

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 185

Short Title: License Massage Therapy Establishments.

(Public)

Sponsors: Representatives Arnold; and Mitchell.

Referred to: Rules, Calendar, and Operations of the House.

February 14, 1994

1 A BILL TO BE ENTITLED  
2 AN ACT TO LICENSE AND REGULATE MASSAGE THERAPY  
3 ESTABLISHMENTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes are amended by adding a new Chapter to  
6 read:

7 **"CHAPTER 89F.**

8 **"MASSAGE THERAPY ESTABLISHMENT LICENSING ACT.**

9 **"§ 89F-1. Purpose and objective.**

10 The purpose of this Chapter is to protect the public health, safety, welfare, and  
11 morals of the citizens of North Carolina. In order to accomplish this purpose, the  
12 following license provisions and regulations are adopted for the privilege of carrying on  
13 the business, trade, or profession of massage and for the operation of carrying on of the  
14 business, trade, or profession commonly known as a massage wherein massage or  
15 physical manipulation of the human body is carried on or practiced. The objective is to  
16 permit only the business or profession of massage therapy as authorized under this  
17 Chapter.

18 **"§ 89F-2. Definitions.**

19 For the purposes of this Chapter, unless the context otherwise requires, the following  
20 definitions shall apply:

- 21 (1) 'Employee' means any person over 18 years of age, other than a  
22 masseur or masseuse, who renders any service in connection with the  
23 operation of a massage business and receives compensation from the  
24 operator of the business or from patrons.

- 1           (2) 'Establishment' or 'massage establishment' means any massage therapy  
2 establishment having a source of income or compensation derived  
3 from the practice of massage therapy as defined in subdivision (4)  
4 below, and which has a fixed place of business where any person, firm,  
5 association, or corporation engages in or carries on any of the activities  
6 as defined in subdivision (4) below.
- 7           (3) 'Licensee' means any person to whom a license has been issued to own  
8 or operate a massage establishment as defined herein.
- 9           (4) 'Massage therapy' means any method of pressure on or friction against,  
10 or stroking, kneading, rubbing, tapping, pounding, vibrating, or  
11 stimulating of the external parts of the human body with the hands or  
12 with the aid of any mechanical electrical apparatus or appliance with  
13 or without supplementary aids such as rubbing alcohol, liniments,  
14 antiseptics, oils, powder, creams, lotions, ointment, or other similar  
15 preparations commonly used in the practice of massage, under  
16 circumstances in which it is reasonably expected that the person to  
17 whom the treatment is provided or some third person on his or her  
18 behalf will pay money or give any other consideration or gratuity  
19 therefor.
- 20           (5) 'Masseur or masseuse' means any person who, for consideration,  
21 engages in the practice of massage therapy as defined in subdivision  
22 (4) above.
- 23           (6) 'Outcall massage service' means any business, the function of which is  
24 to engage in or carry on massages at a location designated by the  
25 customer or client rather than at a massage establishment as defined in  
26 subdivision (2).
- 27           (7) 'Patron' means any person over 18 years of age who receives a  
28 massage for which it is reasonably expected that the person will pay  
29 money or give consideration.
- 30           (8) 'Permittee' means any person to whom a permit has been issued to act  
31 in the capacity of a masseur or masseuse as defined in this section.
- 32           (9) 'Person' means any person to whom a permit has been issued to act in  
33 the capacity of a masseur or masseuse as defined in this section.
- 34           (10) 'Recognized school' means any school or educational institution  
35 licensed to do business as a school or educational institution in the  
36 state in which it is located, or any school recognized by, approved by,  
37 or affiliated with the American Massage and Therapy Association,  
38 Inc., and which has as one of its purposes the teaching of the theory,  
39 method, profession, or work of massage, and which requires the  
40 successful completion of a course of study or learning not less than 70  
41 hours, before the student shall be furnished with a diploma or  
42 certificate of graduation.
- 43           (11) 'Sexual or genital area' means genitals, pubic area, buttocks, anus, or  
44 perineum of any person, or the vulva or breasts of a female.

1 **"§ 89F-3. License or permit required.**

2 (a) No person shall engage in or carry out the business of massage therapy  
3 without a valid business license issued pursuant to the provisions of this Chapter for  
4 each location in which the person conducts the business of massage.

5 (b) No person shall practice massage therapy as an employee or otherwise,  
6 without a valid permit issued pursuant to this Chapter.

7 **"§ 89F-4. Exemptions.**

8 This Chapter does not apply to the following individuals while engaged in the  
9 performance of the duties of their respective professions:

10 (1) Physicians, surgeons, chiropractors, osteopaths, physical therapists, or  
11 podiatrists who are duly licensed to practice their respective  
12 professions in this State.

13 (2) Nurses who are registered or licensed under the laws of this State.

14 (3) Athletic trainers who are employed by a recognized educational  
15 institution or professional sports team, and whose work is limited to  
16 athletic team members.

17 (4) Barbers and beauticians who are duly licensed in this State, except that  
18 this exemption shall apply solely to the massaging of the neck, face,  
19 scalp and hair of the head of the customer or client for cosmetic or  
20 beautifying purposes.

21 **"§ 89F-5. Application for massage establishment license.**

22 (a) Every applicant for a license to maintain, operate, or conduct a massage  
23 therapy establishment within the city limits of a city shall file an application under oath  
24 on a form provided by the city with the chief of police and pay a nonrefundable annual  
25 license fee, which shall be one hundred dollars (\$100.00) per year or any part thereof.  
26 The application, once accepted, shall be investigated by the city police department and  
27 copies of the application shall be sent to the city fire department in the district in which  
28 the establishment is located within five days of receipt. Compliance with the North  
29 Carolina Building Code shall be verified within 30 days of receipt of the application.

30 (b) Every applicant for a license to maintain, operate, or conduct a massage  
31 establishment outside of city limits shall file an application under oath or a form  
32 provided by the sheriff's office with the sheriff of the county in which the establishment  
33 is located and pay a nonrefundable annual license fee, which shall be one hundred  
34 dollars (\$100.00) per year or any part thereof. The application, once accepted, shall be  
35 investigated by the sheriff's department and copies of the application shall be sent to the  
36 fire department of the fire district in which the establishment is located within five days  
37 of receipt. Compliance with the North Carolina Building Code shall be verified within  
38 30 days of receipt of the application.

39 (c) Each application shall contain the following information:

40 (1) A definition of the service to be provided.

41 (2) The location, mailing address, and all telephone numbers of the  
42 premises where the business is to be conducted.

43 (3) The name and residence address of each applicant. If the applicant is a  
44 corporation, the names and the residence addresses of each of the

1 officers and directors of said corporation and of each stockholder  
2 owning more than ten percent (10%) of any class of stock of the  
3 corporation, and the address of the corporation itself, if different from  
4 the address of the establishment. If the applicant is a partnership, the  
5 names and residence addresses of each of the partners including  
6 limited partners, and the address of the partnership itself, if different  
7 from the address of the establishment. If any of the foregoing persons  
8 have resided at an address for less than two years prior to the date of  
9 filing the application, then the person shall provide each address of  
10 residence during the previous two years.

11 (4) Proof that the applicant is at least 18 years of age.

12 (5) The applicant's height, weight, color of eyes and hair, and sex.

13 (6) Copy of identification, such as drivers license and social security card.

14 (7) One photograph of the applicant at least two inches by two inches and  
15 a complete set of the applicant's fingerprints, which shall be taken by  
16 the chief of police or his agent. If the applicant is a corporation, one  
17 photograph at least two inches by two inches of all officers, directors,  
18 and managing agents of said corporation and a complete set of the  
19 officers' and agents' fingerprints, which shall be taken by the chief of  
20 police, the sheriff, or their agents. If the applicant is a partnership, a  
21 front-face photograph at least two inches by two inches in size of each  
22 partner, including a limited partner in said partnership, and a complete  
23 set of each partner or limited partner's fingerprints, which shall be  
24 taken by the chief of police, sheriff, or their agents.

25 (8) The business, occupation, or employment of the applicant for the three  
26 years immediately preceding the date of application.

27 (9) The massage or similar business license history of the applicant;  
28 whether the applicant, in previously operating in this or another city or  
29 state has had a business license revoked or suspended, the reason for  
30 the suspension or revocation, and the business activity or occupation  
31 subsequent to the suspension or revocation.

32 (10) All criminal convictions other than misdemeanor traffic violations,  
33 including the dates of convictions, nature of the crimes, and places  
34 convicted.

35 (11) The name and address of each employee practicing massage therapy  
36 who is or will be employed in the establishment.

37 (12) Applicant must furnish a diploma or certificate of graduation from a  
38 recognized school or other institution of learning wherein the method,  
39 profession, and work of massage is taught; provided, however, that if  
40 the applicant will not personally engage in the practice of massage as  
41 defined herein, the applicant need not possess a diploma or certificate  
42 of graduation from a recognized school or institution of learning.

- 1           (13) The name and address of any business or other massage establishment  
2           that is owned or operated by any person whose name is required to be  
3           given pursuant to this section.
- 4           (14) A description of any other business to be operated on the same  
5           premises or on adjoining premises owned or controlled by the  
6           applicant.
- 7           (15) Authorization for the licensing city or county, its agents and  
8           employees, to seek information and conduct an investigation into the  
9           truth of the statements set forth in the application and the qualifications  
10           of the applicant for the permit.
- 11           (16) The names, current addresses, and written statements of at least three  
12           bona fide permanent residents of the United States that the applicant is  
13           of good moral character. These references must be persons other than  
14           relatives and business associates.
- 15           (17) All identification and information necessary to verify required  
16           information provided by all applicants.
- 17           (18) Written declaration by the applicant, under penalty of perjury, that the  
18           foregoing information contained in the application is true and correct,  
19           said declaration being duly dated and signed.

20           Upon the completion of the application and the furnishing of all foregoing  
21           information, the police department or sheriff's department shall accept the application  
22           for the necessary investigations. The holder of an establishment license shall notify the  
23           chief of police or the sheriff of each change in any of the data required to be furnished  
24           by this section within 10 days after the change occurs.

25           **"§ 89F-6. Application for masseur's or masseuse's permits.**

26           Application for a masseur's or a masseuse's business permit shall be made on a form  
27           provided by the city to the chief of police or by the county to the sheriff in the same  
28           manner as provided above for massage establishment licenses, accompanied by the  
29           annual nonrefundable permit fee of seventy-five dollars (\$75.00) per year or part  
30           thereof. The application shall contain the following information:

- 31           (1) The business address and all telephone numbers where massage  
32           therapy is to be practiced.
- 33           (2) Name and current residence address, and all names, nicknames, and  
34           aliases by which the applicant has been known. If the applicant has  
35           the listed address for less than two years, then the applicant shall list  
36           each address at which the applicant resided during the previous two  
37           years.
- 38           (3) Social security number, drivers license number, and date of birth.
- 39           (4) Applicant's weight, height, color of hair and eyes, and sex.
- 40           (5) Written evidence that the applicant is at least 18 years of age.
- 41           (6) A complete statement of all convictions of the applicant for any felony  
42           or misdemeanor or violation of a local ordinance except misdemeanor  
43           traffic violations.
- 44           (7) Fingerprints of the applicant taken by the police department.

- 1           (8)    Two front-face portrait photographs taken within 30 days of the date of  
2           application and at least two inches by two inches in size.
- 3           (9)    The name and address of the recognized school attended, the dates  
4           attended, and a copy of the diploma or certificate of graduation  
5           awarded the applicant showing the applicant has successfully  
6           completed not less than 70 hours of instruction.
- 7           (10)   The massage or similar business history and experience for three years  
8           prior to the date of application, including, but not limited to, whether  
9           or not the applicant, in previously operating in this or another city or  
10          state under a license or permit, has had the license or permit denied,  
11          revoked, or suspended, the reasons for the suspension or revocation,  
12          and the business activities or occupations subsequent to the denial,  
13          suspension, or revocation.
- 14          (11)   A medical certificate signed by a physician licensed to practice in the  
15          State within seven days of the date of the application. The certificate  
16          shall state that the applicant was examined by the certifying physician  
17          and that the applicant is free of communicable disease. The additional  
18          information required shall be provided at the applicant's expense.
- 19          (12)   Other information, identification, and physical examination of the  
20          person deemed necessary by the police chief or sheriff in order to  
21          discover the truth of the matters required to be set forth in the  
22          application.
- 23          (13)   The names, current addresses, and written statements of at least three  
24          bona fide permanent residents of the United States that the applicant is  
25          of good moral character. These references must be persons other than  
26          relatives and business associates.
- 27          (14)   Authorization for the city or county and its agents and employees to  
28          seek information and conduct an investigation into the truth of the  
29          statements set forth in the application and the qualifications of the  
30          applicant for the permit.
- 31          (15)   Written declaration by the applicant, duly notarized under penalty of  
32          perjury, that the information contained in the application is true and  
33          accurate to the best of the applicant's knowledge.

34    **"§ 89F-7. Issuance of license or permit for a massage establishment.**

35          The chief of police or sheriff shall issue a license for a massage establishment or a  
36          permit for a masseur or masseuse, if all requirements for a massage establishment or  
37          massage permit described in this section are met unless:

- 38          (1)    The correct permit or license fee has not been tendered, and in the case  
39          of a check, or bank draft, not honored with payment upon presentation;
- 40          (2)    The operation as proposed by the applicant, if permitted, would not  
41          comply with all applicable laws, including, but not limited to, building,  
42          zoning, and health regulations;
- 43          (3)    Any person listed in the application, as required by G.S. 89F-5 or G.S.  
44          89F-6, who has been convicted of any of the following offenses:

- 1           a.     An offense involving the use of force and violence upon the  
 2           person of another that amounts to a felony.  
 3           b.     An offense involving sexual misconduct.  
 4           c.     An offense involving narcotics, dangerous drugs, or dangerous  
 5           weapons that amounts to a felony.

6           The chief of police or sheriff may issue a license or permit to any  
 7           person convicted of any of the crimes described in this section if the  
 8           conviction occurred at least five years prior to the date of application  
 9           and the person has had no subsequent felony convictions for crimes  
 10          mentioned in this section;

- 11          (4)   The applicant has knowingly made a false, misleading, or fraudulent  
 12          statement of fact in the permit application or in any document required  
 13          in conjunction therewith;  
 14          (5)   The applicant has had a massage business, masseur, or other similar  
 15          permit or license revoked by a municipality or any other state or local  
 16          agency within five years prior to the date of application; or  
 17          (6)   The applicant, if an individual, or any of the officers and directors, if  
 18          the applicant is a corporation; or any of the partners, including limited  
 19          partners, if the applicant is a partnership; and the manager or other  
 20          person principally in charge of the operation of the business, is not  
 21          over the age of 18 years.

22    **"§ 89F-8. Approval or denial; application.**

23          The chief of police or sheriff shall approve or deny an application for a license or  
 24          permit under this Chapter within a reasonable period of time and in any event shall  
 25          approve or deny said license or permit 60 days from the date the application was  
 26          accepted. The chief of police or sheriff shall make written findings of fact to support a  
 27          denial of a license or permit. Any applicant whose application for a license or permit is  
 28          denied shall have the right to appeal the denial by giving written notice to the city  
 29          council or county board of commissioners within seven days from the date of denial. In  
 30          the case of an appeal, due process shall be accorded the applicant pursuant to G.S. 89F-  
 31          15.

32    **"§ 89F-9. Waiver of application requirements.**

33          The requirements of this Chapter do not apply if the applicant furnishes satisfactory  
 34          evidence that: (i) the applicant attended not less than 70 hours of instruction in the  
 35          school within or without this State or in any foreign country that provides education  
 36          substantially equal to or in excess of the educational requirements of this Chapter; or (ii)  
 37          the applicant has served a training apprenticeship of not less than five years under a  
 38          person who, at that time of apprenticeship, met the requirements of G.S. 89F-6 and  
 39          further, that the applicant has been actively engaged in the business, trade, or profession  
 40          of massage for not less than 10 years, including the apprenticeship period.

41    **"§ 89F-10. Multiple massage establishments.**

42          Should any massage business have more than one location where the business of  
 43          massage is pursued, then a license stating both the address of the principal place of  
 44          business, and of the other location(s) shall be issued by the chief of police or sheriff

1 upon the tender of a license fee of one hundred dollars (\$100.00) per location. Licenses  
2 issued for other locations shall terminate on the same date as that of the principal place  
3 of business, regardless of the date of issuance.

4 **"§ 89F-11. Posting of license or permit.**

5 (a) Every masseur or masseuse shall post the permit required by this Chapter in  
6 the work area.

7 (b) Every person, corporation, partnership, or association licensed under this  
8 Chapter shall display the license required by this Chapter in a prominent place.

9 **"§ 89F-12. Register of employees.**

10 The licensee or person designated by the licensee of a massage establishment shall  
11 maintain a register of all persons employed at any time as masseurs or masseuses. The  
12 register shall be available at the massage establishment during regular business hours.

13 **"§ 89F-13. Revocation or suspension of license.**

14 Any license issued for a massage establishment may be revoked or suspended after  
15 notice and hearing, for good cause, where it appears that the licensee has violated any of  
16 the provisions of this Chapter, or where any employee of the licensee, including a  
17 masseur or masseuse, is engaged in any conduct at the licensee's place of business  
18 which violates ordinances and of which the licensee has actual or constructive  
19 knowledge, or in the exercise of reasonable diligence should have had actual or  
20 constructive knowledge. The permit may also be revoked or suspended by the city after  
21 notice and hearing for good cause, upon the recommendation of the city or county  
22 health department in which the establishment is located, upon a finding that the business  
23 is being managed, conducted, or maintained without regard to proper sanitation and  
24 hygiene. The revocation proceedings shall be as prescribed in G.S. 89F-15.

25 **"§ 89F-14. Revocation of masseur or masseuse permit.**

26 A masseur or masseuse permit issued by the chief of police or sheriff may be  
27 revoked or suspended after notice and hearing, for good cause, where it appears that the  
28 masseur or masseuse has been convicted of any offense which would be cause for denial  
29 of a permit upon an original application, has made a false statement on an application  
30 for a permit, or has committed an act in violation of this Chapter. The revocation  
31 proceedings shall be as prescribed in G.S. 89F-15.

32 **"§ 89F-15. Revocation or suspension proceedings.**

33 Upon the determination of a violation of this Chapter or the existence of any other  
34 condition which is grounds for revocation or suspension of a license or permit pursuant  
35 to G.S. 89F-13 or G.S. 89F-14, the chief of police or sheriff shall serve written notice  
36 upon the person whose license or permit has been determined to be subject to revocation  
37 or suspension. The notice shall state: (i) the specific grounds which make the license or  
38 permit subject to revocation or suspension, (ii) the date, time, and place of the hearing,  
39 which shall not be earlier than 10 days following service of the notice, and (iii) that the  
40 hearing will be held before a hearing panel of the city council or the county board of  
41 commissioners of at least three members, as applicable. Within three days of the  
42 hearing, the panel shall render its decision in writing either revoking the license or  
43 permit, suspending the license or permit for a period of time not to exceed 90 days, or  
44 finding that insufficient grounds for revocation or suspension exist and that the person



1 should retain the license or permit. In the case of a revocation or suspension, the  
2 decision shall state the reasons for the action taken.

3 A person whose license or permit has been revoked or suspended following a  
4 hearing shall have a right of appeal to the full city council if the establishment is within  
5 city limits or the full county board of commissioners if the establishment is not within  
6 the city limits. Notice of appeal must be given to the city council or board of  
7 commissioners within seven days from the date of service of the decision. The  
8 appellant shall be given written notice of the date, time, and place of the appeal hearing  
9 at least seven days before the appeal is to be heard. The license or permit shall remain  
10 valid until the appeal decision, but the stay of the revocation or suspension shall stay or  
11 prevent institution of criminal proceedings or any other action against the person for any  
12 violation of this Chapter or the law, regardless of whether the criminal or other action is  
13 based on the same or similar grounds as those upon which the revocation or suspension  
14 proceedings is based.

15 The person whose license or permit has been revoked or suspended shall have the  
16 right to legal representation and to present evidence concerning the revocation or  
17 suspension. The city council or county board of commissioners may reverse or affirm,  
18 wholly or in part, or may reduce the length of suspension or reduce a revocation to a  
19 suspension not to exceed 90 days, if in its judgment there is good cause for action based  
20 upon reasonable grounds and the evidence presented at the hearing. Written notice of  
21 the decision shall be served upon the appellant within three days following the decision.

22 Service of all notices and decisions shall be by personal service or certified mail,  
23 return receipt requested, and in the case of service by mail, the service shall be complete  
24 upon the mailing of the notice or decision.

25 **"§ 89F-16. Facilities necessary.**

26 No license to conduct a massage establishment shall be issued unless an inspection  
27 reveals that the establishment complies with each of the following minimum  
28 requirements:

- 29 (1) Construction of rooms used for toilets, tubs, steam baths, and showers  
30 shall be installed in accordance with the North Carolina Building  
31 Code. All plumbing fixtures shall be installed in accordance with the  
32 North Carolina State Plumbing Code.
- 33 a. Steam rooms and shower compartments shall have waterproof  
34 floors, walls, and ceilings.
- 35 b. Floors of wet and dry heat rooms shall be adequately pitched to  
36 one or more floor drains properly connected to the sewer,  
37 except that dry heat rooms with wooden floors need not be  
38 provided with pitched floors and floor drains.
- 39 c. A source of hot water must be available within the immediate  
40 vicinity of dry and wet heat rooms to facilitate cleaning.
- 41 (2) The premises shall have adequate equipment for disinfecting and  
42 sterilizing nondisposable instruments and materials used in  
43 administering massages. The nondisposable instruments and materials  
44 shall be disinfected after use on each patron.

- 1           (3) Closed cabinets shall be provided and used for the storage of clean  
2 linens, towels, and other materials used in connection with  
3 administering massages. All soiled linens, towels, and other materials  
4 shall be kept in properly covered containers or cabinets to be kept  
5 separate from the clean storage areas.
- 6           (4) Toilet facilities shall be provided in convenient locations. If  
7 employees and/or patrons of different sexes are on the premises at the  
8 same time, separate toilet facilities shall be provided for each sex. A  
9 single water closet per sex shall be provided for each 20 or more  
10 employees or patrons of that sex on the premises at any one time.
- 11           (5) Lavatories or washbasins provided with both hot and cold running  
12 water shall be installed in either the toilet room or in close proximity  
13 thereto. Lavatories or washbasins shall be provided with soap and a  
14 dispenser and with sanitary towels.
- 15           (6) All electrical equipment shall be installed in accordance with the  
16 requirements of the North Carolina Electrical Code.

17 **"§ 89F-17. Operating requirements.**

18           (a) The massage establishment, including all appliances and apparatuses, shall be  
19 kept clean and operated in a sanitary condition.

20           (b) Price rates for all services shall be prominently posted in the reception area in  
21 a location available to all prospective customers.

22           (c) All employees, including masseurs and masseuses, shall be clean and wear  
23 clean, nontransparent outer garments, fully covering the body (except for the arms and  
24 hands) from a point not to exceed four inches above the center of the kneecap to the  
25 base of the neck. A separate dressing room for each sex must be available on the  
26 premises with individual lockers for each employee. Doors to dressing rooms shall  
27 open inward and shall be self-closing.

28           (d) All massage establishments shall be provided with clean, laundered sheets  
29 and towels in sufficient quantity and shall be laundered after each use and stored in a  
30 sanitary manner.

31           (e) No massage establishment granted a license under the provisions of this  
32 Chapter shall place, publish, or distribute or cause to be placed, published, or  
33 distributed, any advertisement, picture, or statement that is known, or through the  
34 exercise of reasonable care, should be known, to be false, deceptive, or misleading in  
35 order to induce any person to purchase or utilize any professional massage services.

36 **"§ 89F-18. Persons under age 18 prohibited on premises.**

37           No person shall permit any person under the age of 18 years to come or remain on  
38 the premises of any massage business establishment, unless the person is on the  
39 premises on lawful business.

40 **"§ 89F-19. Alcoholic beverages prohibited.**

41           No person shall sell, give, dispense, provide, or keep, or cause to be sold, given,  
42 dispensed, provided, or kept, any alcoholic beverage on the premises of any massage  
43 business.

44 **"§ 89F-20. Hours.**

1 No massage business shall be kept open for any purpose between the hours of 10:00  
2 p.m. and 8:00 a.m.

3 **"§ 89F-21. Employment of masseur or masseuse.**

4 No person shall employ as a masseur or masseuse any person unless the employee  
5 has obtained and has in effect a permit issued pursuant to this Chapter.

6 **"§ 89F-22. Inspections.**

7 The chief of police, sheriff, or an authorized representative shall be authorized to  
8 make inspections of each massage business establishment for the purposes of  
9 determining that the provisions of this Chapter are fully complied with. If, in the  
10 opinion of the chief of police, sheriff, or an authorized representative, there is probable  
11 cause to enter a massage establishment for the purpose of making inspections and  
12 examinations pursuant to this Chapter, that person shall request the owner or occupant  
13 to grant permission for the entry, and if refused, shall request the owner or occupant to  
14 grant permission for the entry, and if refused, shall make application for a search  
15 warrant showing why the warrant should be issued for the purposes set forth in this  
16 Chapter.

17 **"§ 89F-23. Unlawful acts.**

18 (a) It shall be unlawful for any person holding a permit under this Chapter to  
19 treat a person of the opposite sex, except upon the signed order of a licensed physician,  
20 osteopath, chiropractor, or registered physical therapist, that shall be dated and shall  
21 specifically state the number of treatments, not to exceed 10. The date and hour of each  
22 treatment given and the name of the operator shall be entered on the order by the  
23 establishment where the treatments are given and shall be open to inspection by the  
24 police pursuant to G.S. 89F-22. Any disclosure or use of information for purposes other  
25 than the enforcement of this Chapter shall be unlawful. The requirements of this  
26 subsection shall not apply to treatments given in the residence of a patient, the office of  
27 a licensed physician, osteopath, or registered physical therapist, chiropractor, or in a  
28 regularly established and licensed hospital or sanitarium.

29 (b) It shall be unlawful for any person, in a massage establishment to place his or  
30 her hand or hands upon, to touch with any part of his or her body, to fondle in any  
31 manner, a sexual or genital part of any other person. Sexual or genital parts shall  
32 include the genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva  
33 or breasts of a female.

34 (c) It shall be unlawful for any person, in a massage establishment to expose his  
35 or her sexual or genital parts, or any portions thereof, to any other person. It shall also  
36 be unlawful for any person, in a massage establishment, to expose the sexual or genital  
37 parts, or any portions thereof, of any other person.

38 (d) It shall be unlawful for any person while in the presence of any other person  
39 in a massage establishment, to fail to conceal with a fully opaque covering, the sexual or  
40 genital parts of his or her body.

41 (e) It shall be unlawful for any person owning, operating, or managing a massage  
42 establishment knowingly to cause, allow, or permit in or about the establishment, any  
43 agent, employee, or any other person under his control or supervision to perform acts  
44 prohibited in subsections (a), (b), (c), or (d) of this section.

1       (f) It shall be unlawful for any permittee under this Chapter to administer a  
2 massage on an outcall basis as defined in G.S. 89F-2. Massages shall be administered  
3 solely within an establishment licensed under this Chapter. Any violation of these  
4 provisions shall be deemed grounds for revocation of a permit. The restriction on an  
5 outcall massage shall not apply to a permittee who performs an outcall massage upon a  
6 customer or client who is physically unable to travel to the massage establishment. If  
7 any outcall massage is performed under this exception, a record of the date and hour of  
8 each treatment, and the name and address of the customer or client, and the name of the  
9 employee administering the treatment and the type of treatment administered, as well as  
10 the nature of the physical defect, incapacity, or illness of said client or customer shall be  
11 kept by the licensee or person or employee designated by the licensee. Records shall be  
12 open to inspection by the police pursuant to G.S. 89F-22. The information furnished or  
13 secured as a result of an inspection shall be confidential. Any disclosure or use of  
14 information for purposes other than the enforcement to this Chapter shall be unlawful.

15       (g) It shall be unlawful for massage therapy to be administered within any  
16 cubicle, room, booth, or any area within a massage establishment which is fitted with a  
17 door capable of being locked. Nothing contained herein shall be construed to eliminate  
18 the requirements concerning the maintenance of premises, nor to preclude authorized  
19 inspection, whenever an inspection is deemed necessary by the police or other  
20 authorities.

21 **"§ 89F-24. Sale or transfer or change of location.**

22       Upon the sale, transfer, or relocation of a massage establishment, the license shall be  
23 null and void unless a transfer of the license is approved by the chief of police or sheriff  
24 as provided in G.S. 89F-26 within 60 days of the sale, transfer, or relocation.

25 **"§ 89F-25. Name and place of business.**

26       No person granted a license pursuant to this Chapter shall operate the massage  
27 establishment under a name not specified in the license, nor conduct business in any  
28 designation or location not specified in the license.

29 **"§ 89F-26. Transfer of license or permit.**

30       No license or permit shall be transferable unless and until an application for transfer  
31 has been submitted to and approved by the chief of police or sheriff. An application for  
32 a transfer shall be in writing and shall be accompanied by fees prescribed in G.S. 89F-5  
33 and G.S. 89F-6. The written application for transfer shall contain the same information  
34 as required for an initial application for the license or permit and shall be issued to the  
35 chief of police or sheriff pursuant to G.S. 89F-7.

36 **"§ 89F-27. Violation and penalty.**

37       (a) Any person, except those persons who are specifically exempted by this  
38 Chapter, whether acting as an individual owner, employee of the owner, operator, or  
39 employee of the operator, or whether acting as a mere agent or independent contractor  
40 for the owner, employee, or operator, or acting as a participant or worker, in any way,  
41 directly or indirectly, who gives massages or operates a massage establishment or  
42 provides any of the services defined in this Chapter without first obtaining a license or  
43 permit and paying a fee to do so to the city or county shall be guilty of a misdemeanor

1 and upon conviction, shall be punished by a fine not to exceed five hundred dollars  
2 (\$500.00) or by imprisonment for a period not to exceed 30 days, or both.

3 (b) Any person who shall violate any provision of this Chapter shall be guilty of  
4 a misdemeanor and upon conviction, shall be punished by a fine not to exceed five  
5 hundred dollars (\$500.00) or by imprisonment for a period not to exceed 30 days, or  
6 both.

7 **"§ 89F-28. Severability.**

8 If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for  
9 any reason held invalid or unconstitutional by any court of competent jurisdiction, the  
10 portion shall be deemed a separate, distinct, and independent provision and severable  
11 from the remaining Chapter and the holding shall not affect the validity of the remaining  
12 portions."

13 Sec. 2. This act becomes effective October 1, 1994.