

ARKANSAS DEPARTMENT OF HEALTH, CENTER FOR LOCAL PUBLIC HEALTH

SUBJECT: Rules Pertaining to Body Art Establishments

DESCRIPTION: The Department has amended the rules as follows:

- Updated rules to reflect requirements of Act 315 of 2019;
- Added Section 4.7, pertaining to artist training requirements, to implement Act 910 of 2019;
- Added Section 5.3.4, Veterans Licensure, to implement Act 820 of 2019;
- Added sections pertaining to reciprocity and temporary and provisional licenses, implementing Act 426 of 2019;
- Added Sections 5.3.8 through 5.3.9.7, pertaining to prohibiting offenses, to implement Act 990 of 2019.

PUBLIC COMMENT: The public comment period on this rule expired on October 4, 2019. A public hearing was also held on October 4, 2019. The agency provided the following summary of the public comments it received:

Commenter's Name: Simon Garcia

COMMENT #1: Mr. Garcia asked if with the addition of criminal background checks, felons would still be allowed to tattoo. **RESPONSE:** The language concerning prohibiting offenses are in direct response to the requirements of Act 990 of 2019. An individual will not be eligible to receive or hold a license issued by the Department if that individual has pleaded guilty or nolo contendere or been found guilty of any of the offenses detailed in Ark. Code Ann. § 17-1-108. However, the Department may grant a waiver as authorized by Ark. Code Ann. § 17-2-102 in certain circumstances. Act 990 allows an individual to have the Department render a pre-application opinion regarding criminal convictions. No changes will be made to sections 5.3.8 or 5.3.9.

COMMENT #2: Mr. Garcia asked for clarification on the changes affecting Military personnel and their spouses in regard to licensure. **RESPONSE:** The Rule is being changed in response to Act 820 of 2019, which requires automatic or expedited licensure for Military service members and/or their spouses. Military members and their spouses will receive a license upon the Department's receipt of (1) payment of the initial licensure fee, (2) Evidence that the individual holds a substantially equivalent license in another state, and (3) Evidence that the applicant is a qualified applicant under 5.3.4. of this rule. No changes will be made to section 5.3.4.

Commenter's Name: Jay Little

COMMENT #1: Mr. Little asked if the Department of Health decides how to regulate the Body Art profession, and if this Public Hearing was the time or place for general concerns regarding the Body Art Rules.

RESPONSE: The October 4th Public Hearing was only for receiving comments that related to the changes being made to the Rules Pertaining to Body Art Establishments. General comments concerning the Body Art rules were not appropriate at that time. Attendees were informed at the Public Hearing that the Department intended to organize an additional meeting to interact with those who wished to discuss concerns regarding the Body Art profession outside the scope of the Public Hearing.

On December 9th, 2019, ADH held a meeting to clarify the questions and concerns of the Body Art Schools and Body Artists who attended the public hearing of October 4th, 2019. All Body Art Trainers/School Operators in the State were invited, as well as the Artists who attended the public hearing.

The stated goals of the meeting were to accept any information and questions the regulated community expressed or requested, provide additional explanation of the rule updates required by the Acts of the 2019 General Assembly, and to ask for assistance and input with developing curriculum for Body Art Training Schools as required by Act 910 of 2019.

Twenty-one Artists attend the meeting along with Department Environmental and Legal Staff. The attendee's concerns that are within the parameters of ADH authority were addressed. Several artists/school trainers were identified to assist with ongoing development of the curriculum for body art schools.

COMMENT #2: Mr. Little asked if the Rules Pertaining to Body Art Establishments have already changed. **RESPONSE:** The Rules Pertaining to Body Art Establishments have not been changed. The 2016 Rules Pertaining to Body Art Establishments are still currently what the Department is enforcing. The Proposed Amendments to the Rule have not completed the promulgation process.

COMMENT #3: Mr. Little asked if wordage in section 4.7.1 meant that the Department intended to start its own [body art] school. **RESPONSE:** The wording in section 4.7.1 comes directly from Ark. Code Ann. § 20-27-1507. It requires that the school an artist in training attends is licensed by the Department – not run by the Department.

Commenter's Name: Micaela Stephens

Comment: Ms. Stephens stated that she has an issue with the requirement of an "apprentice sponsor" having to be licensed in Arkansas for 5 years. **RESPONSE:** ADH took Ms. Stephens comment on October 4th and on December 9th, 2019, further discussed Ms. Stephens' objections. ADH stated that they would continue to review this requirement among others, but no change would be made to 4.3.7 at this time.

Commenter's Name: Sherry Atkins

COMMENT: Ms. Atkins commented that she has information and copies of the Rules and Regulations from when Body Art was regulated by the Department of Higher Education, and wished to share it with the Department. **RESPONSE:** The Department accepted and copied the information Ms. Atkins offered during the December 9th meeting mentioned in Response #3. The Rules given to us by Ms. Atkins are not applicable to ADH as a result of Act 910 of 2019.

Commenter's Name: Derek Canessa

COMMENT: Mr. Canessa commented that he believed the requirements for a school to be licensed, and the requirements for an artist in training were too vague. **RESPONSE:** The Department believes the language meets the text and intent of Ark. Code Ann. § 20-27-1507 and no changes will be made at this time.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions, provided the following comments, and received the following responses:

1. The completed questionnaire lists a proposed effective date of April 2020. Is that meant to be April 1, 2020? **RESPONSE:** Yes.

2. Section 4.7.1.8 has a citation to the Arkansas Code that should read “§ 20-27-1508” rather than “§ 20-27-32 1508.”. Section 4.7.1.9 duplicates the word “department.”

RESPONSE: Agreed. Both are typos. Corrected.

3. Section 5.3.4.2 states that the Department shall grant automatic licensure “upon receipt of all of the below.” It then lists categories of people who may apply for automatic licensure. What is the Department supposed to receive under this section? **RESPONSE:** This was the result of a cut and paste typo. Corrected version attached.

4. Is an applicant under § 5.3.4.3 who holds a substantially equivalent license in another state required to show that he or she is in good standing with the licensing board of that other state?

RESPONSE: No. The person is not required to provide documentation such as a certificate of good standing or the like. Such a requirement is not a part of the agreed upon model language being utilized by the executive agencies.

It may be that good standing is presumed under 5.3.4.3.2. It may be to reduce paperwork burden since the military licensees are few in number and good standing could usually be ascertained by a phone call to appropriate licensing authorities in other states. This would be consistent with the General Assembly's clear intent is to ease burden red tape burden's on otherwise qualified military personnel. This is all speculation on my part.

5. There seems to be a word missing in § 5.3.4.2.2. Additionally, § 5.3.4.3 should read “upon receipt” instead of “upton receipt.” **RESPONSE:** The missing word was her – fixed. Typo/Omissions fixed.

6. Are the provisions of § 5.3.5 intended to apply solely to current and former military personnel and their spouses, as implied by the reference to § 5.3.4.1? **RESPONSE:** It was meant to apply to any person holding a substantially similar or equivalent license in compliance with Act 1011. I have added clarification language to reference Act 1011.

7. Section 5.3.5.1 references § 5.2.4.2. However, § 5.2.4.2 does not exist. What is the correct cross-reference here? What is “the documentation required” under that section and § 5.3.4.1? **RESPONSE:** I believe this a cut and paste error from another rule set that slipped through into the final draft. I have corrected it.

8. What is meant by “the rest of the documentation required above” in § 5.3.5.3? **RESPONSE:** That was meant to reference 4.4. I have corrected for clarity.

9. Where does the procedure detailed in § 5.3.9.2 through 5.3.9.7 come from? **RESPONSE:** This was based on Act 990 which does not apply to Title 20 Occupations. This was an error that was caught on two other ADH programs in late September/Early October, but obviously slipped through on this program. Originally there was some confusion among executive branch attorneys concerning Red Tape Reduction Act interpretation as it relates to occupations in Title 20. Once a consensus was reached that all Red tape Reduction Acts in addition to Title 17, apply to Title 20 Occupations **except for Act 990**, ADH amended its drafts. This one slipped through since it was one of the earliest to go through our internal rules procedures. I have corrected it and deleted the language. I also have deleted the prohibiting offenses language in 5.3.8 which was also based on Act 990 Model Language.

10. Is there specific statutory authority for the proposition that the Department’s decision on a pre-licensure criminal background check petition is not subject to appeal?

RESPONSE: See item 9 response.

The proposed effective date is April 1, 2020.

FINANCIAL IMPACT: Per the agency, there is no financial impact.

LEGAL AUTHORIZATION: The Department of Health has the authority to license, regulate, and promulgate rules related to body art establishments. *See* Ark. Code Ann. § 20-27-1503(a)(1), (b)(1). Act 910 of 2019 gave the Department the authority to license and regulate body art trainers and training facilities. Act 426 of 2019, sponsored by Representative Bruce Cozart, authorized licensing entities, including the Department, to grant temporary or provisional occupational licenses. The Act also required those entities to adopt “the least restrictive” rules allowing reciprocity and temporary or provisional licenses for certain individuals. *See* Ark. Code Ann. § 17-1-108(b), (c)(3).

Act 820 of 2019, sponsored by Senator Missy Irvin, required occupational licensing entities to automatically grant licenses to certain veterans. Act 990 of 2019, sponsored by Senator John Cooper, allowed occupational licensing entities to require criminal

background checks for license applicants, restricted individuals with certain criminal histories from holding occupational licenses, and required licensing entities to promulgate rules implementing the Act.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Arkansas Department of Health
DIVISION Center for Local Public Health
DIVISION DIRECTOR J. Don Adams
CONTACT PERSON J. Terry Paul
ADDRESS 4815 West Markham, Little Rock, AR 72205
PHONE NO. 501-661-2171 FAX NO. 501-661-2572 E-MAIL jpaul@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Laura Shue
PRESENTER E-MAIL Laura.Shue@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule? Rules Pertaining to Body Art Establishments
- 2. What is the subject of the proposed rule? Body Art Establishments
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No **X**
If yes, please provide the federal rule, regulation, and/or statute citation. _____
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes _____ **No** **X** _____
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes _____ No If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes _____ No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. A. C. A. 14 § 236-101 et. seq

7. What is the purpose of this proposed rule? Why is it necessary? Act 426, Act 820, Act 315 and Act 910 of the 2019 General Assembly. Updates language to current law and provides consensus language of the above referenced acts.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).). <https://www.healthy.arkansas.gov/proposed-amendment-to-existing-rules>

9. Will a public hearing be held on this proposed rule? Yes No _____
If yes, please complete the following:

Date: October 4, 2019 _____

Time: 9:00 a.m. _____

Place: Arkansas Department of Health, Dr. Joseph Bates Auditorium, 4815 West Markham St., Little Rock, AR 72205

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
4:30 p.m. October 4th, 2019.

11. What is the proposed effective date of this proposed rule? April 2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Licensees. Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Health

DIVISION Center for Local Public Health

PERSON COMPLETING THIS STATEMENT J. Terry Paul

TELEPHONE NO. 501-661-2171 **FAX NO.** 501-661-2572 **EMAIL:** jpaul@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rule Pertaining to General Sanitation

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No X _____
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes X _____ No _____
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes _____ No _____

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
- (b) The reason for adoption of the more costly rule;
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:
- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes _____ No _____

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000
Governor Asa Hutchinson
Nathaniel Smith, MD, MPH, Secretary of Health

Summary of Changes to the Rules Pertaining to Body Art Establishments

1. Updated entire rule to reflect requirements of Act 315 of 2019, to remove the word, “regulation.”
2. Added Section 4.7 from A.C.A. 20-27-1507 pertaining to Artist Trainers and Hours for Artists in Training, due to Act 910 of 2019.
3. Added Section 5.3.4 to reflect changes due to Act 820 of 2019.
4. Added Section 5.3.5 to reflect changes due to Act 426 and Act 1011 of 2019.