

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: S3/12/15

A Bill

SENATE BILL 145

5 By: Senator B. Sample
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE ARKANSAS STATE
9 BOARD OF MASSAGE THERAPY; TO TRANSFER THE ARKANSAS
10 STATE BOARD OF *MASSAGE THERAPY*; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

14 TO AMEND THE LAW CONCERNING THE ARKANSAS
15 STATE BOARD OF MASSAGE THERAPY; AND TO
16 TRANSFER THE ARKANSAS STATE BOARD OF
17 *MASSAGE THERAPY*.
18
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

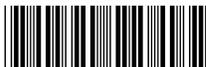
SECTION 1. DO NOT CODIFY.

23 *(a)(1) The Arkansas State Board of Massage Therapy is abolished and*
24 *transferred to the State Board of Health and the Department of Health by a*
25 *type 3 transfer under § 25-2-106.*
26

27 *(2) As used in this act, the Department of Health shall be*
28 *considered the principal department.*

29 *(b)(1) All authority, powers, duties, and functions as established by*
30 *law for the Arkansas State Board of Massage Therapy, including all*
31 *purchasing, budgeting, fiscal, accounting, human resources, payroll, legal,*
32 *information systems, maintenance, program support, administrative support,*
33 *and other management functions are transferred to the State Board of Health*
34 *and the Department of Health, except as specified in this act.*

35 *(2) All records, personnel, property, unexpended balances of*
36 *appropriations, allocations, or other funds are transferred to the Department*



1 of Health. All funds shall be deposited into the Public Health Fund.

2 (3) All powers, duties, and functions, including without
 3 limitation rulemaking, and licensing, promulgation of rules, rates,
 4 standards, and the rendering of findings, orders, and adjudications as
 5 established by law for the Arkansas State Board of Massage Therapy are
 6 transferred to the State Board of Health, except as specified by this act.

7 (c) The Arkansas Code Revision Commission shall replace "Arkansas
 8 State Board of Massage Therapy" in the Arkansas Code with "State Board of
 9 Health", except as specified in this act.

10
 11 SECTION 2. Arkansas Code § 17-86-102(1), concerning the definition of
 12 "board", is repealed and the section shall be renumbered appropriately.

13 ~~(1) "Board" means the Arkansas State Board of Massage Therapy;~~
 14

15 SECTION 3. Arkansas Code § 17-86-102(3)(C)(i), concerning the
 16 definition of "massage therapist", is amended to read as follows:

17 (i) Instruct ~~board-approved~~ continuing education
 18 programs approved by the Department of Health; and
 19

20 SECTION 4. Arkansas Code § 17-86-102(6) and (7), concerning the
 21 definitions of "massage therapy instructor" and "massage therapy school", are
 22 amended to read as follows:

23 ~~(6)(A)(5)(A)~~ "Massage therapy instructor" means a person who:

24 (i) Before July 1, 2010, has completed no less than
 25 two hundred fifty (250) hours of practical experience as a master massage
 26 therapist, which may be gained, in part or in whole, as an assistant to an
 27 instructor in a massage school or may be gained, in part or in whole, as a
 28 directed instructor in a massage school and has completed no less than two
 29 hundred fifty (250) continuing education hours as approved by the ~~board~~
 30 Department of Health;

31 (ii) On or after July 1, 2010, has been an active and
 32 practicing licensee and registered as a master massage therapist for a period
 33 of not less than three (3) years preceding the application for an upgrade to
 34 massage therapy instructor;

35 (iii) On or after July 1, 2010, in addition to the
 36 experience under subdivision ~~(6)(A)(i)(5)(A)(i)~~ of this section, has

1 completed no less than two hundred fifty (250) continuing education hours as
2 approved by the ~~board~~ department as a licensed master massage therapist; and

3 (iv) Is determined by the ~~board~~ department to be
4 qualified to be licensed and registered to practice massage therapy.

5 (B) "Massage therapy instructor" includes a person who has
6 previously obtained the massage therapy instructor license under prior state
7 law.

8 (C) Massage therapy instructors may:

9 (i) Instruct ~~board-approved~~ continuing education
10 programs approved by the department;

11 (ii) Instruct any of the procedures in subdivision
12 ~~(5)~~ (4) of this section; and

13 (iii) Instruct basic curricula in a ~~board-registered~~
14 massage therapy school registered by the department as required by § 17-86-
15 306(e);

16 ~~(7)~~ (6) "Massage therapy school" means a registered and licensed
17 facility that meets and follows the required educational standards as
18 established by § 17-86-306 and all pertinent rules established by the ~~board~~
19 State Board of Health;

20
21 SECTION 5. Arkansas Code § 17-86-102(9), concerning the definition of
22 "master massage therapist", is amended to read as follows:

23 ~~(9)(A)~~ (8)(A) "Master massage therapist" means a person who:

24 (i) Before July 1, 2010, is a licensed and registered
25 massage therapist who has completed no fewer than two hundred fifty (250)
26 hours of practical experience as a massage therapist, which may be gained in
27 part or in whole as an assistant to an instructor in a massage school and has
28 completed no less than one hundred twenty-five (125) continuing education
29 hours as approved by the ~~board~~ Department of Health;

30 (ii) On or after July 1, 2010, has been an active and
31 practicing licensee and registered as a massage therapist for a period of not
32 less than two (2) years preceding the application for an upgrade to master
33 massage therapist;

34 (iii) On or after July 1, 2010, in addition to the
35 experience under subdivision ~~(9)(A)(i)~~ (8)(A)(i) of this section, has
36 completed no less than one hundred twenty-five (125) continuing education

1 hours as approved by the ~~board~~ Department of Health; and

2 (iv) Is determined by the ~~board~~ Department of Health
3 to be qualified to be licensed and registered to practice massage therapy.

4 (B) "Master massage therapist" includes a person who has
5 previously obtained the master massage therapist license under a prior state
6 law.

7 (C) Master massage therapists may:

8 (i) Instruct ~~board-approved~~ continuing education
9 programs approved by the Department of Health;

10 (ii) Instruct any of the procedures in subdivision
11 ~~(5)~~ (4) of this section; and

12 (iii) Instruct, as directed by a massage therapy
13 instructor, basic curricula in a ~~board-registered~~ massage therapy school
14 registered by the Department of Health as required by § 17-86-306(e);

15
16 SECTION 6. Arkansas Code § 17-86-102, concerning definitions, is
17 amended to add an additional subdivision to read as follows:

18 (11) "Postsecondary massage therapy school" means a massage
19 therapy school that:

20 (A) Offers a postsecondary curriculum approved by the
21 State Board of Health; and

22 (B) Has an enrollment in which no more than fifty percent
23 (50%) of its students do not have a high school diploma or the recognized
24 equivalent of a high school diploma.

25
26 SECTION 7. Arkansas Code § 17-86-103 is amended to read as follows:
27 17-86-103. Penalties.

28 (a) Any person who shall violate any of the provisions of this chapter
29 shall be found guilty of a misdemeanor and upon conviction shall be punished
30 by imprisonment in the county jail for not more than six (6) months or by a
31 fine not exceeding one thousand five hundred dollars (\$1,500), or by both
32 fine and imprisonment, at the discretion of the court.

33 (b) It shall be the duty of the prosecuting attorney in the county
34 where the violation occurs, upon request by the ~~Arkansas State Board of~~
35 ~~Massage Therapy~~ Department of Health, to initiate proper legal proceedings in
36 a court of competent jurisdiction to enforce the provisions of this chapter.

1 (c) The courts of this state having general equity jurisdiction are
2 vested with jurisdiction and power to enjoin the unlawful practice of massage
3 therapy and related techniques in a proceeding by the ~~board~~ department or by
4 any citizen of this state in the county in which the alleged unlawful
5 practice occurred or in which the defendant resides or in Pulaski County. The
6 issuance of an injunction shall not relieve a person from criminal
7 prosecution for violation of the provisions of this chapter, but the remedy
8 of injunction shall be in addition to liability to criminal prosecution.

9
10 SECTION 8. Arkansas Code § 17-86-201 is amended to read as follows:
11 17-86-201. Members.

12 (a)(1) The ~~Arkansas State Board of~~ Arkansas State Board of ~~Massage Therapy~~ Technical Advisory
13 Committee shall consist of seven (7) members, who shall be appointed by the
14 ~~Governor~~ State Board of Health for a term of three (3) years.

15 (2)(A) Six (6) of the members shall be licensees under this
16 chapter. ~~These members shall be full voting members.~~

17 (B)~~(i)~~ Only one (1) of the members shall be an owner of a
18 massage therapy school.

19 ~~(ii) The member appointed under subdivision~~
20 ~~(a)(2)(B)(i) of this section shall be a full voting member.~~

21 (3) One (1) member, to represent the public, shall not be engaged
22 in or retired from the practice of massage therapy. ~~This member shall be a~~
23 ~~full voting member.~~

24 ~~(4)(A) A board member shall begin his or her appointed term on~~
25 ~~August 20 of the year in which he or she is appointed.~~

26 ~~(B) Board members appointed to their positions shall be~~
27 ~~selected in equal apportionment from the congressional districts of the state~~
28 ~~as provided in § 25-16-801 and shall be subject to confirmation by the~~
29 ~~Senate.~~

30 ~~(C) A board position becomes vacant immediately when the~~
31 ~~member filling that position moves to another state.~~

32 ~~(D)(i) The initial terms of the appointed members of the~~
33 ~~board shall be determined by lot so that three (3) members have a three-year~~
34 ~~term and two (2) members have a two-year term.~~

35 ~~(ii) A person who served on the board is not eligible~~
36 ~~for an initial appointment.~~

1 ~~(5) Board members shall not serve more than six (6) consecutive~~
2 ~~years on the board.~~

3 ~~(b) The Governor may remove members of the board from office according~~
4 ~~to § 25-16-804. The Governor shall fill any vacancy caused by the removal of~~
5 ~~any member of the board, by a member's resignation or death, or upon the~~
6 ~~expiration of a member's term.~~

7 ~~(c)(1) A member shall be paid and receive a fee of no less than sixty~~
8 ~~dollars (\$60.00) per diem for each day actually engaged in attending board~~
9 ~~meetings or performing other official duties.~~

10 ~~(2) All board members shall receive reimbursement for all~~
11 ~~reasonable and necessary travel at the rate approved for state employees.~~
12 ~~Lodging and other expenses incurred in the performance of their official~~
13 ~~duties will also be paid on the approved scale for state employees.~~

14 ~~(4) The State Board of Health shall promulgate by rule the~~
15 ~~duties and powers of the committee.~~

16
17 SECTION 9. Arkansas Code § 17-86-202 is amended to read as follows:

18 17-86-202. Officers and employees Employees.

19 ~~(a)(1)(A) Arkansas State Board of Massage Therapy officers, elected by~~
20 ~~the board from among their own members, shall be a president, a vice~~
21 ~~president, and a secretary.~~

22 ~~(B) Election of an officer or officers shall take place~~
23 ~~during a regularly scheduled board meeting or during a special nonconference~~
24 ~~call board meeting. An election to fill a vacancy in an elected office will~~
25 ~~take place during the first regularly scheduled meeting or during the first~~
26 ~~special nonconference call meeting immediately following the creation of the~~
27 ~~vacancy.~~

28 ~~(2) Board officers may be removed from their elected offices for~~
29 ~~failure to fulfill the duties of their respective offices. Removal of such a~~
30 ~~board member from his or her elected office will be considered in an~~
31 ~~executive session as provided by § 25-19-106. The executive session will be~~
32 ~~called by the board during a regular or special nonconference call meeting.~~
33 ~~If a motion to remove the board member from his or her elected office is~~
34 ~~arrived at in the executive session, members will reconvene in accordance~~
35 ~~with § 25-19-106 in the public meeting to vote to remove the board member~~
36 ~~from his or her elected office.~~

~~(b) The board is authorized to~~

~~(a) The Department of Health may employ an executive director, regular or special counsel, inspectors, clerks, secretaries, and other personnel as it may deem deems necessary to carry out the provisions of this chapter. At no time shall the executive director, counsel, inspectors, clerks, secretaries, and other personnel exceed ten (10) employees, and no~~

~~(b) An employee of the board shall be a board member, related by blood or marriage to any member of the board, be an employee of a board member, or under this section shall not have any financial interest in the practice or instruction of massage therapy.~~

SECTION 10. Arkansas Code § 17-86-203 is amended to read as follows:
17-86-203. Powers and duties.

(a)(1) The ~~Arkansas State Board of Massage Therapy~~ State Board of Health may promulgate and enforce reasonable rules for the purpose of carrying out this chapter.

(2) The ~~Arkansas State Board of Massage Therapy~~ board shall follow the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as to “rule” and “rule-making” definitions and for the adoption and filing of rules.

~~(3) For the purpose of governing health and safety, the rules shall meet minimum requirements of the law and rules of the State Board of Health.~~

(b)(1)(A) The ~~Arkansas State Board of Massage Therapy~~ Department of Health shall inspect or cause an inspection of student records at least one (1) time each year for each massage therapy school operated in this state.

(B) The ~~Arkansas State Board of Massage Therapy~~ Department of Health and its agents and employees may enter and inspect a massage therapy clinic, spa, or school during operating hours of the business.

(2) The ~~Arkansas State Board of Massage Therapy~~ Department of Health and its agents and employees shall not request or be granted permission to enter a room of a massage therapy clinic, spa, or school in which a client is receiving treatment from a licensee under this chapter.

(c) The ~~Arkansas State Board of Massage Therapy~~ Department of Health may hold licensing examinations from time to time at a place or places as the ~~Arkansas State Board of Massage Therapy~~ department may designate.

1 (d)(1) ~~The Arkansas State Board of Massage Therapy~~ Department of Health
2 may require each original applicant and each upgrade applicant for a license
3 issued by the ~~Arkansas State Board of Massage Therapy~~ Department of Health to
4 apply to the Identification Bureau of the Department of Arkansas State Police
5 for a state and federal criminal background check to be conducted by the
6 Identification Bureau of the Department of Arkansas State Police and the
7 Federal Bureau of Investigation~~†.~~

8 (2) The state and federal criminal background check shall conform
9 to applicable federal standards and shall include the taking of
10 fingerprints~~†.~~

11 (3) The applicant shall sign a release of information to the
12 ~~Arkansas State Board of Massage Therapy~~ Department of Health and shall be
13 responsible for the payment of any fees associated with the state and federal
14 criminal background check~~†.~~

15 (4)(A) Each applicant who has resided outside of Arkansas shall
16 provide a state and federal criminal background check, including the taking
17 of fingerprints, issued by the state or states in which the applicant
18 resided.

19 (B) Results shall be sent directly to the ~~Arkansas State~~
20 ~~Board of Massage Therapy~~ Department of Health from the agency performing the
21 state and federal criminal background check.

22 (e)(1) For purposes of this section, an applicant is not eligible to
23 receive or hold a license issued by the ~~Arkansas State Board of Massage~~
24 ~~Therapy~~ Department of Health if the applicant has pleaded guilty or nolo
25 contendere to or been found guilty of a felony or Class A misdemeanor or any
26 offense involving fraud, theft, or dishonesty.

27 (2) A provision of this section may be waived by the ~~Arkansas~~
28 ~~State Board of Massage Therapy~~ Department of Health if:

29 (A) The conviction is for a Class A misdemeanor and:

30 (i) The completion of the applicant's sentence and
31 probation or completion of the applicant's sentence or probation of the
32 offense is at least three (3) years from the date of the application; and

33 (ii) The applicant has no criminal convictions during
34 the three-year period; or

35 (B) The conviction is for a felony of any classification
36 and:

1 (i) The completion of the applicant's sentence and
2 probation or the completion of the applicant's sentence or probation of the
3 offense is at least five (5) years from the date of the application; and

4 (ii) The applicant has no criminal convictions during
5 the five-year period.

6 (f) ~~The Arkansas State Board of Massage Therapy~~ Department of Health
7 may permit an applicant to be licensed regardless of having been convicted of
8 an offense listed in this section, upon making a determination that the
9 applicant does not pose a risk of harm to any person served by the ~~Arkansas~~
10 ~~State Board of Massage Therapy~~ Department of Health.

11 (g) In making a determination under subsection (f) of this section, the
12 ~~Arkansas State Board of Massage Therapy~~ Department of Health may consider the
13 following factors:

14 (1) The nature and severity of the crime;

15 (2) The consequences of the crime;

16 (3) The number and frequency of crimes;

17 (4) The relationship between the crime and the health, safety,
18 and welfare of persons served by the agency, such as:

19 (A) The age and vulnerability of victims of the crime;

20 (B) The harm suffered by the victim; and

21 (C) The similarity between the victim and persons served by
22 the ~~Arkansas State Board of Massage Therapy~~ Department of Health;

23 (5) The time elapsed without a repeat of the same or similar
24 event;

25 (6) Documentation of successful completion of training or
26 rehabilitation pertinent to the incident; and

27 (7) Any other information that bears on the applicant's ability
28 to care for others or other relevant information.

29 (h) If the ~~Arkansas State Board of Massage Therapy~~ Department of Health
30 waives the provisions of subsection (e) of this section, the ~~Arkansas State~~
31 ~~Board of Massage Therapy~~ department shall submit the reasons for waiving this
32 provision in writing, and the determination and reasons shall be made
33 available to the members of the ~~Arkansas State Board of Massage Therapy~~
34 department for review.

35
36 SECTION 11. Arkansas Code § 17-86-204 is amended to read as follows:

1 17-86-204. Records.

2 (a)(1) ~~The Executive Director of the Arkansas State Board of Massage~~
3 ~~Therapy Department of Health~~ shall maintain a record book and computer file
4 in which will be entered the names and addresses of all persons to whom
5 licenses have been granted under this chapter, the license number, and the
6 dates of granting such licenses and renewals thereof, and other matters of
7 record.

8 (2) ~~The executive director~~ department will move to a separate
9 book and file the records of all persons who have died, have let their
10 licenses lapse for three (3) years, whose licenses have been suspended or
11 revoked by the ~~Arkansas State Board of Massage Therapy~~ department, or
12 cancelled by the licensee.

13 (b) The record books and computer files so provided and maintained
14 shall be deemed and considered a book of records and files of records, and
15 they will be kept in a timely manner. A transcript of any record therein or a
16 license number or date of granting such a license to a person charged with a
17 violation of any of the provisions of this chapter shall be admitted as
18 evidence in any of the courts of this state if certified ~~under the hand of~~
19 ~~the executive director~~ by the department.

20 (c)(1) The original books, records, and papers of the ~~board~~ department
21 shall be maintained at the offices of the ~~board~~ department.

22 (2) A school that closes shall immediately submit all student
23 transcripts to the ~~board~~ department office.

24 (d) Copies of records may be furnished to any person requesting them
25 upon payment of such copying fee as the ~~board~~ department may require and as
26 Arkansas state laws and regulations permit. However, licensing exams shall be
27 exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

28
29 SECTION 12. Arkansas Code § 17-86-205 is amended to read as follows:
30 17-86-205. Disposition of funds.

31 (a)(1) All moneys remitted to the ~~Arkansas State Board of Massage~~
32 ~~Therapy Department of Health~~ under this chapter shall be ~~accepted in the form~~
33 ~~of cashiers checks or money orders and made payable to the Arkansas State~~
34 ~~Board of Massage Therapy. The Executive Director of the Arkansas State Board~~
35 ~~of Massage Therapy~~ Department of Health.

36 (2) The Department of Health shall deposit all such funds received in

1 a timely manner in accordance with laws of the State of Arkansas and
2 regulations of the Department of Finance and Administration.

3 ~~(b) All salaries and expenses of the board shall be paid from funds~~
4 ~~created by the various fees charged by and remitted to the board under the~~
5 ~~provisions of this chapter.~~

6 (b)(1) All moneys received under this chapter shall be paid into the
7 State Treasury and shall be credited to the Public Health Fund for the
8 general uses of the Department of Health.

9 (2) Salaries and other expenses necessarily incurred in carrying
10 into effect the provisions of this chapter and other programs administered by
11 the Department of Health shall be paid from the moneys received.

12
13 SECTION 13. Arkansas Code § 17-86-301 is amended to read as follows:
14 17-86-301. Registration required – Exemptions.

15 (a) It shall be unlawful:

16 (1)(A) For any person who does not hold a valid license to use
17 the following titles: massage therapist, massage practitioner, myotherapist,
18 masso therapist, massage technologist, masseur, masseuse, therapy
19 technologist, master massage therapist, massage therapy instructor, or any
20 derivation of those titles or to advertise such titles; or

21 (B) For any person who does not hold the applicable license
22 issued by the ~~Arkansas State Board of Massage Therapy~~ Department of Health to
23 engage professionally for payment, barter, donation, or exchange in the
24 practice or instruction of massage therapy as defined in this chapter;

25 (2) For any person to operate or conduct any massage therapy
26 clinic or massage therapy school which does not conform to the sanitary
27 regulations contained in § 17-86-302, in state law, in local ordinances, or
28 in those rules ~~and regulations~~ which may be adopted by the ~~board~~ State Board
29 of Health;

30 (3) To employ any person to practice or instruct under this
31 chapter who does not hold a valid license issued by the ~~board~~ department;

32 (4) For any person to operate a massage therapy school or clinic
33 without its first being registered under the provisions of this chapter as a
34 licensed massage therapy school or registered clinic; or

35 (5) For the ~~board~~ department or other individual or entity to
36 incorporate privileges or certification requirements of any private

1 organization, private professional association, or private accrediting agency
2 within Arkansas massage laws or its rules and regulations. However, the ~~board~~
3 department may adopt as its licensure exam an exam drafted and administered
4 by a private organization, private professional association, or private
5 accreditation agency.

6 (b) Exemptions:

7 (1) Persons authorized by the laws of this state to practice
8 medicine, osteopathy, podiatry, or physical therapy, and licensed physicians'
9 assistants, licensed nurses, licensed physical therapy assistants, licensed
10 acupuncturists, licensed midwives, and chiropractors are exempt from this
11 chapter in so far as massage therapy practices are offered or instructed
12 within the scope and under the provisions of licensure;

13 (2) Persons authorized by the ~~board~~ department to present and
14 instruct ~~board-approved~~ department-approved school curriculum or continuing
15 education programs, or both, may present and instruct such ~~board-approved~~
16 department-approved curriculum and programs for payment and in the
17 presentation and instruction may utilize practices defined in, but without
18 being licensed or registered under, the provisions of this chapter; and

19 (3) The practice of massage therapy that is incidental to a
20 program of study by students enrolled in a licensed massage therapy school
21 approved by the ~~board~~ department, and under direct supervision of a licensee
22 employed as an instructor at the school, is exempt from § 17-86-311(a)(10).

23 (c)(1) A licensee shall notify the ~~board~~ department in writing of any
24 change of name, address, phone number, or place of employment.

25 (2) If a name change is requested, a new license shall be issued
26 in the new name at the next renewal date or immediately for a fee not to
27 exceed twenty dollars (\$20.00) for printing of a new license.

28 (3) Valid government-issued photo identification is required for
29 each name change request.

30
31 SECTION 14. Arkansas Code § 17-86-303 is amended to read as follows:
32 17-86-303. Massage therapist.

33 (a) In order to be licensed as a massage therapist, the person seeking
34 licensure shall:

35 (1) Furnish to the ~~Arkansas State Board of Massage Therapy~~
36 Department of Health satisfactory proof that he or she is eighteen (18) years

1 of age or older and of good moral character;

2 (2) Make oath that he or she has not been convicted of, found
3 guilty of, or entered a plea of guilty or nolo contendere to any offense that
4 would constitute a felony or constitute the offense of prostitution, either
5 in this state or the United States, and submit a signed authorization to
6 investigate and have information released to the ~~board~~ department;

7 (3) Present:

8 (A) A valid photo identification or driver's license, or
9 both; and

10 (B) A social security card issued in the same name as the
11 applicant or licensee;

12 (4)(A) Present a high school diploma, Certificate of General
13 Educational Development, or college transcript and credentials issued by a
14 ~~board-accepted~~ department-accepted massage therapy school or a like
15 institution with no less than five hundred (500) in-classroom hours of
16 instruction.

17 (B) An applicant shall not submit his or her transcript
18 directly to the ~~board~~ department office.

19 (C) An applicant shall have the massage therapy school
20 submit the transcript directly to the ~~board~~ department office.

21 (D)(i) If the applicant's transcript is not obtainable
22 from the original school, the applicant shall submit a statement to explain
23 why it may not be obtained.

24 (ii) Other documentation of credentials may be
25 submitted and accepted for licensure at the discretion of the ~~board~~
26 department;

27 (5) Furnish to the ~~board~~ department satisfactory proof of
28 passing an examination recognized and approved by the ~~board~~ department;

29 (6) Present a negative test for tuberculosis that is current at
30 the time of licensure; and

31 (7) Pay the specified fees, which shall accompany a completed
32 notarized application to the ~~board~~ department.

33 (b) Fees are as follows:

34 (1) Application fee.....\$75.00 Nonrefundable

35 (2) Original license fee.....80.00

36 (3) Biennial renewal.....80.00

1 (4) Examination fee or reexamination fee.....25.00

2 (5) Duplicate license fee.....10.00

3 (6) Pocket card fee not to exceed ten dollars (\$10.00)

4 (c) A person shall not practice massage therapy until his or her
5 official license has been received from the ~~board~~ department.

6 (d) A person who attempts to procure or does procure a license in
7 violation of this section shall be subject to the penalties provided for in §
8 17-86-103.

9

10 SECTION 15. Arkansas Code § 17-86-304(a), concerning licensure as a
11 master massage therapist, is amended to read as follows:

12 (a) A person who holds a license as a massage therapist issued by the
13 ~~Arkansas State Board of Massage Therapy~~ Department of Health and who submits
14 satisfactory evidence to the ~~board~~ department that he or she has completed
15 and meets the requirements stated in § 17-86-102 is entitled to be upgraded
16 to master massage therapist.

17

18 SECTION 16. Arkansas Code § 17-86-305(a), concerning licensure as a
19 massage therapy instructor, is amended to read as follows:

20 (a) A person who holds a license as a master massage therapist issued
21 by the ~~Arkansas State Board of Massage Therapy~~ Department of Health and who
22 submits satisfactory evidence to the ~~board~~ department that he or she has
23 successfully completed and meets the requirements stated in § 17-86-102 shall
24 be entitled to be upgraded to massage therapy instructor.

25

26 SECTION 17. Arkansas Code § 17-86-306 is amended to read as follows:
27 17-86-306. Massage therapy school.

28 (a) A person shall not establish, operate, or maintain a massage
29 therapy school without first having obtained a certificate of massage therapy
30 school licensure issued by the ~~Arkansas State Board of Massage Therapy~~
31 Department of Health.

32 (b) A massage therapy school shall not be approved by the ~~board~~
33 department or granted a certificate of licensure until the appropriate
34 application and inspection forms as prescribed by the ~~board~~ department have
35 been completed and approved and the licensure fee has been paid.

36 (c)(1) Inspection of the school premises shall be made by a ~~board~~

1 ~~member or board designee~~ the department, to include without limitation proof
2 of required forms completed and returned to the ~~Executive Director of the~~
3 ~~Arkansas State Board of Massage Therapy~~ department with approval or
4 recommendations.

5 (2) Should the school facilities not pass the first inspection
6 and, after recommendations, failures are corrected, a second inspection will
7 be made within thirty (30) days to determine the school's eligibility.

8 (d)(1) Schools shall require a physical examination by a medical doctor
9 that the student poses no health risk to give and receive massage.

10 (2) The school shall be required to maintain proof of the
11 examination and furnish additional information and documents as may be
12 required by the ~~board~~ department or its appointee during the inspection.

13 (e) The ~~board~~ department may certify the school and provide for
14 licensure thereof if the school follows a curriculum ~~approved by the board~~
15 consisting of not fewer than five hundred (500) hours of in-classroom
16 instruction over a term of not fewer than four (4) months consisting of the
17 following subjects:

18 (1) One hundred seventy-five (175) hours of anatomy, physiology,
19 pathology, and contraindications to massage therapy;

20 (2) Two hundred twenty-five (225) hours of technique;

21 (3) Twenty-five (25) hours of hydrotherapy, electrotherapy, and
22 heliotherapy;

23 (4) Twenty-five (25) hours of hygiene and infection control;

24 (5) Twenty-five (25) hours of massage therapy law, business
25 management, and professional ethics; and

26 (6) Twenty-five (25) hours of related subjects as approved by the
27 ~~board~~ department.

28 (f)(1) The fee for establishing a school shall not exceed one thousand
29 dollars (\$1,000).

30 (2) The initial inspection fee for each school shall not exceed
31 one hundred dollars (\$100).

32 (3) The annual renewal and inspection fee for each school shall
33 not exceed one hundred dollars (\$100).

34 (g) The curriculum established in subsection (e) of this section shall
35 be followed for all massage therapy programs.

36 (h)(1) The State Board of Health shall promulgate rules setting a

1 standard educational curriculum for schools of massage.

2 (2) The standard educational curriculum shall distinguish
3 between secondary and postsecondary educational requirements for the schools
4 of massage.

5
6 SECTION 18. Arkansas Code § 17-86-306 is amended to add an additional
7 subdivision to be enacted pursuant to the emergency stated in Section 31 of
8 this act to read as follows:

9 (h)(1) The Arkansas State Board of Massage Therapy shall promulgate
10 rules setting a standard educational curriculum for schools of massage.

11 (2) The standard educational curriculum shall distinguish
12 between secondary and postsecondary educational requirements for the schools
13 of massage.

14
15 SECTION 19. Arkansas Code § 17-86-307 is amended to read as follows:
16 17-86-307. Massage therapy clinic and spa.

17 (a) A person shall not establish, maintain, or operate a massage
18 therapy clinic or massage therapy spa, or both, until the address and
19 telephone number of the office, clinic, or spa have been supplied in writing
20 to the ~~Arkansas State Board of Massage Therapy~~ Department of Health.

21 (b) If a massage therapy clinic, massage therapy spa, or both moves to
22 a new location or changes its phone number, the new address or phone number,
23 or both, shall be submitted immediately to the ~~board~~ department in writing
24 before operating the clinic or spa, or both, at the new address.

25 (c) The annual inspection fee for each clinic and spa shall not exceed
26 seventy-five dollars (\$75.00).

27
28 SECTION 20. Arkansas Code § 17-86-308 is amended to read as follows:
29 17-86-308. Reciprocity.

30 (a)(1) The ~~Arkansas State Board of Massage Therapy~~ Department of Health
31 may enter into reciprocal relations with other states and territories whose
32 licensure requirements are substantially the same as those provided in this
33 chapter.

34 (2)(A) If the applicant's transcript is not obtainable from the
35 original school, the applicant shall submit a statement to explain why it may
36 not be obtained.

1 (B) Other documentation of credentials may be submitted and
2 accepted for licensure at the discretion of the ~~board~~ department.

3 (b)(1) An out-of-state applicant holding a current massage therapy
4 license issued by another state and after receiving an Arkansas massage
5 therapy license may apply for an upgrade to master massage therapist or
6 massage therapy instructor by providing appropriate continuing education
7 credits and experience gained before Arkansas licensure for ~~board~~ department
8 approval.

9 (2) An upgrade request shall be made by submitting a complete
10 application package and paying the fees required by this chapter.

11
12 SECTION 21. Arkansas Code § 17-86-309(a)(1)(B)(ii), concerning renewal
13 of licenses, is amended to read as follows:

14 (ii)(a) If a license expires under subdivision
15 (a)(1)(B)(i) of this section, the applicant shall submit a new application
16 that requires the applicant to meet current requirements and successfully
17 complete an examination recognized by the ~~Arkansas State Board of Massage~~
18 ~~Therapy Department of Health~~.

19 (b) The ~~board~~ department shall issue a license
20 effective as of the date of receipt of the late application and all new
21 applicant fees.

22 (c) An individual licensee who is not currently
23 in practice and who wishes to place his or her license on the inactive list
24 may remain on the inactive list for not more than four (4) years without
25 reexamination.

26
27 SECTION 22. Arkansas Code § 17-86-309(a)(4), concerning renewal of
28 licenses, is amended to read as follows:

29 (4) Each renewal for licensees shall be accompanied by proof of
30 no fewer than eighteen (18) hours of continuing education that have been
31 approved by the ~~board~~ department.

32
33
34 SECTION 23. Arkansas Code § 17-86-309(d)(2)(B) and (e), concerning
35 renewal of licenses, are amended to read as follows:

36 (B) Before the ~~board~~ department issues a new license to an

1 applicant whose license has expired under subdivision (d)(2)(A) of this
2 section, the applicant shall:

3 (i) Submit a new application that requires the
4 applicant to meet current requirements; and

5 (ii) Successfully complete an examination recognized
6 by the ~~board~~ department.

7 (e) The ~~board~~ department shall issue a license effective as of the date
8 of receipt of the late application and all renewal fees, penalties, and
9 required documentation.

10

11 SECTION 24. Arkansas Code § 17-86-309(f)(2), concerning renewal of
12 licenses, is amended to read as follows:

13 (2) After the time allowed under subdivision (f)(1) of this
14 section, all inactive licensees shall meet current requirements for licensure
15 and must successfully complete an examination recognized by the ~~board~~
16 department before resuming the active practice of massage therapy.

17

18 SECTION 25. Arkansas Code § 17-86-309(i)(3) and (j), concerning
19 renewal of licenses, are amended to read as follows:

20 (3) A licensee whose massage therapy school license has expired
21 shall submit a new application to the ~~board~~ department with current
22 requirements and fees.

23 (j)(1) Each application for continuing education programs shall be
24 accompanied by an application fee not to exceed forty dollars (\$40.00).

25 (2)(A) A licensee holding a valid Arkansas massage therapy
26 license may request ~~board~~ department approval of appropriate continuing
27 education courses otherwise not approved by the ~~board~~ department.

28 (B) Courses shall meet similar standards as courses
29 approved by the ~~board~~ department.

30 (C) Proof of residency shall accompany the request.

31

32 SECTION 26. Arkansas Code § 17-86-310(b) and (c), concerning display
33 of license, are amended to read as follows:

34 (b) It is unlawful to tamper with or reduce in size an original massage
35 therapy license issued by the ~~Arkansas State Board of Massage Therapy~~
36 Department of Health.

1 (c) Each license shall provide the correct address of the ~~board~~
2 department.

3
4 SECTION 27. Arkansas Code § 17-86-311 is amended to read as follows:
5 17-86-311. Disciplinary actions and penalties.

6 (a) The ~~Arkansas State Board of~~ Massage Therapy Technical Advisory
7 Committee may deny, suspend, place on probation, or revoke a license upon any
8 one (1) of the following grounds:

9 (1) Conviction of, finding of guilt, or entry of a plea of guilty
10 or nolo contendere to a felony, Class A misdemeanor, or prostitution;

11 (2) Malpractice or gross incompetency;

12 (3) The use in advertisements of untruthful or improbable
13 statements or flamboyant, exaggerated, or extravagant claims concerning the
14 licensee's professional excellence or abilities;

15 (4) Habitual drunkenness or habitual use of any illegal drugs;

16 (5) Serving alcoholic beverages at the clinic or school in a room
17 where massage therapy is being performed or in a massage therapy school;

18 (6) Moral turpitude or immoral or unprofessional conduct;

19 (7) Failure to comply with the ~~Arkansas State Board of~~
20 department's Massage Therapy Code of Ethics or any valid regulation or order
21 of the ~~board~~ department;

22 (8) Invasion of the field of practice of any profession for which
23 a license is required, the diagnosis of ailments, diseases, or injuries of
24 human beings, the performance of osseous adjustments, prescription of
25 medications, or other breaches of the scope of practice of massage therapy;

26 (9) Failure of any licensee to comply with this chapter; or

27 (10) Failure to have licensed personnel to perform massage
28 therapy techniques in his or her clinic or school.

29 (b)(1) The ~~board~~ State Board of Health shall establish by rule the
30 penalty system to be imposed under this section.

31 (2) Whenever the ~~board~~ committee finds that the holder of a
32 license, certificate of registration, or other permit issued by the ~~board~~
33 department is guilty of a violation of the rules of the ~~board~~ department or
34 the laws of the state pertaining to any occupation, profession, or business
35 licensed or regulated by the ~~board~~ department, the ~~board~~ committee may impose
36 a penalty on the licensee or permit holder in lieu of suspension or

1 revocation of license, certificate of registration, or other permit.

2 (3)(A) Upon imposition of a penalty in lieu of suspension or
3 revocation of license, certificate of registration, or other permit, the
4 ~~board~~ committee may require that the licensee or permit holder pay a penalty
5 to the ~~board~~ department.

6 (B) The license, certificate of registration, or permit
7 shall be suspended until the penalty is paid.

8 (4)(A) The penalty may be imposed in lieu of revocation or
9 suspension of a license, certificate, or other permit only if the ~~board~~
10 committee formally finds that the public health, safety, welfare, and morals
11 would not be impaired and that the payment of the penalty will achieve the
12 desired disciplinary results.

13 (B) The minimum penalty imposed by the ~~board~~ committee in
14 lieu of revocation or suspension of a license, certificate, or other permit
15 shall be twenty-five dollars (\$25.00) and the maximum penalty one thousand
16 dollars (\$1,000) per infraction.

17 (C) The authority of the ~~board~~ committee to impose
18 penalties under this section is not affected by any other civil or criminal
19 proceeding concerning the same violation.

20 (D) A person penalized by the ~~board~~ committee under this
21 chapter may appeal any order of the ~~board~~ committee in the manner currently
22 provided by law.

23 (E) In addition to any other sanctions authorized by this
24 chapter, the ~~board~~ committee may impose a civil penalty as provided in this
25 subsection against any unlicensed person, firm, or corporation practicing or
26 offering to practice any actions requiring licensure under this chapter.

27 (c)(1) The massage therapist-patient relationship is founded on mutual
28 trust. Sexual misconduct is prohibited.

29 (2) The ~~board~~ committee shall revoke the license of a person who
30 engages in the practice of massage of the breasts unless the massage
31 therapist:

32 (i) Engages in the practice of massage of the breasts for
33 therapeutic and medical purposes including without limitation the reduction
34 of scar tissue following a surgery on the breast, release of myofascial
35 binding, or improving lymphatic flow; and

36 (ii) Has received at least forty-eight (48) hours of

1 continuing education credits in lymphatic massage, myofascial massage, or
2 oncology massage.

3 (3) A suspension of a license under subdivisions (c)(1) and (2)
4 of this section shall be for a period of three (3) years.

5 (d)(1) Charges may be brought by any person, ~~or the board on its own~~
6 ~~motion may direct the Executive Director of the Arkansas State Board of~~
7 ~~Massage Therapy to prefer charges.~~

8 (2) Any accusation of any of the offenses enumerated in this
9 section may be filed with the ~~executive director~~ committee. The accusations
10 shall be in writing, signed by the accuser, and verified under oath.

11 (e) In denying, suspending, or revoking any license, the ~~board~~
12 committee shall afford any party review as provided for in the Arkansas
13 Administrative Procedure Act, § 25-15-201 et seq., and as otherwise provided
14 by the rules and regulations of the ~~board~~ State Board of Health.

15
16 SECTION 28. Arkansas Code § 17-86-312(a), concerning massage therapy
17 fees, is amended to read as follows:

18 (a) All registration fees and other fees due the ~~Arkansas State Board~~
19 ~~of Massage Therapy~~ Department of Health shall be paid in accordance with the
20 provisions of this chapter and all other laws and regulations of this state.

21
22 SECTION 29. Arkansas Code § 19-5-1215 is repealed.

23 ~~19-5-1215. Massage Therapy Board Fund.~~

24 ~~(a) There is established on the books of the Treasurer of State, the~~
25 ~~Auditor of State, and the Chief Fiscal Officer of the State a fund to be~~
26 ~~known as the "Massage Therapy Board Fund".~~

27 ~~(b)(1) This fund shall consist of those fees set out in § 17-86-201 et~~
28 ~~seq.~~

29 ~~(2) The fund shall be used for the administration and expenses of~~
30 ~~the Arkansas State Board of Massage Therapy as set out in § 17-86-201 et seq.~~

31
32 SECTION 30. EMERGENCY CLAUSE. It is found and determined by the
33 General Assembly of the State of Arkansas that massage therapy schools cannot
34 qualify for certain federal grants and scholarships without the expedient
35 enactment of Sections 6 and 18 of this act; that enrollment for the upcoming
36 semester requires immediate enactment of Sections 6 and 18 of this act in

1 order to ensure financial assistance to students in need. Therefore, an
2 emergency is declared to exist, and Sections 6 and 18 of this act being
3 immediately necessary for the preservation of the public peace, health, and
4 safety shall become effective on:

5 (1) The date of its approval by the Governor;

6 (2) If the act is neither approved nor vetoed by the Governor,
7 the expiration of the period of time during which the Governor may veto the
8 bill; or

9 (3) If the act is vetoed by the Governor and the veto is
10 overridden, the date the last house overrides the veto.

11
12 SECTION 31. EFFECTIVE DATE.

13 (a) Sections 1-5, 7-17, and 19-30 of this act are effective on and
14 after October 1, 2015.

15 (b) If the Emergency Clause in Section 31 of this bill does not pass
16 by a vote of the General Assembly, then Section 6 of this bill is effective
17 on and after October 1, 2015.

18
19 /s/B. Sample

20
21
22 APPROVED: 04/02/2015