

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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SENATE BILL 1314

Short Title: Amend Massage & Bodywork Therapy Act.

(Public)

Sponsors: Senator Cowell.

Referred to: Commerce, Small Business and Entrepreneurship.

March 26, 2007

A BILL TO BE ENTITLED

1
2 AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA MASSAGE
3 AND BODYWORK THERAPY PRACTICE ACT TO EXPAND THE EXISTING
4 LAWS REGULATING MASSAGE AND BODYWORK THERAPY SCHOOLS;
5 TO AUTHORIZE THE BOARD TO ESTABLISH FEES FOR LICENSING
6 MASSAGE AND BODYWORK THERAPY SCHOOLS; TO ALLOW THE
7 DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD
8 CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL
9 HISTORY OF APPLICANTS FOR LICENSURE TO PRACTICE MASSAGE
10 AND BODYWORK THERAPY; AND TO AMEND THE EXISTING LAWS
11 REGARDING ADULT ENTERTAINMENT.

12 The General Assembly of North Carolina enacts:

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

14 "**§ 90-621. Declaration of purpose.**

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

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

28 "**§ 90-622. Definitions.**

29 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) ~~(1)~~ 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, 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.