

House Bill 1542

By: Representatives Stoner of the 34th, Post 1, Powell of the 23rd, DeLoach of the 127th, Barnes of the 84th, Post 2, and Hill of the 81st

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to regulation of
2 professions and businesses, so as to add a new Chapter 24A regulating the practice of
3 massage therapy; to provide a short title; to provide legislative findings and intent; to provide
4 for certain definitions; to create a Georgia Board of Massage Therapy; to provide for
5 membership on the board; to provide for meetings of the board; to provide for powers of the
6 board; to provide for licensure of massage therapists; to provide for provisional permits; to
7 provide for applications under oath; to provide for licensing examinations; to provide for
8 requirements relating to a license; to provide for violations; to prohibit the unauthorized
9 practice of massage therapy; to provide for disciplinary actions; to provide for administrative
10 procedures; to provide for exceptions; to provide for continuing education requirements; to
11 provide for cumulative remedies; to provide for other jurisdictions; to provide for taxation;
12 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
13 for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

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

18 "CHAPTER 24A

19 43-24A-1.

20 This chapter shall be known and may be cited as the 'Georgia Massage Therapy Practice
21 Act.'

1 43-24A-2.

2 The General Assembly acknowledges that the practice of massage therapy affects the
3 public health, safety, and welfare. Massage therapists must have a knowledge of anatomy
4 and physiology and an understanding of the relationship between the structure and function
5 of the tissue 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 in the
7 interest of the public to set standards of qualifications, education, training, and experience
8 for those who seek to practice massage therapy; to promote high standards of professional
9 performance for those licensed to practice massage therapy; and to protect the public from
10 unprofessional conduct by persons licensed to practice massage therapy.

11 43-24A-3.

12 As used in this chapter, the term:

13 (1) 'Advertise' means, but is not limited to, the issuing of or causing to be distributed any
14 card, sign, or other device or causing or permitting any sign or marking on or in any
15 building or structure, or in any newspaper, magazine, or directory, or announcement on
16 radio, or announcement or display on television, computer network, or electronic or
17 telephonic medium.

18 (2) 'Applicant' means any person seeking a license under this chapter.

19 (3) 'Board' means the Georgia Board of Massage Therapy established by this chapter.

20 (4) 'Board recognized massage program' means an educational program which meets the
21 standards for training and curriculum as set out by the board in its rules which are
22 consistent with the Nonpublic Postsecondary Education Commission as provided in Code
23 Section 20-3-250.4.

24 (5) 'License' means a valid and current certificate of registration issued by the board.

25 (6) 'Licensee' means any person holding a license.

26 (7) 'Massage therapist' means a person who administers massage or massage therapy for
27 compensation.

28 (8) 'Massage therapy' means the application of a system of structured touch, pressure,
29 movement, and holding to the soft tissue of the body in which the primary intent is to
30 enhance or restore health and well-being. The term includes complementary methods,
31 including without limitation the external application of water, heat, cold, lubricants, salt
32 scrubs, or other topical preparations and the use of electromechanical devices which
33 mimic or enhance the actions possible by the hands; and includes determining whether
34 massage therapy is appropriate or contraindicated, or whether referral to another health
35 care provider is appropriate.

36 (9) 'Person' means a natural person only.

1 (10) 'Provisionally licensed massage therapist' means a person provisionally licensed
2 under this chapter.

3 43-24A-4.

4 (a) There is created the Georgia Board of Massage Therapy which shall consist of five
5 members.

6 (b) The Governor shall appoint, subject to confirmation by the Senate, all members of the
7 board for initial terms of office beginning July 1, 2004. The Governor shall appoint two
8 initial members of the board to serve for terms of two years and three initial members of
9 the board, including the public member, to serve for terms of four years. After the initial
10 terms specified in this subsection, members of the board shall take office on the first day
11 of July immediately following the expired term of that office and shall serve for a term of
12 four years and until their successors are appointed and qualified. Any person appointed to
13 the board when the Senate is not in session may serve on the board without Senate
14 confirmation until the Senate acts on that appointment. No member shall serve on the board
15 for more than two full consecutive terms. Any vacancy shall be filled by the Governor
16 subject to confirmation of the Senate.

17 (c) All members of the board shall be reimbursed as provided for in subsection (f) of Code
18 Section 43-1-2.

19 (d) An appointee to the board shall qualify by taking an oath of office within 15 days from
20 the date of his or her appointment. On presentation of the oath, the Secretary of State shall
21 issue commissions to appointees as evidence of his or her authority to act as members of
22 the board.

23 43-24A-5.

24 (a) There shall be four professional members of the board who shall:

25 (1) Be citizens of the United States and residents of this state for at least three years prior
26 to the date of appointment;

27 (2) Have been engaged in massage therapy practice for compensation for at least five
28 years immediately preceding their appointment;

29 (3) Not be an owner of or affiliated with any massage school; and

30 (4) Be eligible for licensure under this chapter. Effective July 1, 2005, and thereafter, all
31 professional members of the board shall be licensed under this chapter.

32 (b) There shall be one consumer member of the board who shall be appointed by the
33 Governor from the public at large, shall be a citizen of the United States and resident of this
34 state, and shall be a person to whom neither this state nor any other state or jurisdiction or

1 organization has ever issued a certificate, registration, license, or permit to engage in the
2 practice of massage therapy nor be an owner of or affiliated with any massage school.

3 (c) The Governor may remove members of the board, after notice and opportunity for
4 hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of a felony,
5 failure to meet the qualifications of this chapter, or committing any act prohibited by this
6 chapter. In the event of death, resignation, or removal of a member of the board, the
7 vacancy of the unexpired term shall be filled by the Governor in the same manner as other
8 appointments.

9 43-24A-6.

10 (a) The board shall meet annually and shall elect from its members a president, vice
11 president, and any other officers as deemed necessary who shall hold office for a term of
12 one year and may appoint such committees as it considers necessary to fulfill its duties. In
13 addition to its annual meeting, the board may hold additional meetings on the call of the
14 president or at the written request of any two members of the board.

15 (b) A quorum shall consist of the majority of the board members.

16 43-24A-7.

17 (a) The board shall have the power to:

18 (1) Enforce the provisions of this chapter and it shall be granted all of the necessary
19 duties, powers, and authority to fulfill this responsibility;

20 (2) Promulgate, adopt, and enforce such rules as it deems necessary for the
21 administration and enforcement of this chapter, including, but not limited to, regulations
22 relating to professional licensure and the establishment of ethical standards of practice
23 for persons licensed under this chapter in the protection of public health, safety, and
24 welfare;

25 (3) Determine the qualifications and authorize the issuance of licenses to qualified
26 applicants and license duly qualified applicants by examination, endorsement, renewal,
27 or reinstatement in accordance with standards, schedules, and fees approved by the board;

28 (4) Adopt, revise, and enforce rules regarding advertising by licensees, including, but not
29 limited to, rules to prohibit false, misleading, or deceptive practices; and

30 (5) Adopt an official seal and the form of a license certificate of suitable design to be
31 used only in accordance with the prescription of the board.

32 (b) In addition to the enumerated powers in subsection (a) of this Code section, the board
33 has the authority to conduct its business pursuant to the provisions of Code Section 43-1-19
34 which is incorporated herein and made a part of this chapter by specific reference.

1 43-24A-8.

2 (a) Each applicant for a license as a massage therapist shall submit a completed application
3 upon a form and in such manner as the board prescribes, accompanied by applicable fees,
4 and shall be in compliance with the requirements of the board.

5 (b) Notwithstanding the requirements of subsection (a) of this Code section, each applicant
6 for a license as a massage therapist applying before July 1, 2006, shall have submitted a
7 completed application upon a form and in such manner as the board prescribes,
8 accompanied by applicable fees, and shall be in compliance with the following
9 requirements:

10 (1) The applicant shall be at least 18 years of age;

11 (2) The applicant shall submit a background report which demonstrates that, in the
12 opinion of the board, the applicant is of good moral character. For purposes of this
13 paragraph, 'good moral character' means professional integrity and a lack of any
14 conviction for acts involving moral turpitude. For failure to satisfy this requirement, the
15 board may refuse to license an applicant where it finds a substantial connection between
16 the lack of good moral character of the applicant and the professional responsibilities of
17 a licensee and the finding by the board of a lack of good moral character is supported by
18 clear and convincing evidence. The board may require an applicant to submit from at
19 least three persons independent letters recommending the applicant, using such requests
20 for information as the board may prescribe. When an applicant is found to be unqualified
21 for a license because of lack of good moral character, the board shall furnish the applicant
22 a statement containing the findings of the board and a complete listing of the evidence
23 upon which the determination was based, and the applicant may request a hearing on that
24 determination; and

25 (3) The applicant has met at least one of the following requirements:

26 (A) He or she has completed successfully a board recognized educational program with
27 a minimum of 500 hours of course and clinical work;

28 (B) He or she has passed satisfactorily the National Certification Examination for
29 Therapeutic Massage and Bodywork, an equivalent test approved by the board, or an
30 examination administered by another state or jurisdiction whose license requirements
31 meet or exceed those of this state;

32 (C) He or she meets the qualifications necessary to sit for the National Certification
33 Examination for Therapeutic Massage and Bodywork or has substantially similar
34 qualifications as determined by the board;

35 (D) He or she holds a license as a massage therapist in another state or jurisdiction
36 whose license requirements meet or exceed the licensing requirements of this state;

1 (E) He or she has practiced massage therapy for at least ten hours per week on average
2 for at least ten years prior to the date of application and has completed at least 100
3 hours of formal training in massage therapy as determined by the board;

4 (F) He or she has practiced massage therapy for at least five years prior to the date of
5 application and has completed a minimum of 200 hours of formal training in massage
6 therapy as determined by the board;

7 (G) He or she demonstrates, to the satisfaction of the board, training in another state
8 or jurisdiction which meets or exceeds the requirements for licensing in this state; or

9 (H) He or she has been a member for a period of one year prior to his or her application
10 for licensure of a professional massage therapy association established before 2002,
11 which holds its members to a published code of ethics. The applicant shall be a member
12 at the level that requires an average of at least ten continuing education hours annually,
13 and requires a 500 hour core curriculum or the passing of a certification examination.

14 (c) Subsection (b) of this Code section is repealed effective July 1, 2006.

15 43-24A-9.

16 A provisional permit to practice as a provisionally licensed massage therapist may be
17 issued by the board upon the filing of an application with appropriate fees and submission
18 of evidence of successful completion of a substantial portion of the requirements for
19 licensure as provided by Code Section 43-24A-8, at the discretion of the board. The permit
20 shall be issued for one year and may be renewed for no more than one additional year. The
21 board may require a renewal fee to maintain a provisional license.

22 43-24A-10.

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

24 43-24A-11.

25 (a) Examinations shall be administered to qualified applicants at least twice each calendar
26 year. The examinations may be administered by a testing service as determined by the
27 board.

28 (b) Applicants may obtain their examination scores in accordance with such rules and
29 regulations as the board may establish.

30 (c) The board may waive the examination and grant a license to any applicant who shall
31 present proof of:

32 (1) Current licensure as a massage therapist in another jurisdiction, state, or territory of
33 the United States, which requires standards for licensure considered by the board to be
34 equivalent to the requirements for licensure under this chapter; and

1 (2) Current certification by National Certification Board for Therapeutic Massage and
2 Bodywork or an equivalent certification approved by the National Commission for
3 Certifying Agencies.

4 43-24A-12.

5 (a) A license issued by the board is the property of the board and must be surrendered on
6 demand.

7 (b) The licensee shall display the license certificate or a photocopy thereof in an
8 appropriate and public manner at each location at which he or she practices.

9 (c) All licenses shall expire biennially unless renewed. All applications for renewal of a
10 license shall be filed with the division director prior to the expiration date, accompanied
11 by the biennial renewal fee prescribed by the board and certifying that all current
12 requirements of continuing education as determined by the board have been fulfilled. A
13 license which has expired for failure of the holder to renew may only be restored after
14 application and payment of the prescribed restoration fee within the time period established
15 by the division director and provided the applicant meets such requirements as the board
16 may establish by rule. Any license which has not been restored within such period
17 following its expiration may not be renewed, restored, or reissued thereafter. The holder
18 of such a canceled license may apply for and obtain a valid license only upon compliance
19 with all relevant requirements for issuance of a new license.

20 (d) The licensee shall inform the board of any change of address within 30 days.

21 (e) Each person licensed under this chapter is responsible for renewing his or her license
22 before the expiration date.

23 (f) Under procedures and conditions established by the board, a licensee may request that
24 his or her license be declared inactive. The licensee may apply for active status at any time
25 and upon meeting the conditions set forth by the board shall be declared active.

26 43-24A-13.

27 (a) It is a violation of this chapter for any person to advertise massage therapy services
28 unless such services are provided by a person who holds a valid license under this chapter.

29 (b) It shall be a violation of this chapter for any person to advertise:

30 (1) As a massage therapist unless the person holds a valid license under this chapter in
31 the classification so advertised; and

32 (2) Massage therapy services combined with escort or dating services or adult
33 entertainment.

34 (c) It shall be unlawful for a person or business entity, its employees, agents, or
35 representatives to practice massage therapy or to use in connection with its name or

1 business activity the terms 'massage,' 'massage therapy,' 'massage therapist,' 'massage
2 practitioner,' 'bodywork,' 'bodyworker,' 'bodywork therapist,' or the letters 'M.T.,' 'L.M.T.,'
3 or any other words, letters, abbreviations, or insignia indicating or implying directly or
4 indirectly that massage therapy is provided or supplied unless such massage therapy is
5 provided by a massage therapist licensed and practicing in accordance with this chapter.

6 (d) Notwithstanding the prohibitions of subsection (c) of this Code section, practitioners
7 who meet the criteria established for exemption in paragraph (5), (6), or (7) of Code
8 Section 43-24A-17 are not prohibited from using the terms 'bodywork,' 'bodyworker,' and
9 'bodywork therapist' in their promotional materials and advertising and also are not
10 prohibited from advertising and using in their promotional materials any certifications that
11 they are qualified to use.

12 43-24A-14.

13 The practice of massage therapy is declared to be an activity affecting the public interest
14 and involving the health, safety, and welfare of the public. Such practice by a person who
15 is not licensed to practice in this state is declared to be a public nuisance, harmful to the
16 public health, safety, and welfare. Any citizen of this state, the board, or the appropriate
17 prosecuting attorney where such practice is carried on by such unlicensed person may, on
18 behalf of the public, bring an action to restrain and enjoin such unlicensed practice in the
19 superior court of the county where such unlicensed person resides or works. It shall not be
20 necessary in order to obtain an injunction under this Code section to allege or prove that
21 there is no adequate remedy at law, or to allege or prove any special injury.

22 43-24A-15.

23 (a) The following acts shall constitute grounds for which disciplinary actions specified in
24 subsection (b) of this Code section may be taken against a massage therapist licensed under
25 this chapter:

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

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

31 (3) Being convicted or found guilty, regardless of adjudication, of a crime in any
32 jurisdiction which directly relates to the practice of massage or to the ability to practice
33 massage;

34 (4) Using false, deceptive, or misleading advertising;

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

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

4 (7) Gross or repeated malpractice, violating the confidentiality of information or
5 knowledge concerning a client, or the failure to practice massage with that level of care,
6 skill, and treatment which is recognized by a reasonably prudent massage therapist as
7 being acceptable under similar conditions and circumstances;

8 (8) Other disciplinary action taken against the licensee by any such lawful licensing
9 authority other than the board;

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

13 (10) Violating any provision of this chapter, a rule of the board, or a lawful order of the
14 board previously entered in a disciplinary hearing, or failing to comply with a lawfully
15 issued subpoena of the board;

16 (11) Refusing to permit the board or its agents to inspect the business premises of the
17 licensee during regular business hours; and

18 (12) Failing to keep the equipment and premises in a clean and sanitary condition.

19 (b) When the board finds grounds for discipline set forth in subsection (a) of this Code
20 section, it may enter an order imposing one or more of the following penalties:

21 (1) Refusal to license an applicant;

22 (2) Revocation or suspension of a license;

23 (3) Issuance of a reprimand or censure; or

24 (4) Imposition of an administrative fine not to exceed \$1,000.00 for each count or
25 separate offense.

26 43-24A-16.

27 Proceedings under this chapter shall be governed by Chapter 13 of Title 50, the 'Georgia
28 Administrative Procedure Act.'

29 43-24A-17.

30 Nothing in this chapter shall be construed to affect, restrict, or prevent the practice,
31 services, or activities of:

32 (1) A person licensed, registered, or certified under any other article under Title 43 while
33 engaged in the professional or trade practices properly conducted under authority of such
34 other licensing laws, provided that such person shall not use the title of massage therapist
35 or hold himself or herself out as engaged in massage therapy;

1 (2) A person pursuing a course of study leading to a degree or certificate as a massage
2 therapist in an educational program recognized by the board, if such person is designated
3 by title indicating student status and is fulfilling uncompensated work experiences
4 required for the attainment of the degree or certificate;

5 (3) A nonresident person rendering massage therapy up to 60 days during a 12 month
6 period, for treatment of a temporary sojourner only, provided that such nonresident
7 massage therapist holds a license, registration, or certification from another state,
8 jurisdiction, or country if the requirements as determined by the board for licensure are
9 substantially equal to the requirements contained in this chapter, or provided that such
10 nonresident massage therapist is currently nationally certified in therapeutic massage and
11 bodywork;

12 (4) A person who restricts his or her practice to the manipulation of the soft tissue of the
13 human body to hands, feet, or ears who does not have the client disrobe and does not hold
14 himself or herself out as a massage therapist;

15 (5) A person who uses touch, words, and directed movement to deepen awareness of
16 existing patterns of movement in the body as well as to suggest new possibilities of
17 movement while engaged within the scope of practice of a profession with established
18 standards and ethics, provided that their services are not designated or implied to be
19 massage or massage therapy. Practitioners must be recognized by either a professional
20 organization or credentialing agency that represents or certifies the respective practice
21 based on a minimal level of training, demonstration of competency, and adherence to
22 ethical standards;

23 (6) A person who uses touch and movement education to effect change in the structure
24 of the body while engaged in the practice of structural integration, provided that their
25 services are not designated or implied to be massage or massage therapy. Practitioners
26 must be recognized by either a professional organization or credentialing agency that
27 represents or certifies the respective practice based on a minimal level of training,
28 demonstration of competency, and adherence to ethical standards;

29 (7) A person who uses touch to affect the energy systems, polarity, acupoints, or Qi
30 meridians (channels of energy) of the human body while engaged within the scope of
31 practice of a profession with established standards and ethics, provided that their services
32 are not designated or implied to be massage or massage therapy. Practitioners must be
33 recognized by either a professional organization or credentialing agency that represents
34 or certifies the respective practice based on a minimal level of training, demonstration of
35 competency, and adherence to ethical standards;

36 (8) A person duly licensed, registered, or certified in another jurisdiction, state, territory,
37 or a foreign country when incidentally in this state to provide service as part of an

1 emergency response team working in conjunction with disaster relief officials or as part
2 of a charity event with which he or she comes into the state; or

3 (9) A person who was engaged in massage therapy practice prior to July 1, 2004, but the
4 prohibition of subsection (c) of Code Section 43-24A-13 shall apply to such a person on
5 and after July 1, 2006.

6 43-24A-18.

7 The board may establish continuing education requirements not to exceed 25 classroom
8 hours per biennium. A maximum of 12 additional hours may be carried over into the next
9 renewal period. The board shall by rule establish criteria for the approval of continuing
10 education programs or courses. The programs or courses approved by the board may
11 include correspondence courses that meet the criteria for continuing education courses held
12 in a classroom setting.

13 43-24A-19.

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

18 43-24A-20.

19 This chapter shall not be construed to prohibit a county or municipality from enacting any
20 regulation of persons not licensed pursuant to this chapter. No provision of any ordinance
21 enacted by a city, county, or other jurisdiction that is in effect before July 1, 2004, and that
22 relates to the practice of massage therapy or requires licensure of a massage therapist may
23 be enforced against a person who is issued a license by the board under this chapter.

24 43-24A-21.

25 Notwithstanding any provision of law to the contrary, the act of a duly licensed massage
26 therapist in performing a massage shall be deemed to be the act of a health care
27 professional and shall not be subject to the collection of any form of state or local taxation
28 regulations not also imposed on other professional health care activities.

29 43-24A-22.

30 Any person violating the provisions of this chapter shall be guilty of a misdemeanor."

1 **SECTION 2.**

2 This Act shall become effective on July 1, 2004.

3 **SECTION 3.**

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