

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS55685-MC-249 (5/13)

Short Title: Amend Massage and Bodywork Therapy Act.

(Public)

Sponsors: Senator Cowell.

Referred to:

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"§ 90-621. Declaration of purpose.

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

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

"§ 90-622. Definitions.

The following definitions apply in this Article:

- 1 (1) Accreditation. – Status granted to a postsecondary institution of higher
2 learning that has met standards set by an accrediting agency
3 recognized by the Secretary of the United States Department of
4 Education. The accreditation for massage and bodywork schools may
5 be institutional or programmatic in nature.
- 6 (1a) Board. – The North Carolina Board of Massage and Bodywork
7 Therapy.
- 8 (2) Board-approved school. – Any massage and bodywork therapy school
9 or training program in this State or another state that is not otherwise
10 exempt from Board approval, that has met the criteria established by
11 the Board, standards set forth in this Article, and been granted approval
12 by the Board.
- 13 (2a) Criminal history record check. – A report resulting from a request
14 made by the Board to the North Carolina Department of Justice for a
15 history of conviction of a 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 3.** 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 4.** 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 5.** The current terms of the two members of the Board appointed
5 by the General Assembly upon the recommendation of the President Pro Tempore of the
6 Senate are each extended to a total period of five years, ending on June 30 of the last
7 year of each extended term. Upon the completion of these five-year terms, all future
8 members of the Board shall serve three-year terms, as provided in G.S. 90-625(c).

9 **SECTION 6.** G.S. 90-626(8) reads as rewritten:

10 **"§ 90-626. Powers and duties.**

11 The Board shall have the following powers and duties:

12 ...

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

18"

19 **SECTION 7.** G.S. 90-628(b) reads as rewritten:

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

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

29 **SECTION 8.** G.S. 90-629 reads as rewritten:

30 **"§ 90-629. Requirements for licensure.**

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

- 34 (1) Has obtained a high school diploma or equivalent.
- 35 (2) Is 18 years of age or older.
- 36 (3) Is of good moral character as determined by the Board.
- 37 (4) Has successfully completed a ~~course of study~~ training program
38 consisting of a minimum of 500 ~~classroom-in-class~~ hours of supervised
39 instruction at a Board-approved school.
- 40 (5) Has ~~successfully~~ passed an competency assessment examination
41 administered by a certifying agency that has been approved by the
42 National Commission of Certifying Agencies (NCCA) and is in good
43 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 9.** G.S. 90-630 is repealed.

7 **SECTION 10.** Article 36 of Chapter 90 of the General Statutes is amended
8 by 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 11.** 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 12.** 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

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

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

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

12 **SECTION 13.** G.S. 90-633 reads as rewritten:

13 **"§ 90-633. Disciplinary action.**

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

- 16 (1) The employment of fraud, deceit, or misrepresentation in obtaining or
17 attempting to obtain a license or the renewal of a license.
- 18 (2) The use of drugs or intoxicating liquors to an extent that affects
19 professional competency.
- 20 (3) Conviction of an offense under any municipal, State, or federal
21 narcotic or controlled substance ~~law until proof of rehabilitation can be~~
22 ~~established.~~law.
- 23 (4) Conviction of a felony or other public offense involving moral
24 ~~turpitude until proof of rehabilitation can be established.~~turpitude.
- 25 (5) An adjudication of insanity or ~~incompetency until proof of recovery~~
26 ~~from the condition can be established.~~incompetency.
- 27 (6) Engaging in any act or practice in violation of any of the provisions of
28 this Article or of any of the rules adopted by the Board, or aiding,
29 abetting, or assisting any other person in the violation of these
30 provisions or rules. For purposes of this subdivision, the phrase
31 'aiding, abetting, or assisting any other person' does not include acts
32 intended to inform the individual who is not in compliance with this
33 Article of the steps necessary to comply with this Article or any rules
34 adopted by the Board.
- 35 (7) The commission of an act of malpractice, gross negligence, or
36 incompetency.
- 37 (8) Practice as a licensee under this Article without a valid certificate or
38 renewal.
- 39 (9) Engaging in conduct that could result in harm or injury to the public.
- 40 (10) The employment of fraud, deceit, or misrepresentation when
41 communicating with the general public, health care professionals, or
42 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 14.** 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 15.** 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
38 unless the penalty is imposed against the same party who has repeated the same act for
39 which discipline has previously been imposed. The clear proceeds of any civil penalty
40 assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in
41 accordance with G.S. 115C-457.2.

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

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

- 1 (2) The appropriateness of the imposition of a civil penalty when
2 considered alone or in combination with other punishment.
3 (3) Whether the violation was willful and malicious.
4 (4) Any other factors that would tend to mitigate or aggravate the
5 violations found to exist.

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

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

10 (e) Transcription Costs. – The Board may assess the costs of transcription of a
11 disciplinary hearing held by the Board or the Office of Administrative Hearings to
12 include the recording of the hearing by a court reporter and transcription of the
13 proceeding against a person found to be in violation of this Article or rules adopted by
14 the Board."

15 **SECTION 16.** Article 36 of Chapter 90 of the General Statutes is amended
16 by adding the following new sections to read:

17 **"§ 90-637. Authority to regulate massage and bodywork therapy schools.**

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

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

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

- 26 (1) Formulate criteria and standards for approval of massage and
27 bodywork therapy schools.
28 (2) Provide for adequate investigations of all massage and bodywork
29 therapy schools applying for approval.
30 (3) Issue approvals to those applicant massage and bodywork therapy
31 schools meeting the standards established by the Board.
32 (4) Maintain a list of massage and bodywork therapy schools approved
33 under the provisions of this Article.
34 (5) Provide for periodic inspection of all massage and bodywork therapy
35 schools approved in this State under the provisions of this Article.
36 (6) Require periodic reports of approved massage and bodywork therapy
37 schools.

38 (d) The Board shall have general supervision over massage and bodywork
39 therapy schools in this State for the purpose of protecting the health, safety, and welfare
40 of the public by requiring that approved massage and bodywork therapy schools
41 maintain: (i) adequate, safe, and sanitary facilities; (ii) sufficient and qualified
42 instructional and administrative staff; and (iii) satisfactory programs of operation and
43 instructions; and by requiring that massage and bodywork therapy schools carry out
44 their advertised promises and contracts made with their students and patrons. The Board

1 may adopt rules to approve massage and bodywork therapy schools as authorized under
2 G.S. 90-626(9).

3 **"§ 90-637.1. Massage and bodywork therapy school approval required.**

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

8 **"§ 90-637.2. Authority to establish fees for massage and bodywork therapy school**
9 **approval.**

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

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

16 (1) <u>Request for Application Approval Package</u>	<u>\$20.00</u>
17 (2) <u>Initial application for approval (one program)</u>	<u>2,000.00</u>
18 (3) <u>Initial application for approval of additional</u>	
19 <u>programs (same location)</u>	<u>750.00</u>
20 (4) <u>Inspection for initial approval or renewal (one program)</u>	<u>1,500.00</u>
21 (5) <u>Inspection for initial approval or renewal of additional</u>	
22 <u>programs (same location)</u>	<u>500.00</u>
23 (6) <u>Renewal of approval (one program)</u>	<u>1,000.00</u>
24 (7) <u>Renewal of approval (each additional program)</u>	<u>750.00</u>

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

29 (d) In addition to the inspection fees, schools shall also pay for travel, lodging,
30 and subsistence expenses related to the inspection.

31 **"§ 90-637.3. Grounds for suspension, revocation, or refusal of massage and**
32 **bodywork therapy school approval; notice and hearing; judicial review.**

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

- 35 (1) The employment of fraud, deceit, or misrepresentation in obtaining or
36 attempting to obtain approval of a massage and bodywork therapy
37 school.
- 38 (2) Engaging in any act or practice in violation of any of the provisions of
39 this Article or of any of the rules adopted by the Board, or aiding,
40 abetting, or assisting any other person in the violation of the provisions
41 of this Article or rules adopted by the Board.
- 42 (3) Failure to require that its students must complete the minimum
43 standards in order to graduate.

- 1 (4) Operating a massage and bodywork therapy school without approval
2 from this Board.
- 3 (5) Engaging in conduct that could result in harm or injury to the public.
- 4 (6) The employment of fraud, deceit, or misrepresentation when
5 communicating with the general public, health care professionals, or
6 other business professionals.
- 7 (7) Falsely holding out a massage and bodywork therapy school as
8 approved by this Board.
- 9 (8) Failure to allow authorized representatives of the Board to conduct
10 inspections of the massage and bodywork therapy school or refusing to
11 make available to the Board, following written notice to the massage
12 and bodywork therapy school, the requested information pertaining to
13 the requirements for approval set forth in this Article.
- 14 (9) Failure to notify the Board in writing within 30 days of any
15 notification it receives from its accrediting agency or the United States
16 Department of Education Office of Postsecondary Education of a show
17 cause action, probation action, or denial of accreditation.
- 18 (10) The applicant for or holder of massage and bodywork therapy school
19 approval has pleaded guilty, entered a plea of nolo contendere, or has
20 been found guilty of a crime involving moral turpitude by a judge or
21 jury in any state or federal court.

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

25 **"§ 90-638. Criminal history record checks of applicants for licensure.**

26 (a) All applicants for licensure shall consent to a criminal history record check.
27 Refusal to consent to a criminal history record check may constitute grounds for the
28 Board to deny licensure to an applicant. The Board shall ensure that the State and
29 national criminal history of an applicant is checked. The Board shall be responsible for
30 providing to the North Carolina Department of Justice the fingerprints of the applicant
31 to be checked, a form signed by the applicant consenting to the criminal record check
32 and the use of fingerprints and other identifying information required by the State or
33 National Repositories, and any additional information required by the Department of
34 Justice. The Board shall keep all information obtained pursuant to this section
35 confidential.

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

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

- 42 (1) The level of seriousness of the crime.
- 43 (2) The date of the crime.
- 44 (3) The age of the person at the time of the conviction.

- 1 (4) The circumstances surrounding the commission of the crime, if known.
2 (5) The nexus between the criminal conduct of the person and the job
3 duties of the position to be filled.
4 (6) The person's prison, jail, probation, parole, rehabilitation, and
5 employment records since the date the crime was committed.
6 (7) The subsequent commission by the person of a crime set forth in
7 G.S. 90-622(2a).

8 If, after reviewing the factors, the Board determines that any of the grounds set forth
9 in the subdivisions of G.S. 90-633(a) exist, the Board may deny licensure of the
10 applicant. The Board may disclose to the applicant information contained in the
11 criminal history record check that is relevant to the denial. The Board shall not provide
12 a copy of the criminal history record check to the applicant. The applicant shall have the
13 right to appear before the Board to appeal the Board's decision. However, an appearance
14 before the full Board shall constitute an exhaustion of administrative remedies in
15 accordance with Chapter 150B of the General Statutes.

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

20 **SECTION 17.** Part 2 of Article 4 of Chapter 114 of the General Statutes is
21 amended by adding the following new section to read:

22 "§ 114-19.11B. Criminal record checks of applicants for licensure as massage and
23 bodywork therapists.

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

39 **SECTION 18.** This act becomes effective October 1, 2008, and applies to
40 the actions of therapists and schools on or after that date and to massage and bodywork
41 therapist applications for licensure and massage and bodywork therapy school
42 applications for Board approval submitted to the Board on or after that date.