

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

A Bill

SENATE BILL 89

4
5 By: Senator T. Smith

For An Act To Be Entitled

6
7
8 AN ACT TO AMEND VARIOUS PROVISIONS OF THE MESSAGE
9 THERAPY ACT; AND FOR OTHER PURPOSES.
10

Subtitle

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

15
16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19
20 SECTION 1. Arkansas Code § 17-86-102 is amended to read as follows:
21 17-86-102. Definitions.

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

23 (1) "Board" means the Arkansas State Board of Massage Therapy;

24 (2) "Licensee" means any individual licensed under this chapter;

25 (3)(A) "Massage therapist" means a person who has:

26 (i) earned ~~earned~~ Earned a diploma from a board-accepted
27 school of massage therapy;

28 (ii) who has passed ~~who has passed~~ Passed an examination required
29 by the ~~board,~~ Arkansas State Board of Massage Therapy; and

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

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

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

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



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

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

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

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

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

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

15 ~~(D) Hydrotherapy techniques;~~

16 ~~(E) Heliotherapy;~~

17 ~~(F) Electrotherapy; and~~ the assessment, mobilization, and
 18 treatment of soft tissues, which may include skin, fascia, tendons,
 19 ligaments, and muscles and their dysfunctions for therapeutic purposes of
 20 establishing and maintaining good physical condition, comfort, relief of pain
 21 or injury.

22 (B) "Massage therapy" is a health care service that
 23 includes gliding, kneading, percussion, compression, vibration, friction,
 24 nerve strokes, stretching the tissue, and exercising the range of motion.

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

27 (i) Massage therapy techniques and procedures,
 28 either hands-on or with mechanical devices, such as T-bars, thumpers, and
 29 body support systems;

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

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

34 (iv) Hydrotherapy techniques including steam cabinet
 35 baths, steam canopies, whirlpool, Hubbard tanks, or other forms of
 36 hydrotherapy;

1 (v) Heliotherapy which may include mechanical
 2 devices, heat lamps, and other devices;

3 (vi) Electrotherapy; and

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

8 (5) "Massage therapy clinic" means a clinic, ~~or place, where~~
 9 ~~there are one (1) or more licensees practicing massage therapy premises,~~
 10 building, or part of a building in which a branch or any combination of
 11 branches of massage therapy of the occupation of a massage therapist is
 12 practiced;

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

14 ~~(i) Is licensed and registered as a master massage~~
 15 ~~therapist;~~

16 ~~(ii) Has completed no fewer than two hundred fifty~~
 17 ~~(250) hours of practical experience as a master massage therapist, which may~~
 18 ~~be gained in part or in whole as an assistant to an instructor in a massage~~
 19 ~~school or may be gained in part or in whole as a directed instructor in a~~
 20 ~~massage school; and~~

21 ~~(iii)(i)~~ Has been an active and practicing licensee
 22 and registered as a master massage therapist for a period of not less
 23 than three (3) years preceding the application for an upgrade to massage
 24 therapy instructor;

25 (ii) In addition to ~~that~~ the experience under
 26 subdivision (6)(A)(i) of this section, has completed no fewer than two
 27 hundred fifty (250) continuing education hours as approved by the board as a
 28 licensed master massage therapist; and

29 (iii) ~~who is~~ Is determined by the board to be
 30 qualified to be licensed and registered to practice massage therapy ~~as~~
 31 ~~defined in subdivision (4) of this section.~~

32 (B) "Massage therapy instructor" includes a person who had
 33 previously obtained the massage therapy instructor license under prior state
 34 law.

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

36 (i) Instruct board-approved continuing education

1 programs;

2 (ii) Instruct any of the procedures in subdivision
3 (4) of this section; and

4 (iii) Instruct basic curricula in a board-registered
5 massage therapy school as required by § 17-86-306(e).

6 ~~(C) “Massage therapy instructor” may also mean a person
7 who had previously obtained the massage therapy instructor license under
8 prior state law;~~

9 (7) “Massage therapy school” means a registered and licensed
10 facility ~~which~~ that meets and follows the required educational standards as
11 established by § 17-86-306 and all pertinent rules ~~and regulations~~
12 established by the board; and

13 (8)(A) “Master massage therapist” means a person who:

14 ~~(i) Is a licensed and registered massage therapist
15 who has completed no fewer than two hundred fifty (250) hours of practical
16 experience as a massage therapist, which may be gained in part or in whole as
17 an assistant to an instructor in a massage school~~

18 (i) Has been an active and practicing licensee and
19 registered as a massage therapist for a period of not less than two (2) years
20 preceding the application for an upgrade to master massage therapist;

21 (ii) In addition to ~~that~~ the experience under
22 subdivision (8)(A)(i) of this section, has completed no fewer than one
23 hundred twenty-five (125) continuing education hours as approved by the
24 board; and

25 (iii) Is determined by the board to be qualified to
26 be licensed and registered to practice massage therapy ~~as defined in
27 subdivision (4) of this section.~~

28 (B) “Master massage therapist” includes a person who had
29 previously obtained the master massage therapist license under a prior state
30 law.

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

32 (i) Instruct board-approved continuing education
33 programs;

34 (ii) Instruct any of the procedures in subdivision
35 (4) of this section; and

36 (iii) Instruct, as directed by a massage therapy

1 instructor, basic curricula in a board-registered massage therapy school as
2 required by § 17-86-306(e); and

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

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

8

9 SECTION 2. Arkansas Code § 17-86-201 is amended to read as follows:
10 17-86-201. Members.

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

14 (2) Four (4) members shall be active and practicing licensees
15 under this chapter. These members shall be full voting members.

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

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

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

26 (6)(A) ~~Board members who are sitting in the board positions~~
27 ~~described in this subsection on August 1, 1997, will~~ A board member shall
28 remain as ~~members~~ a member of the board until;

29 (i) ~~the~~ The term of that member's appointment
30 expires;

31 (ii) ~~or until that~~ That member is removed from the
32 board; or

33 (iii) ~~until that~~ That member resigns from the board
34 or dies before the term of his or her appointment expires.

35 (B) Board members ~~appointed to their positions after~~
36 ~~August 1, 1997,~~ shall be selected in equal apportionment from the

1 congressional districts of the state as provided in § 25-16-801 and shall be
 2 subject to confirmation by the Senate.

3 (C) A board position becomes vacant immediately when the
 4 member filling that position moves to another state.

5 (b)(1) The Governor may remove members of the board from office
 6 according to § 25-16-804.

7 (2) The Governor shall fill any vacancy caused by the removal of
 8 any member of the board, by a member's resignation or death, or upon the
 9 expiration of a member's term.

10 (c)(1) Members shall be paid and receive a fee of no less than ~~fifty~~
 11 ~~dollars (\$50.00)~~ sixty dollars (\$60.00) per diem for each day actually
 12 engaged in attending board meetings or performing other official duties as
 13 provided in § 25-16-903.

14 (2)(A) All board members shall receive reimbursement for all
 15 reasonable and necessary travel at the rate approved for state employees.

16 (B) Lodging and other expenses incurred in the performance
 17 of their official duties will also be paid on the approved scale for state
 18 employees.

19
 20 SECTION 3. Arkansas Code § 17-86-203 is amended to read as follows:
 21 17-86-203. Powers and duties.

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

25 (2) ~~The board~~ Arkansas State Board of Massage Therapy shall
 26 follow ~~the provisions found in~~ the Arkansas Administrative Procedure Act, §
 27 25-15-201 et seq., as to "rule" and "rule-making" definitions and for the
 28 adoption and filing of rules ~~and regulations.~~

29 (3) For the purpose of governing health and safety, the rules
 30 must meet minimum requirements of the law and rules of the State Board of
 31 Health.

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

35 (B) ~~The board~~ Arkansas State Board of Massage Therapy and
 36 its agents and employees ~~shall have and they are given the authority to~~ may

1 enter and inspect any massage therapy clinic or school during any operating
2 hours of the business.

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

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

10 (d)(1) The Arkansas State Board of Massage Therapy may require each
11 original applicant and each upgrade applicant for a license issued by the
12 Arkansas State Board of Massage Therapy to apply to the Identification Bureau
13 of the Department of Arkansas State Police for a state and federal criminal
14 background check to be conducted by the Identification Bureau of the
15 Department of Arkansas State Police and the Federal Bureau of Investigation;

16 (2) The state and federal criminal background check shall
17 conform to applicable federal standards and shall include the taking of
18 fingerprints;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (2) The consequences of the crime;

24 (3) The number and frequency of crimes;

25 (4) The relation between the crime and the health, safety, and
26 welfare of persons served by the agency, such as:

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

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

29 (C) The similarity between the victim and persons served
30 by the Arkansas State Board of Massage Therapy;

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

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

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

1
2 SECTION 4. Arkansas Code § 17-86-301, regarding the registration
3 requirement for massage therapists, is amended to add a new subsection (c) to
4 read as follows:

5 (c)(1) All licensees shall notify the board in writing of any change
6 of name, address, phone number, or place of employment.

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

10 (3) Valid government issued photo identification is required for
11 all name change requests.

12
13 SECTION 5. Arkansas Code § 17-86-303 is amended to read as follows:
14 17-86-303. Massage therapist.

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

17 (1) Furnish to the Arkansas State Board of Massage Therapy
18 satisfactory proof that he or she is eighteen (18) years of age or older and
19 of good moral character;

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

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

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

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

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

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

4 ~~(A)(1) Registration fee \$75.00~~ Application fee not
5 to exceed one hundred twenty-five dollars (\$125);

6 ~~(B)(2) Annual renewal fee 30.00~~ Original license fee
7 not to exceed one hundred twenty dollars (\$120);

8 ~~(C)(3) Biennial renewal fee not to exceed one hundred twenty~~
9 dollars (\$120);

10 (4) Examination fee or reexamination fee 25.00 not
11 to exceed forty-five dollars (\$45.00);

12 (5) Duplicate license fee not to exceed twenty dollars (\$20.00);

13 and

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

15 ~~(2) Should reexamination be necessary, the registration fee of~~
16 ~~seventy five dollars (\$75.00) will be held until after the reexamination is~~
17 ~~taken. Should the reexamination qualifications not be met, the board will~~
18 ~~refund the seventy five dollars (\$75.00) but not the examination and~~
19 ~~reexamination fees.~~

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

22 (d) Any person who attempts to procure or does procure a license in
23 violation of the provisions of this section shall be subject to the penalties
24 provided for in § 17-86-103.

25
26 SECTION 6. Arkansas Code § 17-86-304 is amended to read as follows:
27 17-86-304. Master massage therapist.

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

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

35 (c) Fees are as follows:

36 (1) ~~Registration fee \$75.00~~ Application fee not to

1 exceed one hundred twenty-five dollars (\$125);

2 (2) ~~Annual renewal fee 40.00~~ Original license fee
3 not to exceed one hundred twenty dollars (\$120);

4 (3) Biennial renewal fee not to exceed one hundred twenty
5 dollars (\$120);

6 (4) Duplicate license fee not to exceed twenty dollars (\$20.00);

7 and

8 (5) Pocket card fee not to exceed ten dollars (\$10.00).

9
10 SECTION 7. Arkansas Code § 17-86-305 is amended to read as follows:

11 17-86-305. Massage therapy instructor.

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

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

19 (c) Fees are as follows:

20 (1) ~~Registration fee \$75.00~~ Application fee not to
21 exceed one hundred twenty-five dollars (\$125);

22 (2) ~~Annual renewal fee 45.00~~ Original license fee
23 not to exceed one hundred twenty dollars (\$120);

24 (3) Biennial renewal fee not to exceed one hundred twenty
25 dollars (\$120);

26 (4) Duplicate license fee not to exceed twenty dollars (\$20.00);

27 and

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
34 of massage therapy school licensure issued by the Arkansas State Board of
35 Massage Therapy.

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

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

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

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

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

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

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

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

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

26 (3) Twenty-five (25) hours of hydrotherapy, electrotherapy, and
 27 heliotherapy;

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

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

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

33 (f)(1) The fee for establishing a school ~~is eight hundred fifty~~
 34 ~~dollars (\$850)~~ shall not exceed one thousand two hundred and fifty dollars
 35 (\$1,250). ~~The fee for establishing a satellite school is four hundred~~
 36 ~~twenty five dollars (\$425).~~

1 (2) The initial inspection fee ~~is one hundred dollars (\$100).~~
 2 ~~The initial inspection fee per each satellite school is one hundred dollars~~
 3 ~~(\$100) for each school shall not exceed one hundred fifty dollars (\$150).~~

4 (3) The annual renewal and inspection fee ~~is one hundred dollars~~
 5 ~~(\$100). The annual renewal and inspection fee per each satellite school is~~
 6 ~~one hundred dollars (\$100) for each school shall not exceed one hundred~~
 7 ~~seventy-five dollars (\$175).~~

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

10
 11 SECTION 9. Arkansas Code § 17-86-307 is amended to read as follows:

12 17-86-307. Massage therapy clinic.

13 (a) No person may establish, maintain, or operate a massage therapy
 14 clinic until the ~~address and telephone number of the office or clinic has~~
 15 ~~been supplied in writing to~~ massage therapy clinic has become registered and
 16 licensed with the Arkansas State Board of Massage Therapy.

17 (b) A person, firm or corporation desiring to operate a massage
 18 therapy clinic shall submit an application to the board for a certificate of
 19 registration and license.

20 (c) The fee for registering a new massage therapy clinic shall
 21 not exceed seventy-five dollars (\$75.00).

22 (d) The massage therapy clinic license annual renewal fee shall not
 23 exceed seventy-five (\$75.00).

24 (e) ~~In the event~~ If a massage therapy clinic changes ownership, moves
 25 to a new location or changes its phone number, the ~~new address or phone~~
 26 ~~number, or both, will~~ changes shall be immediately submitted to the board in
 27 writing ~~prior to~~ before operating the clinic at the new address.

28
 29 SECTION 10. Arkansas Code § 17-86-308 is amended to read as follows:

30 17-86-308. Reciprocity.

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

35 (b)(1) An out-of-state applicant holding a current massage therapy
 36 license issued by another state and after receiving an Arkansas massage

1 therapy license may apply for an upgrade to master massage therapist or
 2 massage therapy instructor by providing appropriate continuing education
 3 credits and experience gained before Arkansas licensure for board approval.

4 (2) All upgrade requests shall be made by submitting a complete
 5 application package and paying the fees required by this chapter.

6
 7 SECTION 11. Arkansas Code § 17-86-309 is amended to read as follows:

8 17-86-309. Renewals – Inactive list – Continuing education.

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

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

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

25 ~~(3)(4) Beginning July 1, 1999, each~~ Each renewal for licensees
 26 shall be accompanied by proof of no fewer than ~~six (6)~~ eighteen (18) hours of
 27 continuing education ~~which~~ that have been approved by the Arkansas State
 28 Board of Massage Therapy. ~~A licensee may carry over no more than six (6)~~
 29 ~~additional hours of continuing education from the previous licensing period.~~

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

33 (b) ~~The board shall have the authority to levy penalties for late~~
 34 ~~renewals by licensees which begin July 1 in the amount of twenty five dollars~~
 35 ~~(\$25.00) per month or portion thereof for a period not to exceed six (6)~~
 36 ~~months~~ A renewal application for a licensee is due on or before the first day

1 of the month preceding the month of the birthdate of the licensee in the
 2 biennial renewal year

3 (c) A renewal application for a licensee postmarked after the first
 4 day of the month preceding the month of the birthdate of the licensee of the
 5 biennial renewal year shall be levied a late penalty fee not to exceed one
 6 hundred dollars (\$100).

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

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

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

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

17 (ii) Successfully complete an examination recognized
 18 by the board.

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

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

26 (2) After ~~such time~~ the time allowed under subdivision (f)(1) of
 27 this section, all inactive licensees ~~will be required to~~ shall meet current
 28 requirements for licensure and must successfully complete an examination
 29 recognized by the board ~~prior to~~ before resuming the active practice of
 30 massage therapy.

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

1 the active practice of massage therapy.

2 ~~(f)~~(h) The fee for placement on the inactive list ~~is ten dollars~~
3 ~~(\$10.00) each year shall not exceed forty dollars (\$40.00) per biennium.~~

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

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

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

12 (j)(1) A licensee whose massage therapy clinic license renewal is
13 postmarked after April 30 of each year shall pay a late fee not to
14 exceed fifty dollars (\$50.00)

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

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

20 (k)(1) Each application for continuing education programs shall be
21 accompanied by an application fee not to exceed fifty dollars (\$50.00).

22 (2)(A) A licensee residing out-of-state and holding a valid
23 Arkansas massage therapy license may request board approval of appropriate
24 continuing education courses otherwise not approved by the board.

25 (B) Courses shall meet similar standards as courses
26 approved by the board.

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

28
29 SECTION 12. Arkansas Code § 17-86-310 is amended to read as follows:

30 17-86-310. Display of license.

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

36 (b) It is unlawful to tamper with or reduce in size an original

1 massage therapy license issued by the Arkansas State Board of Massage
 2 Therapy.

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

5 SECTION 13. Arkansas Code § 17-86-311 is amended to read as follows:

6 17-86-311. ~~Revocation, suspension, or denial~~ Disciplinary actions and
 7 penalties.

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

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

12 (2) Malpractice or gross incompetency;

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

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

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

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

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

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

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

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

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

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

1 the board may impose a penalty on the licensee or permit holder in lieu of
2 suspension or revocation of license, certificate of registration, or other
3 permit.

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

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

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

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

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

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

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

28 (c)(1) Charges may be brought by any person, or the board on its own
29 motion may direct the Executive Director of the Arkansas State Board of
30 Massage Therapy to prefer charges.

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

34 (e)(d) In denying, suspending, or revoking any license, the board
35 shall afford any party review as provided for in the Arkansas Administrative
36 Procedure Act, § 25-15-201 et seq., and as otherwise provided by the rules

1 and regulations of the board.

2
3 SECTION 13. EMERGENCY CLAUSE. It is found and determined by the
4 General Assembly of the State of Arkansas that this act is necessary to
5 improve the operations of the Arkansas State Board of Massage Therapy, to
6 improve the regulation of the massage therapy industry, and for the immediate
7 protection of the public. Therefore, an emergency is declared to exist and
8 this act being immediately necessary for the preservation of the public
9 peace, health, and safety shall become effective on:

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

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

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

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