers of the state under
13 this chapter or be inconsistent with this chapter. This Code section shall not be construed
14 to prohibit a county or municipality from enacting any regulation of persons or
15 establishments not licensed pursuant to this chapter. No provision of any ordinance
16 enacted by a city or county that is in effect before July 1, 2003, and that relates to the
17 practice of massage therapy may be enforced against a person who is issued a license by
18 the board under this chapter."

19 **SECTION 2.**

20 This Act shall become effective on July 1, 2003.

21 **SECTION 3.**

22 All laws and parts of laws in conflict with this Act are repealed.