

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

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**SENATE BILL 1314  
Healthcare Committee Substitute Adopted 7/11/07  
Finance Committee Substitute Adopted 7/26/07**

Short Title: Amend Massage & Bodywork Therapy Act.

(Public)

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Sponsors:

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Referred to:

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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; AND 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.

11 The General Assembly of North Carolina enacts:

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

13 "**§ 90-621. Declaration of purpose.**

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

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

26 "**§ 90-622. Definitions.**

27 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 crime, whether a misdemeanor or felony,  
16          that bears on an applicant's fitness for licensure to practice massage  
17          and bodywork therapy. The crimes include, but are not limited to, the  
18          criminal offenses set forth in any of the following Articles of Chapter  
19          14 of the General Statutes: Article 5, Counterfeiting and Issuing  
20          Monetary Substitutes; Article 5A, Endangering Executive and  
21          Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other  
22          Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and  
23          Abduction; Article 13, Malicious Injury or Damage by Use of  
24          Explosive or Incendiary Device or Material; Article 14, Burglary and  
25          Other Housebreakings; Article 15, Arson and Other Burnings; Article  
26          16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article  
27          19, 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.
- 11 (3a) Massage and bodywork therapy school. – Any educational institution  
12 that conducts a training program or curriculum for a tuition charge,  
13 which is intended to teach adults the knowledge, skills, and abilities  
14 necessary for the safe, effective, and ethical practice of massage and  
15 bodywork therapy.
- 16 (4) Massage and bodywork therapist. – A person licensed under this  
17 Article.
- 18 (5) Practice of massage and bodywork therapy. – The application of  
19 massage and bodywork therapy to any person for a fee or other  
20 consideration. ~~"Practice of massage and bodywork therapy" does not~~  
21 ~~include the diagnosis of illness or disease, medical procedures,~~  
22 ~~chiropractic adjustive procedures, electrical stimulation, ultrasound,~~  
23 ~~prescription of medicines, or the use of modalities for which a license~~  
24 ~~to practice medicine, chiropractic, nursing, physical therapy,~~  
25 ~~occupational therapy, acupuncture, or podiatry is required by law."~~

26 **SECTION 2.1.** G.S. 90-623 is amended by adding a new subsection to read:

27 "(d) The practice of massage and bodywork therapy shall not include any of the  
28 following:

- 29 (1) The diagnosis of illness or disease.  
30 (2) Medical procedures, chiropractic adjustive procedures, electrical  
31 stimulation, ultrasound, or prescription of medicines.  
32 (3) The use of modalities for which a license to practice medicine,  
33 chiropractic, nursing, physical therapy, occupational therapy,  
34 acupuncture, or podiatry is required by law.  
35 (4) Sexual activity, which shall mean any direct or indirect physical  
36 contact, by any person or between persons, which is intended to  
37 erotically stimulate either person, or which is likely to cause such  
38 stimulation and includes sexual intercourse, fellatio, cunnilingus,  
39 masturbation, or anal intercourse. As used in this subdivision,  
40 masturbation means the manipulation of any body tissue with the  
41 intent to cause sexual arousal. Sexual activity can involve the use of  
42 any device or object and is not dependent on whether penetration,  
43 orgasm, or ejaculation has occurred."

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

1 **"§ 90-625. North Carolina Board of Massage and Bodywork Therapy.**

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

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

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

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

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

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

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

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

41 (f) Members may be removed by the official who appointed the member for  
42 neglect of duty, incompetence, or unprofessional conduct. A member subject to  
43 disciplinary proceedings as a licensee or other professional credential shall be  
44 disqualified from participating in the official business of the Board until the charges

1 have been ~~resolved~~ resolved by a determination that the misconduct does not rise to the  
2 level of disciplinary action resulting in the suspension or revocation of the member's  
3 professional credential."

4 **SECTION 3.1.** The current terms of the two members of the Board  
5 appointed by the General Assembly upon the recommendation of the President Pro  
6 Tempore of the Senate are each extended to a total period of five years, ending on June  
7 30 of the last year of each extended term. Upon the completion of these five-year terms,  
8 all future members of the Board shall serve three-year terms, as provided in  
9 G.S. 90-625(c).

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

11 **"§ 90-626. Powers and duties.**

12 The Board shall have the following powers and duties:

13 ...

- 14 (8) ~~Establish~~ Pursuant to the maximum amounts set by this Article and  
15 other specific authority authorizing fees, establish reasonable fees for  
16 applications for examination, certificates of licensure and renewal,  
17 approval of massage and bodywork therapy schools, and other services  
18 provided by the Board.

19 ...."

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

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

- |   |          |          |
|---|----------|----------|
| 22 (1) Application for examination.....                   | \$200.00 | \$300.00 |
| 23 (1a) <u>Application packet.....</u>                    |          | 25.00    |
| 24 (2) <del>License fee</del> Initial license.....        | 150.00   | 300.00   |
| 25 (3) License renewal.....                               | 100.00   | 200.00   |
| 26 (4) Late renewal penalty .....                         |          | 75.00    |
| 27 (5) License by <del>reciprocity</del> endorsement..... | 50.00    | 300.00   |
| 28 (6) Duplicate license .....                            | 25.00    | 25.00.   |
| 29 (7) <del>Provisional license.....</del>                |          | 150.00." |

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

31 **"§ 90-629. Requirements for licensure.**

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

- 35 (1) Has obtained a high school diploma or equivalent.
- 36 (2) Is 18 years of age or older.
- 37 (3) Is of good moral character as determined by the Board.
- 38 (4) Has successfully completed a ~~course of study~~ training program  
39 consisting of a minimum of 500 ~~classroom~~ in-class hours of supervised  
40 instruction at a Board-approved school.
- 41 (5) Has ~~successfully~~ passed an a competency assessment examination  
42 administered by a certifying agency that has been approved by the  
43 National Commission of Certifying Agencies (NCCA) and is in good  
44 standing with such agency or has successfully passed an examination

1 ~~administered or approved by the Board.~~that meets generally accepted  
2 psychometric principles and standards and is approved by the Board.

- 3 (6) Has submitted fingerprint cards in a form acceptable to the Board at  
4 the time the license application is filed and consented to a criminal  
5 history record check by the North Carolina Department of Justice."

6 **SECTION 7.** G.S. 90-630 is repealed.

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

9 "**§ 90-630.1. Licensure by endorsement.**

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

- 14 (1) The applicant meets the requirements of G.S. 90-629(1), (2), (3), and  
15 (6) and submits the required application and fees to the Board.  
16 (2) The applicant currently holds a valid license, certificate, or registration  
17 as a massage and bodywork therapist in another jurisdiction, and that  
18 jurisdiction's requirements for licensure, certification, or registration as  
19 a massage and bodywork therapist are substantially equivalent to or  
20 exceed the requirements for licensure under this Article.  
21 (3) The applicant is currently a practitioner in good standing, with no  
22 disciplinary proceeding or unresolved complaint pending in any  
23 jurisdiction at the time a license is to be issued in this State.  
24 (4) The applicant passes a jurisprudence examination administered by the  
25 Board regarding laws and rules adopted by the Board for licensure  
26 under this Article.  
27 (5) The applicant, including applicants credentialed in a foreign country,  
28 demonstrates satisfactory proof of proficiency in the English language.

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

- 32 (1) The applicant meets the requirements of G.S. 90-629(1), (2), (3), and  
33 (6) and submits the required application and fees to the Board.  
34 (2) The applicant has passed a competency assessment examination that  
35 meets generally accepted psychometric principles and standards and is  
36 approved by the Board.  
37 (3) The applicant has graduated from a massage and bodywork therapy  
38 school that: (i) offers a curriculum that meets or is substantially  
39 equivalent to the standards set forth in the Board's criteria for school  
40 approval; and (ii) is licensed or approved by the regulatory authority  
41 for schools of massage and bodywork therapy in the state, province,  
42 territory, or country in which it operates or is exempt by law.

- 1           (4) The applicant is currently a practitioner in good standing, with no  
2           disciplinary proceeding or unresolved complaint pending in any  
3           jurisdiction at the time a license is to be issued in this State.  
4           (5) The applicant passes a jurisprudence examination administered by the  
5           Board regarding laws and rules adopted by the Board for licensure  
6           under this Article.  
7           (6) The applicant, including an applicant credentialed in a foreign country,  
8           demonstrates satisfactory proof of proficiency in the English language.  
9           (7) Notwithstanding the requirements of subdivisions (2) and (3) of this  
10          subsection, the applicant has other credentials, to be reviewed by the  
11          Board on a case-by-case basis, that are deemed by the Board to be  
12          substantially equivalent to the requirements in subdivisions (2) and (3)  
13          of this subsection.

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

18          **SECTION 9.** G.S. 90-631(a) reads as rewritten:

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

- 21               (1) Basic curriculum standards that ensure graduates have the education  
22               and skills necessary to carry out the safe and effective practice of  
23               massage and bodywork therapy.  
24               (2) Standards for faculty and learning resources.  
25               (3) Requirements for reporting changes in instructional staff and  
26               curriculum.  
27               (4) A description of the process used by the Board to approve a school.

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

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

35          "**§ 90-632. License renewal and continuing education.**

36               (a) The license to practice under this Article shall be renewed every two years.  
37          ~~When renewing a license, each licensee shall submit to the Board evidence of the~~  
38          ~~successful completion of at least 25 hours of study, as approved by the Board, during~~  
39          ~~the immediately preceding two years, in the practice of massage and bodywork therapy.~~

40               (b) The continuing education requirement for the initial license renewal is as  
41          follows:

- 42               (1) If the licensure period is two years or more, each licensee shall submit  
43               to the Board evidence of the successful completion of at least 24 hours

of study, as approved by the Board, since the initial licensure application date in the practice of massage and bodywork therapy.

(2) If the licensure period is less than two years, but more than one year, each licensee shall submit to the Board evidence of the successful completion of at least 12 hours of study, as approved by the Board, since the initial licensure application date in the practice of massage and bodywork therapy.

(c) For subsequent license renewals, each licensee shall submit to the Board evidence of the successful completion of at least 24 hours of study, as approved by the Board, since the previous licensure renewal submission date in the practice of massage and bodywork therapy."

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

"§ 90-633. Disciplinary action.

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

- (1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.
- (2) The use of drugs or intoxicating liquors to an extent that affects professional competency.
- (3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.~~law.~~
- (4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.~~turpitude.~~
- (5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.~~incompetency.~~
- (6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules. For purposes of this subdivision, the phrase 'aiding, abetting, or assisting any other person' does not include acts intended to inform the individual who is not in compliance with this Article of the steps necessary to comply with this Article or any rules adopted by the Board.
- (7) The commission of an act of malpractice, gross negligence, or incompetency.
- (8) Practice as a licensee under this Article without a valid certificate or renewal.
- (9) Engaging in conduct that could result in harm or injury to the public.
- (10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

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

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

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

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

13 **"§ 90-634. Enforcement; injunctive relief.**

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

16 (1) Practice of massage and bodywork therapy.

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

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

21 (b) A person who violates subsection (a) of this section shall be guilty of a Class  
22 1 misdemeanor.

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

26 (b2) An individual, association, partnership, corporation, or other entity that  
27 violates subsection (b1) of this section shall be guilty of a Class 3 misdemeanor.

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

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

33 **"§ 90-634.1. Civil penalties; disciplinary costs.**

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

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

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

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

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

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

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

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

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

10 **"§ 90-637. Authority to regulate massage and bodywork therapy schools.**

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

14 (b) If a massage and bodywork therapy school offers training programs at more  
15 than one physical location, each location shall constitute a separate massage and  
16 bodywork therapy school.

17 (c) Notwithstanding G.S. 90-626, regarding the regulation of massage and  
18 bodywork therapy schools, the Board shall have the power and duty to:

19 (1) Formulate criteria and standards for approval of massage and  
20 bodywork therapy schools.

21 (2) Provide for adequate investigations of all massage and bodywork  
22 therapy schools applying for approval.

23 (3) Issue approvals to those applicant massage and bodywork therapy  
24 schools meeting the standards established by the Board.

25 (4) Maintain a list of massage and bodywork therapy schools approved  
26 under the provisions of this Article.

27 (5) Provide for periodic inspection of all massage and bodywork therapy  
28 schools approved in this State under the provisions of this Article.

29 (6) Require periodic reports of approved massage and bodywork therapy  
30 schools.

31 (d) The Board shall have general supervision over massage and bodywork  
32 therapy schools in this State for the purpose of protecting the health, safety, and welfare  
33 of the public by requiring that approved massage and bodywork therapy schools  
34 maintain: (i) adequate, safe, and sanitary facilities; (ii) sufficient and qualified  
35 instructional and administrative staff; and (iii) satisfactory programs of operation and  
36 instructions; and by requiring that massage and bodywork therapy schools carry out  
37 their advertised promises and contracts made with their students and patrons. The Board  
38 may adopt rules to approve massage and bodywork therapy schools as authorized under  
39 G.S. 90-626(9).

40 **"§ 90-637.1. Massage and bodywork therapy school approval required.**

41 No individual, association, partnership, corporation, or other entity shall open,  
42 operate, or advertise a massage and bodywork therapy school in this State unless it has  
43 first complied with all the requirements of this Article and rules adopted by the Board  
44 and has been approved by the Board.

1 **"§ 90-637.2. Authority to establish fees for massage and bodywork therapy school**  
2 **approval.**

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

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

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

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

22 **"§ 90-637.3. Grounds for suspension, revocation, or refusal of massage and**  
23 **bodywork therapy school approval; notice and hearing; judicial review.**

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

- 26 (1) The employment of fraud, deceit, or misrepresentation in obtaining or  
27 attempting to obtain approval of a massage and bodywork therapy  
28 school.
- 29 (2) Engaging in any act or practice in violation of any of the provisions of  
30 this Article or of any of the rules adopted by the Board, or aiding,  
31 abetting, or assisting any other person in the violation of the provisions  
32 of this Article or rules adopted by the Board.
- 33 (3) Failure to require that its students must complete the minimum  
34 standards in order to graduate.
- 35 (4) Operating a massage and bodywork therapy school without approval  
36 from this Board.
- 37 (5) Engaging in conduct that could result in harm or injury to the public.
- 38 (6) The employment of fraud, deceit, or misrepresentation when  
39 communicating with the general public, health care professionals, or  
40 other business professionals.
- 41 (7) Falsely holding out a massage and bodywork therapy school as  
42 approved by this Board.
- 43 (8) Failure to allow authorized representatives of the Board to conduct  
44 inspections of the massage and bodywork therapy school or refusing to

1           make available to the Board, following written notice to the massage  
2           and bodywork therapy school, the requested information pertaining to  
3           the requirements for approval set forth in this Article.

4           (9) Failure to notify the Board in writing within 30 days of any  
5           notification it receives from its accrediting agency or the United States  
6           Department of Education Office of Postsecondary Education of a show  
7           cause action, probation action, or denial of accreditation.

8           (10) The applicant for or holder of massage and bodywork therapy school  
9           approval has pleaded guilty, entered a plea of nolo contendere, or has  
10           been found guilty of a crime involving moral turpitude by a judge or  
11           jury in any state or federal court.

12           (b) A refusal to issue, refusal to renew, or suspension or revocation of massage  
13           and bodywork therapy school approval under this section shall be made in accordance  
14           with Chapter 150B of the General Statutes.

15           **§ 90-638. Criminal history record checks of applicants for licensure.**

16           (a) All applicants for licensure shall consent to a criminal history record check.  
17           Refusal to consent to a criminal history record check may constitute grounds for the  
18           Board to deny licensure to an applicant. The Board shall ensure that the State and  
19           national criminal history of an applicant is checked. The Board shall be responsible for  
20           providing to the North Carolina Department of Justice the fingerprints of the applicant  
21           to be checked, a form signed by the applicant consenting to the criminal record check  
22           and the use of fingerprints and other identifying information required by the State or  
23           National Repositories, and any additional information required by the Department of  
24           Justice. The Board shall keep all information obtained pursuant to this section  
25           confidential.

26           (b) The cost of the criminal history record check and the fingerprinting shall be  
27           borne by the applicant.

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

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

33           (2) The date of the crime.

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

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

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

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

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

42           If, after reviewing the factors, the Board determines that any of the grounds set forth  
43           in the subdivisions of G.S. 90-633(a) exist, the Board may deny licensure of the  
44           applicant. The Board may disclose to the applicant information contained in the

1 criminal history record check that is relevant to the denial. The Board shall not provide  
2 a copy of the criminal history record check to the applicant. The applicant shall have the  
3 right to appear before the Board to appeal the Board's decision. However, an appearance  
4 before the full Board shall constitute an exhaustion of administrative remedies in  
5 accordance with Chapter 150B of the General Statutes.

6 (d) The Board, its officers, and employees, acting in good faith and in  
7 compliance with this section, shall be immune from civil liability for denying licensure  
8 to an applicant based on information provided in the applicant's criminal history record  
9 check."

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

12 **"§ 114-19.11B. Criminal record checks of applicants for licensure as massage and**  
13 **bodywork therapists.**

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

29 **SECTION 16.** This act becomes effective October 1, 2007, and applies to  
30 the actions of therapists and schools on or after that date and to massage and bodywork  
31 therapist applications for licensure, and massage and bodywork therapy school  
32 applications for Board approval submitted to the Board on or after that date.