HB305
193665-4
By Representatives Williams (JD), Coleman, Hall and Boyd
RFD: Judiciary
First Read: 25-JAN-18
ENROLLED, An Act,

Relating to human trafficking and offenses against minors; to amend Sections 13A-6-151 and 13A-6-152, Code of Alabama 1975, to provide further for the definition of sexual servitude and to provide further for the crime of human trafficking in the first degree; to amend Section 13A-6-157, Code of Alabama 1975, to provide further for the private right of action of a victim of human trafficking; to add Section 13A-6-157.1 to the Code of Alabama 1975, to provide a right of action by the Attorney General to enforce the human trafficking laws and to recover damages for victims of human trafficking; to amend Section 13A-6-158, Code of Alabama 1975, to provide that the limitations period does not apply to the Attorney General; to add Sections 13A-6-161 and 13A-6-162 to the Code of Alabama 1975, to authorize the issuance of and enforcement of subpoenas when investigating allegations of human trafficking and to provide a civil penalty for violations; to add Section 13A-12-121.1 to the Code of Alabama 1975, to establish the crime of engaging in an act of prostitution with a minor; to amend Section 13A-12-122, Code of Alabama 1975, to provide further criminal penalties for human trafficking; to add Sections 13A-12-124 and 13A-12-125 to the Code of Alabama 1975, to prohibit a defendant accused of engaging in an act of prostitution with a minor from
asserting a mistake of age defense and to provide an additional fine; to amend Sections 15-27-1 and 15-27-2, Code of Alabama 1975, to provide further for the expungement of certain crimes committed by victims of human trafficking under certain conditions; to provide that human trafficking offenses and certain prostitution offenses may only be prosecuted in circuit or district court; to amend Sections 34-43-12, 34-43-13, 34-43-14, 34-43-15, Code of Alabama 1975, to require the Alabama Board of Massage Therapy to conduct criminal history background checks under certain circumstances and to set the fee for the background check; to further provide for the suspension or revocation of a license issued under the Alabama Massage Therapy Licensure Act; to provide that a massage therapist licensee who allows an individual to remain in a massage therapy establishment overnight is misconduct subject to disciplinary action; to require the reporting of certain misconduct by certain persons; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. Sections 13A-6-151, 13A-6-152, and 13A-6-157, Code of Alabama 1975, are amended to read as follows:

"§13A-6-151.
"As used in this article, the following terms shall have the following, or any combination of the following, meanings ascribed to them by this section:

"(1) COERCION. Any of the following:
"a. Causing or threatening to cause physical injury or mental suffering to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person or otherwise causing the person performing or providing labor or services to believe that the person or another person will suffer physical injury or mental suffering.
"b. Implementing any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in physical injury, mental suffering, or physical restraint of any person.
"c. Destroying, concealing, removing, confiscating, or withholding from the person or another person, or threatening to destroy, conceal, remove, confiscate, or withhold from the person or another person, the person's or any person's actual or purported government records,"
immigration documents, identifying information, or personal or real property.

d. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal prosecution, criminal or immigration proceedings, hatred, contempt, or ridicule.

e. Threatening to report the person or another person to immigration officials or to other law enforcement officials or otherwise blackmailing or extorting the person or another person.

f. Controlling a person's access to a controlled substance, as the term is defined in Section 20-2-2.

g. Rape or sodomy or threatened rape or sodomy of any person, as defined in Title 13A.

(2) DECEPTION. Any of the following:

a. Creating or confirming an impression of any existing fact or past event which is false and which the accused knows or believes to be false.

b. Exerting financial control over the person or another person by placing the person or another person under the actor's control as a security or payment of a debt, if the value of the services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined or the principal amount of the debt does not reasonably reflect the
value of the items or services for which debt was incurred or
by preventing a person from acquiring information pertinent to
the disposition of the debt, referenced in this paragraph.

"c. Promising benefits or the performance of
services which the accused does not intend to be delivered.
Evidence of failure to deliver benefits or perform services
standing alone shall not be sufficient to authorize a
conviction under this article.

"d. Using any scheme, plan, or pattern, whether
overt or subtle, intended to cause any person to believe that,
if the person did not perform such labor, services, acts, or
performances, the person or another person would suffer
physical injury or mental suffering.

"(3) LABOR SERVITUDE. Work or service of economic or
financial value which is performed or provided by another
person and is induced or obtained by coercion or deception.

"(4) MENTAL SUFFERING. A high degree of mental pain
or emotional disturbances, such as distress, anxiety, public
humiliation, or psychosomatic physical symptoms. It is more
than mere disappointment, anger, resentment, wounded pride, or
embarrassment and must be a direct result of the crime of
human trafficking.

"(5) MINOR. A person under the age of 18.

"(6) PHYSICAL INJURY. Impairment of physical
condition or substantial pain.
"(7) SEXUAL CONDUCT. Any of the following acts:

"a. Sexual intercourse. This term shall have its ordinary meaning and occurs upon a penetration, however slight; emission is not required.

"b. Sexual contact. Any known touching for the purpose of sexual arousal, gratification, or abuse of the following:

1. The sexual or other intimate parts of the victim by the actor.

2. The sexual or other intimate part of the actor by the victim.

3. The clothing covering the immediate area of the sexual or other intimate parts of the victim or actor.

"c. Sexual explicit performances, meaning an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, videotaped, or projected over the Internet.

"d. Commercial sex acts, meaning any sex act on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.

"(7) (8) SEXUAL SERVITUDE. Any of the following:

"a. Any sexual conduct as defined in subdivision (3) of Section 14-11-30, for which anything of value is directly or indirectly given, promised to, or received by any person,
which conduct is induced or obtained by coercion or deception from a person; provided, however, that if the sexual conduct is with a minor, no coercion or deception is required.

"b. Sexual conduct includes:

1. Sexually explicit performances, meaning an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, videotaped, or projected over the Internet.

2. Commercial sex acts, meaning any sex act on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.

3. Acts defined in subdivision (3) of Section 14 11 30.

TRAFFICKING VICTIM. Any person, including minors, subjected to labor servitude, sexual servitude, or involuntary servitude.

§13A-6-152.

(a) A person commits the crime of human trafficking in the first degree if:

(1) He or she knowingly subjects another person to labor servitude or sexual servitude through use of coercion or deception.

(2) He or she knowingly obtains, recruits, entices, solicits, induces, threatens, isolates, harbors, holds,
restains, transports, provides, or maintains any minor for
the purpose of causing a minor to engage in sexual servitude.

"(3) He or she knowingly gives monetary
consideration or any other thing of value to engage in any
sexual conduct with a minor or an individual he or she
believes to be a minor.

"(3) (b) For purposes of this section, it is not
required that the defendant have knowledge of a minor victim's
age, nor is reasonable mistake of age a defense to liability
under this section.

"(4) (c) A corporation, or any other legal entity
other than an individual, may be prosecuted for human
trafficking in the first degree for an act or omission only if
an agent of the corporation or entity performs the conduct
which is an element of the crime while acting within the scope
of his or her office or employment and on behalf of the
corporation or entity, and the commission of the crime was
either authorized, requested, commanded, performed, or within
the scope of the person's employment on behalf of the
corporation or entity or constituted a pattern of conduct that
an agent of the corporation or entity knew or should have
known was occurring.

"(4) (d) Any person who obstructs, or attempts to
obstruct, or in any way interferes with or prevents the
enforcement of this section shall be guilty of a Class C felony.

"(e) Human trafficking in the first degree is a Class A felony."

"§13A-6-157.

"(a) An individual who is a victim of human trafficking may bring a civil action in the appropriate state court against any and all persons or entities, whether in a personal or corporate capacity, who meets the description of those purveyors of human trafficking as described in Alabama Code §13A-6-152(a). It shall not be a prerequisite to any such civil action that the defendant must first have been charged and/or convicted of the crime of human trafficking.

"(b) Venue for any action brought under this section shall be in the county in which the offense was committed or in any other county into or through which the person upon whom it was committed may have been carried in the commission of the offense. If venue is proper in more than one county, venue shall be in either county.

"(c) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious."
"(d) The court shall award a prevailing plaintiff's fees and costs.

"(e) Upon commencement of any action brought under this section, the clerk of the court shall mail a copy of the complaint or other initial pleading to the office of the Attorney General and, upon entry of any injunction, judgment, or decree in the action, shall mail a copy of the injunction, judgment, or decree to the office of the Attorney General.

"(f) This section does not preclude any other remedy available to the victim under federal law or the laws of this state."

Section 2. Section 13A-6-157.1 is added to the Code of Alabama 1975, to read as follows:

§13A-6-157.1.

(a) In addition to any other remedy under this article, if the Attorney General has reason to believe that any person, corporation, or any other legal entity is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this article, the Attorney General may bring an action in the name of the state in the appropriate state court against the person, corporation, or entity to restrain by temporary restraining order, or temporary or permanent injunction, the acts or practices.

(b) In addition to any other remedy under this article, the Attorney General may bring a civil action on
behalf of the state in the appropriate state court to recover actual damages for victims of acts or practices performed in violation of this article.

(c) Venue for any action brought under this section is in the county in which the offense was committed or in any other county into or through which the person upon whom it was committed may have been carried in the commission of the offense. If venue is proper in more than one county, venue shall be in either county.

Section 3. Section 13A-6-158, Code of Alabama 1975, is amended to read as follows:

"§13A-6-158.

"(a)(1) Except as provided in subsection (c), an action for an offense defined by this article where the victim is not a minor shall be brought within five years from the date the victim was removed or escaped from the human trafficking situation.

"(2) Any statute of limitations that would otherwise preclude prosecution for an offense involving the trafficking of a minor, or the physical or sexual abuse of a minor, shall be tolled until such time as the victim has reached the age of 18 years.

"(3) The running of the statute of limitations shall be suspended where a person entitled to bring a claim of an offense defined by this article could not have reasonably
discovered the crime due to circumstances resulting from the human trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

"(b) Any statute of limitation period imposed for the filing of a civil action under this article will not begin to run until the plaintiff discovers both that the sex trade act occurred and that the defendant caused, was responsible for, or profited from the sex trade act.

"(1) If the plaintiff is a minor, then the limitation period will not commence running until he or she has reached the age of majority.

"(2) If the plaintiff is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.

"(3) If the plaintiff's injury is caused by two or more acts that are part of a continuing series of sex trade acts by the same defendant, then the limitation period will not commence running until the last sex trade act in the continuing series occurs.
"(4) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, then the time when these acts occur will not be part of the time limited for the commencement of this action."

"(c) There shall be no limitation period for civil actions brought under this article by the Attorney General."

Section 4. Sections 13A-6-161 and 13A-6-162 are added to the Code of Alabama 1975, to read as follows:

§13A-6-161.

Before the Attorney General commences any action under this article, the Attorney General may issue subpoenas to any person to appear and produce relevant papers, documents, and physical evidence, and administer an oath or affirmation to any person, in aid of any investigation or inquiry into possible violations of this article. The subpoenas shall be served in accordance with the appropriate Alabama Rules of Civil Procedure. Upon failure of a person without lawful excuse to obey such subpoena, the Attorney General may apply to a court of competent jurisdiction for an order compelling compliance. After an action is commenced, discovery may proceed in accordance with the Alabama Rules of Civil Procedure.

§13A-6-162.
(a) Any person, corporation, or other legal entity who engages in any act or practice that violates this article is liable for a civil penalty of up to fifty thousand dollars ($50,000) for each violation.

(b) Any person, corporation, or other legal entity who violates the terms of an injunction or order issued under this article shall forfeit and pay a civil penalty of not more than seventy-five thousand dollars ($75,000) per violation and shall be adjudged in contempt. For the purpose of this section, any court issuing an injunction or order under this article shall retain jurisdiction, and in such cases the Attorney General may petition for recovery of civil penalties.

(c) Upon a second or continuing violation of an injunction after imposition of the sanctions in subsection (b), and upon petition by the Attorney General, the circuit court of general jurisdiction of a county may order the dissolution or suspension or forfeiture of the franchise of any corporation, partnership, or sole proprietorship that willfully violates the terms of any injunction issued pursuant to this article.

(d) In any successful action brought by the Attorney General under this section, the court shall award the office of the Attorney General reasonable attorney's fees and costs.

(e) All penalties recovered in actions brought under this section shall be deposited into the State Treasury to the
credit of the Attorney General's Special Revenue Account for
the purpose of implementing and enforcing this article.
Amounts deposited into the Special Revenue Account shall be
budgeted and allotted in accordance with Sections 41-4-80
through 41-4-96 and Sections 41-19-1 through 41-19-12, Code of
Alabama 1975.

Section 5. Section 13A-12-121.1 is added to the Code
of Alabama 1975, to read as follows:

§13A-12-121.1.

(a) No person shall commit an act of prostitution,
as defined in Section 13A-12-120, with a minor.

(b) No person shall solicit, compel, or coerce any
minor to have sexual intercourse or participate in any natural
or unnatural sexual act, deviate sexual intercourse, or sexual
contact for monetary consideration or other thing of
marketable value.

(c) No person shall agree to engage in sexual
intercourse, deviate sexual intercourse, or sexual contact
with a minor or participate in the act for monetary
consideration or other thing of marketable value and give or
accept monetary consideration or other thing of value in
furtherance of the agreement.

(d) No person shall knowingly do any of the
following:
(1) Cause or aid a minor to commit or engage in
prostitution.

(2) Procure or solicit a minor for prostitution.

(3) Provide premises for the prostitution of a
minor.

(4) Receive or accept money or other thing of value
pursuant to a prior agreement with a minor where the minor
participates or is to participate in the proceeds of any
prostitution activity.

(5) Operate or assist in the operation of a house of
prostitution or a prostitution enterprise where minors
participate in prostitution.

(6) Sell or offer to sell travel services that
include or facilitate travel for the purpose of engaging in
sexual intercourse, sexual acts, deviate sexual intercourse,
or any other sexual contact with a minor.

Section 6. Section 13A-12-122, Code of Alabama 1975,
is amended to read as follows:

"§13A-12-122.

(a) Each violation of this division Section
13A-12-121 is a Class A misdemeanor.

(b) A violation of Section 13A-12-121.1 is a Class
B felony."

Section 7. Sections 13A-12-124 and 13A-12-125 are
added to the Code of Alabama 1975, to read as follows:
§13A-12-124.

(a) As used in this section, the term minor victim means a person who committed, or was solicited to commit, an act of prostitution while the person was a minor.

(b) Evidence of any of the following facts or conditions does not constitute a defense in a prosecution under Section 13A-12-121.1, Code of Alabama 1975, nor shall the evidence preclude a finding of a violation:

(1) A minor victim's sexual history or history of commercial sexual activity.

(2) A minor victim's connection by blood or marriage to a defendant in the case or to anyone involved in the minor victim's prostitution.

(3) Consent of or permission by a minor victim or anyone else on the minor victim's behalf to any commercial sex act or sexually explicit performance.

(4) Age of consent to engage in sexual activity.

(5) Mistake as to the minor victim's age, even if the mistake is reasonable.

§13A-12-125.

In addition to all other fines and penalties prescribed by law, a person convicted of violating Section 13A-6-152, Section 13A-6-153, Section 13A-12-111, Section 13A-12-112, Section 13A-12-121, or Section 13A-12-121.1 shall pay a fine of five hundred dollars ($500) which shall be used
to compensate victims of prostitution and human trafficking. The fine shall be deposited into the State Treasury to the credit of the Alabama Crime Victims Compensation Fund under Section 15-23-16. Amounts deposited into the Alabama Crime Victims Compensation Fund shall be budgeted and allotted in accordance with Sections 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12.

Section 8. Sections 15-27-1 and 15-27-2, Code of Alabama 1975, are amended to read as follows:

"§15-27-1.

"(a) A person who has been charged with a misdemeanor criminal offense, a violation, a traffic violation, or a municipal ordinance violation may file a petition in the criminal division of the circuit court in the county in which the charges were filed, to expunge records relating to the charge in any of the following circumstances:

"(1) When the charge is dismissed with prejudice.

"(2) When the charge has been no billed by a grand jury.

"(3) When the person has been found not guilty of the charge.

"(4) When the charge was dismissed without prejudice more than two years ago, has not been refiled, and the person has not been convicted of any other felony or misdemeanor.
crime, any violation, or any traffic violation, excluding minor traffic violations, during the previous two years.

"(5) When the person proves by a preponderance of the evidence that the person is a victim of human trafficking, that the person committed the misdemeanor criminal offense, violation, traffic violation, or municipal ordinance violation during the period the person was being trafficked, and that the person would not have committed the offense or violation but for being trafficked. Evidence that a person is a victim of human trafficking may include, but is not limited to, evidence that the person's trafficker was convicted of trafficking the person under Section 13A-6-152 or Section 13A-6-153.

"(b) The circuit court shall have exclusive jurisdiction of a petition filed under subsection (a).


"(a) A person who has been charged with a felony offense, except a violent offense as defined in Section 12-25-32, may file a petition in the criminal division of the circuit court in the county in which the charges were filed, to expunge records relating to the charge in any of the following circumstances:

"(1) When the charge is dismissed with prejudice.

"(2) When the charge has been no billed by a grand jury.
"(3)a. The charge was dismissed after successful completion of a drug court program, mental health court program, diversion program, veteran's court, or any court-approved deferred prosecution program after one year from successful completion of the program.

"b. Expungement may be a court-ordered condition of a program listed in paragraph a.

"(4) The charge was dismissed without prejudice more than five years ago, has not been refiled, and the person has not been convicted of any other felony or misdemeanor crime, any violation, or any traffic violation, excluding minor traffic violations, during the previous five years.

"(5) Ninety days have passed from the date of dismissal with prejudice, no-bill, acquittal, or nolle prosequi and the charge has not been refiled.

"(6) When the person proves by a preponderance of the evidence that the person is a victim of human trafficking, that the person committed the felony offense during the period the person was being trafficked, and that the person would not have committed the felony offense but for being trafficked. Evidence that a person is a victim of human trafficking may include, but is not limited to, evidence that the person's trafficker was convicted of trafficking the person under Section 13A-6-152 or Section 13A-6-153.
"(b) Subsection (a) notwithstanding, convictions for the following offenses, which are defined as a violent offense under subdivision (15) of Section 13A-25-32, may be expunged upon a showing that the person committed the felony offense during the period the person was trafficked, and that the person would not have committed the felony offense but for being trafficked:

"(1) Promoting prostitution in the first degree pursuant to Section 13A-12-111.

"(2) Domestic violence in the third degree pursuant to subsection (d) of Section 13A-6-132.

"(3) Production of obscene matter involving a person under the age of 17 years pursuant to Section 13A-12-197.

"(b)(1) (c)(1) A person who has been charged with any felony offense, including a violent offense as defined in Section 12-25-32, may file a petition in the criminal division of the circuit court in the county in which the charges were filed to expunge records relating to the charge if the person has been found not guilty of the charge.

"(2) Records related to violent offenses as defined in Section 12-25-32 may be disclosed to law enforcement agency for criminal investigation purposes as provided in Section 15-27-7.
"(c) (d) The circuit court shall have exclusive jurisdiction of a petition filed under subsection (a) or subsection (b)."

Section 9. (a) Any violation of Article 8 of Chapter 6 of Title 13A, Code of Alabama 1975, or any violation of Section 13A-12-111, 13A-12-112, 13A-12-113, 13A-12-121, or 13A-12-121.1, Code of Alabama 1975, may only be prosecuted in circuit or district court.

(b) Notwithstanding any provision of law to the contrary, this section supersedes any law or ordinance that provides for the prosecution of the offenses included in subsection (a) in municipal court.

Section 10. The Legislature finds and declares the following:

(1) There are an estimated 21 million people in forced or coerced human trafficking worldwide.

(2) According to the United States State Department, 600,000 to 800,000 people are trafficked across international borders every year, of which 80 percent are female and half are children.

(3) Between 14,500 and 17,500 people are trafficked into the United States each year.

(4) In 2017, more than 32,000 cases of human trafficking were reported through the National Human Trafficking Hotline. Trafficking related to illicit massage
therapy establishments accounted for 2,949 cases, which was
second in prevalence only to trafficking in escort services.

(5) More than 9,000 massage therapy establishments
are currently operating in the United States. There is strong
evidence suggesting that thousands of women are being
trafficked in these establishments in the United States on any
given day.

(6) Further regulating massage therapy
establishments will help eliminate massage parlor trafficking
while ensuring the health and safety of customers and
employees of legitimate massage therapy establishments.

Section 11. Sections 34-43-12, 34-43-13, 34-43-14,
and 34-43-15, Code of Alabama 1975, are amended to read as
follows:

"§34-43-12.

"(a) Applications for licensure or renewal shall be
on forms provided by the board and shall be accompanied by the
proper fee. The application shall be legible, either printed
in black ink or typed. Applications sent by facsimile shall
not be accepted. A two-by-two photograph, taken no more than
six months earlier, showing a frontal view of the head and
shoulders of the applicant, shall be submitted with the
application. All documents shall be submitted in English.

"(b) Each applicant for licensure shall be subject
to a criminal history check. Refusal to consent to a criminal
historical check constitutes grounds for the board to deny the applicant's application for licensure.

"(c) Each licensed therapist shall display his or her license in the manner specified by the board. Each establishment shall post its license in plain sight and the license of each massage therapist who practices in the establishment.

"(d) A license is the property of the board and shall be surrendered upon demand of the board.


"(a) Each license shall be renewed biennially, on or before the anniversary date, by forwarding to the board a renewal application accompanied by the renewal fee. Each applicant for renewal for licensure shall be subject to a criminal history check. Any license not renewed biennially on or before the anniversary date shall expire.
"(b) Each licensee, upon application for renewal of a license, shall do both of the following:

(1) submit evidence of satisfactory completion of the continuing education requirements contained in Section 34-43-21.

"(2) Consent to a criminal history check. Refusal to consent to a criminal history check constitutes grounds for the board to deny the licensee's application for renewal of the license.

"(c) Licenses are valid for two years from the date of issuance. An individual whose license has expired and who has ceased to practice massage therapy for a period of not longer than five years may have his or her license reinstated upon payment of a renewal fee and a late fee and submission of a renewal application and evidence satisfactory to the board that the applicant has fulfilled continuing education requirements, passed a criminal history check pursuant to rules adopted by the board, paid the criminal history check fee, and passed the examination.

"(d) Subsequent to an official complaint, the board may request a criminal background check of the licensee through the district attorney of the circuit in which the licensee is located.

"§34-43-14."
(a) By rule, the board shall initially assess and collect the following fees not to exceed:

(1) One hundred sixty dollars ($160) for the examination.

(2) One hundred dollars ($100) for the initial massage therapist license which shall be issued for one year. The initial licensing fee shall be assessed in the month when the applicant is notified that the license has been approved.

(3) One hundred dollars ($100) for all biennial license renewals postmarked or received at the office of the board by the date in which the license expires.

(4) Twenty-five dollars ($25) for the initial application for licensure or the resubmission of the initial application.

(5) One hundred dollars ($100) for the initial establishment license.

(6) Fifty dollars ($50) for the biennial renewal of the establishment license.

(7) Fifty dollars ($50) for the initial registration as a massage therapy school in this state.

(8) Ten dollars ($10) to renew the registration as a massage therapy school.

(9) Ten dollars ($10) to register as a massage therapy instructor in this state. This is a one-time fee and does not have to be renewed.
"(10) Seventy-five dollars ($75) to reactivate an inactive license.

"(11) Twenty-five dollars ($25) shall be added to all license fees not post-marked or received by the board before the expiration date of the license.

"(12) Fifteen dollars ($15) to verify a license.

"(13) Ten dollars ($10) for a duplicate license certificate or a name change on a license certificate. The board may issue a duplicate certificate only after receiving a sworn letter from the massage therapist that the original certificate was lost, stolen, or destroyed. The records of the board shall reflect that a duplicate certificate was issued.

"(14) A fee, set by the board, for the criminal history check.

"(b) Necessary administrative fees may be charged by the board, including, but not limited to, reasonable costs for copying, labels, and lists. Examination and license fees may be adjusted as the board shall deem appropriate.

"(c) There is hereby established a separate special revenue trust fund in the State Treasury to be known as the Alabama Board of Massage Therapy Fund. All receipts collected by the board under the provisions of this chapter are to be deposited in this fund and used only to carry out the provisions of this chapter. Such receipts shall be disbursed only by warrant of the state Comptroller, upon itemized
vouchers approved by the chair of the board; provided that no funds shall be withdrawn except as budgeted and allotted according to the provisions of Sections 41-4-80 to 41-4-96, inclusive, 41-19-1, and 41-19-12, as amended, and only in amounts as stipulated in the general appropriations bill or other appropriations bills."

"§34-43-15.

"(a) Any person may file with the board a written and signed complaint regarding an allegation of impropriety by a licensee, establishment, or person. Complaints shall be made in the manner prescribed by the board. Complaints received by the board shall be referred to a standing investigative committee consisting of a board member, the Executive Director, the board attorney, and the board investigator. If no probable cause is found, the investigative committee may dismiss the charges and prepare a statement, in writing, of the reasons for the decision.

"(a) The (b) If probable cause is found, the board shall initiate an administrative proceeding. Upon a finding that the licensee has committed any of the following instances of misconduct, the board may suspend, revoke, or refuse to issue or renew a license or impose a civil penalty after notice and opportunity for a hearing pursuant to the Administrative Procedure Act, upon proof of any of the following:
"(1) The license was obtained by means of fraud, misrepresentation, or concealment of material facts, including making a false statement on an application or any other document required by the board for licensure.

"(2) The licensee sold or bartered or offered to sell or barter a license for a massage therapist or a massage therapy establishment.

"(3) The licensee has engaged in unprofessional conduct that has endangered or is likely to endanger the health, safety, and welfare of the public, as defined by the rules of the board. As used in this subdivision, unprofessional conduct includes, but is not limited to, allowing any individual to remain in a massage therapy establishment overnight.

"(4) The licensee has been convicted of a felony or of any crime arising out of or connected with the practice of massage therapy.

"(5) The licensee has violated or aided and abetted in the violation of this chapter.

"(6) The licensee is adjudicated as mentally incompetent by a court of law.

"(7) The licensee uses controlled substances or habitually and excessively uses alcohol.

"(8) The licensee engaged in false, deceptive, or misleading advertising.
(9) The licensee engaged in or attempted to or offered to engage a client in sexual activity, including but not limited to genital contact, within the client-massage therapist relationship.

(10) The licensee has knowingly allowed the massage therapy establishment to be used as an overnight sleeping accommodation.

(11) The licensee had a license revoked, suspended, or denied in any other territory or jurisdiction of the United States for any act described in this section.

(c)(1) A person governed by this chapter who has a reasonable belief that another massage therapist has engaged in or attempted to or offered to engage a client in sexual activity, as provided in subdivision (9) of subsection (b), shall inform the board in writing within 30 calendar days from the date the person discovers this activity. Upon finding that a person has violated this subsection, the board may do any of the following:

a. Impose an administrative fine of not more than ten thousand dollars ($10,000).

b. Suspend or revoke the person's license to practice massage therapy.

(2) Upon a finding that a person has violated this subsection three or more times, the board shall impose a
mandatory license suspension for a period of no less than three years and a fine of ten thousand dollars ($10,000).

"(d) Any person who has been convicted of, or entered a plea of nolo contendere to, a crime or offense involving prostitution or other sexual offenses is ineligible to hold a license as a massage therapist for a period of at least three years after the entry of the conviction or plea. The board retains the right to revoke a license indefinitely if the licensee is proven guilty of a crime or sexual misconduct. Reinstatement of licensure is contingent upon proof of weekly counseling by a licensed professional counselor.

"(e) Any person who has been convicted of, or entered a plea of nolo contendere to, an offense involving prostitution or any other type of sexual offense may not receive a license for a massage therapy establishment for a period of three years after the date of conviction or entry of the plea. The board shall revoke the establishment license of any establishment which the board determines is a sexually oriented business. The board may revoke an establishment license if a person is convicted of, or enters a plea of nolo contendere to, any crime involving prostitution or any other sexual offense against a client which occurred on the premises of the establishment.
"(d)(1) (f)(1) Upon finding a person, governed by this chapter, performing massage therapy without having obtained a license, the board may do any of the following:

"a. Impose an administrative fine of not more than ten thousand dollars ($10,000).

"b. Issue a cease and desist order.

"c. Petition the circuit court of the county where the act occurred to enforce the cease and desist order and collect the assessed fine.

"(2) Any person aggrieved by any adverse action of the board must appeal the action to the Circuit Court of Montgomery County in accordance with the Alabama Administrative Procedure Act.

"(g) The board shall present any incident of misconduct to the local district attorney for review and appropriate action.

"(h) The board may adopt rules to implement and administer this section."

Section 12. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the
bill defines a new crime or amends the definition of an existing crime.

Section 13. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.
Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives
I hereby certify that the within Act originated in
and was passed by the House 13-MAR-18, as amended.

Jeff Woodard
Clerk

Senate               27-MAR-18               Amended and Passed
House               28-MAR-18               Concurred in Senate Amendment