

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: H3/7/13
A Bill

HOUSE BILL 1183

By: Representative Wright

For An Act To Be Entitled

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

Subtitle

TO AMEND VARIOUS PROVISIONS OF THE
MESSAGE THERAPY ACT.

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

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

As used in this chapter:

- (1) "Board" means the Arkansas State Board of Massage Therapy;
- (2) "Licensee" means ~~any~~ an individual licensed under this

chapter;

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

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

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

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

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

- (C) A massage therapist may:

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



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

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

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

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

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

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

(iii) Therapeutic application of hot or cold packs;

(iv) Hydrotherapy techniques;

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

(vi) Electrotherapy; and

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

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

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

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

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

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

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

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

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

(C) Massage therapy instructors may:

(i) Instruct board-approved continuing education programs;

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

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

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

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

~~(8)(A)~~ (9)(A) "Master massage therapist" means a person who:

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

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

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

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

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

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

(C) Master massage therapists may:

(i) Instruct board-approved continuing education programs;

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

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

(9) "Sexual misconduct" includes:

(A) A range of behavior used to obtain sexual gratification against another's will, at the expense of another, without the client's knowledge, engaging in sexual activity for profit, or a combination of any of these activities; and

(B) Massage of the genitalia, anus, and, except under specific circumstances, the breast; and

~~(9)~~(10) "This chapter" means the "Massage Therapy Act", § 17-86-101 et seq.

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

17-86-104. Criminal background checks.

An applicant applying as a new massage therapy licensee, an individual applying for a new massage therapy school license, or a licensee applying for an upgrade issued by the Arkansas State Board of Massage Therapy shall apply to the Identification Bureau of the Department of Arkansas State Police for a

state and federal criminal background check to be conducted by the Identification Bureau and the Federal Bureau of Investigation.

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

(B)(i) Only ~~two (2)~~ one (1) of the members shall be ~~owners~~ an owner of a massage therapy school.

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

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

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

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

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

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

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

(c)(1) ~~Members~~ A member shall be paid and receive a fee of no less than ~~fifty dollars (\$50.00)~~ sixty dollars (\$60.00) per diem for each day actually engaged in attending board meetings or performing other official duties.

SECTION 7. Arkansas Code § 17-86-203(a) and (b), concerning the powers

and duties of the Arkansas State Board of Massage Therapy, ~~is~~ are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

(2) A school that closes shall immediately submit all student

transcripts to the board office.

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

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

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

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

(3) Present:

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

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

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

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

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

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

(ii) Other documentation of credentials may be submitted and accepted for licensure at the discretion of the board;

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

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

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

(b) Fees are as follows:

- (1) Application fee \$75.00 Nonrefundable
- (2) Original license fee 80.00
- (3) Biennial renewal 80.00
- (4) Examination fee or reexamination fee 25.00
- (5) Duplicate license fee 10.00
- (6) Pocket card fee not to exceed ten dollars (\$10.00)

SECTION 11. Arkansas Code § 17-86-304~~(e)~~, ~~concerning fees for licensure as a master massage therapist~~, is amended to read as follows:

17-86-304. Master massage therapist.

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

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

(c) Fees are as follows:

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

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

17-86-305. Massage therapy instructor.

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

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

(c) Fees are as follows:

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

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

(c)(1) Inspection of the school premises will be made by a board member ~~and~~ or board designee, to include without limitation proof of required forms completed and returned to the Executive Director of the Arkansas State Board of Massage Therapy with approval or recommendations.

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

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

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

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

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

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

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

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

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

~~(a)(1)(A) Each license for licensees is valid for a period of A~~
license issued under this chapter is valid for two (2) years and expires on the licensee's birthday.

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

(ii)(a) If a license expires under subdivision (a)(1)(B)(i) of this section, a renewal license may be issued upon submission of a completed license renewal application with payment of the fee or fees prescribed for class of certification the applicant shall submit a new application that requires the applicant to meet current requirements and successfully complete an examination recognized by the board.

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

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

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

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

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

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

(1) Conviction of, ~~or~~ finding of guilt, or entry of a plea of

guilty or nolo contendere to a felony, Class A misdemeanor, or prostitution;

(2) Malpractice or gross incompetency;

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

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

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

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

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

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

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

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

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

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

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

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

*SECTION 21. Arkansas Code § 17-86-312 is amended to read as follows:
17-86-312. Fees.*

(a) All registration fees and other fees due the Arkansas State Board of Massage Therapy shall be paid in accordance with the provisions of this chapter and all other laws and regulations of this state.

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

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

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

SECTION 22. Arkansas Code § 17-86-313 is repealed.

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

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

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

/s/Wright