

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 1426\*

Short Title: Amend Massage & Bodywork Therapy Act.

(Public)

Sponsors: Representative Fisher.

Referred to: Judiciary I, if favorable, Finance.

April 12, 2007

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA MASSAGE AND BODYWORK THERAPY PRACTICE ACT TO EXPAND THE EXISTING LAWS REGULATING MASSAGE AND BODYWORK THERAPY SCHOOLS; TO AUTHORIZE THE BOARD TO ESTABLISH FEES FOR LICENSING MASSAGE AND BODYWORK THERAPY SCHOOLS; TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE TO PRACTICE MASSAGE AND BODYWORK THERAPY; AND TO AMEND THE EXISTING LAWS REGARDING ADULT ENTERTAINMENT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 90-621 reads as rewritten:

"§ 90-621. **Declaration of purpose.**

~~The General Assembly recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapy is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.~~The purpose of this Article is to ensure the protection of the health, safety, and welfare of the citizens of this State receiving massage and bodywork therapy services. This purpose is achieved by establishing standards of education and training to enable each student to master the body of knowledge and demonstrate an accomplished proficiency in the field of massage and bodywork therapy. Mandatory licensure of those engaged in the practice of massage and bodywork therapy assures the public that each individual has satisfactorily met the standards of the profession and continues to meet both the ethical and competency goals of the profession.

**SECTION 2.** G.S. 90-622 reads as rewritten:

"§ 90-622. **Definitions.**

The following definitions apply in this Article:

- 1           (1)    Accreditation. – Status granted to a postsecondary institution of higher  
2           learning that has met standards set by an accrediting agency  
3           recognized by the Secretary of the United States Department of  
4           Education. The accreditation for massage and bodywork schools may  
5           be institutional or programmatic in nature.
- 6           (1a)   Board. – The North Carolina Board of Massage and Bodywork  
7           Therapy.
- 8           (2)    Board-approved school. – Any massage and bodywork therapy school  
9           or training program in this State or another state that is not otherwise  
10           exempt from Board approval, that has met the ~~criteria established by~~  
11           the Board, standards set forth in this Article, and been granted approval  
12           by the Board.
- 13          (2a)   Criminal history record check. – A report resulting from a request  
14           made by the Board to the North Carolina Department of Justice for a  
15           history of conviction of a State crime, whether a misdemeanor or  
16           felony, that bears on an applicant's fitness for licensure to practice  
17           massage and bodywork therapy. The crimes include the criminal  
18           offenses set forth in any of the following Articles of Chapter 14 of the  
19           General Statutes: Article 5, Counterfeiting and Issuing Monetary  
20           Substitutes; Article 5A, Endangering Executive and Legislative  
21           Officers; Article 6, Homicide; Article 7A, Rape and Other Sex  
22           Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction;  
23           Article 13, Malicious Injury or Damage by Use of Explosive or  
24           Incendiary Device or Material; Article 14, Burglary and Other  
25           Housebreakings; Article 15, Arson and Other Burnings; Article 16,  
26           Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19,  
27           False Pretenses and Cheats; Article 19A, Obtaining Property or  
28           Services by False or Fraudulent Use of Credit Device or Other Means;  
29           Article 19B, Financial Transaction Card Crime Act; Article 20,  
30           Frauds; Article 21, Forgery; Article 26, Offenses Against Public  
31           Morality and Decency; Article 26A, Adult Establishments; Article 27,  
32           Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,  
33           Misconduct in Public Office; Article 35, Offenses Against the Public  
34           Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection  
35           of Minors; Article 40, Protection of the Family; Article 59, Public  
36           Intoxication; and Article 60, Computer-Related Crime. The crimes  
37           also include possession or sale of drugs in violation of the North  
38           Carolina Controlled Substances Act in Article 5 of Chapter 90 of the  
39           General Statutes and alcohol-related offenses including sale to  
40           underage persons in violation of G.S. 18B-302 or driving while  
41           impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.
- 42          (2b)   Jurisdiction. – The authority, capacity, or right of another state,  
43           territory of the United States, District of Columbia, or a foreign  
44           country to act.

- 1 (3) Massage and bodywork therapy. – Systems of activity applied to the  
2 soft tissues of the human body for therapeutic, educational, or  
3 relaxation purposes. The application may include:  
4 a. Pressure, friction, stroking, rocking, kneading, percussion, or  
5 passive or active stretching within the normal anatomical range  
6 of movement.  
7 b. Complementary methods, including the external application of  
8 water, heat, cold, lubricants, and other topical preparations.  
9 c. The use of mechanical devices that mimic or enhance actions  
10 that may possibly be done by the hands. The application of  
11 systems of activity by a massage and bodywork therapist during  
12 the course of therapy shall not include any action pursued with  
13 the intent of providing sexual stimulation or pursuing sexual  
14 contact.
- 15 (4) Massage and bodywork therapist. – A person licensed under this  
16 Article.
- 17 (5) Practice of massage and bodywork therapy. – The application of  
18 massage and bodywork therapy to any person for a fee or other  
19 consideration. ~~"Practice of massage and bodywork therapy" does not~~  
20 ~~include the diagnosis of illness or disease, medical procedures,~~  
21 ~~chiropractic adjustive procedures, electrical stimulation, ultrasound,~~  
22 ~~prescription of medicines, or the use of modalities for which a license~~  
23 ~~to practice medicine, chiropractic, nursing, physical therapy,~~  
24 ~~occupational therapy, acupuncture, or podiatry is required by law. The~~  
25 ~~practice of massage and bodywork therapy does not include:~~  
26 a. The diagnosis of illness or disease.  
27 b. Medical procedures, chiropractic adjustive procedures,  
28 electrical stimulation, ultrasound, or prescription of medicines.  
29 c. The use of modalities for which a license to practice medicine,  
30 chiropractic, nursing, physical therapy, occupational therapy,  
31 acupuncture, or podiatry is required by law.  
32 d. Sexual activity, which shall mean any direct or indirect physical  
33 contact or verbal communication, by any person or between  
34 persons, which is intended to erotically stimulate either person,  
35 or which is likely to cause such stimulation and includes sexual  
36 intercourse, fellatio, cunnilingus, masturbation, or anal  
37 intercourse. As used in this sub-subdivision, masturbation  
38 means the manipulation of any body tissue with the intent to  
39 cause sexual arousal. Sexual activity can involve the use of any  
40 device or object and is not dependent on whether penetration,  
41 orgasm, or ejaculation has occurred."

42 **SECTION 3.** G.S. 90-625 reads as rewritten:

43 **"§ 90-625. North Carolina Board of Massage and Bodywork Therapy.**

1 (a) The North Carolina Board of Massage and Bodywork Therapy is created. The  
2 Board shall consist of seven members who are residents of this State and are as follows:

3 (1) Five members shall be massage and bodywork therapists who have  
4 been licensed under this Article and have been in the practice of  
5 massage and bodywork therapy for at least five of the last seven years  
6 prior to their serving on the Board. ~~The appointments may be made~~  
7 ~~from lists provided by the North Carolina Therapeutic Massage and~~  
8 ~~Bodywork Task Force.~~ Consideration shall be given to geographical  
9 distribution, practice setting, clinical specialty, involvement in  
10 massage and bodywork therapy education, and other factors that will  
11 promote diversity of the profession on the Board. Two of the five  
12 members shall be appointed by the General Assembly, upon the  
13 recommendation of the Speaker of the House of Representatives, two  
14 shall be appointed by the General Assembly, upon the  
15 recommendation of the President Pro Tempore of the Senate, and one  
16 shall be appointed by the Governor.

17 (2) One member shall be a physician licensed pursuant to Article 1 of  
18 Chapter 90 of the General ~~Statutes~~. Statutes or a person once licensed  
19 as a physician whose license lapsed while the person was in good  
20 standing with the profession and eligible for licensure. The  
21 appointment shall be made by the Governor and may be made from a  
22 list provided by the North Carolina Medical Society.

23 (3) One member shall be a member of the general public who shall not be  
24 licensed under Chapter 90 of the General Statutes or the spouse of a  
25 person who is so licensed, or have any financial interest, directly or  
26 indirectly, in the profession regulated under this Article. The  
27 appointment shall be made by the Governor.

28 (b) Legislative appointments shall be made in accordance with G.S. 120-121. A  
29 vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

30 (c) Each member of the Board shall serve for a term of three years, ending on  
31 June 30 of the last year of the term. A member shall not be appointed to serve more than  
32 two consecutive terms.

33 (d) The Board shall elect annually a chair and other officers as it deems  
34 necessary. The Board shall meet as often as necessary for the conduct of business but no  
35 less than twice a year. The Board shall establish procedures governing the calling,  
36 holding, and conducting of regular and special meetings. A majority of the Board shall  
37 constitute a quorum.

38 (e) Each member of the Board may receive per diem and reimbursement for  
39 travel and subsistence as set forth in G.S. 93B-5.

40 (f) Members may be removed by the official who appointed the member for  
41 neglect of duty, incompetence, or unprofessional conduct. A member subject to  
42 disciplinary proceedings as a licensee or other professional credential shall be  
43 disqualified from participating in the official business of the Board until the charges  
44 have been ~~resolved~~. resolved by a determination that the misconduct does not rise to the

1 level of disciplinary action resulting in the suspension or revocation of the member's  
2 professional credential."

3 SECTION 4. G.S. 90-626(8) reads as rewritten:

4 "§ 90-626. Powers and duties.

5 The Board shall have the following powers and duties:

6 ...

7 (8) ~~Establish~~ Pursuant to the maximum amounts set by this Article and  
8 other specific authority authorizing fees, establish reasonable fees for  
9 applications for examination, certificates of licensure and renewal, and  
10 other services provided by the Board.

11 ...."

12 SECTION 5. G.S. 90-628(b) reads as rewritten:

13 "(b) The Board may impose the following fees up to the amounts listed below:

- 14 (1) Application for examination..... \$200.00\$300.00
- 15 (1a) Application packet..... 25.00
- 16 (2) ~~License fee~~Initial license ..... 150.00300.00
- 17 (3) License renewal ..... 100.00200.00
- 18 (4) Late renewal penalty ..... 75.00
- 19 (5) License by ~~reciprocity~~endorsement..... 50.00300.00
- 20 (6) Duplicate license ..... 25.00
- 21 (7) ~~Provisional license~~.....150.00."

22 SECTION 6. G.S. 90-629 reads as rewritten:

23 "§ 90-629. Requirements for licensure.

24 Upon application to the Board and the payment of the required fees, an applicant  
25 may be licensed as a massage and bodywork therapist if the applicant meets all of the  
26 following qualifications:

- 27 (1) Has obtained a high school diploma or equivalent.
- 28 (2) Is 18 years of age or older.
- 29 (3) Is of good moral character as determined by the Board.
- 30 (4) Has successfully completed a ~~course of study~~training program  
31 consisting of a minimum of 500 ~~classroom in-class~~ hours of supervised  
32 instruction at a Board-approved school.
- 33 (5) Has ~~successfully~~ passed ~~an~~ a competency assessment examination  
34 administered by a certifying agency that has been approved by the  
35 National Commission of Certifying Agencies (NCCA) and is in good  
36 standing with such agency or has ~~successfully~~ passed an examination  
37 administered or approved by the Board that meets generally accepted  
38 psychometric principles and standards and is approved by the Board.
- 39 (6) Has submitted fingerprint cards in a form acceptable to the Board at  
40 the time the license application is filed and consented to a criminal  
41 history background check by the North Carolina Department of  
42 Justice."

43 SECTION 7. G.S. 90-630 is repealed.

1           **SECTION 8.** Article 36 of Chapter 90 of the General Statutes is amended by  
2 adding the following new section to read:

3 **"§ 90-630.1. Licensure by endorsement.**

4       (a) The Board may issue a license to a practitioner who is duly licensed,  
5 certified, or registered as a massage and bodywork therapist under the laws of another  
6 jurisdiction. The practitioner shall be eligible for licensure by endorsement if all of the  
7 following qualifications are met:

8           (1) The applicant meets the requirements of G.S. 90-629(1), (2), (3), and  
9 (6), and submits the required application and fees to the Board.

10          (2) The applicant currently holds a valid license, certificate, or registration  
11 as a massage and bodywork therapist in another jurisdiction, and that  
12 jurisdiction's requirements for licensure, certification, or registration as  
13 a massage and bodywork therapist are substantially equivalent to or  
14 exceed the requirements for licensure under this Article.

15          (3) The applicant is currently a practitioner in good standing, with no  
16 disciplinary proceeding or unresolved complaint pending anywhere at  
17 the time a license is to be issued in this State.

18          (4) The applicant passes a jurisprudence examination administered by the  
19 Board regarding laws and rules adopted by the Board for licensure  
20 under this Article.

21          (5) The applicant, including applicants credentialed in a foreign country,  
22 demonstrates satisfactory proof of proficiency in the English language.

23       (b) The Board may issue a license by endorsement to a practitioner from another  
24 state that does not license, certify, or register massage and bodywork therapists if all of  
25 the following qualifications are met:

26           (1) The applicant meets the requirements of G.S. 90-629(1), (2), (3), and  
27 (6), and submits the required application and fees to the Board.

28           (2) The applicant has passed a psychometrically valid competency  
29 assessment examination approved by the Board.

30           (3) The applicant has graduated from a massage and bodywork therapy  
31 school that: (i) offers a curriculum that meets or is substantially  
32 equivalent to the standards set forth in the Board's criteria for school  
33 approval; and (ii) is licensed or approved by the regulatory authority  
34 for schools of massage and bodywork therapy in the state, province,  
35 territory, or country in which it operates or is exempt by law.

36           (4) The applicant is currently a practitioner in good standing, with no  
37 disciplinary proceeding or unresolved complaint pending anywhere at  
38 the time a license is to be issued in this State.

39           (5) The applicant passes a jurisprudence examination administered by the  
40 Board regarding laws and rules adopted by the Board for licensure  
41 under this Article.

42           (6) The applicant, including an applicant credentialed in a foreign country,  
43 demonstrates satisfactory proof of proficiency in the English language.

1           (7) Notwithstanding the requirements of subdivisions (2) and (3) of this  
2           subsection, the applicant has other credentials, to be reviewed by the  
3           Board on a case-by-case basis, that are deemed by the Board to be  
4           substantially equivalent to the requirements in subdivisions (2) and (3)  
5           of this subsection.

6           (c) The Board shall maintain a list of jurisdictions whose regulatory standards for  
7           the practice of massage and bodywork therapy have been determined by the Board to be  
8           substantially equivalent to or to exceed the requirements for licensure under this  
9           Article."

10           **SECTION 9.** 90-631(a) reads as rewritten:

11           (a) The Board shall establish rules for the approval of massage and bodywork  
12           therapy schools. These rules shall include:

- 13           (1) Basic curriculum standards that ensure graduates have the education  
14           and skills necessary to carry out the safe and effective practice of  
15           massage and bodywork therapy.  
16           (2) Standards for faculty and learning resources.  
17           (3) Requirements for reporting changes in instructional staff and  
18           curriculum.  
19           (4) A description of the process used by the Board to approve a school.

20           Any school that offers a training program in massage and bodywork therapy ~~may not~~  
21           otherwise exempt from the requirements of this Article shall make application for  
22           approval to the Board. The Board shall grant approval to ~~schools, a school,~~ a school, whether in  
23           this State or another state, that ~~meet~~ meets the criteria established by the Board. The  
24           Board shall maintain a list of approved schools and a list of community college  
25           programs operating pursuant to subsection (b) of this section."

26           **SECTION 10.** G.S. 90-632 reads as rewritten:

27           "**§ 90-632. License renewal and continuing education.**

28           (a) The license to practice under this Article shall be renewed every two years.  
29           ~~When renewing a license, each licensee shall submit to the Board evidence of the~~  
30           ~~successful completion of at least 25 hours of study, as approved by the Board, during~~  
31           ~~the immediately preceding two years, in the practice of massage and bodywork therapy.~~  
32           The initial license renewal is as follows:

- 33           (1) If the licensure period is two years or more, each licensee shall submit  
34           to the Board evidence of the successful completion of at least 24 hours  
35           of study, as approved by the Board, since the initial licensure  
36           application date in the practice of massage and bodywork therapy.  
37           (2) If the licensure period is less than two years, but more than one year,  
38           each licensee shall submit to the Board evidence of the successful  
39           completion of at least 12 hours of study, as approved by the Board,  
40           since the initial licensure application date in the practice of massage  
41           and bodywork therapy.

42           (b) For subsequent license renewals, each licensee shall submit to the Board  
43           evidence of the successful completion of at least 24 hours of study, as approved by the

1 Board, since the previous licensure renewal submission date in the practice of massage  
2 and bodywork therapy."

3 **SECTION 11.** G.S. 90-633 reads as rewritten:

4 **"§ 90-633. Disciplinary action.**

5 (a) The Board may deny, suspend, revoke, or refuse to license a massage and  
6 bodywork therapist or applicant for any of the following:

7 (1) The employment of fraud, deceit, or misrepresentation in obtaining or  
8 attempting to obtain a license or the renewal of a license.

9 (2) The use of drugs or intoxicating liquors to an extent that affects  
10 professional competency.

11 (3) Conviction of an offense under any municipal, State, or federal  
12 narcotic or controlled substance ~~law until proof of rehabilitation can be~~  
13 ~~established.~~law.

14 (4) Conviction of a felony or other public offense involving moral  
15 ~~turpitude until proof of rehabilitation can be established.~~turpitude.

16 (5) An adjudication of insanity or ~~incompetency until proof of recovery~~  
17 ~~from the condition can be established.~~incompetency.

18 (6) Engaging in any act or practice in violation of any of the provisions of  
19 this Article or of any of the rules adopted by the Board, or aiding,  
20 abetting, or assisting any other person in the violation of these  
21 provisions or rules. For purposes of this subdivision, the phrase  
22 'aiding, abetting, or assisting any other person' does not include acts  
23 intended to inform the individual who is not in compliance with this  
24 Article of the steps necessary to comply with this Article or any rules  
25 adopted by the Board.

26 (7) The commission of an act of malpractice, gross negligence, or  
27 incompetency.

28 (8) Practice as a licensee under this Article without a valid certificate or  
29 renewal.

30 (9) Engaging in conduct that could result in harm or injury to the public.

31 (10) The employment of fraud, deceit, or misrepresentation when  
32 communicating with the general public, health care professionals, or  
33 other business professionals.

34 (11) Falsely holding out himself or herself as licensed or certified in any  
35 discipline of massage and bodywork therapy without successfully  
36 completing training approved by the Board in that specialty.

37 (12) The application of systems of activity by a massage and bodywork  
38 therapist during the course of therapy with the intent of providing  
39 sexual stimulation or otherwise pursuing sexual contact.

40 (b) The Board may reinstate a revoked license, revoke censure or other judgment,  
41 or remove other licensure restrictions if the Board finds that the reasons for revocation,  
42 censure, or other judgment, or other licensure restrictions no longer exist and the  
43 massage and bodywork therapist or applicant can reasonably be expected to safely and  
44 properly practice as a massage and bodywork therapist."

1           **SECTION 12.** G.S. 90-634 reads as rewritten:

2   "**§ 90-634. Enforcement; injunctive relief.**

3       (a) It is unlawful for a person not licensed or exempted under this Article to  
4 engage in any of the following:

5           (1) Practice of massage and bodywork therapy.

6           (2) Advertise, represent, or hold out himself or herself to others to be a  
7 massage and bodywork therapist.

8           (3) Use any title descriptive of any branch of massage and bodywork  
9 therapy, as provided in G.S. 90-623, to describe his or her practice.

10       (b) A person who violates subsection (a) of this section shall be guilty of a Class  
11 1 misdemeanor.

12       **(b1) It is unlawful for an individual, association, partnership, corporation, or other**  
13 **entity to open, operate, or advertise a massage and bodywork therapy school without**  
14 **first having obtained the approval required by G.S. 90-637.1.**

15       **(b2) An individual, association, partnership, corporation, or other entity that**  
16 **violates subsection (b1) of this section shall be guilty of a Class 1 misdemeanor.**

17       (c) The Board may make application to superior court for an order enjoining a  
18 violation of this Article. Upon a showing by the Board that a ~~person~~ person, association,  
19 partnership, corporation, or other entity has violated or is about to violate this Article,  
20 the court may grant an injunction, restraining order, or take other appropriate action."

21           **SECTION 13.** G.S. 90-634.1 reads as rewritten:

22   "**§ 90-634.1. Civil penalties; disciplinary costs.**

23       (a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty  
24 not in excess of one thousand dollars (\$1,000) for the violation of any section of this  
25 Article or the violation of any rules adopted by the Board. The continuation of the same  
26 act for which the penalty is imposed shall not be the basis for an additional penalty. The  
27 clear proceeds of any civil penalty assessed under this section shall be remitted to the  
28 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

29       (b) Consideration Factors. – Before imposing and assessing a civil penalty, the  
30 Board shall consider the following factors:

31           (1) The nature, gravity, and persistence of the particular violation.

32           (2) The appropriateness of the imposition of a civil penalty when  
33 considered alone or in combination with other punishment.

34           (3) Whether the violation was willful and malicious.

35           (4) Any other factors that would tend to mitigate or aggravate the  
36 violations found to exist.

37       (c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil  
38 penalties for violations of this Article and rules adopted by the Board.

39       ~~(d) Costs. — The Board may assess the costs of disciplinary actions against a~~  
40 ~~person found to be in violation of this Article or rules adopted by the Board."~~

41           **SECTION 14.** Article 36 of Chapter 90 of the General Statutes is amended  
42 by adding the following new sections to read:

43   "**§ 90-637. Authority to regulate massage and bodywork therapy schools.**

1       (a) The Board shall have authority to administer and enforce this Article and to  
2 grant and issue approval to massage and bodywork therapy schools whether in this State  
3 or another state.

4       (b) For purposes of this Article, 'massage and bodywork therapy school' means  
5 any educational institution that conducts a training program or curriculum for a tuition  
6 charge, which is intended to teach adults the knowledge, skills, and abilities necessary  
7 for the safe, effective, and ethical practice of massage and bodywork therapy, as defined  
8 in this Article.

9       (c) If a school offers training programs at more than one physical location, each  
10 location shall constitute a separate school, as defined in this section.

11       (d) Notwithstanding G.S. 90-625, regarding the regulation of massage and  
12 bodywork therapy schools, the Board shall have the power and duty to:

13           (1) Formulate criteria and standards for approval of massage and  
14 bodywork therapy schools.

15           (2) Provide for adequate investigations of all schools applying for  
16 approval.

17           (3) Issue approvals to those applicant schools meeting the standards  
18 established by the Board.

19           (4) Maintain a list of schools approved under the provisions of this  
20 Article.

21           (5) Provide for periodic inspection of all schools approved in this State  
22 under the provisions of this Article.

23           (6) Require periodic reports of approved schools.

24       (e) The Board shall have general supervision over massage and bodywork  
25 therapy schools in this State for the purpose of protecting the health, safety, and welfare  
26 of the public by having approved schools maintain: (i) adequate, safe, and sanitary  
27 facilities; (ii) sufficient and qualified instructional and administrative staff; and (iii)  
28 satisfactory programs of operation and instructions; and by having the schools carry out  
29 their advertised promises and contracts made with their students and patrons. The Board  
30 may adopt rules to approve massage and bodywork therapy schools as authorized under  
31 G.S. 90-626(9).

32 **"§ 90-637.1. Massage and bodywork therapy school approval required.**

33       No individual, association, partnership, corporation, or other entity shall open,  
34 operate, or advertise a massage and bodywork therapy school in this State unless  
35 approval is first secured from the Board and granted in accordance with the provisions  
36 of this Article and the rules adopted by the Board.

37 **"§ 90-637.2. Authority to establish fees for massage and bodywork therapy school**  
38 **approval.**

39       (a) The Board shall establish a schedule of reasonable fees for approvals and  
40 renewals granted and for inspections performed pursuant to this Article. The fees  
41 collected under this section are intended to cover the administrative costs of the  
42 approval programs. No fee for application approval or renewal of approval shall be  
43 refunded in the event the application is rejected or the approval suspended or revoked.

44       (b) Fees for Board approval of schools are as follows:

1	(1)	<u>Request for Application Approval Package</u>	<u>\$20.00</u>
2	(2)	<u>Initial application for approval (one program)</u>	<u>2,000.00</u>
3	(3)	<u>Initial application for approval of additional</u>	
4		<u>programs (same location)</u>	<u>750.00</u>
5	(4)	<u>Inspection for initial approval or renewal (one program)</u>	<u>1,500.00</u>
6	(5)	<u>Inspection for initial approval or renewal of additional</u>	
7		<u>programs (same location)</u>	<u>500.00</u>
8	(6)	<u>Renewal of approval (one program)</u>	<u>1,000.00</u>
9	(7)	<u>Renewal of approval (each additional program)</u>	<u>750.00</u>

10 (c) A school that is required to have more than one inspection in a fiscal year in  
 11 order to investigate or verify areas of noncompliance with the standards for school  
 12 approval shall pay a fee of one thousand five hundred dollars (\$1,500) for each  
 13 additional inspection.

14 (d) In addition to the inspection fee, schools shall also pay for travel, lodging,  
 15 and subsistence expenses related to the inspection.

16 **"§ 90-637.3. Grounds for suspension, revocation, or refusal of massage and**  
 17 **bodywork therapy school approval; notice and hearing; judicial review.**

18 (a) The Board may deny, suspend, revoke, or refuse to approve a massage and  
 19 bodywork therapy school or program for any of the following:

- 20 (1) The employment of fraud, deceit, or misrepresentation in obtaining or  
 21 attempting to obtain approval of a school or program.
- 22 (2) Engaging in any act or practice in violation of any of the provisions of  
 23 this Article or of any of the rules adopted by the Board, or aiding,  
 24 abetting, or assisting any other person in the violation of the provisions  
 25 of this Article or rules adopted by the Board.
- 26 (3) Failure to require its students to complete the minimum standards in  
 27 order to graduate.
- 28 (4) Operating a massage and bodywork therapy school or additional  
 29 program without approval from this Board.
- 30 (5) Engaging in conduct that could result in harm or injury to the public.
- 31 (6) The employment of fraud, deceit, or misrepresentation when  
 32 communicating with the general public, health care professionals, or  
 33 other business professionals.
- 34 (7) Falsely holding out a school or program as approved by this Board.
- 35 (8) Failure to allow authorized representatives of the Board to conduct  
 36 inspections of the school or refusing to make available to the Board,  
 37 following written notice to the school, the requested information  
 38 pertaining to the requirements for approval set forth in this Article.
- 39 (9) Failure to notify the Board in writing within 30 days of any  
 40 notification it receives from its accrediting agency or the United States  
 41 Department of Education Office of Postsecondary Education of a show  
 42 cause action, probation action, or denial of accreditation.
- 43 (10) The applicant for or holder of school approval has pleaded guilty,  
 44 entered a plea of nolo contendere, or has been found guilty of a crime

1 involving moral turpitude by a judge or jury in any state or federal  
2 court.

3 (b) A refusal to issue, refusal to renew, or suspension or revocation of school  
4 approval under this section shall be made in accordance with Chapter 150B of the  
5 General Statutes.

6 **"§ 90-638. Criminal history record checks of applicants for licensure.**

7 (a) All applicants for licensure shall consent to a criminal history record check.  
8 Refusal to consent to a criminal history record check may constitute grounds for the  
9 Board to deny licensure to an applicant. The Board shall ensure that the State and  
10 national criminal history of an applicant is checked. The Board shall be responsible for  
11 providing to the North Carolina Department of Justice the fingerprints of the applicant  
12 to be checked, a form signed by the applicant consenting to the criminal record check  
13 and the use of fingerprints and other identifying information required by the State or  
14 National Repositories, and any additional information required by the Department of  
15 Justice. The Board shall keep all information obtained pursuant to this section  
16 confidential.

17 (b) The cost of the background check and the fingerprinting shall be borne by the  
18 applicant.

19 (c) If an applicant's criminal history record check reveals one or more  
20 convictions of crimes set forth in G.S. 90-622(2a) of this Article, the conviction shall  
21 not automatically bar licensure. The Board shall consider all of the following factors  
22 regarding the conviction:

23 (1) The level of seriousness of the crime.

24 (2) The date of the crime.

25 (3) The age of the person at the time of the conviction.

26 (4) The circumstances surrounding the commission of the crime, if known.

27 (5) The nexus between the criminal conduct of the person and the job  
28 duties of the position to be filled.

29 (6) The person's prison, jail, probation, parole, rehabilitation, and  
30 employment records since the date the crime was committed.

31 (7) The subsequent commission by the person of a crime set forth in  
32 G.S. 90-622(2a) of this Article.

33 If, after reviewing the factors, the Board determines that the grounds set forth in  
34 subdivisions (1), (2), (3), (4), (5), or (6) of G.S. 90-637.3(a) exist, the Board may deny  
35 licensure of the applicant. The Board may disclose to the applicant information  
36 contained in the criminal history record check that is relevant to the denial. The Board  
37 shall not provide a copy of the criminal history record check to the applicant. The  
38 applicant shall have the right to appear before the Board to appeal the Board's decision.  
39 However, an appearance before the full Board shall constitute an exhaustion of  
40 administrative remedies in accordance with Chapter 150B of the General Statutes.

41 (d) Limited Immunity. – The Board, its officers, and employees, acting in good  
42 faith and in compliance with this section, shall be immune from civil liability for  
43 denying licensure to an applicant based on information provided in the applicant's  
44 criminal history record check."

1           **SECTION 15.** Part 2 of Article 4 of Chapter 114 of the General Statutes is  
2 amended by adding the following new section to read:

3 **"§ 114-19.11B. Criminal record checks of applicants for licensure as massage and**  
4 **bodywork therapists.**

5           The Department of Justice may provide to the North Carolina Board of Massage and  
6 Bodywork Therapy from the State and National Repositories of Criminal Histories the  
7 criminal history of any applicant for licensure pursuant to Article 36 of Chapter 90 of  
8 the General Statutes. Along with the request, the Board shall provide to the Department  
9 of Justice the fingerprints of the applicant, a form signed by the applicant consenting to  
10 the criminal record check and use of fingerprints and other identifying information  
11 required by the State and National Repositories, and any additional information required  
12 by the Department of Justice. The applicant's fingerprints shall be forwarded to the State  
13 Bureau of Investigation for a search of the State's criminal history record file, and the  
14 State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of  
15 Investigation for a national criminal history record check. The Board shall keep all  
16 information obtained pursuant to this section confidential. The Department of Justice  
17 may charge a fee to offset the cost incurred by it to conduct a criminal record check  
18 under this section. The fee shall not exceed the actual cost of locating, editing,  
19 researching, and retrieving the information."

20           **SECTION 16.** G.S. 14-202.10 reads as rewritten:

21 **"§ 14-202.10. Definitions.**

22           As used in this Article:

23           (1) "Adult bookstore" means a bookstore:

- 24           a. Which receives a majority of its gross income during any  
25           calendar month from the sale or rental of publications  
26           (including books, magazines, other periodicals, videotapes,  
27           compact discs, other photographic, electronic, magnetic, digital,  
28           or other imaging medium) which are distinguished or  
29           characterized by their emphasis on matter depicting, describing,  
30           or relating to specified sexual activities or specified anatomical  
31           areas, as defined in this section; or  
32           b. Having as a preponderance (either in terms of the weight and  
33           importance of the material or in terms of greater volume of  
34           materials) of its publications (including books, magazines, other  
35           periodicals, videotapes, compact discs, other photographic,  
36           electronic, magnetic, digital, or other imaging medium) which  
37           are distinguished or characterized by their emphasis on matter  
38           depicting, describing, or relating to specified sexual activities or  
39           specified anatomical areas, as defined in this section.

40           (2) "Adult establishment" means an adult bookstore, adult motion picture  
41           theatre, adult mini motion picture theatre, or adult live entertainment  
42           ~~business, or massage~~ business as defined in this section.

- 1 (3) "Adult live entertainment" means any performance of or involving the  
2 actual presence of real people which exhibits specified sexual activities  
3 or specified anatomical areas, as defined in this section.
- 4 (4) "Adult live entertainment business" means any establishment or  
5 business wherein adult live entertainment is shown for observation by  
6 patrons.
- 7 (5) "Adult motion picture theatre" means an enclosed building or premises  
8 used for presenting motion pictures, a preponderance of which are  
9 distinguished or characterized by an emphasis on matter depicting,  
10 describing, or relating to specified sexual activities or specified  
11 anatomical areas, as defined in this section, for observation by patrons  
12 therein. "Adult motion picture theatre" does not include any adult mini  
13 motion picture theatre as defined in this section.
- 14 (6) "Adult mini motion picture theatre" means an enclosed building with  
15 viewing booths designed to hold patrons which is used for presenting  
16 motion pictures, a preponderance of which are distinguished or  
17 characterized by an emphasis on matter depicting, describing or  
18 relating to specified sexual activities or specified anatomical areas as  
19 defined in this section, for observation by patrons therein.
- 20 ~~(7) "Massage" means the manipulation of body muscle or tissue by~~  
21 ~~rubbing, stroking, kneading, or tapping, by hand or mechanical device.~~
- 22 ~~(8) "Massage business" means any establishment or business wherein~~  
23 ~~massage is practiced, including establishments commonly known as~~  
24 ~~health clubs, physical culture studios, massage studios, or massage~~  
25 ~~parlors.~~
- 26 (9) "Sexually oriented devices" means without limitation any artificial or  
27 simulated specified anatomical area or other device or paraphernalia  
28 that is designed principally for specified sexual activities but shall not  
29 mean any contraceptive device.
- 30 (10) "Specified anatomical areas" means:  
31 a. Less than completely and opaquely covered: (i) human genitals,  
32 pubic region, (ii) buttock, or (iii) female breast below a point  
33 immediately above the top of the areola; or  
34 b. Human male genitals in a discernibly turgid state, even if  
35 completely and opaquely covered.
- 36 (11) "Specified sexual activities" means:  
37 a. Human genitals in a state of sexual stimulation or arousal;  
38 b. Acts of human masturbation, sexual intercourse or sodomy; or  
39 c. Fondling or other erotic touchings of human genitals, pubic  
40 regions, buttocks or female breasts."

41 **SECTION 17.** G.S. 14-202.11(a) reads as rewritten:

42 "(a) No person shall permit any building, premises, structure, or other facility that  
43 contains any adult establishment to contain any other kind of adult establishment. No  
44 person shall permit any building, premises, structure, or other facility in which sexually

1 oriented devices are sold, distributed, exhibited, or contained to contain any adult  
2 establishment. No person shall permit the practice of massage and bodywork therapy, as  
3 defined in G.S. 90-622, in an adult establishment."

4 **SECTION 18.** This act is effective when it becomes law.