

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: S3/24/05 S3/29/05

A Bill

SENATE BILL 976

5 By: Senator Altes
6
7

For An Act To Be Entitled

9 AN ACT TO PROVIDE NATURAL, ALTERNATIVE HEALTHCARE
10 OPTIONS FOR THE PEOPLE OF ARKANSAS; TO BROADEN
11 THE RANGE OF HEALTHY OPTIONS IN THIS STATE; AND
12 FOR OTHER PURPOSES.
13

Subtitle

15 AN ACT TO PROVIDE NATURAL, ALTERNATIVE
16 HEALTHCARE OPTIONS FOR THE PEOPLE OF
17 ARKANSAS.
18
19

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

22 SECTION 1. Arkansas Code Title 17 is amended to add an additional
23 chapter to read as follows:

24 17-107-101. Title.

25 This chapter shall be known and may be cited as the "Healthcare Freedom
26 Act".
27

28 17-107-102. Findings and purpose.

29 (a) The General Assembly finds that:

30 (1) A significant number of consumers in this state are
31 contracting for healthcare services from unlicensed noninvasive, natural,
32 alternative, or complementary healthcare providers;

33 (2) The use of noninvasive, natural, alternative, or
34 complementary healthcare modalities by an unlicensed provider of such
35 modalities does not pose a known risk to the health and safety of consumers;
36 and



1 (3) A consumer has the right to contract for healthcare
2 services of his or her choice.

3 (b) This chapter is intended to:

4 (1) Protect the consumer by establishing standards of
5 service for an unlicensed noninvasive, natural, alternative, or complementary
6 healthcare provider;

7 (2) Provide the consumer with legal remedies that will
8 insure accountability of an unlicensed noninvasive, natural, alternative, or
9 complementary healthcare provider;

10 (3) Allow a consumer the right to choose the provider and
11 modality of healthcare he or she will receive;

12 (4) Extend healthcare options to consumers;

13 (5) Allow a consumer to contract with an unlicensed
14 noninvasive, natural, alternative, or complementary healthcare provider;

15 (6) Allow an unlicensed noninvasive, natural, alternative,
16 or complementary healthcare provider to render noninvasive healthcare
17 services to consumers; and

18 (7) Afford a licensed healthcare practitioner the right to
19 use noninvasive natural, alternative, or complementary healthcare modalities
20 without reprisal.

21
22 17-107-103. Definitions.

23 As used in this chapter:

24 (1) "Allopathic" means conventional western medicine as
25 practiced by a medical doctor who is licensed by the Arkansas State Medical
26 Board;

27 (2) "Healthcare consumer" means a person who contracts with a
28 licensed healthcare practitioner or with an unlicensed noninvasive, natural,
29 alternative, or complementary healthcare provider for healthcare services;

30 (3) "Homeostatic process" means the body's own self-
31 healing mechanisms;

32 (4) "Licensed healthcare practitioner" means a person licensed
33 by a board of the healing arts;

34 (5) "Natural, alternative, or complementary healthcare
35 practices" means the broad domain of healing modalities that are nonmedical
36 and noninvasive in nature that attempt to restore health through balancing,

1 harmonizing, or promoting the body's own homeostatic process;

2 (6) "Noninvasive" means not breaking the skin;

3 (7) "Traditional naturopathy" means an alternative form of
4 nondiagnostic, noninvasive, nonpharmaceutical healthcare that attempts to
5 restore the entire body to a healthful state through counseling and natural
6 healthcare by using such modalities as detoxification, purification,
7 balancing, and strengthening of the entire body in an attempt to enhance the
8 body's own natural healing ability; and

9 (8) "Unlicensed noninvasive, natural, alternative, or
10 complementary healthcare provider" means a person who:

11 (A) Uses modalities to restore health that are not medical
12 in nature, that do not break the skin, and that are not substantially harmful
13 to the body; and

14 (B) Is not licensed by a board of the healing arts.

15
16 17-107-104. Applicability.

17 (a) This chapter applies to licensed healthcare practitioners and to
18 unlicensed noninvasive, natural, alternative, or complementary healthcare
19 providers who use noninvasive, natural, alternative, or complementary
20 healthcare modalities that are not a part of allopathic medicine and include,
21 but are not limited to, the following:

22 (1) Alternative services such as traditional naturopathy,
23 culturally traditional healing practices, folk practices, homeopathy, and
24 Ayurveda;

25 (2) Mind-body interventions that include a variety of techniques
26 and practices relating to meditation, prayer, mental healing, art, music, and
27 dance that enhance the mind's capacity to affect bodily function and
28 symptoms;

29 (3) Biologically-based therapies that use substances found in
30 nature such as herbs, foods, and vitamins including dietary supplements and
31 herbal products;

32 (4) Body-based methods that include movement of one (1) or more
33 parts of the body;

34 (5) Energy therapies that manipulate biofields by placing the
35 hands in or through these fields; and

36 (6) Bioelectromagnetic-based therapies that include pulsed

1 fields, magnetic fields, alternating current fields, or direct current
2 fields.

3 (b) Services provided under this chapter by an unlicensed, noninvasive
4 natural, alternative, or complementary healthcare provider do not constitute
5 the practice of medicine.

6 (c) The provisions of Arkansas Code §§ 17-80-109 and 17-95-202 do not
7 apply to unlicensed noninvasive, natural, alternative, or complementary
8 healthcare providers who render services under this chapter.

9 (d) Except as provided in this chapter, an unlicensed noninvasive,
10 natural, alternative, or complementary healthcare provider is not in
11 violation of any law of this state for providing noninvasive natural,
12 alternative, or complementary healthcare service.

13 (e) An unlicensed noninvasive, natural, alternative, or complementary
14 healthcare provider practicing under this chapter is not eligible for
15 licensure by any board of the healing arts merely by the fact of practice
16 under this chapter.

17 (f) An unlicensed noninvasive, natural, alternative, or complementary
18 healthcare provider is not subject to the regulatory authority of any board
19 of the healing arts.

20 (g) If a minor child does not respond to an alternative treatment
21 methodology, the use of the methodology by a parent of the minor child does
22 not preclude reporting and investigation of an allegation of child
23 maltreatment.

24
25 17-107-105. Consumer rights.

26 A consumer seeking healthcare under this chapter shall have the
27 following rights:

28 (1) For a person eighteen (18) years of age or older, to
29 evaluate, determine, and contract for the healthcare modality of his or her
30 choice either from a licensed healthcare practitioner or from an unlicensed
31 noninvasive, natural, alternative, or complementary healthcare provider;

32 (2) For a parent or a legal guardian of a child under eighteen
33 (18) years of age, an individual holding power of attorney over the
34 healthcare of another person, or an individual designated to make healthcare
35 decisions for another individual, to evaluate, determine, and contract for
36 the modality of healthcare of his or her choice with either a licensed

1 healthcare practitioner or with an unlicensed noninvasive, natural,
2 alternative, or complementary healthcare provider for healthcare services for
3 the minor or the person in his or her care;

4 (3) To access and use for health purposes:

5 (A) Whole, natural, organic foods, and dietary
6 supplements, as defined in Public Law 103-417, Dietary Supplement Health and
7 Education Act of 1994, as in effect January 1, 2005, in strengths above the
8 recommended daily allowances;

9 (B) Herbs for cooking;

10 (C) Herbs for health purposes; and

11 (D) Other over-the-counter natural health products;

12 (4) To receive and use educational materials concerning the
13 historical use and benefits of noninvasive, natural, alternative, and
14 complementary healthcare practices;

15 (5) To maintain the confidentiality of his or her condition,
16 services received, and records in keeping with any state and federal laws
17 pertaining to an individual's right to privacy concerning healthcare; and

18 (6) To file a complaint or a civil suit against an unlicensed
19 noninvasive, natural, alternative, or complementary healthcare provider who
20 renders services under this chapter.

21
22 17-107-106. Provider and practitioner rights.

23 (a) An unlicensed noninvasive, natural, alternative, or complementary
24 healthcare provider who is twenty-one (21) years of age or older may contract
25 with a consumer to provide service in noninvasive, natural, alternative, or
26 complementary healthcare modalities, or in any other noninvasive healing
27 modality that is not licensed by this state.

28 (b) An unlicensed noninvasive, natural, alternative, or complementary
29 healthcare provider shall be afforded the protections of § 17-95-101, the
30 "Good Samaritan" law.

31 (c) An unlicensed noninvasive, natural, alternative, or complementary
32 healthcare provider may refuse counsel or service to anyone the provider
33 believes should seek advice or treatment from a licensed healthcare
34 practitioner.

35 (d) A licensed healthcare practitioner may not be denied a license or
36 renewal of a license to practice by a state board solely because the

1 practitioner provides noninvasive natural, alternative, or complementary
2 healthcare service under this chapter.

3
4 17-107-107. Provider limitations.

5 An unlicensed noninvasive, natural, alternative, or complementary,
6 healthcare provider may not:

7 (1) Use any title of a healthcare practitioner licensed under
8 Title 17;

9 (2) Hold out, state, indicate, advertise, or imply to a
10 person that he or she is a doctor, physician, or surgeon;

11 (3) Recommend the discontinuance of prescription drugs or
12 controlled substances prescribed by a licensed healthcare practitioner;

13 (4) Perform:

14 (A) Surgery;

15 (B) Any procedure that punctures the skin; or

16 (C) Any procedure that is known or has been proven to be
17 substantially harmful to the body;

18 (5) Administer, dispense, or recommend any product that is known
19 or has been proven to be substantially harmful to the body;

20 (6) Provide services:

21 (A) Services to a child under eighteen (18) years of age
22 unless the child is accompanied by a parent, a guardian, or a person holding
23 a healthcare power of attorney;

24 (B) Services if no informed consent agreement has been
25 signed by the consumer; or

26 (C) A medical diagnosis or oriental medical diagnosis;

27 (7) Administer or recommend an X-ray;

28 (8) Prescribe, recommend, or administer a prescription drug or a
29 controlled substance;

30 (9) Set a fracture;

31 (10) Engage in the practice of dentistry;

32 (11) Make any manipulation or adjustment of the joints;

33 (12) Practice massage for remuneration;

34 (13) Deliver an infant, except under § 17-95-101;

35 (14) Engage in the practice of:

36 (A) Acupuncture and related techniques;

- 1 (B) Optometry;
- 2 (C) Physical therapy;
- 3 (D) Podiatry;
- 4 (E) Osteopathy;
- 5 (F) Nursing;
- 6 (G) Veterinary medicine;
- 7 (H) Allopathic medicine; or
- 8 (I) Any other healing art licensed in Arkansas;

9 (15) Engage in:

- 10 (A) Any contact with a consumer that may be reasonably
- 11 interpreted by the consumer as sexual;
- 12 (B) Sexual exploitation of a consumer; or
- 13 (C) Healthcare service while intoxicated or under the
- 14 influence of a controlled substance; or

15 (16) Reveal confidential information about a consumer, except as

16 required or permitted by law.

17

18 17-107-108. Provider responsibilities.

19 (a)(1) An unlicensed noninvasive natural, alternative, or

20 complementary healthcare provider shall maintain confidential records for

21 each consumer for a period of at least three (3) years.

22 (2) The records shall include:

- 23 (A) The date on which service is provided;
- 24 (B) The service provided;
- 25 (C) The cost of service;
- 26 (D) The provider's assessment; and
- 27 (E) A signed, witnessed, and dated informed consent
- 28 agreement.

29 (b) An unlicensed noninvasive, natural, alternative, or

30 complementary healthcare provider shall provide each consumer with an

31 informed consent agreement, written in plain language, that contains the

32 following:

33 (1) A statement that:

- 34 (A) The unlicensed provider is not a licensed doctor,
- 35 physician, or surgeon;
- 36 (B) The service to be rendered is an alternative or is

1 complementary to healthcare service that is licensed by the state;

2 (C) The consumer should first seek advice from a licensed
3 healthcare practitioner for the treatment of any specific healthcare
4 condition;

5 (D) The service provided by an unlicensed noninvasive,
6 natural, alternative, or complementary healthcare provider is not designed to
7 replace the recommendations of a licensed healthcare practitioner; and

8 (E) Many natural noninvasive therapies and substances used
9 by the provider are neither scientifically proven effective nor approved by
10 the United States Food and Drug Administration;

11 (2) A statement of the nature of the service to be provided;

12 (3) A list of provider services and fees;

13 (4) Information on the payment policy for services
14 rendered;

15 (5) A listing of the provider's degrees, training,
16 experience, credentials, certification, or other qualifications as a
17 healthcare provider;

18 (6) A confirmation statement that the consumer has read,
19 understands, and has received a copy of the informed consent agreement;

20 (7) The date;

21 (8) The signature of the consumer; and

22 (9) The signature of a witness.

23 (c) An unlicensed noninvasive, natural, alternative, or complementary
24 healthcare provider who advertises shall disclose in the advertisement that
25 he or she is not licensed by the state as a healthcare practitioner.

26 (d) An unlicensed noninvasive, natural, alternative, or complementary
27 healthcare provider shall refuse counsel or service to a consumer that the
28 provider believes should seek advice or treatment from a licensed healthcare
29 practitioner.

30 (e) An unlicensed noninvasive, natural, alternative, or complementary
31 healthcare provider shall post his or her credentials in a conspicuous public
32 place in his or her business facility.

33
34 17-107-109. Scope of this chapter.

35 (a) This chapter does not:

36 (1) Affect the scope of practice of any licensed healthcare

1 practitioner;

2 (2) Limit the right of any person to seek relief for negligence
3 or any other civil remedy against a person providing services under this
4 chapter; or

5 (3) Exempt any healthcare practitioner licensed by any state
6 health board or commission from the laws or rules governing that
7 practitioner's license.

8 (b) This chapter does not prohibit or require a license for:

9 (1) Performing the healing practice of any religion or church,
10 with or without compensation;

11 (2) Practicing spiritual healing, with or without
12 compensation; or

13 (3) Domestic administering of a family remedy.

14 (c) This chapter does not control, prevent, or restrict:

15 (1) Practicing, servicing, marketing, or distributing food
16 products, including dietary supplements as defined in Public Law 103-417,
17 Dietary Supplement Health and Education Act of 1994, as in effect January 1,
18 2005;

19 (2) Informing a consumer about products under subdivision (c)(1)
20 of this section; or

21 (3) Explaining the use of products under subdivision (c)(1) of
22 this section.

23 (d) A healthcare provider who offers health counseling as a free
24 service to purchasers of health products shall be exempt from §§ 17-107-
25 107(6)(B) and 17-107-108.

26
27 17-107-110. Cities and counties.

28 No town, city, or county government may:

29 (1) Impose restrictions on the authority and rights provided
30 under this chapter; or

31 (2) Add to the requirements of this chapter.

32
33 17-107-111. Penalty.

34 (a) A parent, guardian, person holding healthcare power of attorney,
35 an individual designated to make healthcare decisions for another individual,
36 or a consumer receiving services may file a complaint in a court of competent

1 jurisdiction in the city or county in which the healthcare provider resides
2 or practices against an unlicensed noninvasive, natural, alternative, or
3 complementary healthcare provider who provided a service and is accused of
4 violation of any of the following:

5 (1) Malpractice or gross incompetence;

6 (2) Fraudulent advertising; or

7 (3) Any other act in violation of this chapter.

8 (b) The prosecuting attorney of the county in which the violation
9 occurs may file charges against the unlicensed noninvasive, natural,
10 alternative, or complementary healthcare provider.

11 (c)(1) A violation of this chapter is a misdemeanor.

12 (2) Upon a finding of guilty or entry of a plea of guilty or
13 nolo contendere, the unlicensed noninvasive, natural, alternative, or
14 complementary healthcare provider may be sentenced to:

15 (A) Public service of not less than forty (40) hours nor
16 more than three hundred twenty (320) hours;

17 (B) A fine of not less than two hundred fifty dollars
18 (\$250) nor more than five hundred dollars (\$500);

19 (C) Imprisonment in the county jail for a period of not
20 less than one (1) month nor more than eleven (11) months; or

21 (D) Any combination of public service, fine, and
22 imprisonment under subdivisions (2)(A) through (C) of this section.

23 (3) A cease and desist order may be issued to repeat offenders.

24 (d) Upon a finding of guilty, a plea of guilty or
25 nolo contendere, and sentencing by the judge, the clerk of the court shall
26 provide the following information to the Director of the Department of
27 Health:

28 (1) The defendant's name;

29 (2) The defendant's county of residence;

30 (3) The names of counties where the defendant practices;

31 (4) The date of violation;

32 (5) The charge;

33 (6) The date of sentencing; and

34 (7) The sentence.

35 (e) The director shall retain for public review all records of
36 defendants found guilty of violations of this chapter.

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2 17-107-112. Healthcare Freedom Fund.

3 (a) There is created on the books of the Treasurer of State, Auditor
4 of State, and Chief Fiscal Officer of the State a special revenue fund to be
5 known as the "Healthcare Freedom Fund".

6 (b)(1) All moneys collected under § 17-107-111 shall be deposited into
7 the State Treasury to the credit of the fund as special revenues.

8 (2) The fund shall also consist of any other revenues as
9 may be authorized by law.

10 (c) The fund shall be used by the Department of Health to inform
11 healthcare consumers about the benefits of noninvasive, natural, alternative,
12 or complementary healthcare.

13
14 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
15 General Assembly of the State of Arkansas that based upon a comprehensive
16 report by the National Institute of Medicine and other studies, including a
17 study published by the New England Journal of Medicine, it is evident that
18 millions of consumers are presently receiving a substantial volume of
19 healthcare services from unlicensed noninvasive, natural, alternative, or
20 complementary healthcare providers. Those studies further indicate that
21 consumers using services provided by unlicensed noninvasive, natural,
22 alternative, and complementary healthcare providers represent a wide range of
23 age, ethnic, socioeconomic, educational, and other demographic categories.
24 Notwithstanding the widespread consumer use of services provided by
25 unlicensed noninvasive natural, alternative, and complementary healthcare
26 providers, the provision of many of these services may be in technical
27 violation of the Arkansas Medical Practices Act and other healing arts
28 licensure acts. Unlicensed noninvasive, natural, alternative, and
29 complementary healthcare providers could therefore be subject to fines,
30 penalties, and the restriction of their services under the Arkansas Medical
31 Practices Act and other healing arts licensure acts even though there is no
32 demonstration that their services are substantially harmful to the consumer.
33 The General Assembly intends, by enactment of this act, to allow access by
34 consumers to unlicensed noninvasive, natural, alternative, and complementary
35 healthcare providers who are not providing services that require medical
36 training and credentials. The General Assembly further finds that these

1 unlicensed nonmedical and noninvasive, natural, alternative, and
2 complementary healthcare services do not pose a known risk to the health and
3 safety of Arkansas consumers, and that restricting access to those services
4 due to technical violations of the Arkansas Medical Practices Act and other
5 healing arts licensure acts is not warranted. Therefore, an emergency is
6 declared to exist and this act being immediately necessary for the
7 preservation of the public peace, health, and safety shall become effective
8 on:

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

10 (2) If the bill is neither approved nor vetoed by the Governor,
11 it shall become effective on the expiration of the period of time during
12 which the Governor may veto the bill; or

13 (3) If the bill is vetoed by the Governor and the veto is
14 overridden, it shall become effective on the date the last house overrides
15 the veto.

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