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2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1440

4

5 By: Representative Pilkington

6 By: Senator Hester

7

8

For An Act To Be Entitled

9 AN ACT TO MODIFY THE CURRICULUM OF MASSAGE THERAPIST
10 SCHOOL; TO ALLOW REMOTE EDUCATION IN AN ONLINE FORMAT
11 AND IN-PERSON TRAINING WITH A MASTER MASSAGE
12 THERAPIST TO MEET THE CURRICULUM REQUIREMENTS; TO
13 CREATE THE ARKANSAS STATE BOARD OF MASSAGE THERAPY;
14 TO DECLARE AN EMERGENCY AND FOR OTHER PURPOSES.

15

16

17

Subtitle

18

TO MODIFY THE CURRICULUM OF MASSAGE

19

THERAPY SCHOOLS; TO ALLOW REMOTE

20

EDUCATION TO MEET CURRICULUM

21

REQUIREMENTS; TO CREATE THE ARKANSAS

22

STATE BOARD OF MASSAGE THERAPY; AND TO

23

DECLARE AN EMERGENCY.

24

25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

27

28 SECTION 1. DO NOT CODIFY. Creation and establishment of Arkansas
29 State Board of Massage Therapy - Abolishment of Massage Therapy Technical
30 Advisory Committee.

31 (a) There is created within the Department of Health the Arkansas
32 State Board of Massage Therapy.

33 (b) Except as otherwise provided by law, the administrative functions
34 of the Arkansas State Board of Massage Therapy are transferred to the
35 Department of Health under § 25-43-802.

36 (c) The Arkansas State Board of Massage Therapy shall have authority



1 to regulate the practice of massage therapy as provided by law and the
2 statutory authority, powers, duties, functions, and records regarding the
3 regulation of massage therapy are transferred from the department to the
4 Arkansas State Board of Massage Therapy.

5 (d)(1) The creation of the Arkansas State Board of Massage Therapy
6 does not affect the orders, rules, regulations, directives, or standards made
7 or promulgated by the department regarding the regulation of massage therapy
8 prior to the effective date of this act.

9 (2) The orders, rules, regulations, directives, or standards
10 under subdivision (d)(1) of this section shall continue with full force and
11 effect until amended or repealed by the Arkansas State Board of Massage
12 Therapy under authority given by law.

13 (e) The Department of Health shall grant access to and provide all
14 information requested by the Arkansas State Board of Massage Therapy to
15 accomplish the transfer of the regulation of massage therapy from the
16 department to the board.

17 (f) On the effective date of this section, the Massage Therapy
18 Technical Advisory Committee is abolished and the terms of its members are
19 cut short and shall expire on the effective date of this act.

20
21 SECTION 2. Arkansas Code § 17-86-102(2), concerning the definition of
22 "massage therapist" relating to the Massage Therapy Act, is amended to read
23 as follows:

24 (2)(A) "Massage therapist" means a person who has:

25 (i) Earned a diploma from a ~~State Board of Health~~
26 Arkansas State Board of Massage Therapy accepted school of massage therapy;

27 (ii) Passed an examination required or accepted by
28 the ~~State Board of Health~~ board; and

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

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

33 (C) A massage therapist may:

34 (i) Instruct continuing education programs approved
35 by the ~~Department of Health~~ Arkansas State Board of Massage Therapy; and

36 (ii) Assist in the instruction of the procedures

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

3
4 SECTION 3. Arkansas Code § 17-86-102(5) and (6), concerning the
5 definition of "massage therapy instructor" and "massage therapy school"
6 relating to the Massage Therapy Act, are amended to read as follows:

7 (5)(A) "Massage therapy instructor" means a person who:

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

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

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

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

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

28 (C) Massage therapy instructors may:

29 (i) Instruct continuing education programs approved
30 by the ~~department~~ board;

31 (ii) Instruct any of the procedures in subdivision
32 (3) of this section; and

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

35 (6) "Massage therapy school" means a registered and licensed
36 facility that meets and follows the required educational standards as

1 established by § 17-86-306 and all pertinent rules established by the ~~State~~
2 ~~Board of Health~~ board;

3
4 SECTION 4. Arkansas Code § 17-86-102(8) and (9), concerning the
5 definition of "master massage therapist" and "postsecondary massage therapy
6 school" relating to the Massage Therapy Act, are amended to read as follows:

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

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

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

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

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

24 (B) "Master massage therapist" includes a person who has
25 previously obtained the master massage therapist license under a prior state
26 law.

27 (C) Master massage therapists may:

28 (i) Instruct continuing education programs approved
29 by the ~~department~~ board;

30 (ii) Instruct any of the procedures in subdivision
31 (3) of this section; and

32 (iii) Instruct, as directed by a massage therapy
33 instructor, basic curricula in a massage therapy school registered by the
34 ~~department~~ board as required by § 17-86-306(e);

35 (9) "Postsecondary massage therapy school" means a massage
36 therapy school that:

1 (A) Offers a postsecondary curriculum approved by the
2 ~~State Board of Health~~ board; and

3 (B) Has an enrollment in which no more than fifty percent
4 (50%) of its students do not have a high school diploma or the recognized
5 equivalent of a high school diploma;

6
7 SECTION 5. Arkansas Code § 17-86-103(b), concerning penalties relating
8 to the practice of massage therapy, is amended to read as follows:

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

13
14 SECTION 6. Arkansas Code § 17-86-103(d), concerning penalties relating
15 to the practice of massage therapy, is amended to read as follows:

16 (d)(1) The courts of this state are vested with jurisdiction and power
17 to enjoin the unlawful practice of massage therapy and related techniques in
18 a proceeding by the ~~department~~ board or by any citizen of this state in the
19 county in which the alleged unlawful practice occurred, the county in which
20 the defendant resides, or in Pulaski County.

21 (2) The issuance of an injunction shall not relieve a person
22 from criminal prosecution for violation of the provisions of this chapter,
23 but the remedy of injunction shall be in addition to liability to criminal
24 prosecution.

25
26 SECTION 7. Arkansas Code § 17-86-104 is amended to read as follows:

27 17-86-104. Criminal background checks.

28 An applicant applying as a new massage therapy licensee, an individual
29 applying for a new massage therapy school license, or a licensee applying for
30 an upgrade issued by the ~~Department of Health~~ Arkansas State Board of Massage
31 Therapy shall apply to the Identification Bureau of the ~~Department~~ Division
32 of Arkansas State Police for a state and federal criminal background check to
33 be conducted by the Identification Bureau of the Division of Arkansas State
34 Police and the Federal Bureau of Investigation.

35
36 SECTION 8. Arkansas Code § 17-86-201 is amended to read as follows:

1 17-86-201. Members.

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

6 (2)(A) Six (6) of the members shall be licensees under this
7 chapter.

8 (B) Only one (1) of the members shall be an owner of a
9 massage therapy school.

10 (3) One (1) member, to represent the public, shall not be
11 engaged in or retired from the practice of massage therapy.

12 ~~(b) The State Board of Health shall promulgate by rule the duties and~~
13 ~~powers of the committee.~~

14 (4)(A) A board member shall begin his or her appointed term on
15 July 1 of the year in which he or she is appointed.

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

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

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

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

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

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

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

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

1 (3) In addition, board members shall receive expense
2 reimbursement on the approved scale for state employees to be paid from a
3 cash fund for lodging and other incidental expenses incurred in the
4 performance of the board member's official duties.

5
6 SECTION 9. Arkansas Code §§ 17-86-203 through 17-86-205 are amended to
7 read as follows:

8 17-86-203. Powers and duties.

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

12 (2) The board shall follow the Arkansas Administrative Procedure
13 Act, § 25-15-201 et seq., as to "rule" and "rulemaking" definitions and for
14 the adoption and filing of rules.

15 (b)(1)(A) ~~The Department of Health~~ board shall inspect or cause an
16 inspection of student records at least one (1) time each year for each
17 massage therapy school operated in this state.

18 (B) ~~The department~~ board and its agents and employees may
19 enter and inspect a massage therapy clinic, spa, or school during operating
20 hours of the business.

21 (2) ~~The department~~ board and its agents and employees shall not
22 request or be granted permission to enter a room of a massage therapy clinic,
23 spa, or school in which a client is receiving treatment from a licensee under
24 this chapter.

25 (c) ~~The department~~ board may hold licensing examinations from time to
26 time at a place or places as the ~~department~~ board may designate.

27 (d)(1) ~~The department~~ board may require each original applicant and
28 each upgrade applicant for a license issued by the ~~Department of Health~~ board
29 to apply to the Identification Bureau of the Division of Arkansas State
30 Police for a state and federal criminal background check to be conducted by
31 the Identification Bureau of the Division of Arkansas State Police and the
32 Federal Bureau of Investigation.

33 (2) The state and federal criminal background check shall
34 conform to applicable federal standards and shall include the taking of
35 fingerprints.

36 (3) The applicant shall sign a release of information to the

1 ~~department~~ board and shall be responsible for the payment of any fees
2 associated with the state and federal criminal background check.

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

7 (B) Results shall be sent directly to the ~~department~~ board
8 from the agency performing the state and federal criminal background check.

9 (e) For purposes of this section, the board shall follow the licensing
10 restrictions based on criminal records under § 17-3-102.

11
12 17-86-204. Records.

13 (a)(1) The ~~Department of Health~~ Arkansas State Board of Massage
14 Therapy shall maintain a record book and computer file in which will be
15 entered the names and addresses of all persons to whom licenses have been
16 granted under this chapter, the license number, and the dates of granting
17 such licenses and renewals thereof, and other matters of record.

18 (2) The ~~department~~ board will move to a separate book and file
19 the records of all persons who have died, have let their licenses lapse for
20 three (3) years, whose licenses have been suspended or revoked by the
21 ~~department~~ board, or cancelled by the licensee.

22 (b)(1) The record books and computer files so provided and maintained
23 shall be deemed and considered a book of records and files of records, and
24 they will be kept in a timely manner.

25 (2) A transcript of any record therein or a license number or
26 date of granting such a license to a person charged with a violation of any
27 of the provisions of this chapter shall be admitted as evidence in any of the
28 courts of this state if certified by the ~~department~~ board.

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

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

33 (d)(1) Copies of records may be furnished to any person requesting
34 them upon payment of such copying fee as the ~~department~~ board may require and
35 as Arkansas state laws and rules permit.

36 (2) However, licensing exams shall be exempt from the Freedom of

1 Information Act of 1967, § 25-19-101 et seq.

2
3 17-86-205. Disposition of funds.

4 (a)(1) All moneys remitted to the ~~Department of Health~~ Arkansas State
5 Board of Massage Therapy under this chapter shall be made payable to the
6 ~~Department of Health~~ board.

7 (2) The ~~Department of Health~~ board shall deposit all such funds
8 received in a timely manner in accordance with laws of the State of Arkansas
9 and rules of the Department of Finance and Administration.

10 (b)(1) All moneys received under this chapter shall be paid into the
11 State Treasury and shall be credited to ~~the Public Health Fund~~ a cash fund
12 for the general uses of the ~~Department of Health~~ board.

13 (2) Salaries and other expenses necessarily incurred in carrying
14 into effect the provisions of this chapter and other programs administered by
15 the ~~Department of Health~~ board shall be paid from the moneys received.

16
17 SECTION 10. Arkansas Code § 17-86-301 is amended to read as follows:

18 17-86-301. Registration required – Exemptions.

19 (a) It shall be unlawful:

20 (1)(A) For any person who does not hold a valid license to use
21 the following titles: massage therapist, massage practitioner, myotherapist,
22 massotherapist, massage technologist, masseur, masseuse, therapy
23 technologist, master massage therapist, massage therapy instructor, or any
24 derivation of those titles or to advertise such titles; or

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

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

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

35 (4) For any person to operate a massage therapy school or clinic
36 without its first being registered under the provisions of this chapter as a

1 licensed massage therapy school or registered clinic; or
2 (5) For the ~~department~~ board or other individual or entity to
3 incorporate privileges or certification requirements of any private
4 organization, private professional association, or private accrediting agency
5 within Arkansas massage laws or its rules. However, the ~~department~~ board may
6 adopt as its licensure exam an exam drafted and administered by a private
7 organization, private professional association, or private accreditation
8 agency.

9 (b) Exemptions:

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

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

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

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

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

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

33

34 SECTION 11. Arkansas Code § 17-86-302(a)(6), concerning sanitary
35 requirements regarding the practice of massage therapy, is amended to read as
36 follows:

1 (6) A clinic or school must comply with all requirements of the
2 Arkansas State Board of Massage Therapy, Department of Health, city
3 ordinances, and state laws.

4
5 SECTION 12. Arkansas Code § 17-86-303 is amended to read as follows:
6 17-86-303. Massage therapist.

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

9 (1) Furnish to the ~~Department of Health~~ Arkansas State Board of
10 Massage Therapy satisfactory proof that he or she is eighteen (18) years of
11 age or older;

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

17 (3) Present the following issued in the same name as the
18 applicant or licensee:

19 (A) A valid photo identification or driver's license, or
20 both; and

21 (B) A Social Security card;

22 (4)(A) Present a high school diploma, high school equivalency
23 diploma approved by the Adult Education Section, or college transcript and
24 credentials issued by a massage therapy school accepted by the ~~department~~
25 board or a like institution with no less than five hundred (500) hours of in-
26 classroom instruction.

27 (B) An applicant shall not submit his or her transcript
28 directly to the ~~department~~ board.

29 (C) An applicant shall request that the massage therapy
30 school submit the transcript directly to the ~~department~~ board.

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

34 (ii) Other documentation of credentials may be
35 submitted and accepted for licensure at the discretion of the ~~department~~
36 board;

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

3 (6) Pay the specified fees, which shall accompany a completed
4 notarized application to the ~~department~~ board.

5 (b) Fees are as follows:

6 (1) Application fee \$75.00 Nonrefundable

7 (2) Original license fee 80.00

8 (3) Biennial renewal 80.00

9 (4) Examination fee or reexamination fee 25.00

10 (5) Duplicate license fee 10.00

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

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

14 (d) A person who attempts to procure or does procure a license in
15 violation of this section shall be subject to the penalties provided for in §
16 17-86-103.

17
18 SECTION 13. Arkansas Code § 17-86-304(a), concerning licensure of
19 master massage therapists, is amended to read as follows:

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

25
26 SECTION 14. Arkansas Code § 17-86-305(a), concerning the licensure of
27 massage therapy instructors, is amended to read as follows:

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

33
34 SECTION 15. Arkansas Code §§ 17-86-306 through 17-86-312 are amended
35 to read as follows:

36 17-86-306. Massage therapy school.

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

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

9 (c)(1) Inspection of the school premises shall be made by the
10 ~~department~~ board, to include without limitation proof of required forms
11 completed and returned to the ~~department~~ board with approval or
12 recommendations.

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

16 (d)(1) A school shall require a physical examination by a medical
17 doctor documenting that the student poses no health risk to give and receive
18 massage.

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

22 (e)(1) The ~~department~~ board may certify the school and provide for
23 licensure thereof if the school follows a curriculum consisting of not fewer
24 than five hundred (500) hours of in-classroom instruction over a term of not
25 fewer than four (4) months consisting of the following subjects:

26 ~~(1)~~(A) One hundred seventy-five (175) hours of anatomy,
27 physiology, pathology, and contraindications to massage therapy;

28 ~~(2)~~(B) Two hundred twenty-five (225) hours of technique;

29 ~~(3)~~(C) Twenty-five (25) hours of hydrotherapy, electrotherapy,
30 and heliotherapy;

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

32 ~~(5)~~(E) Twenty-five (25) hours of massage therapy law, business
33 management, and professional ethics; and

34 ~~(6)~~(F) Twenty-five (25) hours of related subjects as approved by
35 the ~~department~~ board.

36 (2)(A) The curriculum established in subdivision (e)(1) of this

1 section may be completed through remote education in an online format and in-
2 person training with a master massage therapist or massage therapy instructor
3 in a licensed massage therapy clinic or massage therapy spa if the massage
4 therapy clinic or massage therapy spa has a collaborative agreement with a
5 massage therapy school.

6 (B) If a massage therapy clinic or massage therapy spa
7 cannot find a massage therapy school willing to enter into a collaborative
8 agreement with the massage therapy clinic or massage therapy spa, the massage
9 therapy clinic or massage therapy spa may apply to the board for an exemption
10 to the requirement in (e)(2)(A) of this section.

11 (C) A massage therapy clinic or massage therapy spa that
12 allows students to train under subdivision (e)(2)(A) of this section shall
13 submit a curriculum to the board.

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

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

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

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

22 (h)(1) The ~~State Board of Health~~ board shall promulgate rules setting
23 a standard educational curriculum for schools of massage.

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

27
28 17-86-307. Massage therapy clinic and spa.

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

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

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

3
4 17-86-308. Reciprocity.

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

9 (2)(A) If the applicant's transcript or a copy of the
10 applicant's transcript is not obtainable from the original school, the
11 applicant shall submit a statement to explain why it may not be obtained.

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

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

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

22
23 17-86-309. Renewals – Inactive list – Continuing education.

24 (a)(1)(A) A license issued under this chapter is valid for two (2)
25 years and expires on the licensee's birthday.

26 (B)(i) If a license issued under this chapter is not
27 renewed by the first day of the month preceding the birthdate of the licensee
28 in the biennial renewal year, the license expires.

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

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

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

5 (2) Each license for a massage therapy school is valid for a
6 period of one (1) year and expires on June 30 of each year, whereupon a
7 renewal license may be issued upon submission of a completed license renewal
8 application with payment of the fee or fees prescribed for class of
9 certification.

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

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

15 (b) A renewal application for a licensee is due on or before the first
16 day of the month preceding the month of the birthdate of the licensee in the
17 biennial renewal year.

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

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

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

27 (B) Before the ~~department~~ board issues a new license to an
28 applicant whose license has expired under subdivision (d)(2)(A) of this
29 section, the applicant shall:

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

32 (ii) Successfully complete an examination recognized
33 by the ~~department~~ board.

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

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

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

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

15 (h) The fee for placement on the inactive list shall not exceed eighty
16 dollars (\$80.00) per biennium.

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

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

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

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

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

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

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

33
34 17-86-310. Display of license.

35 (a) An official license shall be conspicuously and publicly displayed
36 in the place where the holder engages in the practice of massage therapy or

1 instruction of massage therapy. A massage therapy school license shall be
2 conspicuously displayed in the massage therapy school.

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

6 (c) Each license shall provide the correct address of the ~~department~~
7 board.

8
9 17-86-311. Disciplinary actions and penalties.

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

13 (1) A felony listed under § 17-3-102;

14 (2) Malpractice or gross incompetency;

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

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

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

21 (6) Unprofessional conduct;

22 (7) Failure to comply with the ~~Department of Health's~~ board's
23 Massage Therapy Code of Ethics or any valid rule or order of the ~~department~~
24 board;

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

29 (9) Failure of any licensee to comply with 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 State Board of Health~~ board shall establish by rule the
33 penalty system to be imposed under this section.

34 (2) Whenever the ~~committee~~ board finds that the holder of a
35 license, certificate of registration, or other permit issued by the
36 ~~department~~ board is guilty of a violation of the rules of the ~~department~~

1 board or the laws of the state pertaining to any occupation, profession, or
2 business licensed or regulated by the ~~department~~ board, the ~~committee~~ board
3 may impose a penalty on the licensee or permit holder in lieu of suspension
4 or revocation of license, certificate of registration, or other 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 ~~committee~~ board may require that the licensee or permit holder pay a penalty
8 to the ~~department~~ 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 ~~committee~~
13 board formally finds that the public health, safety, welfare, and morals
14 would not be impaired and that the payment of the penalty will achieve the
15 desired disciplinary results.

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

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

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

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

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

32 (2) The ~~committee~~ board shall revoke the license of a person who
33 engages in the practice of massage of the breasts unless the massage
34 therapist:

35 (A) Engages in the practice of massage of the breasts for
36 therapeutic and medical purposes including without limitation the reduction

1 of scar tissue following a surgery on the breast, release of myofascial
2 binding, or improving lymphatic flow; and

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

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

8 (d)(1) Charges may be brought by any person.

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

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

16

17 17-86-312. Fees.

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

21 (b)(1) The initial inspection fee for a massage therapy school shall
22 not exceed one hundred dollars (\$100).

23 (2) The annual renewal and inspection fee for a massage therapy
24 school shall not exceed one hundred dollars (\$100).

25 (3) A licensee whose massage therapy school license renewal is
26 postmarked after April 30 of each year shall pay a late fee not to exceed
27 five hundred dollars (\$500).

28

29 SECTION 16. Arkansas Code Title 17, Chapter 86, Subchapter 3, is
30 amended to add an additional section to read as follows:

31 17-86-315. Temporary licenses for students.

32 (a) A student who works and trains in a massage therapy school or
33 massage therapy clinic shall apply for a temporary license with the Arkansas
34 State Board of Massage Therapy by submitting an application, applicable fee,
35 and any other information deemed necessary by the board.

36 (b) A temporary license issued under this section shall expire two (2)

1 years from the date of issuance.

2
3 SECTION 17. Arkansas Code § 25-16-903(33), concerning a stipend
4 authorization for sixty dollars (\$60), is amended to read as follows:

5 (33) ~~Massage Therapy Technical Advisory Committee~~ Arkansas State
6 Board of Massage Therapy;

7
8 SECTION 18. Arkansas Code 25-43-802(a)(38), concerning state entities
9 transferred to the Department of Health, is repealed.

10 ~~(38) The Massage Therapy Technical Advisory Committee, created~~
11 ~~under § 17-86-201;~~

12
13 SECTION 19. Arkansas Code § 25-43-802(a), concerning state entities
14 transferred to the Department of Health, is amended to add an additional
15 subdivision to read as follows:

16 (50) The Arkansas State Board of Massage Therapy, created under
17 § 17-86-201.

18
19 SECTION 20. DO NOT CODIFY. Appointment of initial members of Arkansas
20 State Board of Massage Therapy.

21 (a) Initial members of the Arkansas State Board of Massage Therapy
22 shall be appointed within thirty (30) days of the effective date of this
23 section and their terms shall begin on July 1, 2021.

24 (b) The initial members of the board shall draw lots so that two (2)
25 members serve a one-year term, two (2) members serve a two-year term, and
26 three (3) members serve a three-year term.

27 (c) All subsequently appointed members of the board shall serve a term
28 of three (3) years.

29
30 SECTION 21. EMERGENCY CLAUSE. (a) It is found and determined by the
31 General Assembly of the State of Arkansas that the Department of Health and
32 Arkansas State Board of Massage Therapy preserve the public peace, health,
33 and safety by regulating massage therapy in the state; that this act provides
34 for the transfer of the regulation of massage therapy to the Arkansas State
35 Board of Massage Therapy; and that this act should become effective on July
36 1, 2021, to coincide with the appropriation bill of the Department of Health

1 and ensure that the Arkansas State Board of Massage Therapy provides vital
2 services as the transfer is implemented. Therefore, an emergency is
3 declared to exist, and Sections 1-20 being necessary for the preservation of
4 the public peace, health, and safety shall become effective on July 1, 2021.

5 (b) It is found and determined by the General Assembly of the State of
6 Arkansas that the Arkansas State Board of Massage Therapy will preserve the
7 public peace, health, and safety by regulating massage therapy in this state;
8 that the transfer of authority to the board will occur on July 1, 2021; and
9 that the board's initial members should be appointed prior to July 1, 2021,
10 to allow for a seamless transfer of duties and ensure that the regulation of
11 massage therapy is not disrupted or impeded by the transfer. Therefore, an
12 emergency is declared to exist, and Section 21 of this act being immediately
13 necessary for the preservation of the public peace, health, and safety shall
14 become effective on:

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

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

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

21
22 /s/Pilkington
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