

1 SB384
2 157236-1
3 By Senator Allen
4 RFD: Health
5 First Read: 20-FEB-14

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8 SYNOPSIS: Under existing law, there are no
9 requirements authorizing the licensure or
10 regulation of persons practicing acupuncture or
11 other techniques of Oriental medicine.

12 This bill would establish the Alabama Board
13 of Acupuncture and Oriental Medicine to grant
14 licensure to practice acupuncture and Oriental
15 medicine techniques.

16 This bill would provide for the composition
17 of the board; would provide for the functions of
18 the board; would specify requirements for rules for
19 licensed acupuncturists; and would provide for
20 penalties for violating this bill.

21 Amendment 621 of the Constitution of Alabama
22 of 1901, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of
24 Alabama of 1901, as amended, prohibits a general
25 law whose purpose or effect would be to require a
26 new or increased expenditure of local funds from
27 becoming effective with regard to a local

1 governmental entity without enactment by a 2/3 vote
2 unless: it comes within one of a number of
3 specified exceptions; it is approved by the
4 affected entity; or the Legislature appropriates
5 funds, or provides a local source of revenue, to
6 the entity for the purpose.

7 The purpose or effect of this bill would be
8 to require a new or increased expenditure of local
9 funds within the meaning of the amendment. However,
10 the bill does not require approval of a local
11 governmental entity or enactment by a 2/3 vote to
12 become effective because it comes within one of the
13 specified exceptions contained in the amendment.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to acupuncture; to establish the Alabama
20 Board of Acupuncture and Oriental Medicine; to provide for the
21 licensing and regulation of the practice of acupuncture and
22 other Oriental medicine techniques; and in connection
23 therewith would have as its purpose or effect the requirement
24 of a new or increased expenditure of local funds within the
25 meaning of Amendment 621 of the Constitution of Alabama of
26 1901, now appearing as Section 111.05 of the Official

1 Recompilation of the Constitution of Alabama of 1901, as
2 amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. The following words and phrases shall
5 have the following meanings, unless the context clearly
6 indicates otherwise:

7 (1) ACUPUNCTURE. A form of health care developed
8 from traditional and modern Oriental medical concepts and
9 modern research, that employs acupuncture diagnosis and
10 treatment, as well as adjunctive therapies and diagnostic
11 techniques, for the promotion, maintenance, and restoration of
12 health and the prevention of disease. Acupuncture includes,
13 but is not limited to, the insertion of needles and the
14 application of moxibustion to specific areas of the body; the
15 use of electroacupuncture and electrodermal assessment; Qi
16 Gong; and Oriental methods of bodywork, dietary, nutritional,
17 herbal and movement therapies as taught in learning
18 institutions accredited by the Accreditation Commission for
19 Acupuncture and Oriental Medicine.

20 (2) ACUPUNCTURIST. A practitioner who is licensed
21 under this act to practice acupuncture, as determined by the
22 Alabama Board of Acupuncture and Oriental Medicine.

23 (3) BOARD. The Alabama Board of Acupuncture and
24 Oriental Medicine.

25 Section 2. (a) There is created and established the
26 Alabama Board of Acupuncture and Oriental Medicine to
27 implement and administer this act.

1 (b) The board shall consist of four members
2 appointed by the Governor. Three members shall hold valid
3 certifications from the National Certification Commission for
4 Acupuncture and Oriental Medicine or be licensed to practice
5 acupuncture as provided in this act, and the fourth member
6 shall be a member of the public. The membership of the board
7 shall be inclusive and reflect the racial, gender, geographic,
8 urban/rural, and economic diversity of the state. Vacancies
9 shall be filled by the Governor in the same manner as other
10 appointments are made. In the case of a vacancy, the new
11 appointee shall serve for the remainder of the unexpired term.

12 (c) Two of the initial members of the board shall be
13 appointed for a term of two years, and two of the initial
14 members shall be appointed for a term of four years. Terms of
15 subsequent members shall be for four years. A member whose
16 term has expired shall serve until a successor is appointed.

17 (d) The board shall meet at least twice each year,
18 conducting its business in person or by electronic methods,
19 including proxy voting.

20 (e) The board shall elect one of its members to
21 serve as chair for a two-year term. The chair may not serve
22 consecutive terms.

23 (f) All members of the board shall be immune from
24 individual civil liability while acting within the scope of
25 their duties as board members.

26 (g) Members of the board shall serve without
27 compensation but shall be allowed travel and per diem expenses

1 at the same rate paid to state employees, to be paid from the
2 funds collected for the administration of this act, as funds
3 are available.

4 (h) The board may employ, subject to the state Merit
5 System, those agents, employees, or assistants as may from
6 time to time be necessary, and may work or collaborate with or
7 contract services with any existing board as deemed necessary
8 and appropriate.

9 (i) The Alabama Board of Acupuncture and Oriental
10 Medicine shall be subject to the Alabama Sunset Law, Title 41,
11 Chapter 20, Code of Alabama 1975, as an enumerated agency as
12 provided in Section 41-20-3, Code of Alabama 1975, and shall
13 have a termination date of October 1, 2016, and every four
14 years thereafter, unless continued pursuant to the Alabama
15 Sunset Law.

16 Section 3. All funds received by the board under the
17 provisions of this act shall be deposited in the State
18 Treasury to the credit of the Alabama Board of Acupuncture and
19 Oriental Medicine and all such funds are to be appropriated to
20 the board to defray the expenses incurred in carrying out the
21 provisions of this act. In all cases, any fee which is
22 received by the board shall not be refunded, and no applicant
23 shall have the right to recover any part of a fee accompanying
24 his or her application for licensure or otherwise paid to the
25 board except on the death, disability, or retirement from
26 practice of any applicant or licensee between payment of any
27 fee and the expiration of his or her current renewal or the

1 issuance of the initial license. The books and records of the
2 board shall be subject to state audit in the same manner and
3 to the same extent as any other state agency. The board shall
4 keep a true and accurate account of all funds received by the
5 board and all expenditures made by the board.

6 Section 4. (a) The board shall be responsible for
7 the regulation and licensing of acupuncturists in the state,
8 including the approval, renewal, denial, restriction,
9 revocation, and suspension of licenses.

10 (b) The board shall maintain a record of its
11 proceedings regarding the regulation and licensing of
12 acupuncturists in a register maintained for that purpose.

13 (c) The board shall maintain an up-to-date roster of
14 every person licensed to practice acupuncture in the state and
15 persons whose licenses have been suspended or revoked. A copy
16 of the roster shall be made available to any person requesting
17 it upon payment of a fee established by the board as
18 sufficient to cover the copying cost. The roster shall include
19 the name of the person, the address, and the date the license
20 was issued, renewed, suspended, or revoked.

21 (d) The board shall promulgate and publish rules in
22 accordance with the Alabama Administrative Procedure Act to
23 administer this act. Rules shall include, but not be limited
24 to, all of the following:

25 (1) A code of ethics.

26 (2) Licensing procedures.

1 (3) Minimum competency requirements to ensure an
2 applicant meets accepted national educational standards.

3 (4) Minimum standards of practice in accordance with
4 those developed and generally accepted by the profession in
5 order to safely and effectively diagnose and treat health
6 conditions within the framework of acupuncture and Oriental
7 medicine.

8 Section 5. (a) (1) Any person wishing to obtain the
9 right to use acupuncture needles to pierce the skin, or use
10 acupuncture or other Oriental medicine technique in this state
11 shall make application to the board upon such form and in such
12 manner as prescribed by the board.

13 (2) Unless a person has first obtained a valid
14 license, it shall be unlawful and a violation of this act for
15 him or her to practice acupuncture or other Oriental medicine
16 technique.

17 (b) A candidate for licensure shall furnish the
18 board with satisfactory evidence of all of the following:

19 (1) He or she is at least 21 years of age.

20 (2) He or she is of good moral character.

21 (3) He or she successfully passes one or more
22 examinations as the board prescribes, unless exempt under
23 subsection (c).

24 (4) He or she holds an active certification from the
25 National Certification Commission for Acupuncture and Oriental
26 Medicine as a diplomat in acupuncture, Oriental medicine, or

1 Chinese herbology, or certification from an equivalent
2 organization as recognized and approved by the board.

3 (c) The board may issue a license to any candidate
4 who holds a current license for practicing acupuncture or
5 other Oriental medicine technique under the laws of another
6 state, territory, or foreign country, and who applies to the
7 board, provided the candidate shall furnish the board with
8 satisfactory evidence of all of the following:

9 (1) He or she is at least 21 years of age.

10 (2) He or she is of good moral character.

11 (3) He or she has not been involved in any
12 disciplinary action or complaint that would affect his or her
13 ability to practice acupuncture.

14 (4) That the state under which he or she is licensed
15 gives similar recognition and reciprocal licensing to licensed
16 acupuncturists in this state, or otherwise meets requirements
17 prescribed by the board.

18 (d) The board shall renew licenses annually. The
19 board may require continuing education coursework as a
20 condition of renewal.

21 Section 6. (a) The board may require as a condition
22 to determining an applicant's fitness to practice acupuncture
23 that the applicant pass one or more competency examinations,
24 either administered by a national accreditation commission for
25 acupuncture and Oriental medicine or administered by the
26 board.

1 (b) If the board chooses to administer examinations
2 as a condition of licensure, it shall adopt rules prescribing
3 the manner in which an examination will be given and the
4 subject matter that will be included. For any examination so
5 administered, the board shall appoint three or more persons
6 who are licensed to practice acupuncture to assist in the
7 preparation and administration of the examination.

8 (c) The board may charge a fee to cover the costs of
9 administering the examination.

10 (d) Any applicant who fails an examination and is
11 therefore refused licensure may retake the examination upon
12 application and payment of an additional examination fee.

13 Section 7. (a) The board shall collect the following
14 fees as determined by the board:

15 (1) An application and license fee not to exceed six
16 hundred dollars (\$600).

17 (2) An annual license renewal fee not to exceed two
18 hundred dollars (\$200).

19 (3) A reissuance fee for a lost or destroyed license
20 not to exceed one hundred dollars (\$100).

21 (b) In addition to the fees provided in subsection
22 (a), the board shall collect an examination fee as determined
23 by the board.

24 (c) Each applicant who applies for the renewal of a
25 license after his or her license has expired shall pay a late
26 fee of not more than twenty-five dollars (\$25).

1 Section 8. The board may suspend, restrict, revoke,
2 or refuse to issue or renew any license issued or applied for
3 in accordance with this act, or otherwise discipline a
4 licensed acupuncturist after notice and opportunity for a
5 hearing as provided in this section, whenever the board finds
6 by a preponderance of the evidence that the person has engaged
7 in any of the following acts or offenses:

8 (1) Fraud or deception in applying for or procuring
9 a license or in passing an examination under this act.

10 (2) Failure to fulfill continuing education
11 requirements mandated by the board.

12 (3) Impersonation of another person holding an
13 acupuncturist license or allowing another person to use his or
14 her license.

15 (4) Violation of the code of ethics adopted by the
16 board.

17 (5) Conviction of a felony, the record of the
18 conviction being conclusive evidence thereof.

19 (6) The practice of acupuncture or other Oriental
20 medicine technique in such a manner as to endanger the welfare
21 of clients or patients.

22 (7) Has been legally adjudicated as mentally
23 incompetent, the record of adjudication being conclusive
24 evidence thereof.

25 (8) Willful or negligent violation of any provision
26 of this act or rule adopted thereof.

1 (9) Performance of an act that exceeds the scope of
2 practice granted to the licensed acupuncturist.

3 (b) Notice of denial, revocation, or suspension of a
4 license or of disciplinary action shall be sent to the
5 applicant or licensee by registered mail or served personally
6 on the applicant or licensee. The notice shall state the
7 particular reasons for the proposed action and shall set a
8 date at which the applicant or licensee shall be given an
9 opportunity for a prompt and fair hearing. The written notice
10 shall be sent to the person's last known address, but the
11 nonappearance of the person shall not prevent a hearing. For
12 the purposes of the hearing, the board may subpoena persons,
13 books, and papers on its own behalf or on behalf of the
14 applicant or licensee who may appear by counsel or personally
15 on his or her own behalf.

16 (c) On the basis of any hearing or upon default of
17 the applicant or licensee, the board shall make a
18 determination specifying its findings of fact and conclusions
19 of law. A copy of the determination shall be sent by
20 registered mail or served personally upon the applicant or
21 licensee. A decision of the board to deny, revoke, or suspend
22 a license shall become final 30 days after being mailed or
23 served unless within that period the applicant or licensee
24 appeals the decision as provided by the Administrative
25 Procedure Act. No appeal, while pending appropriate court
26 action, shall supersede the denial, revocation, or suspension.

1 All proceedings and evidence presented at hearings before the
2 board may be admissible during appellate proceedings.

3 (d) Every order or judgment of the board shall take
4 effect immediately on its promulgation unless the board in the
5 order or judgment sets a probationary period for the applicant
6 or licensee. The order or judgment shall continue in effect
7 until expiration of any specified time period or termination
8 by a court of competent jurisdiction. The board shall notify
9 all licensees of any action taken against a licensee and may
10 make public its orders and judgments in the manner and form it
11 considers appropriate.

12 Section 9. The board shall have the power to
13 recognize areas of specialization for practice and to ensure
14 through rules and enforcement that licensees limit their
15 practice to demonstrated areas of competence. The board may
16 designate appropriate titles, including, but not limited to,
17 "acupuncturist," "licensed acupuncturist," "doctor of Oriental
18 medicine" "Oriental medicine practitioner," or "Practitioner
19 of Oriental Medicine," as well as abbreviations such as "LAc,"
20 "DOM," or "OMD," as the board deems appropriate.

21 Section 10. (a) Effective July 1, 2015, a person may
22 not practice acupuncture or any other Oriental medicine
23 technique, or assume or use the title or designation
24 "acupuncturist," "licensed acupuncturist," "Oriental medicine
25 practitioner," or similar title, abbreviation, or designation
26 unless he or she holds a valid license issued by the board
27 pursuant to this act. A person who violates this section shall

1 be guilty of a Class C misdemeanor and, upon conviction, shall
2 be punished as prescribed by law.

3 (b) The board, through its proper officer, may cause
4 to issue, in any competent court, a writ of injunction
5 enjoining any person from practicing as an acupuncturist until
6 the person obtains a license under the provisions of this act,
7 or for any other violation of this act or the rules
8 promulgated by this act.

9 (c) In case of violation of any injunction issued
10 under this section, the court may punish the offender for
11 contempt of court.

12 (d) The injunctive proceedings shall be in addition
13 to, and not in lieu of, all penalties and other remedies
14 provided in this act.

15 (e) In the suit for an injunction, the board may
16 demand a civil penalty, payable to the board, of not more than
17 two thousand dollars (\$2,000) and attorney fees in addition to
18 the court costs, as determined by the board. This judgment for
19 penalty, attorney fees, and court costs may be rendered in the
20 same judgment in which the injunction is made absolute.

21 (f) An action for injunctive relief shall be
22 determined by a judge without a jury.

23 Section 11. When treating a patient, a licensed
24 acupuncturist may not make a medical diagnosis, but may
25 provide pattern differentiation according to traditional
26 Chinese medicine. If a patient's condition is not improving or

1 a patient requires emergency medical treatment, the
2 practitioner shall consult promptly with a physician.

3 Section 12. The provisions of this act shall not be
4 construed to interfere with or prevent any other class of
5 health care practitioner licensed in this state from
6 practicing within the scope of his or her license.

7 Section 13. Although this bill would have as its
8 purpose or effect the requirement of a new or increased
9 expenditure of local funds, the bill is excluded from further
10 requirements and application under Amendment 621, now
11 appearing as Section 111.05 of the Official Recompilation of
12 the Constitution of Alabama of 1901, as amended, because the
13 bill defines a new crime or amends the definition of an
14 existing crime.

15 Section 14. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.