

The House Committee on Governmental Affairs offers the following substitute to HB 1542:

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 issued a provisional
2 permit 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. The board shall be assigned to the Secretary of State's office for administrative
6 purposes and shall be under the jurisdiction of the division director and shall operate in
7 accordance with and pursuant to the provisions of Chapter 1 of this title, as applicable.

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

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

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

26 43-24A-5.

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

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

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

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

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

1 (b) There shall be one consumer member of the board who shall be appointed by the
 2 Governor from the public at large, shall be a citizen of the United States and resident of this
 3 state, and shall be a person to whom neither this state nor any other state or jurisdiction or
 4 organization has ever issued a certificate, registration, license, or permit to engage in the
 5 practice of massage therapy nor be an owner of or affiliated with any massage school.

6 (c) The Governor, after notice and opportunity for hearing, may remove any member of
 7 the board for incompetence, neglect of duty, unprofessional conduct, conviction of a
 8 felony, failure to meet the qualifications of this chapter, or committing any act prohibited
 9 by this chapter.

10 43-24A-6.

11 The board shall meet at least once each year at a time fixed by the board. At its annual
 12 meeting, the board shall elect from its members a chairperson, vice chairperson, and any
 13 other officers as deemed necessary who shall hold office for a term of one year.
 14 Additionally, the board may appoint such committees as it considers necessary to fulfill its
 15 duties. In addition to its annual meeting, the board may hold additional meetings at the call
 16 of the chairperson or at the request of any two members of the board or as approved by the
 17 division director.

18 43-24A-7.

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

20 (1) Examine and determine the qualifications and fitness of applicants for licenses to
 21 practice massage therapy in this state;

22 (2) Issue, renew, refuse to renew, deny, suspend, or revoke licenses to practice massage
 23 therapy in this state or otherwise discipline licensed massage therapists;

24 (3) Conduct investigations for the purpose of discovering violations of this chapter or
 25 grounds for disciplining persons licensed under this chapter;

26 (4) Hold hearings on all matters properly brought before the board and, in conjunction
 27 therewith, to administer oaths, receive evidence, make the necessary determinations, and
 28 enter orders consistent with the findings. The board may designate one or more of its
 29 members as its hearing officer;

30 (5) Promulgate, adopt, amend, or repeal all rules necessary for its government and all
 31 regulations necessary to carry this chapter into effect, including, without limitation, the
 32 establishment and publication of standards of professional conduct for the practice of
 33 massage therapy;

34 (6) Adopt, revise, and enforce rules concerning advertising by licensees including, but
 35 not limited to, rules to prohibit false, misleading, or deceptive practices;

1 (7) Adopt an official seal; and

2 (8) Bring proceedings to the courts for the enforcement of this chapter or any rules and
3 regulations promulgated pursuant to this chapter.

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

7 43-24A-8.

8 (a) No person may practice massage therapy in this state who is not a licensed massage
9 therapist or the holder of a valid provisional permit issued by the division director pursuant
10 to this chapter.

11 (b) Prior to July 1, 2006, any applicant for a license as a massage therapist must submit a
12 completed application upon a form and in such manner as the board prescribes,
13 accompanied by applicable fees, and evidence satisfactory to the board that:

14 (1) The applicant is at least 18 years of age;

15 (2) The applicant is of good moral character. For purposes of this paragraph, 'good
16 moral character' means professional integrity and a lack of any conviction for acts
17 involving moral turpitude;

18 (3) The applicant agrees to provide the board with any and all information necessary to
19 perform a criminal background check and expressly consents and authorizes the board
20 or its representative to perform such a check; and

21 (4) The applicant has met at least one of the following requirements:

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

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

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

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

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

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

4 (G) He or she has, to the satisfaction of the board, training in another state or
5 jurisdiction that meets or exceeds the requirements for licensing in this state; or

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

11 (c) On and after July 1, 2006, any applicant for a license as a massage therapist must
12 submit a completed application upon a form and in such manner as the board prescribes,
13 accompanied by applicable fees, and evidence satisfactory to the board that:

14 (1) The applicant is at least 18 years of age;

15 (2) The applicant has a high school diploma or its recognized equivalent;

16 (3) The applicant is a citizen of the United States or a permanent resident of the United
17 States;

18 (4) The applicant is of good moral character. For purposes of this paragraph, 'good
19 moral character' means professional integrity and a lack of any conviction for acts
20 involving moral turpitude;

21 (5) The applicant agrees to provide the board with any and all information necessary to
22 perform a criminal background check and expressly consents and authorizes the board
23 or its representative to perform such a check;

24 (6) The applicant has completed successfully a board recognized educational program
25 consisting of a minimum of 500 hours of course and clinical work; and

26 (7) The applicant has passed satisfactorily the National Certification Examination for
27 Therapeutic Massage and Bodywork, an equivalent test approved by the board, or an
28 examination administered by another state or jurisdiction whose license requirements
29 meet or exceed those of this state.

30 43-24A-9.

31 (a) A provisional permit to practice as a provisionally licensed massage therapist may be
32 issued by the board to the following applicants who are qualified to take the massage
33 therapy examination:

34 (1) An applicant licensed in another state with like or similar requirements for licensure;

35 or

1 (2) An applicant who is not the holder of any massage therapy license. In such case,
2 such license shall authorize the applicant to work under the supervision of a licensed
3 massage therapist as provided by the board.

4 (b) The applicant, by submitting an application for a provisional permit, agrees to provide
5 the board with any and all information necessary to perform a criminal background check
6 and expressly consents to and authorizes the board or its representative to perform such a
7 check.

8 (c) Such provisional permit shall have the same force and effect as a permanent license
9 until the time of its expiration.

10 (d) The provisional permit shall expire on the same date as a permanent license that is
11 issued to persons who have passed the examination.

12 43-24A-10.

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

14 43-24A-11.

15 (a) Examinations shall be administered to qualified applicants at least twice each calendar
16 year.

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

19 43-24A-12.

20 (a) Any applicant for a license by reciprocity as a massage therapist must submit a
21 completed application upon a form and in such manner as the board prescribes,
22 accompanied by applicable fees, and evidence satisfactory to the board that:

23 (1) The applicant is at least 18 years of age;

24 (2) The applicant is of good moral character. For purposes of this paragraph, 'good
25 moral character' means professional integrity and a lack of any conviction for acts
26 involving moral turpitude;

27 (3) The applicant, by submitting an application for a license by reciprocity, agrees to
28 provide the board with any and all information necessary to perform a criminal
29 background check and expressly consents and authorizes the board or its representative
30 to perform such a check; and

31 (4) The applicant is currently licensed as a massage therapist in another jurisdiction,
32 state, or territory of the United States or of a foreign country, which requires standards
33 for licensure considered by the board to be equivalent to the requirements for licensure
34 under this chapter.

1 43-24A-13.

2 (a) Any applicant for a license by endorsement as a massage therapist must submit a
3 completed application upon a form and in such manner as the board prescribes,
4 accompanied by applicable fees, and evidence satisfactory to the board that:

5 (1) The applicant is at least 18 years of age;

6 (2) The applicant is of good moral character. For purposes of this paragraph, 'good
7 moral character' means professional integrity and a lack of any conviction for acts
8 involving moral turpitude;

9 (3) The applicant, by submitting an application for a license by endorsement, agrees to
10 provide the board with any and all information necessary to perform a criminal
11 background check and expressly consents and authorizes the board or its representative
12 to perform such a check; and

13 (4) The applicant has current certification by the National Certification Board for
14 Therapeutic Massage and Bodywork or an equivalent certification approved by the
15 National Commission for Certifying Agencies.

16 43-24A-14.

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

19 (b) All licenses shall expire biennially unless renewed. All applications for renewal of a
20 license shall be filed with the division director prior to the expiration date, accompanied
21 by the biennial renewal fee prescribed by the board and certifying that all current
22 requirements of continuing education as determined by the board have been fulfilled. A
23 license which has expired for failure of the holder to renew may only be reinstated after
24 application and payment of the prescribed reinstatement fee within six months of such
25 expiration date, provided that the applicant meets such requirements as the board may
26 establish by rule. Any license which has not been reinstated within such period following
27 its expiration may not be renewed, reinstated, or reissued thereafter. The holder of such
28 a canceled license may apply for and obtain a valid license only upon compliance with all
29 relevant requirements for issuance of a new license.

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

31 (d) Each person licensed under this chapter is responsible for renewing his or her license
32 before the expiration date.

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

1 43-24A-15.

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

4 (b) It shall be a violation of this chapter for any person or business entity, its employees,
5 agents, or representatives to advertise:

6 (1) As a massage therapist unless the person or business entity, its employees, agents,
7 or representatives hold a valid license under this chapter in the classification so
8 advertised; and

9 (2) Massage therapy services combined with escort or dating services or adult
10 entertainment.

11 (c) It shall be unlawful for a person or business entity, its employees, agents, or
12 representatives to practice massage therapy or to use in connection with its name or
13 business activity the terms 'massage,' 'massage therapy,' 'massage therapist,' 'massage
14 practitioner,' 'bodywork,' 'bodyworker,' 'bodywork therapist,' or the letters 'M.T.,' 'L.M.T.,'
15 or any other words, letters, abbreviations, or insignia indicating or implying directly or
16 indirectly that massage therapy is provided or supplied unless such massage therapy is
17 provided by a massage therapist licensed and practicing in accordance with this chapter.

18 (d) Notwithstanding the prohibitions of subsection (c) of this Code section, practitioners
19 who meet the criteria established for exemption in paragraph (5), (6), or (7) of Code
20 Section 43-24A-18 are not prohibited from using the terms 'bodywork,' 'bodyworker,' and
21 'bodywork therapist' in their promotional materials and advertising and also are not
22 prohibited from advertising and using in their promotional materials any certifications that
23 they are qualified to use.

24 43-24A-16.

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

1 43-24A-17.

2 The board shall take disciplinary action in accordance with the provisions of Chapter 1 of
3 this title.

4 43-24A-18.

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

7 43-24A-19.

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

10 (1) A person licensed, registered, or certified under any other chapter of Title 43 while
11 engaged in the professional or trade practices properly conducted under authority of such
12 other licensing laws, provided that such person shall not use the title of massage therapist;

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

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

24 (4) A person duly licensed, registered, or certified in another jurisdiction, state, territory,
25 or a foreign country when incidentally in this state to provide service as part of an
26 emergency response team working in conjunction with disaster relief officials or as part
27 of a charity event with which he or she comes into the state; or

28 (5) A person who was engaged in massage therapy practice prior to July 1, 2004, but the
29 prohibition of subsection (c) of Code Section 43-24A-14 shall apply to such a person on
30 and after July 1, 2006.

1 43-24A-20.

2 The board may establish continuing education requirements not to exceed 25 hours per
3 biennium. The board shall by rule establish criteria for the approval of continuing
4 education programs or courses. The programs or courses approved by the board may
5 include correspondence courses that meet the criteria for continuing education courses.

6 43-24A-21.

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

11 43-24A-22.

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

18 43-24A-23.

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

23 43-24A-24.

24 (a) Any person who practices massage therapy without a valid license in violation of this
25 chapter, upon conviction thereof, shall be punished as provided in this Code section.

26 (b) Each act of unlawful practice under this Code section shall constitute a distinct and
27 separate offense.

28 (c) Upon being convicted a first time under this Code section, such person shall be
29 punished by a fine of not more than \$500.00 for each offense. Upon being convicted a
30 second or subsequent time under this Code section, such person shall be punished by a fine
31 of not more than \$1,000.00 for each offense, imprisonment for not more than 12 months,
32 or both."

