

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 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/17/09 H3/20/09 H3/24/09

A Bill

HOUSE BILL 1951

5 By: Representative Pyle
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE MESSAGE
10 THERAPY ACT; AND FOR OTHER PURPOSES.

Subtitle

11 TO AMEND VARIOUS PROVISIONS OF THE
12 MASSAGE THERAPY ACT.
13
14
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 17-86-102 is amended to read as follows:
20 17-86-102. Definitions.

21 As used in this chapter, unless the context otherwise requires:

- 22 (1) "Board" means the Arkansas State Board of Massage Therapy;
23 (2) "Licensee" means any individual licensed under this chapter;
24 (3)(A) "Massage therapist" means a person who has:

25 (i) earned ~~earned~~ Earned a diploma from a board-accepted school
26 of massage therapy;
27 (ii) who has passed ~~who has passed~~ Passed an examination required by the
28 ~~board,~~ Arkansas State Board of Massage Therapy; and

29 (iii) who has become ~~who has become~~ Become licensed and registered to
30 practice massage therapy ~~as defined in subdivision (4) of this section.~~

31 (B) "Massage therapist" includes a person who has previously
32 obtained the massage therapist license under prior state law.

33 ~~(B) Massage therapists~~ (C) A massage therapist may:

34 (i) instruct ~~instruct~~ Instruct board-approved continuing education
35 programs; and

36 (ii) Assist in the instruction of the procedures defined



1 in subdivisions (3)(A)-(C) of this section under the direct supervision of a
 2 massage therapy instructor or master massage therapist ~~assist in the instruction of~~
 3 ~~the procedures defined in subdivisions (4)(A)-(C) of this section.~~

4 ~~(C) A massage therapist may also mean a person who had~~
 5 ~~previously obtained the massage therapist license under prior state law;~~

6 (4)(A) "Massage therapy" means to engage in the practice of any of the
 7 following procedures:

8 ~~(A) All massage therapy techniques and procedures, either hands-~~
 9 ~~on or with mechanical devices;~~

10 ~~(B) Therapeutic application of all oils, lotions, and powders;~~

11 ~~(C) Therapeutic application of hot or cold packs;~~

12 ~~(D) Hydrotherapy techniques;~~

13 ~~(E) Heliotherapy;~~

14 ~~(F) Electrotherapy; and~~ the treatment of soft tissues,
 15 which may include skin, fascia, and muscles and their dysfunctions for
 16 therapeutic purposes of establishing and maintaining good physical condition,
 17 comfort, and relief of pain.

18 (B) "Massage therapy" is a health care service that
 19 includes gliding, kneading, percussion, compression, vibration, friction,
 20 nerve strokes, and stretching the tissue.

21 (C) "Massage therapy" also means to engage in the practice
 22 of any of the following procedures:

23 (i) Massage therapy techniques and procedures,
 24 either hands-on or with mechanical devices;

25 (ii) Therapeutic application and use of oils, herbal
 26 or chemical preparations, lubricants, nonprescription creams, lotions,
 27 scrubs, powders, and other spa services;

28 (iii) Therapeutic application of hot or cold packs;

29 (iv) Hydrotherapy techniques;

30 (v) Heliotherapy, which may include mechanical devices,
 31 heat lamps, and other devices;

32 (vi) Electrotherapy; and

33 ~~(G)(vii)~~ Any hands-on bodywork techniques and procedures
 34 rising to the level of the techniques and procedures intended to be regulated under
 35 this chapter and not covered under specific licensing laws of other boards;

36 (5) "Massage therapy clinic" means a clinic, ~~or place, where there are~~

1 ~~one (1) or more licensees practicing massage therapy premises, building, or part of~~
 2 ~~a building in which a branch or any combination of branches of massage therapy or~~
 3 ~~the occupation of a massage therapist is practiced;~~

4 (6)(A) "Massage therapy instructor" means a person who:

5 ~~(i) Is licensed and registered as a master massage~~
 6 ~~therapist;~~

7 ~~(ii)(i) Before July 1, 2010, has~~ ~~Has~~ completed no
 8 fewer than two hundred fifty (250) hours of practical experience as a master
 9 massage therapist, which may be gained in part or in whole as an assistant to
 10 an instructor in a massage school or may be gained in part or in whole as a
 11 directed instructor in a massage school and has completed no less than two
 12 hundred fifty (250) continuing education hours as approved by the board; and

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

17 ~~(iii) On or after July 1, 2010, in~~ ~~In~~ addition to
 18 ~~that the~~ experience under subdivision (6)(A)(i) of this section, has
 19 completed no fewer than two hundred fifty (250) continuing education hours as
 20 approved by the board as a licensed master massage therapist; and

21 ~~(iv) who is~~ Is determined by the board to be qualified to
 22 be licensed and registered to practice massage therapy ~~as defined in subdivision~~
 23 ~~(4) of this section.~~

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

26 ~~(B)(C)~~ Massage therapy instructors may:

27 (i) Instruct board-approved continuing education programs;
 28 (ii) Instruct any of the procedures in subdivision (4) of
 29 this section; and

30 (iii) Instruct basic curricula in a board-registered
 31 massage therapy school as required by § 17-86-306(e);;

32 ~~(C) "Massage therapy instructor" may also mean a person who had~~
 33 ~~previously obtained the massage therapy instructor license under prior state law;~~

34 (7) "Massage therapy school" means a registered and licensed facility
 35 ~~which~~ that meets and follows the required educational standards as established by §
 36 17-86-306 and all pertinent rules ~~and regulations~~ established by the board; and

1 (8)(A) "Master massage therapist" means a person who:

2 (i) ~~Is a licensed and registered massage therapist who has~~
3 ~~completed no fewer than two hundred fifty (250) hours of practical experience as a~~
4 ~~massage therapist, which may be gained in part or in whole as an assistant to an~~
5 ~~instructor in a massage school~~ Before July 1, 2010, is a licensed and registered
6 massage therapist who has completed no fewer than two hundred fifty (250) hours of
7 practical experience as a massage therapist, which may be gained in part or in
8 whole as an assistant to an instructor in a massage school and has completed no
9 less than one hundred twenty-five (125) continuing education hours as approved by
10 the board;

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

15 ~~(iii)~~ (iii) On or after July 1, 2010, in ~~In~~ addition to
16 ~~that the~~ experience under subdivision (8)(A)(i) of this section, has completed no
17 fewer than one hundred twenty-five (125) continuing education hours as approved by
18 the board; and

19 ~~(iii)~~ (iv) Is determined by the board to be qualified to be
20 licensed and registered to practice massage therapy ~~as defined in subdivision (4)~~
21 ~~of this section.~~

22 (B) "Master massage therapist" includes a person who had
23 previously obtained the master massage therapist license under a prior state law.

24 ~~(B)~~ (C) Master massage therapists may:

25 (i) Instruct board-approved continuing education programs;
26 (ii) Instruct any of the procedures in subdivision (4) of
27 this section; and

28 (iii) Instruct, as directed by a massage therapy
29 instructor, basic curricula in a board-registered massage therapy school as
30 required by § 17-86-306(e).

31 ~~(C)~~ ~~A master massage therapist may also mean a person who had~~
32 ~~previously obtained the master massage therapist license under a prior state law;~~
33 ~~and~~

34 (9) "This chapter" means the "Massage Therapy Act", § 17-86-101 et
35 seq.

36

1 SECTION 2. Arkansas Code 17-86-201(a), concerning the Arkansas State
2 Board of Massage Therapy, is amended to read as follows:

3 (a)(1) The Arkansas State Board of Massage Therapy shall consist of
4 seven (7) members, who shall be appointed by the Governor for a term of three
5 (3) years.

6 (2)(A) ~~Four (4)~~ Six (6) of the members shall be licensees under
7 this chapter. These members shall be full voting members.

8 (B) Only two (2) of the members shall be owners of a
9 massage therapy school.

10 ~~(3) One (1) member, to represent senior citizens, shall be sixty~~
11 ~~(60) years of age or older and shall not be engaged in or retired from the~~
12 ~~practice of massage therapy. This member shall be a full voting member.~~

13 ~~(4) One (1) member, to represent the public, shall not be~~
14 ~~engaged in or retired from the practice of massage therapy. This member shall~~
15 ~~be a full voting member.~~

16 ~~(5) One (1) member, to represent the medical field, shall not be~~
17 ~~engaged in or retired from the practice of massage therapy. This member shall~~
18 ~~be a full voting member and shall be a person exempted from the provisions of~~
19 ~~this law under § 17-86-301(b)(1).~~

20 ~~(6)(A)(4)(A) Board members who are sitting in the board~~
21 ~~positions described in this subsection on August 1, 1997, will remain as~~
22 ~~members of the board until the term of that member's appointment expires or~~
23 ~~until that member is removed from the board or until that member resigns from~~
24 ~~the board or dies before the term of his or her appointment expires. A board~~
25 member shall begin his or her appointed term on July 1, 2009.

26 (B) Board members appointed to their positions ~~after~~
27 ~~August 1, 1997,~~ shall be selected in equal apportionment from the
28 congressional districts of the state as provided in § 25-16-801 and shall be
29 subject to confirmation by the 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, two (2) members have a two-year term, and two (2) members have a one-
35 year term.

36 (ii) A person who has previously served on the board

1 shall not be eligible for an initial appointment.

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

4
5 SECTION 3. Arkansas Code § 17-86-203 is amended to read as follows:

6 17-86-203. Powers and duties.

7 (a)(1) The Arkansas State Board of Massage Therapy ~~is empowered to~~ may
8 promulgate and enforce reasonable rules ~~and regulations~~ for the purpose of carrying
9 out ~~the provisions of~~ this chapter.

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

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

16 (b)(1)(A) ~~It shall also be the duty of the board to~~ The Arkansas State Board
17 of Massage Therapy shall inspect or cause to be inspected at least ~~once~~ one (1)
18 time each year all massage therapy schools operated in this state.

19 (B) ~~The board~~ Arkansas State Board of Massage Therapy and its
20 agents and employees ~~shall have and they are given the authority to~~ may enter and
21 inspect any massage therapy clinic or school during any operating hours of the
22 business.

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

27 (c) ~~The board~~ Arkansas State Board of Massage Therapy may hold licensing
28 examinations from time to time at ~~such a~~ a place or places as the ~~board~~ Arkansas
29 State Board of Massage Therapy may designate.

30 (d)(1) The Arkansas State Board of Massage Therapy may require each original
31 applicant and each upgrade applicant for a license issued by the Arkansas State
32 Board of Massage Therapy to apply to the Identification Bureau of the Department of
33 Arkansas State Police for a state and federal criminal background check to be
34 conducted by the Identification Bureau of the Department of Arkansas State Police
35 and the Federal Bureau of Investigation;

36 (2) The state and federal criminal background check shall conform to

1 applicable federal standards and shall include the taking of fingerprints;

2 (3) The applicant shall sign a release of information to the Arkansas
3 State Board of Massage Therapy and shall be responsible for the payment of any fees
4 associated with the state and federal criminal background check;

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

8 (B) Results shall be sent directly to the Arkansas State Board
9 of Massage Therapy from the agency performing the state and federal criminal
10 background check.

11 (e)(1) For purposes of this section, an applicant is not eligible to receive
12 or hold a license issued by the Arkansas State Board of Massage Therapy if the
13 applicant has pleaded guilty or nolo contendere to or been found guilty of a felony
14 or class A misdemeanor or any offense involving fraud, theft, or dishonesty.

15 (2) A provision of this section may be waived by the Arkansas State
16 Board of Massage Therapy if:

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

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

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

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

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

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

29 (f) The Arkansas State Board of Massage Therapy may permit an applicant to
30 be licensed regardless of having been convicted of an offense listed in this
31 section, upon making a determination that the applicant does not pose a risk of
32 harm to any person served by the Arkansas State Board of Massage Therapy.

33 (g) In making a determination under subsection (f) of this section, the
34 Arkansas State Board of Massage Therapy may consider the following factors:

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

36 (2) The consequences of the crime;

- 1 (3) The number and frequency of crimes;
- 2 (4) The relationship between the crime and the health, safety, and
- 3 welfare of persons served by the agency, such as:
- 4 (A) The age and vulnerability of victims of the crime;
- 5 (B) The harm suffered by the victim; and
- 6 (C) The similarity between the victim and persons served by the
- 7 Arkansas State Board of Massage Therapy;
- 8 (5) The time elapsed without a repeat of the same or similar event;
- 9 (6) Documentation of successful completion of training or
- 10 rehabilitation pertinent to the incident; and
- 11 (7) Any other information that bears on the applicant's ability
- 12 to care for others or other relevant information.
- 13 (h) If the board waives the provisions of subsection (e) of this section,
- 14 the board shall submit the reasons for waiving this provision in writing and the
- 15 determination and reasons shall be made available to review.

16

17 SECTION 4. Arkansas Code § 17-86-301, regarding the registration requirement

18 for massage therapists, is amended to add a new subsection (c) to read as follows:

- 19 (c)(1) A licensee shall notify the board in writing of any change of name,
- 20 address, phone number, or place of employment.
- 21 (2) If a name change is requested, a new license shall be issued in
- 22 the new name at the next renewal date or immediately for a fee not to exceed twenty
- 23 dollars (\$20.00) for printing of a new license.
- 24 (3) Valid government issued photo identification is required for each
- 25 name change request.

26

27 SECTION 5. Arkansas Code § 17-86-303 is amended to read as follows:

28 17-86-303. Massage therapist.

- 29 (a) In order to be licensed as a massage therapist, the person seeking
- 30 licensure shall:
- 31 (1) Furnish to the Arkansas State Board of Massage Therapy
- 32 satisfactory proof that he or she is eighteen (18) years of age or older and of
- 33 good moral character;
- 34 (2) Make oath that he or she has not been convicted of or found guilty
- 35 of or entered a plea of guilty or nolo contendere to any offense that would
- 36 constitute a felony or constitute the offense of prostitution, either in this state

1 or the United States, and submit a signed authorization to investigate and have
2 information released to the board;

3 (3) Present a high school diploma, graduate equivalency diploma, or
4 college transcript and credentials issued by a board-accepted massage therapy
5 school or a like institution with no fewer than five hundred (500) in-classroom
6 hours of instruction;

7 (4) Furnish to the board satisfactory proof of passing an examination
8 recognized and approved by the board;

9 ~~(5) Present a physician's statement declaring such a person free from~~
10 ~~infectious tuberculosis and any disease or condition which could pose a health risk~~
11 ~~to the public in the practice of massage therapy. Such an examination must have~~
12 ~~taken place within the preceding twelve (12) months; and Present a negative test~~
13 ~~for tuberculosis. The tuberculosis test must be current at the time of licensure;~~
14 and

15 (6) Pay the specified fees, which shall accompany a completed
16 notarized application to the board.

17 (b)~~(1)~~ Fees are as follows:

18 "~~(A)~~(1) Registration Application fee \$75.00

19 ~~(B)~~(2) Annual renewal Original license fee 30.00

20 80.00

21 ~~(C)~~(3) Biennial renewal 80.00

22 (4) Examination fee or reexamination fee 25.00

23 (5) Duplicate license fee 10.00

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

25 ~~(2) Should reexamination be necessary, the registration fee of~~
26 ~~seventy five dollars (\$75.00) will be held until after the reexamination is taken.~~
27 ~~Should the reexamination qualifications not be met, the board will refund the~~
28 ~~seventy five dollars (\$75.00) but not the examination and reexamination fees.~~

29 (c) A person shall not practice massage therapy until his or her official
30 license has been received from the board.

31 (d) ~~Any~~ A person who attempts to procure or does procure a license in
32 violation of this section shall be subject to the penalties provided for in § 17-
33 86-103.

34
35 SECTION 6. Arkansas Code § 17-86-304 is amended to read as follows:
36 17-86-304. Master massage therapist.

1 (a) Any person who holds a license as a massage therapist issued by the
2 Arkansas State Board of Massage Therapy and who submits satisfactory evidence to
3 the board that he or she has completed and meets the requirements stated in § 17-
4 86-102(3) ~~shall be~~ is entitled to be upgraded to master massage therapist.

5 (b) Each application for upgrade to master massage therapist shall be
6 considered a new application for purposes of criminal background checks.

7 (c) Fees are as follows:

- 8 (1) ~~Registration~~ Application fee \$75.00
- 9 (2) ~~Annual renewal~~ Original license fee ~~40.00~~ 80.00
- 10 (3) Biennial renewal fee 80.00
- 11 (4) Duplicate license fee 10.00
- 12 (5) Pocket card fee not to exceed ten dollars (\$10.00)

13
14 SECTION 7. Arkansas Code § 17-86-305 is amended to read as follows:

15 17-86-305. Massage therapy instructor.

16 (a) Any person who holds a license as a master massage therapist issued by
17 the Arkansas State Board of Massage Therapy and who submits satisfactory evidence
18 to the board that he or she has successfully completed and meets the requirements
19 stated in § 17-86-102(8) shall be entitled to be upgraded to massage therapy
20 instructor.

21 (b) Each application for upgrade to massage therapy instructor is considered
22 a new application for purposes of criminal background checks.

23 (c) Fees are as follows:

- 24 (1) ~~Registration~~ Application fee \$75.00
- 25 (2) ~~Annual renewal~~ Original license fee ~~45.00~~ 80.00
- 26 (3) Biennial renewal fee 80.00
- 27 (4) Duplicate license fee 10.00
- 28 (5) Pocket card fee not to exceed ten dollars (\$10.00)

29
30 SECTION 8. Arkansas Code § 17-86-306 is amended to read as follows:

31 17-86-306. Massage therapy school.

32 (a) ~~No person or persons may~~ A person shall not establish, operate, or
33 maintain a massage therapy school without first having obtained a certificate of
34 massage therapy school licensure issued by the Arkansas State Board of Massage
35 Therapy.

36 (b) ~~No school shall~~ A massage therapy school shall not be approved by the

1 board or granted a certificate of licensure until ~~such~~ the appropriate application
2 and inspection forms as prescribed by the board have been completed and approved
3 and the licensure fee has been paid.

4 (c)(1) Inspection of the school premises will be made by a board member and
5 required forms completed and returned to the Executive Director of the Arkansas
6 State Board of Massage Therapy with approval or recommendations.

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

10 (d)(1) Schools shall require a physical examination by a medical doctor that
11 the student poses no health risk to give and receive massage and a tuberculosis
12 test verifying that the licensee is free from contagious tuberculosis.

13 (2) The school shall be required to maintain proof of the examination
14 and the tuberculosis test and furnish ~~such~~ additional information and documents as
15 may be required by the board or its appointee during the inspection.

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

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

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

23 (3) Twenty-five (25) hours of hydrotherapy, electrotherapy, and
24 heliotherapy;

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

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

28 (6) Twenty-five (25) hours of related subjects as approved by the
29 board.

30 (f)(1) The fee for establishing a school ~~is eight hundred fifty dollars~~
31 ~~(\$850)~~ shall not exceed one thousand dollars (\$1,000). ~~The fee for establishing a~~
32 ~~satellite school is four hundred twenty five dollars (\$425).~~

33 (2) The initial inspection fee ~~is one hundred dollars (\$100).~~ ~~The~~
34 ~~initial inspection fee per each satellite school is one hundred dollars (\$100) for~~
35 each school shall not exceed one hundred dollars (\$100).

36 (3) The annual renewal and inspection fee ~~is one hundred dollars~~

1 ~~(\$100). The annual renewal and inspection fee per each satellite school is one~~
 2 ~~hundred dollars (\$100) for each school shall not exceed one hundred dollars (\$100).~~

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

5
 6 SECTION 9. Arkansas Code § 17-86-308 is amended to read as follows:

7 17-86-308. Reciprocity.

8 (a) The Arkansas State Board of Massage Therapy shall have the discretion to
 9 may enter into reciprocal relations with other states and territories whose
 10 licensure requirements are substantially the same as those provided in this
 11 chapter.

12 (b)(1) An out-of-state applicant holding a current massage therapy license
 13 issued by another state and after receiving an Arkansas massage therapy license may
 14 apply for an upgrade to master massage therapist or massage therapy instructor by
 15 providing appropriate continuing education credits and experience gained before
 16 Arkansas licensure for board approval.

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

19
 20 SECTION 10. Arkansas Code § 17-86-309 is amended to read as follows:

21 17-86-309. Renewals – Inactive list – Continuing education.

22 (a)(1) Each license for licensees ~~and massage schools shall be is~~ valid for
 23 a period of ~~one (1) year~~ two (2) years and ~~shall expire~~ expires on ~~June 30 of each~~
 24 ~~year~~ on the birthdate of the licensee in the biennial renewal year, whereupon a
 25 renewal license may be issued upon submission of completed license renewal
 26 application with payment of the fee or fees prescribed for class of certification.

27 (2) ~~Prior to July 1, 1999, each renewal for licensees shall be~~
 28 ~~accompanied by proof of no fewer than three (3) in-classroom hours of continuing~~
 29 ~~education which has been approved by the Arkansas State Board of Massage Therapy~~
 30 Each license for a massage therapy school and a massage therapy clinic is valid for
 31 a period of one (1) year and expires on June 30 of each year, whereupon a renewal
 32 license may be issued upon submission of a completed license renewal application
 33 with payment of the fee or fees prescribed for class of certification.

34 (3) Every license for licensees, both active and inactive, shall
 35 expire on the birthdate of the licensee in the biennial renewal year.

36 ~~(3)(4) Beginning July 1, 1999, each~~ Each renewal for licensees shall

1 be accompanied by proof of no fewer than ~~six (6)~~ eighteen (18) hours of continuing
2 education ~~which~~ that have been approved by the Arkansas State Board of Massage
3 Therapy. A licensee may carry over no more than ~~six (6)~~ additional hours of
4 continuing education from the previous licensing period.

5 ~~(4) Each renewal shall be accomplished by a statement from a qualified~~
6 ~~health care provider issued during the preceding twelve (12) months verifying that~~
7 ~~the licensee is free from contagious tuberculosis.~~

8 (b) ~~The board shall have the authority to levy penalties for late renewals~~
9 ~~by licensees which begin July 1 in the amount of twenty five dollars (\$25.00) per~~
10 ~~month or portion thereof for a period not to exceed six (6) months~~ A renewal
11 application for a licensee is due on or before the first day of the month preceding
12 the month of the birthdate of the licensee in the biennial renewal year.

13 (c) A renewal application for a licensee postmarked after the first day of
14 the month preceding the month of the birthdate of the licensee of the biennial
15 renewal year shall be levied a late penalty fee not to exceed twenty-five dollars
16 (\$25.00).

17 (d)(1) An application for renewal postmarked after the birthdate of the
18 licensee in the biennial renewal year will be treated as an application to renew an
19 expired license.

20 (2)(A) A license is expired if the application is postmarked after the
21 birthdate of the licensee in the biennial renewal year.

22 (B) Before the board issues a new license to an applicant whose
23 license has expired under subdivision (d)(2)(A) of this section, the applicant
24 shall:

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

27 (ii) Successfully complete an examination recognized by
28 the board.

29 ~~(e)~~(e) The board shall issue a license effective as of the date of receipt
30 of the late application and all renewal fees, penalties, and required
31 documentation.

32 ~~(d)~~(f)(1) Any individual licensee who is not currently in practice and who
33 wishes to place his or her license on the inactive list may remain on this list for
34 a period not to exceed ~~three (3)~~ four (4) years without reexamination.

35 (2) After ~~such time~~ the time allowed under subdivision (f)(1) of this
36 section, all inactive licensees will be required to shall meet current requirements

1 for licensure and must successfully complete an examination recognized by the board
2 ~~prior to~~ before resuming the active practice of massage therapy.

3 ~~(e)~~(g) Any individual licensee who has been placed on the inactive list for
4 fewer than ~~three (3)~~ four (4) years and who wishes to reactivate his or her license
5 ~~must~~ shall follow the procedures for license renewal as provided for in this
6 section, present satisfactory evidence of completion of continuing education hours
7 as required by subsection (a) of this section for the inactive period, and pay all
8 appropriate fees ~~prior to~~ before resuming the active practice of massage therapy.

9 ~~(f)~~(h) The fee for placement on the inactive list ~~is ten dollars (\$10.00)~~
10 ~~each year~~ shall not exceed eighty dollars (\$80.00) per biennium.

11 (i)(1) A licensee whose massage therapy school license renewal is postmarked
12 after April 30 of each year shall pay a late fee not to exceed five hundred dollars
13 (\$500).

14 (2) A massage therapy school license renewal postmarked after June 30
15 of each year automatically expires.

16 (3) A licensee whose massage therapy school license has expired shall
17 submit a new application to the board with current requirements and fees.

18 (j)(1) A massage therapy clinic license renewal postmarked after June
19 30 of each year automatically expires.

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

23 (k)(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 residing out-of-state and holding a valid Arkansas
26 massage therapy license may request board approval of appropriate continuing
27 education courses otherwise not approved by the board.

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

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

31
32 SECTION 11. Arkansas Code § 17-86-310 is amended to read as follows:

33 17-86-310. Display of license.

34 (a) An official license shall be conspicuously and publicly displayed in the
35 place where the holder engages in the practice of massage therapy or instruction of
36 massage therapy. ~~Massage therapy school licenses~~ A massage therapy school license

1 shall be conspicuously displayed in the ~~facility~~ massage therapy school.

2 (b) It is unlawful to tamper with or reduce in size an original massage
3 therapy license issued by the Arkansas State Board of Massage Therapy.

4 (c) Each license shall provide the correct address of the board.

5
6 SECTION 12. Arkansas Code § 17-86-311 is amended to read as follows:

7 17-86-311. ~~Revocation, suspension, or denial~~ Disciplinary actions and
8 penalties.

9 (a) The Arkansas State Board of Massage Therapy may deny, suspend, or
10 revoke a license upon any one (1) of the following grounds:

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

13 (2) Malpractice or gross incompetency;

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

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

18 (5) Serving or having a permit to serve alcoholic beverages at
19 the clinic or school;

20 (6) Engaging in moral turpitude or immoral or unprofessional
21 conduct;

22 (7) Failure to comply with any valid regulation or order of the
23 board;

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

28 (9) Failure of any licensee to comply with the provisions of
29 this chapter; or

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

32 (b)(1) The board shall establish by rule the penalty system to be
33 imposed under this section.

34 (2) Whenever the board finds that the holder of a license,
35 certificate of registration, or other permit issued by the board is guilty of
36 a violation of the rules of the board or the laws of the state pertaining to

1 any occupation, profession, or business licensed or regulated by the board,
2 the board may impose a penalty on the licensee or permit holder in lieu of
3 suspension or revocation of license, certificate of registration, or other
4 permit.

5 (3)(A) Upon imposition of a penalty in lieu of suspension or
6 revocation of license, certificate of registration, or other permit, the
7 board may require that the licensee or permit holder pay a penalty to the
8 board.

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

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

16 (B) The minimum penalty imposed by the board in lieu of
17 revocation or suspension of a license, certificate, or other permit shall be
18 twenty-five dollars (\$25.00) and the maximum penalty one thousand dollars
19 (\$1,000) per infraction.

20 (C) The authority of the board to impose penalties under
21 this section is not affected by any other civil or criminal proceeding
22 concerning the same violation.

23 (D) A person penalized by the board under this chapter may
24 appeal any order of the board in the manner currently provided by law.

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

29 (c)(1) The department shall revoke the license of a person who engages
30 in the practice of massage of the anus or the genital area of another person.

31 (2) The department shall revoke the license of a person who
32 engages in the practice of massage of the breasts unless the massage
33 therapist:

34 (i) Engages in the practice of massage of the breasts for
35 therapeutic and medical purposes including without limitation the reduction
36 of scar tissue following a surgery on the breast, release of myofascial

1 binding, or improving lymphatic flow; and

2 (ii) Has received at least forty-eight (48) hours of
3 continuing education credits in lymphatic massage, myofascial massage,
4 orthopedic massage, or oncology massage.

5 (3) A revocation of a license under subdivision (c)(1) and (2)
6 of this section shall be for a period of three (3) years.

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

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

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

17
18 SECTION 13. EMERGENCY CLAUSE. It is found and determined by the General
19 Assembly of the State of Arkansas that this act is necessary to improve the
20 operations of the Arkansas State Board of Massage Therapy, to improve the
21 regulation of the massage therapy industry, and for the immediate protection of the
22 public. Therefore, an emergency is declared to exist and this act being
23 immediately necessary for the preservation of the public peace, health, and safety
24 shall become effective on:

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

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

28 (3) If the bill is vetoed by the Governor and the veto is overridden,
29 the date the last house overrides the veto.

30
31 /s/ Pyle
32
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36