

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1183

5 By: Representative Wright
6

For An Act To Be Entitled

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

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:

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

23 ~~(2)(1)~~ (1) "Licensee" means ~~any~~ an individual licensed under this
24 chapter;

25 ~~(3)(A)(2)(A)~~ (2)(A) "Massage therapist" means a person who has:

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

28 (ii) Passed an examination required or accepted by
29 the board; and

30 (iii) Become licensed and registered to practice
31 massage therapy.

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

34 (C) A massage therapist may:

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



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

4 ~~(4)(A)(3)(A)~~ "Massage therapy" means the treatment of soft
 5 tissues, which may include skin, fascia, and muscles and their dysfunctions
 6 for therapeutic purposes of establishing and maintaining good physical
 7 condition, comfort, and relief of pain.

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

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

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

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

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

19 (iv) Hydrotherapy techniques;

20 (v) Heliotherapy, which may include mechanical
 21 devices, heat lamps, and other devices;

22 (vi) Electrotherapy; and

23 (vii) Any hands-on bodywork techniques and
 24 procedures rising to the level of the techniques and procedures intended to
 25 be regulated under this chapter and not covered under specific licensing laws
 26 of other boards;

27 ~~(5)(4)~~ "Massage therapy clinic" means a clinic, place, premises,
 28 building, or part of a building in which a branch or any combination of
 29 branches of massage therapy or the occupation of a massage therapist is
 30 practiced;

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

32 (i) Before July 1, 2010, has completed no ~~fewer~~ less
 33 than two hundred fifty (250) hours of practical experience as a master
 34 massage therapist, which may be gained, in part or in whole, as an assistant
 35 to an instructor in a massage school or may be gained, in part or in whole,
 36 as a directed instructor in a massage school and has completed no ~~fewer~~ less

1 than two hundred fifty (250) continuing education hours as approved by the
2 board;

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

7 (iii) On or after July 1, 2010, in addition to the
8 experience under subdivision ~~(6)(A)(i)~~(5)(A)(i) of this section, has
9 completed no ~~fewer~~ less than two hundred fifty (250) continuing education
10 hours as approved by the board as a licensed master massage therapist; and

11 (iv) Is determined by the board to be qualified to
12 be licensed and registered to practice massage therapy.

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

16 (C) Massage therapy instructors may:

17 (i) Instruct board-approved continuing education
18 programs;

19 (ii) Instruct any of the procedures in subdivision
20 ~~(4)~~(5) of this section; and

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

23 ~~(7)~~(6) "Massage therapy school" means a registered and licensed
24 facility that meets and follows the required educational standards as
25 established by § 17-86-306 and all pertinent rules established by the board;

26 (7) "Massage therapy spa" means a site or premises, or portion
27 of a site or premises, in which a massage therapist practices massage; and

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

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

35 (ii) On or after July 1, 2010, has been an active
36 and practicing licensee and registered as a massage therapist for a period of

1 not less than two (2) years preceding the application for an upgrade to
 2 master massage therapist;

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

7 (iv) Is determined by the board to be qualified to
 8 be licensed and registered to practice massage therapy.

9 (B) "Master massage therapist" includes a person who ~~had~~
 10 has previously obtained the master massage therapist license under a prior
 11 state law.

12 (C) Master massage therapists may:

13 (i) Instruct board-approved continuing education
 14 programs;

15 (ii) Instruct any of the procedures in subdivision
 16 ~~(4)~~(5) of this section; and

17 (iii) Instruct, as directed by a massage therapy
 18 instructor, basic curricula in a board-registered massage therapy school as
 19 required by § 17-86-306(e); ~~and~~

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

22
 23 SECTION 2. Arkansas Code Title 17, Chapter 86, Subchapter 1, is
 24 amended to add an additional section to read as follows:

25 17-86-104. Criminal background checks.

26 A massage therapy instructor or master massage therapist who applies
 27 for an upgrade for a license issued by the Arkansas State Board of Massage
 28 Therapy shall apply to the Identification Bureau of the Department of
 29 Arkansas State Police for a state and federal criminal background check to be
 30 conducted by the Identification Bureau and the Federal Bureau of
 31 Investigation.

32
 33 SECTION 3. Arkansas Code § 17-86-201(a)(2)(B), concerning the
 34 membership of the Arkansas State Board of Massage Therapy, is amended to read
 35 as follows:

36 (B)(i) Only ~~two (2)~~ one (1) of the members shall be ~~owners~~

1 an owner of a massage therapy school.

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

4
5 SECTION 4. Arkansas Code § 17-86-201(a)(4)(A), concerning the
6 membership of the Arkansas State Board of Massage Therapy, is amended to read
7 as follows:

8 (4)(A) A board member shall begin his or her appointed term on
9 ~~July 1, 2009~~ August 20 of the year in which he or she is appointed.

10
11 SECTION 5. Arkansas Code § 17-86-201(a)(4)(D), concerning the
12 membership of the Arkansas State Board of Massage Therapy, is amended to read
13 as follows:

14 (D)(i) The initial terms of the appointed members of the
15 board shall be determined by lot so that three (3) members have a three-year
16 term, and two (2) members have a two-year term, ~~and two (2) members have a~~
17 ~~one-year term.~~

18 (ii) A person who ~~has previously~~ served on the board
19 ~~shall~~ before 2009 is not be eligible for an ~~initial~~ appointment.

20
21 SECTION 6. Arkansas Code § 17-86-201~~(a)(2)(B)~~ (c)(1), concerning the
22 membership of the Arkansas State Board of Massage Therapy, is amended to read
23 as follows:

24 ~~Members~~ A member shall be paid and receive a fee of no less
25 than ~~fifty dollars (\$50.00)~~ sixty dollars (\$60.00) per diem for each day
26 actually engaged in attending board meetings or performing other official
27 duties.

28
29 SECTION 7. Arkansas Code § 17-86-203(a) and (b), concerning the powers
30 and duties of the Arkansas State Board of Massage Therapy, ~~is~~ are amended to
31 read as follows:

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

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

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

4 (b)(1)(A) The Arkansas State Board of Massage Therapy shall inspect or
5 cause ~~to be inspected~~ an inspection of financial and student records, at
6 least one (1) time each year ~~all~~ for each massage therapy ~~schools~~ school
7 operated in this state.

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

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

15
16 SECTION 8. Arkansas Code § 17-86-203(h), concerning the powers and
17 duties of the Arkansas State Board of Massage Therapy is amended to read as
18 follows:

19 (h) If the Arkansas State Board of Massage Therapy waives the
20 provisions of subsection (e) of this section, the Arkansas State Board of
21 Massage Therapy shall submit the reasons for waiving this provision in
22 writing, and the determination and reasons shall be made available to ~~review~~
23 the members of the Arkansas State Board of Massage Therapy for review.

24
25 SECTION 9. Arkansas Code § 17-86-204(c), concerning the powers and
26 duties of the Arkansas State Board of Massage Therapy, is amended to read as
27 follows:

28 (c)(1) The original books, records, and papers of the board shall be
29 maintained at the offices of the board.

30 (2) A school that closes shall immediately submit all student
31 transcripts to the board office.

32
33 SECTION 10. Arkansas Code § 17-86-303(a) and (b), concerning licensure
34 as a massage therapist, ~~is~~ are amended to read as follows:

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

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

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

9 (3) Present:

10 (A) A valid photo identification or driver's license, or
11 both; and

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

14 ~~(3)~~(4)(A) Present a high school diploma, Certificate of General
15 Educational Development, or college transcript and credentials issued by a
16 board-accepted massage therapy school or a like institution with no ~~fewer~~
17 less than five hundred (500) in-classroom hours of instruction.

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

20 (C) An applicant shall have the massage therapy school
21 submit the transcript directly to the board office;

22 ~~(4)~~(5) Furnish to the board satisfactory proof of passing an
23 examination recognized and approved by the board;

24 ~~(5)~~(6) Present a negative test for tuberculosis. ~~The~~
25 ~~tuberculosis test must be~~ that is current at the time of licensure; and

26 ~~(6)~~(7) Pay the specified fees, which shall accompany a completed
27 notarized application to the board.

28 (b) Fees are as follows:

29 (1) Application fee \$75.00 Nonrefundable

30 (2) Original license fee 80.00

31 (3) Biennial renewal 80.00

32 (4) Examination fee or reexamination fee 25.00

33 (5) Duplicate license fee 10.00

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

35
36 SECTION 11. Arkansas Code § 17-86-304(e), ~~concerning fees for~~

1 ~~licensure as a master massage therapist~~, is amended to read as follows:

2 17-86-304. Master massage therapist.

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

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

10 (c) Fees are as follows:

- 11 (1) Application fee \$75.00 Nonrefundable
- 12 (2) Original license fee . . . 80.00
- 13 (3) Biennial renewal fee . . . 80.00
- 14 (4) Duplicate license fee . . . 10.00
- 15 (5) Pocket card fee not to exceed ten dollars (\$10.00)

16
17 SECTION 12. Arkansas Code § 17-86-305 is amended to read as follows:

18 17-86-305. Massage therapy instructor.

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

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

26 (c) Fees are as follows:

- 27 (1) Application fee \$75.00 Nonrefundable
- 28 (2) Original license fee . . . 80.00
- 29 (3) Biennial renewal fee . . . 80.00
- 30 (4) Duplicate license fee . . . 10.00
- 31 (5) Pocket card fee not to exceed ten dollars (\$10.00)

32
33 SECTION 13. Arkansas Code § 17-86-306(c)(1), concerning inspections of
34 massage therapy schools, is amended to read as follows:

35 (c)(1) Inspection of the school premises will be made by a board
36 member or board member designee, to include without limitation proof of

1 financial viability and required forms completed and returned to the
 2 Executive Director of the Arkansas State Board of Massage Therapy with
 3 approval or recommendations.

4
 5 SECTION 14. Arkansas Code § 17-86-307 is amended to read as follows:
 6 17-86-307. Massage therapy clinic and spa.

7 (a) ~~No person may~~ A person shall not establish, maintain, or operate a
 8 massage therapy clinic or massage therapy spa, or both, until the address and
 9 telephone number of the office, ~~or clinic, or spa has~~ have been supplied in
 10 writing to the Arkansas State Board of Massage Therapy.

11 (b) ~~In the event~~ If a massage therapy clinic, massage therapy spa, or
 12 both moves to a new location or changes its phone number, the new address or
 13 phone number, or both, ~~will be immediately submitted~~ shall be submitted
 14 immediately to the board in writing ~~prior to~~ before operating the clinic or
 15 spa, or both, at the new address.

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

18
 19 SECTION 15. Arkansas Code § 17-86-308(a), concerning massage therapy
 20 license reciprocity, is amended to read as follows:

21 (a)(1) The Arkansas State Board of Massage Therapy may enter into
 22 reciprocal relations with other states and territories whose licensure
 23 requirements are substantially the same as those provided in this chapter.

24 (2)(A) An out-of-state applicant shall not submit his or her
 25 transcript directly to the office of the office.

26 (B) An out-of-state applicant shall arrange for the
 27 massage therapy school to submit the transcript directly to the office of the
 28 board.

29
 30 SECTION 16. Arkansas Code § 17-86-309(a)(1), concerning renewals of
 31 massage therapy licenses, is amended to read as follows:

32 (a)(1)(A) ~~Each license for licensees is valid for a period of A~~
 33 license issued under this chapter is valid for two (2) years, and expires on

34 (B)(i) If a license issued under this chapter is not
 35 renewed by the first day of the month preceding the birthdate of the licensee
 36 in the biennial renewal year, the license expires, whereupon

1 (ii) If a license expires under subdivision
 2 (a)(1)(B)(i) of this section, a renewal license may be issued upon submission
 3 of a completed license renewal application with payment of the fee or fees
 4 prescribed for the class of certification.

5
 6 SECTION 17. Arkansas Code § 17-86-309(j)(2)(A), concerning continuing
 7 education for massage therapists, is amended to read as follows:

8 (2)(A) A licensee ~~residing out of state and~~ holding a valid
 9 Arkansas massage therapy license may request board approval of appropriate
 10 continuing education courses otherwise not approved by the board.

11
 12 SECTION 18. Arkansas Code § 17-86-311(a), concerning disciplinary
 13 actions for massage therapists, is amended to read as follows:

14 (a) The Arkansas State Board of Massage Therapy may deny, suspend,
 15 place on probation, or revoke a license upon any one (1) of the following
 16 grounds:

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

19 (2) Malpractice or gross incompetency;

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

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

24 (5) Serving ~~or having a permit to serve~~ alcoholic beverages at
 25 the clinic or school in a room where massage therapy is being performed or in
 26 a massage therapy school;

27 (6) ~~Engaging in moral~~ Moral turpitude or immoral or
 28 unprofessional conduct;

29 (7) Failure to comply with the Arkansas State Board of Massage
 30 Therapy Code of Ethics or any valid regulation or order of the board;

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

35 (9) Failure of any licensee to comply with ~~the provisions of~~
 36 this chapter; or

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

3
 4 SECTION 19. Arkansas Code § 17-86-311(c)(1), concerning disciplinary
 5 actions for massage therapists, is amended to read as follows:

6 (c)(1)(A) ~~The board shall revoke the license of a person who engages~~
 7 ~~in the practice of massage of the anus or the genital area of another person.~~
 8 The massage therapist-patient relationship is founded on mutual trust.

9 (B) Sexual misconduct in the practice of massage therapy
 10 is a violation of the massage therapist-patient relationship.

11 (C) Sexual misconduct in the practice of massage therapy
 12 is prohibited.

13
 14 SECTION 20. Arkansas Code § 17-86-311(c)(3), concerning disciplinary
 15 actions and penalties for massage therapists, is amended to read as follows:

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

18
 19 SECTION 21. Arkansas Code § 17-86-313 is repealed.

20 ~~17-86-313. Grandfather clause—Ability to upgrade status.~~

21 ~~(a)(1) In the event the qualifications for a specific license are~~
 22 ~~increased or changed, a person holding a particular license from the Arkansas~~
 23 ~~State Board of Massage Therapy may continue to hold that license or may~~
 24 ~~upgrade from massage therapist to master massage therapist or from master~~
 25 ~~massage therapist to massage therapy instructor, without meeting current~~
 26 ~~requirements for the particular license the person held at the time of the~~
 27 ~~increase or change.~~

28 ~~(2) It is the express intent of the legislature that in the~~
 29 ~~event the qualifications for a specific license are increased or changed,~~
 30 ~~that those persons who hold the license or licenses will be able to hold that~~
 31 ~~specific license or upgrade licensure status without completing current~~
 32 ~~requirements for the license held at the time of the increase or change.~~