

Senate Bill 364

By: Senators Staton of the 18th, Unterman of the 45th, Murphy of the 27th, Brown of the 26th, Douglas of the 17th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 24A of Title 43 of the Official Code of Georgia Annotated, relating to
2 massage therapy practice, so as to provide better control and regulation of the practice of
3 massage therapy; to provide for a definition; to provide the Georgia Board of Massage
4 Therapy with broader investigative powers; to change and expand acts constituting violations
5 of the chapter; to change provisions relating to disciplinary actions; to clarify provisions
6 relating to local regulation of massage therapy; to increase punishment for violations of the
7 chapter; to provide for related matters; to provide an effective date and applicability; to
8 repeal conflicting laws; and for other purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

11 Chapter 24A of Title 43 of the Official Code of Georgia Annotated, relating to massage
12 therapy practice, is amended in Code section 43-24A-3, relating to definitions, by adding a
13 new paragraph to read as follows:

14 "(4.1) 'Entity' means the owner or operator of a business where massage therapy for
15 compensation is performed."

16 **SECTION 2.**

17 Said chapter is further amended by revising paragraph (3) of subsection (a) of Code Section
18 43-24A-7, relating to powers of the Georgia Board of Massage Therapy, as follows:

19 "(3) Conduct investigations for the purpose of discovering violations of this chapter or
20 grounds for disciplining persons ~~licensed under~~ or entities acting in violation of this
21 chapter. The board and any designee of the board shall be authorized to conduct
22 investigations as deemed necessary for the enforcement of the provisions of this chapter.
23 An investigator conducting an investigation on behalf of the board shall have access to
24 and may examine and copy any writing, document, or other material relating to the fitness
25 of any licensee or applicant. The board or the board's designee may issue subpoenas to

26 compel access to such documents where there is a reasonable basis for believing that a
 27 violation of this chapter has occurred;"

28 **SECTION 3.**

29 Said chapter is further amended by revising Code Section 43-24A-15, relating to unlawful
 30 acts, as follows:

31 "43-24A-15.

32 (a) It ~~is~~ shall be a violation of this chapter for any person or entity to advertise massage
 33 therapy services or to advertise the offering of massage therapy services unless such
 34 services are provided by a person who holds a valid license under this chapter.

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

36 (1) As a massage therapist unless the person holds a valid license under this chapter in
 37 the classification so advertised; or

38 (2) Massage therapy services combined with escort or dating services or adult
 39 entertainment.

40 (c) It shall be ~~unlawful~~ a violation of this chapter for a person or ~~business~~ entity, or ~~its~~ the
 41 employees, agents, or representatives of such person or entity, to practice massage therapy
 42 or to use in connection with its such person's or entity's name or business activity the terms
 43 'massage,' 'massage therapy,' 'massage therapist,' 'massage practitioner,' or the letters 'M.T.,'
 44 'L.M.T.,' or any other words, letters, abbreviations, or insignia indicating or implying
 45 directly or indirectly that massage therapy is provided or supplied unless such massage
 46 therapy is provided by a massage therapist licensed and practicing in accordance with this
 47 chapter.

48 (d) It shall be a violation of this chapter for any entity to:

49 (1) Advertise the offering of massage therapy services combined with escort or dating
 50 services or adult entertainment; or

51 (2) Employ unlicensed massage therapists to perform massage therapy.

52 (e) It shall be a violation of this chapter for any person to practice massage therapy without
 53 holding a current or provisional license as a massage therapist in accordance with
 54 subsection (a) of Code Section 43-24A-8.

55 (f) It shall be a violation of this chapter for any person or entity, or the employees, agents,
 56 or representatives of such person or entity, to render or offer massage therapy services for
 57 compensation unless such massage therapy is provided by a licensed massage therapist."

58 **SECTION 4.**

59 Said chapter is further amended by revising Code Section 43-24A-17, relating to disciplinary
 60 actions, as follows:

61 "43-24A-17.

62 (a) The board shall ~~may~~ take disciplinary action in accordance with the provisions of
 63 Chapter 1 of this title against any person or entity believed to be acting in violation of this
 64 chapter.

65 (b) The board may take any one or more of the following actions against a person or entity
 66 found by the board to have committed a violation of this chapter:

67 (1) Reprimand or place the licensee on probation;

68 (2) Revoke or suspend the license or deny the issuance or renewal of a license;

69 (3) Impose an administrative fine not to exceed \$5,000.00 for each violation; and

70 (4) Assess costs against the violator for expenses relating to the investigation and
 71 administrative action.

72 (c) The board may assess collection costs and interest for the collection of fines imposed
 73 under this chapter against any person or entity that fails to pay a fine as directed by the
 74 board."

75 **SECTION 5.**

76 Said chapter is further amended by revising Code Section 43-24A-22, relating to local
 77 regulation, as follows:

78 "43-24A-22.

79 (a) This chapter shall not be construed to prohibit a county or municipality from enacting
 80 any regulation of persons not licensed pursuant to this chapter. No provision of any
 81 ordinance enacted by a municipality, county, or other jurisdiction that is in effect before
 82 July 1, 2005, and that relates to the practice of massage therapy or requires licensure of a
 83 massage therapist may be enforced against a person who is issued a license by the board
 84 under this chapter.

85 (b) Any place of business where massage therapy for compensation is performed shall also
 86 be subject to regulation by local governing authorities with regard to the:

87 (1) Manner of operation of the business within the jurisdiction of the governing
 88 authority;

89 (2) Licensing of such business; and

90 (3) Prevention of any threat to public health and safety."

91 **SECTION 6.**

92 Said chapter is further amended by revising Code Section 43-24A-24, relating to fines and
 93 punishments for violations, as follows:

94 "43-24A-24.

95 (a) Any person who ~~practices massage therapy without a valid license~~ acts in violation of
96 ~~this chapter~~ Code Section 43-24A-15, upon conviction thereof, shall be punished as
97 provided in this Code section.

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

100 (c) Upon being convicted a first time under this Code section, such person or entity shall
101 be guilty of and shall be punished by a fine of not more than \$500.00 as for a misdemeanor
102 for each offense. Upon being convicted a second time under this Code section, such person
103 or entity shall be guilty of and shall be punished as for a misdemeanor of a high and
104 aggravated nature. Upon being convicted a ~~second~~ third or subsequent time under this
105 Code section, such person or entity shall be guilty of a felony and shall be punished by a
106 fine of not more than ~~\$1,000.00~~ \$25,000.00 for each offense, imprisonment for not ~~more~~
107 ~~than 12 months~~ less than one nor more than five years, or both."

108 **SECTION 7.**

109 This Act shall become effective on July 1, 2010, and shall apply to all offenses which occur
110 on and after that date.

111 **SECTION 8.**

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