

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

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/12/15

A Bill

SENATE BILL 145

By: Senator B. Sample

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE ARKANSAS STATE BOARD OF MASSAGE THERAPY; TO TRANSFER THE ARKANSAS STATE BOARD OF *MASSAGE THERAPY*; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE ARKANSAS STATE BOARD OF MASSAGE THERAPY; AND TO TRANSFER THE ARKANSAS STATE BOARD OF *MASSAGE THERAPY*.

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

SECTION 1. DO NOT CODIFY.

(a)(1) The Arkansas State Board of Massage Therapy is abolished and transferred to the State Board of Health and the Department of Health by a type 3 transfer under § 25-2-106.

(2) As used in this act, the Department of Health shall be considered the principal department.

(b)(1) All authority, powers, duties, and functions as established by law for the Arkansas State Board of Massage Therapy, including all purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions are transferred to the State Board of Health and the Department of Health, except as specified in this act.

(2) All records, personnel, property, unexpended balances of appropriations, allocations, or other funds are transferred to the Department



of Health. All funds shall be deposited into the Public Health Fund.

(3) All powers, duties, and functions, including without limitation rulemaking, and licensing, promulgation of rules, rates, standards, and the rendering of findings, orders, and adjudications as established by law for the Arkansas State Board of Massage Therapy are transferred to the State Board of Health, except as specified by this act.

(c) The Arkansas Code Revision Commission shall replace "Arkansas State Board of Massage Therapy" in the Arkansas Code with "State Board of Health", except as specified in this act.

SECTION 2. Arkansas Code § 17-86-102(1), concerning the definition of "board", is repealed and the section shall be renumbered appropriately.

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

SECTION 3. Arkansas Code § 17-86-102(3)(C)(i), concerning the definition of "massage therapist", is amended to read as follows:

(i) Instruct ~~board-approved~~ continuing education programs approved by the Department of Health; and

SECTION 4. Arkansas Code § 17-86-102(6) and (7), concerning the definitions of "massage therapy instructor" and "massage therapy school", are amended to read as follows:

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

(i) Before July 1, 2010, has completed no 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 less than two hundred fifty (250) continuing education hours as approved by the ~~board~~ Department of Health;

(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)(5)(A)(i)~~ of this section, has

completed no less than two hundred fifty (250) continuing education hours as approved by the ~~board~~ department as a licensed master massage therapist; and

(iv) Is determined by the ~~board~~ department 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 approved by the department;

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

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

~~(7)~~ (6) "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~~ State Board of Health;

SECTION 5. Arkansas Code § 17-86-102(9), concerning the definition of "master massage therapist", is amended to read as follows:

~~(9)(A)~~ (8)(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 less than one hundred twenty-five (125) continuing education hours as approved by the ~~board~~ Department of Health;

(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 ~~(9)(A)(i)~~ (8)(A)(i) of this section, has completed no less than one hundred twenty-five (125) continuing education

hours as approved by the ~~board~~ Department of Health; and

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

(B) "Master massage therapist" includes a person who 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 approved by the Department of Health;

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

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

SECTION 6. Arkansas Code § 17-86-102, concerning definitions, is amended to add an additional subdivision to read as follows:

(11) "Postsecondary massage therapy school" means a massage therapy school that:

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

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

SECTION 7. Arkansas Code § 17-86-103 is amended to read as follows:
17-86-103. Penalties.

(a) Any person who shall violate any of the provisions of this chapter shall be found guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not more than six (6) months or by a fine not exceeding one thousand five hundred dollars (\$1,500), or by both fine and imprisonment, at the discretion of the court.

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

(c) The courts of this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful practice of massage therapy and related techniques in a proceeding by the ~~board~~ department or by any citizen of this state in the county in which the alleged unlawful practice occurred or in which the defendant resides or in Pulaski County. The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of this chapter, but the remedy of injunction shall be in addition to liability to criminal prosecution.

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

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

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

(B)~~(i)~~ Only one (1) of the members shall be 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.~~

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

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

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

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

~~(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.~~

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

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

~~(b) The Governor may remove members of the board from office according to § 25-16-804. The Governor shall fill any vacancy caused by the removal of any member of the board, by a member's resignation or death, or upon the expiration of a member's term.~~

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

~~(2) All board members shall receive reimbursement for all reasonable and necessary travel at the rate approved for state employees. Lodging and other expenses incurred in the performance of their official duties will also be paid on the approved scale for state employees.~~

~~(4) The State Board of Health shall promulgate by rule the duties and powers of the committee.~~

SECTION 9. Arkansas Code § 17-86-202 is amended to read as follows:

17-86-202. Officers and employees Employees.

~~(a)(1)(A) Arkansas State Board of Massage Therapy officers, elected by the board from among their own members, shall be a president, a vice president, and a secretary.~~

~~(B) Election of an officer or officers shall take place during a regularly scheduled board meeting or during a special nonconference call board meeting. An election to fill a vacancy in an elected office will take place during the first regularly scheduled meeting or during the first special nonconference call meeting immediately following the creation of the vacancy.~~

~~(2) Board officers may be removed from their elected offices for failure to fulfill the duties of their respective offices. Removal of such a board member from his or her elected office will be considered in an executive session as provided by § 25-19-106. The executive session will be called by the board during a regular or special nonconference call meeting. If a motion to remove the board member from his or her elected office is arrived at in the executive session, members will reconvene in accordance with § 25-19-106 in the public meeting to vote to remove the board member from his or her elected office.~~

~~(b) The board is authorized to~~

~~(a) The Department of Health may employ an executive director, regular or special counsel, inspectors, clerks, secretaries, and other personnel as it may deem deems necessary to carry out the provisions of this chapter. At no time shall the executive director, counsel, inspectors, clerks, secretaries, and other personnel exceed ten (10) employees, and no~~

~~(b) An employee of the board shall be a board member, related by blood or marriage to any member of the board, be an employee of a board member, or under this section shall not have any financial interest in the practice or instruction of massage therapy.~~

SECTION 10. Arkansas Code § 17-86-203 is amended to read as follows:
17-86-203. Powers and duties.

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

(2) The ~~Arkansas State Board of Massage Therapy~~ board 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~~ Department of Health shall inspect or cause an inspection of student records at least one (1) time each year for each massage therapy school operated in this state.

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

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

(c) The ~~Arkansas State Board of Massage Therapy~~ Department of Health may hold licensing examinations from time to time at a place or places as the ~~Arkansas State Board of Massage Therapy~~ department may designate.

(d)(1) ~~The Arkansas State Board of Massage Therapy~~ Department of Health may require each original applicant and each upgrade applicant for a license issued by the ~~Arkansas State Board of Massage Therapy~~ Department of Health to 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 of the Department of Arkansas State Police and the Federal Bureau of Investigation~~†.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The nature and severity of the crime;

(2) The consequences of the crime;

(3) The number and frequency of crimes;

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

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

(B) The harm suffered by the victim; and

(C) The similarity between the victim and persons served by the ~~Arkansas State Board of Massage Therapy~~ Department of Health;

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

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

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

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

SECTION 11. Arkansas Code § 17-86-204 is amended to read as follows:

17-86-204. Records.

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

(2) ~~The executive director~~ department will move to a separate book and file the records of all persons who have died, have let their licenses lapse for three (3) years, whose licenses have been suspended or revoked by the ~~Arkansas State Board of Massage Therapy~~ department, or cancelled by the licensee.

(b) The record books and computer files so provided and maintained shall be deemed and considered a book of records and files of records, and they will be kept in a timely manner. A transcript of any record therein or a license number or date of granting such a license to a person charged with a violation of any of the provisions of this chapter shall be admitted as evidence in any of the courts of this state if certified ~~under the hand of the executive director~~ by the department.

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

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

(d) Copies of records may be furnished to any person requesting them upon payment of such copying fee as the ~~board~~ department may require and as Arkansas state laws and regulations permit. However, licensing exams shall be exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

SECTION 12. Arkansas Code § 17-86-205 is amended to read as follows:

17-86-205. Disposition of funds.

(a)(1) All moneys remitted to the ~~Arkansas State Board of Massage Therapy Department of Health~~ under this chapter shall be ~~accepted in the form of cashiers checks or money orders and made payable to the Arkansas State Board of Massage Therapy. The Executive Director of the Arkansas State Board of Massage Therapy~~ Department of Health.

(2) The Department of Health shall deposit all such funds received in

a timely manner in accordance with laws of the State of Arkansas and regulations of the Department of Finance and Administration.

~~(b) All salaries and expenses of the board shall be paid from funds created by the various fees charged by and remitted to the board under the provisions of this chapter.~~

(b)(1) All moneys received under this chapter shall be paid into the State Treasury and shall be credited to the Public Health Fund for the general uses of the Department of Health.

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

SECTION 13. Arkansas Code § 17-86-301 is amended to read as follows:
17-86-301. Registration required – Exemptions.

(a) It shall be unlawful:

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

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

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

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

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

(5) For the ~~board~~ department or other individual or entity to incorporate privileges or certification requirements of any private

organization, private professional association, or private accrediting agency within Arkansas massage laws or its rules and regulations. However, the ~~board~~ department may adopt as its licensure exam an exam drafted and administered by a private organization, private professional association, or private accreditation agency.

(b) Exemptions:

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

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

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

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

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

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

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

(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~~ Department of Health 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, 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~~ department;

(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;

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

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

(C) An applicant shall have the massage therapy school submit the transcript directly to the ~~board~~ department 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~~ department;

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

(6) Present a negative test for tuberculosis that is current at the time of licensure; and

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

(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)

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

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

SECTION 15. Arkansas Code § 17-86-304(a), concerning licensure as a master massage therapist, is amended to read as follows:

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

SECTION 16. Arkansas Code § 17-86-305(a), concerning licensure as a massage therapy instructor, is amended to read as follows:

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

SECTION 17. Arkansas Code § 17-86-306 is amended to read as follows:
17-86-306. Massage therapy school.

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

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

(c)(1) Inspection of the school premises shall be made by a ~~board~~

~~member or board designee~~ the department, to include without limitation proof of required forms completed and returned to the ~~Executive Director of the Arkansas State Board of Massage Therapy~~ department with approval or recommendations.

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

(d)(1) Schools shall require a physical examination by a medical doctor that the student poses no health risk to give and receive massage.

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

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

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

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

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

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

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

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

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

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

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

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

(h)(1) The State Board of Health shall promulgate rules setting a

standard educational curriculum for schools of massage.

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

SECTION 18. Arkansas Code § 17-86-306 is amended to add an additional subdivision to be enacted pursuant to the emergency stated in Section 31 of this act to read as follows:

(h)(1) The Arkansas State Board of Massage Therapy shall promulgate rules setting a standard educational curriculum for schools of massage.

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

SECTION 19. Arkansas Code § 17-86-307 is amended to read as follows:
17-86-307. Massage therapy clinic and spa.

(a) 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, clinic, or spa have been supplied in writing to the ~~Arkansas State Board of Massage Therapy~~ Department of Health.

(b) 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, shall be submitted immediately to the ~~board~~ department in writing 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 20. Arkansas Code § 17-86-308 is amended to read as follows:
17-86-308. Reciprocity.

(a)(1) The ~~Arkansas State Board of Massage Therapy~~ Department of Health 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~~ department.

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

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

SECTION 21. Arkansas Code § 17-86-309(a)(1)(B)(ii), concerning renewal of licenses, is amended to read as follows:

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

(b) The ~~board~~ department 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 22. Arkansas Code § 17-86-309(a)(4), concerning renewal of licenses, is amended to read as follows:

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

SECTION 23. Arkansas Code § 17-86-309(d)(2)(B) and (e), concerning renewal of licenses, are amended to read as follows:

(B) Before the ~~board~~ department issues a new license to an

applicant whose license has expired under subdivision (d)(2)(A) of this section, the applicant shall:

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

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

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

SECTION 24. Arkansas Code § 17-86-309(f)(2), concerning renewal of licenses, is amended to read as follows:

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

SECTION 25. Arkansas Code § 17-86-309(i)(3) and (j), concerning renewal of licenses, are amended to read as follows:

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

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

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

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

(C) Proof of residency shall accompany the request.

SECTION 26. Arkansas Code § 17-86-310(b) and (c), concerning display of license, are amended to read as follows:

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

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

SECTION 27. Arkansas Code § 17-86-311 is amended to read as follows:
17-86-311. Disciplinary actions and penalties.

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

(1) Conviction of, 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 alcoholic beverages at the clinic or school in a room where massage therapy is being performed or in a massage therapy school;

(6) Moral turpitude or immoral or unprofessional conduct;

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

(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 this chapter; or

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

(b)(1) The ~~board~~ State Board of Health shall establish by rule the penalty system to be imposed under this section.

(2) Whenever the ~~board~~ committee finds that the holder of a license, certificate of registration, or other permit issued by the ~~board~~ department is guilty of a violation of the rules of the ~~board~~ department or the laws of the state pertaining to any occupation, profession, or business licensed or regulated by the ~~board~~ department, the ~~board~~ committee may impose a penalty on the licensee or permit holder in lieu of suspension or

revocation of license, certificate of registration, or other permit.

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

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

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

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

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

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

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

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

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

(i) Engages in the practice of massage of the breasts for therapeutic and medical purposes including without limitation the reduction of scar tissue following a surgery on the breast, release of myofascial binding, or improving lymphatic flow; and

(ii) Has received at least forty-eight (48) hours of

continuing education credits in lymphatic massage, myofascial massage, or oncology massage.

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

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

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

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

SECTION 28. Arkansas Code § 17-86-312(a), concerning massage therapy fees, is amended to read as follows:

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

SECTION 29. Arkansas Code § 19-5-1215 is repealed.

~~19-5-1215. Massage Therapy Board Fund.~~

~~(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Massage Therapy Board Fund".~~

~~(b)(1) This fund shall consist of those fees set out in § 17-86-201 et seq.~~

~~(2) The fund shall be used for the administration and expenses of the Arkansas State Board of Massage Therapy as set out in § 17-86-201 et seq.~~

SECTION 30. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that massage therapy schools cannot qualify for certain federal grants and scholarships without the expedient enactment of Sections 6 and 18 of this act; that enrollment for the upcoming semester requires immediate enactment of Sections 6 and 18 of this act in

order to ensure financial assistance to students in need. Therefore, an emergency is declared to exist, and Sections 6 and 18 of this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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

SECTION 31. EFFECTIVE DATE.

(a) Sections 1-5, 7-17, and 19-30 of this act are effective on and after October 1, 2015.

(b) If the Emergency Clause in Section 31 of this bill does not pass by a vote of the General Assembly, then Section 6 of this bill is effective on and after October 1, 2015.

/s/B. Sample