

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH60380-LUF-118 (04/13)

Short Title: Amend Massage Therapy Act/Fees/Crim. Checks. (Public)

Sponsors: Representative Wright.

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. 90-622 reads as rewritten:

"§ 90-622. Definitions.

The following definitions apply in this Article:

- (1) Board. – The North Carolina Board of Massage and Bodywork Therapy.
- (2) Board-approved school. – Any massage and bodywork therapy school or training program in this State or another state that has met the criteria established by the Board standards set forth in this Article and been granted approval by the Board.
- (2a) Criminal history record check. – A report resulting from a request made by the Board to the North Carolina Department of Justice for a history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice massage and bodywork therapy. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary

1 Substitutes; Article 5A, Endangering Executive and Legislative
2 Officers; Article 6, Homicide; Article 7A, Rape and Other Sex
3 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction;
4 Article 13, Malicious Injury or Damage by Use of Explosive or
5 Incendiary Device or Material; Article 14, Burglary and Other
6 Housebreakings; Article 15, Arson and Other Burnings; Article 16,
7 Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19,
8 False Pretenses and Cheats; Article 19A, Obtaining Property or
9 Services by False or Fraudulent Use of Credit Device or Other Means;
10 Article 19B, Financial Transaction Card Crime Act; Article 20,
11 Frauds; Article 21, Forgery; Article 26, Offenses Against Public
12 Morality and Decency; Article 26A, Adult Establishments; Article 27,
13 Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,
14 Misconduct in Public Office; Article 35, Offenses Against the Public
15 Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection
16 of Minors; Article 40, Protection of the Family; Article 59, Public
17 Intoxication; and Article 60, Computer-Related Crime. The crimes
18 also include possession or sale of drugs in violation of the North
19 Carolina Controlled Substances Act in Article 5 of Chapter 90 of the
20 General Statutes and alcohol-related offenses including sale to
21 underage persons in violation of G.S. 18B-302 or driving while
22 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

- 23 (3) Massage and bodywork therapy. – Systems of activity applied to the
24 soft tissues of the human body for therapeutic, educational, or
25 relaxation purposes. The application may include:
- 26 a. Pressure, friction, stroking, rocking, kneading, percussion, or
27 passive or active stretching within the normal anatomical range
28 of movement.
 - 29 b. Complementary methods, including the external application of
30 water, heat, cold, lubricants, and other topical preparations.
 - 31 c. The use of mechanical devices that mimic or enhance actions
32 that may possibly be done by the hands. The application of
33 systems of activity by a massage and bodywork therapist during
34 the course of therapy shall not include any action pursued with
35 the intent of providing sexual stimulation or pursuing sexual
36 contact.
- 37 (4) Massage and bodywork therapist. – A person licensed under this
38 Article.
- 39 (5) Practice of massage and bodywork therapy. – The application of
40 massage and bodywork therapy to any person for a fee or other
41 consideration. "Practice of massage and bodywork therapy" does not
42 include the diagnosis of illness or disease, medical procedures,
43 chiropractic adjustive procedures, electrical stimulation, ultrasound,
44 prescription of medicines, or the use of modalities for which a license

1 to practice medicine, chiropractic, nursing, physical therapy,
2 occupational therapy, acupuncture, or podiatry is required by law.

- 3 (6) Sexual contact. – The intentional touching, either directly or indirectly,
4 of the genitalia, anus, groin, breast, inner thigh, or buttocks of any
5 person with an intent to abuse, humiliate, harass, degrade, or arouse or
6 gratify the sexual desire of the person."

7 **SECTION 2.** G.S. 90-625 reads as rewritten:

8 **"§ 90-625. North Carolina Board of Massage and Bodywork Therapy.**

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

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

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

- 31 (3) One member shall be a member of the general public who shall not be
32 licensed under Chapter 90 of the General Statutes or the spouse of a
33 person who is so licensed, or have any financial interest, directly or
34 indirectly, in the profession regulated under this Article. The
35 appointment shall be made by the Governor.

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

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

41 (d) The Board shall elect annually a chair and other officers as it deems
42 necessary. The Board shall meet as often as necessary for the conduct of business but no
43 less than twice a year. The Board shall establish procedures governing the calling,

1 holding, and conducting of regular and special meetings. A majority of the Board shall
2 constitute a quorum.

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

5 (f) Members may be removed by the official who appointed the member for
6 neglect of duty, incompetence, or unprofessional conduct. A member subject to
7 disciplinary proceedings as a licensee shall be disqualified from participating in the
8 official business of the Board until the charges have been resolved."

9 **SECTION 3.** 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, and
16 other services provided by the Board.

17"

18 **SECTION 4.** G.S. 90-628(b) reads as rewritten:

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

- 20 (1) Application for examination of requirements for license ~~\$200.00~~ \$20.00
- 21 (2) License fee..... 150.00
- 22 (3) License renewal..... 100.00
- 23 (4) Late renewal penalty 75.00
- 24 (5) License by ~~reciprocity~~ endorsement..... ~~50.00~~ 150.00
- 25 (6) Duplicate license 25.00
- 26 ~~(7) Provisional license..... 150.00.~~
- 27 (8) Application for additional examination of moral character 150.00."

28 **SECTION 5.** G.S. 90-629 reads as rewritten:

29 **"§ 90-629. Requirements for licensure.**

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

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

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

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

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

8 "**§ 90-630A. Endorsement.**

9 Endorsement shall apply to an applicant moving to this State from another state,
10 territory, country, or the District of Columbia. An applicant shall be eligible for
11 licensure by endorsement if, upon application to the Board, the applicant pays the
12 required fees, complies with G.S. 90-629 (1), (2), (3), and (6), and meets one of the
13 following criteria:

14 (1) Has been licensed, registered, or certified and is in good standing in
15 another state or country having standards equivalent to those in this
16 State.

17 (2) Has successfully passed an examination administered by a certifying
18 agency that has been approved by the National Commission of
19 Certifying Agencies (NCCA) and is in good standing with that agency.

20 (3) Has credentials to be reviewed by the Board on a case-by-case basis."

21 **SECTION 8.** G.S. 90-631 is repealed.

22 **SECTION 9.** G.S. 90-632 reads as rewritten:

23 "**§ 90-632. License renewal and continuing education.**

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

29 (1) If the licensure period is two years or more, each licensee shall submit
30 to the Board evidence of the successful completion of 24 contact hours
31 of study, as approved by the Board, since the initial licensure
32 application date, in the practice of massage and bodywork therapy.

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

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

42 **SECTION 10.** G.S. 90-633 reads as rewritten:

43 "**§ 90-633. Disciplinary action.**

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

- 3 (1) The employment of fraud, deceit, or misrepresentation in obtaining or
4 attempting to obtain a license or the renewal of a license.
5 (2) The use of drugs or intoxicating liquors to an extent that affects
6 professional competency.
7 (3) Conviction of an offense under any municipal, State, or federal
8 narcotic or controlled substance ~~law until proof of rehabilitation can be~~
9 ~~established.~~law.
10 (4) Conviction of a felony or other public offense involving moral
11 ~~turpitude until proof of rehabilitation can be established.~~turpitude.
12 (5) An adjudication of insanity or ~~incompetency until proof of recovery~~
13 ~~from the condition can be established.~~incompetency.
14 (6) Engaging in any act or practice in violation of any of the provisions of
15 this Article or of any of the rules adopted by the Board, or aiding,
16 abetting, or assisting any other person in the violation of these
17 provisions or rules.
18 (7) The commission of an act of malpractice, gross negligence, or
19 incompetency.
20 (8) Practice as a licensee under this Article without a valid certificate or
21 renewal.
22 (9) Engaging in conduct that could result in harm or injury to the public.
23 (10) The employment of fraud, deceit, or misrepresentation when
24 communicating with the general public, health care professionals, or
25 other business professionals.
26 (11) Falsely holding out himself or herself as licensed or certified in any
27 discipline of massage and bodywork therapy without successfully
28 completing training approved by the Board in that specialty.
29 (12) The application of systems of activity by a massage and bodywork
30 therapist during the course of therapy with the intent of providing
31 sexual stimulation or otherwise pursuing sexual contact.

32 (b) The Board may reinstate a revoked license, revoke censure or probative
33 terms, or remove other licensure restrictions when it finds that the reasons for
34 revocation, censure or probative terms, or other licensure restrictions no longer exist and
35 the massage and bodywork therapist or applicant can reasonably be expected to safely
36 and properly practice as a massage and bodywork therapist."

37 **SECTION 11.** G.S. 90-634 reads as rewritten:

38 "**§ 90-634. Enforcement; injunctive relief.**

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

- 41 (1) Practice of massage and bodywork therapy.
42 (2) Advertise, represent, or hold out himself or herself to others to be a
43 massage and bodywork therapist.

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

3 (b) A person who violates subsection (a) of this section shall be guilty of a Class
4 1 misdemeanor.

5 (b1) It is unlawful for an individual, association, partnership, corporation, or other
6 entity to open, operate, or promote a massage and bodywork therapy school without
7 first having obtained the approval required by G.S. 90-637.2, and if a proprietary
8 school, without also having executed the bond required by G.S. 90-637.6.

9 (b2) An individual, association, partnership, corporation, or other entity that
10 violates subsection (c) of this section shall be guilty of a Class 1 misdemeanor, and each
11 day that the school remains open, continues to operate, or is promoted shall constitute a
12 separate offense.

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

17 **SECTION 12.** Article 36 of Chapter 90 of the General Statutes is amended
18 by adding the following new sections to read:

19 "**§ 90-637. Authority to regulate massage and bodywork therapy schools.**

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

23 (b) For purposes of this Article, 'massage and bodywork therapy school' means
24 any educational institution that conducts a training program or curriculum for a tuition
25 charge, which is intended to teach adults the skills and knowledge necessary for the
26 professional practice of massage and bodywork therapy, as defined in this Article.
27 These institutions may be organized as one of the following:

28 (1) Proprietary schools, which are privately owned and operated by a sole
29 proprietor, association, partnership, corporation, or other entity.

30 (2) Accredited postsecondary colleges or universities, whether public or
31 private.

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

34 (d) In addition to the powers and duties set forth in G.S. 90-625, the Board shall
35 have the following powers and duties pursuant to the regulation of massage and
36 bodywork therapy schools:

37 (1) Formulate criteria and standards for approval of massage and
38 bodywork therapy schools.

39 (2) Provide for adequate investigations of all schools applying for
40 approval.

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

43 (4) Maintain a list of schools approved under the provisions of this
44 Article.

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

3 (6) Require periodic reports of approved schools.

4 (e) The Board shall have general supervision over massage and bodywork
5 therapy schools in this State for the purpose of protecting the health, safety, and welfare
6 of the public by having approved schools maintain adequate, safe, and sanitary
7 facilities, sufficient and qualified instructional and administrative staff, and satisfactory
8 programs of operation and instructions and to have the schools carry out their advertised
9 promises and contracts made with their students and patrons. The Board may adopt
10 rules to approve massage and bodywork therapy schools as authorized under
11 G.S. 90-626(9).

12 **"§ 90-637.1. Massage and bodywork therapy school approval required.**

13 No individual, association, partnership, corporation, accredited postsecondary
14 institution, or other entity shall operate, maintain, or promote a massage and bodywork
15 therapy school in this State unless approval is first secured from the Board, granted in
16 accordance with the provisions of this Article and the rules adopted by the Board.

17 **"§ 90-637.2. Application process and standards for massage and bodywork**
18 **therapy school approval.**

19 (a) Application for school approval shall be filed in the manner and upon the
20 forms prescribed and furnished by the Board for that purpose. The application shall be
21 signed by the applicant and properly verified and shall contain all information required
22 by the Board.

23 (b) After due investigation and consideration on the part of the Board, school
24 approval shall be granted to the applicant when it is shown to the satisfaction of the
25 Board that the applicant meets the following criteria:

26 (1) The school offers a curriculum and maintains academic standards that
27 ensure graduates have the knowledge and skills necessary for the safe,
28 effective, and ethical practice of massage and bodywork therapy.

29 (2) The school's director, administrative staff, and instructional staff
30 possess adequate education and experience to carry out their
31 responsibilities.

32 (3) The school has adequate space, equipment, instructional materials,
33 learning resources, and instructional staff to provide training of good
34 quality.

35 (4) A copy of the school bulletin or catalog is provided to the student upon
36 enrollment, which shall include course descriptions, schedule of
37 tuition, fees, and other charges, grading policy, standards for
38 completion, and administrative policies.

39 (5) Upon completion of training, the student is given a certificate,
40 diploma, or degree indicating the program was satisfactorily
41 completed.

42 (6) Adequate records are maintained to show attendance and academic
43 progress or grades and satisfactory standards relating to attendance,
44 progress, and conduct are enforced.

- 1 (7) The school complies with all city, county, State, and federal
2 requirements, such as fire, building, and sanitation codes.
- 3 (8) The school is financially sound and capable of fulfilling its
4 commitments for training.
- 5 (9) The school does not exceed its enrollment limitation as established by
6 the Board.
- 7 (10) The school does not use advertising of any type that is erroneous or
8 misleading, either by actual statement, omission, or intimation.
- 9 (11) The school's owners, directors, administrators, and instructors are of
10 good reputation and character.
- 11 (12) Any other additional criteria deemed necessary by the Board.

12 **"§ 90-637.3. Duration and renewal of massage and bodywork therapy school**
13 **approvals; notice of change; approval not transferable.**

- 14 (a) All massage and bodywork therapy school approvals issued shall expire on
15 June 30 of the year following the date of issuance.
- 16 (b) Approvals shall be renewable annually on or before July 1 for schools found
17 to be in compliance with the standards for approval set forth by the Board.
- 18 (c) After an approval is granted, it shall be the responsibility of the approved
19 school to notify the Board of any changes in ownership, administration, location,
20 instructional staff, curriculum, or other changes that may significantly affect the course
21 of instruction offered.
- 22 (d) If a school is sold, the approval granted to the original owner or operator of
23 that school shall not be transferable to the new owner or operator. However, the Board
24 may issue a 90-day, temporary operating approval to a school upon its sale if the school
25 held a valid, current approval before the sale and the Board finds the school is likely to
26 qualify after the sale for approval under this Article.

27 **"§ 90-637.4. Authority to establish fees for massage and bodywork therapy school**
28 **approval.**

- 29 (a) The Board shall establish a schedule of reasonable fees for approvals and
30 renewals granted and for inspections performed pursuant to this Article. The fees
31 collected under this section are intended to cover the administrative costs of the
32 approval programs. No fee for approval application or renewal shall be refunded in the
33 event the application is rejected or the approval suspended or revoked. The Board shall
34 charge fees for a request for application approval package, initial application for school
35 approval, application for additional program approval, annual renewal of approval, and
36 inspections.
- 37 (b) Fees for Board approval of schools within the State are as follows:
 - 38 (1) Request for Application Approval Package \$ 20.00
 - 39 (2) Initial application for approval (one program) 2,000.00
 - 40 (3) Initial application for approval of additional
41 programs, same location 750.00
 - 42 (4) Inspection for initial approval or renewal (one program) 1,500.00
 - 43 (5) Inspection for initial approval or renewal of additional
44 program, same location 500.00

- 1 (6) Annual renewal of approval (one program) 1,000.00
2 (7) Annual renewal of approval (each additional program) 750.00
3 (c) Fees for schools outside the State, which are licensed or approved by the
4 educational regulatory authority in the state in which it operates as follows:
5 (1) Request for Application Approval Package \$ 20.00
6 (2) Initial application for approval (one program) 2,000.00
7 (3) Initial application for approval of additional programs,
8 same location 750.00
9 (4) Initial inspection for approval or renewal (one program) 1,500.00
10 (5) Initial inspection for approval of additional program,
11 same location 500.00
12 (6) Annual renewal of approval (one program) 1,000.00
13 (7) Annual renewal of approval (each additional program) 750.00
14 (d) A school that is required to have more than one inspection in a fiscal year, in
15 order to investigate or verify areas of noncompliance with the standards for school
16 approval, shall pay a fee of one thousand five hundred dollars (\$1,500) for each
17 additional inspection.
18 (e) In addition to the inspection fee, schools shall also pay for travel, lodging,
19 and subsistence expenses related to the inspection.
20 **"§ 90-637.5. Grounds for suspension, revocation, or refusal of massage and**
21 **bodywork therapy school approval; notice and hearing; judicial review.**
22 (a) The Board may deny, suspend, revoke, or refuse to approve a massage and
23 bodywork therapy school or program for any of the following:
24 (1) The employment of fraud, deceit, or misrepresentation in obtaining or
25 attempting to obtain approval of a school or program.
26 (2) Engaging in any act or practice in violation of any of the provisions of
27 this Article or of any of the rules adopted by the Board, or aiding,
28 abetting, or assisting any other person in the violation of these
29 provisions or rules.
30 (3) Failure to require its students to complete the minimum standards in
31 order to graduate.
32 (4) Operating a massage and bodywork therapy school or additional
33 program without approval from this Board.
34 (5) Engaging in conduct that could result in harm or injury to the public.
35 (6) The employment of fraud, deceit, or misrepresentation when
36 communicating with the general public, health care professionals, or
37 other business professionals.
38 (7) Falsely holding out a school or program as approved by this Board.
39 (8) Failure to allow authorized representatives of the Board to conduct
40 inspections of the school, or refusing to make available to them at any
41 time full information pertaining to the requirements for approval set
42 forth in this section.
43 (9) Failure to notify the Board in writing within 30 days of any
44 notification it receives from its accrediting agency or the United States

1 Department of Education Office of Postsecondary Education of a show
2 cause action, probation action, or denial of accreditation.

3 (10) The applicant for or holder of school approval has pleaded guilty,
4 entered a plea of nolo contendere, or has been found guilty of a crime
5 involving moral turpitude by a judge or jury in any state or federal
6 court.

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

10 (c) A decision under this section to refuse to grant, refuse to renew, suspend, or
11 revoke school approval is subject to judicial review in accordance with Article 4 of
12 Chapter 150B of the General Statutes.

13 **§ 90-637.6. Bond required for proprietary massage and bodywork therapy**
14 **schools.**

15 (a) Each proprietary massage and bodywork therapy school in this State shall
16 provide a guaranty bond unless the school has already provided a bond or an alternative
17 to a bond under G.S. 115D-95. The Board may restrict, suspend, revoke, or refuse to
18 renew or reinstate the approval of a proprietary school that fails to maintain a bond or an
19 alternative to a bond pursuant to this section or G.S. 115D-95.

20 (b) The proprietary massage and bodywork therapy school shall meet the
21 following bond criteria:

22 (1) The applicant shall file the guaranty bond with the clerk of superior
23 court in the county in which the school is located. The bond shall be in
24 favor of the students. The bond shall be executed by the applicant as
25 principal and by a bonding company authorized to do business in this
26 State. The bond shall be conditioned to provide indemnification to any
27 student who has suffered loss of tuition or any fees by reason of the
28 failure of the school to offer or complete student instruction, academic
29 services, or other goods or services as related to course enrollment for
30 any reason, including suspension, revocation, or nonrenewal of a
31 school's approval, bankruptcy, foreclosure, or the school's ceasing to
32 operate.

33 (2) The bond amount shall be at least equal to the maximum amount of
34 prepaid tuition held at any time by the school during the last fiscal
35 year, but in no case shall be less than ten thousand dollars (\$10,000).
36 Each application for approval or renewal of approval shall include a
37 letter signed by an authorized representative of the school showing the
38 calculations made and the method of computing the amount of the
39 bond in accordance with rules adopted by the Board. If the Board finds
40 that the calculations made and the method of computing the amount of
41 the bond are inaccurate or that the amount of the bond is otherwise
42 inadequate to provide indemnification under the terms of the bond, the
43 Board may require the applicant to provide an additional bond.

1 (3) The bond shall remain in effect until canceled by the guarantor. The
2 guarantor may cancel the bond upon 30 days' notice to the Board.
3 Cancellation of the bond shall not affect any liability incurred or
4 accrued before the termination of the notice period.

5 (c) An applicant who is unable to secure a bond may seek from the Board a
6 waiver of the guaranty bond requirements and approval of one of the guaranty bond
7 alternatives set forth in this subsection. With the approval of the Board, an applicant
8 may file one of the following instead of a bond with the clerk of the court in the county
9 where the school is located:

10 (1) An assignment of a savings account in an amount equal to the bond
11 required that is in a form acceptable to the Board, and is executed by
12 the applicant and a state or federal savings and loan association, state
13 bank, or national bank that is doing business in this State and whose
14 accounts are insured by a federal depositor's corporation, and access to
15 the account is subject to the same conditions as those for a bond in
16 subsection (b) of this section.

17 (2) A certificate of deposit that is executed by a state or federal savings
18 and loan association, state bank, or national bank that is doing business
19 in this State and whose accounts are insured by a federal depositor's
20 corporation, and access to the certificate of deposit is subject to the
21 same conditions as those for a bond in subsection (b) of this section.

22 **§ 90-638. Criminal history record checks of applicants for licensure.**

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

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

35 (c) Any new massage therapist license issued under this section shall be
36 conditional, pending completion of the criminal background check.

37 (d) If the criminal background check discloses the applicant has intentionally
38 failed to accurately disclose a criminal history, the license shall be immediately and
39 automatically revoked.

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

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

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

10 If, after reviewing the factors, the Board determines that the grounds set forth in
11 subdivisions (1), (2), (3), (4), (5), or (6) of G.S. 90-637.5(a) exist, the Board may deny
12 licensure of the applicant. The Board may disclose to the applicant information
13 contained in the criminal history record check that is relevant to the denial. The Board
14 shall not provide a copy of the criminal history record check to the applicant. The
15 applicant shall have the right to appear before the Board to appeal the Board's decision.
16 However, an appearance before the full Board shall constitute an exhaustion of
17 administrative remedies in accordance with Chapter 150B of the General Statutes.

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

22 **SECTION 13.** Part 2 of Article 4 of Chapter 114 of the General Statutes is
23 amended by adding the following new section to read:

24 **"§ 114-19.11A. Criminal record checks of applicants for licensure as massage and**
25 **bodywork therapists.**

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

41 **SECTION 14.** This act is effective when it becomes law.