

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

State of Arkansas *As Engrossed: H2/23/21 H3/17/21 H4/15/21*
93rd General Assembly **A Bill**
Regular Session, 2021

HOUSE BILL 1440

By: Representative Pilkington

By: *Senator Hester*

For An Act To Be Entitled

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

Subtitle

TO MODIFY THE CURRICULUM OF MASSAGE THERAPY SCHOOLS; TO ALLOW REMOTE EDUCATION TO MEET CURRICULUM REQUIREMENTS; TO CREATE THE ARKANSAS STATE BOARD OF MASSAGE THERAPY; AND TO DECLARE AN EMERGENCY.

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

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

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

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

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



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

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

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or standards under subdivision (d)(1) of this section shall continue with full force and effect until amended or repealed by the Arkansas State Board of Massage Therapy under authority given by law.

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

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

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

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

- (i) Earned a diploma from a ~~State Board of Health~~ Arkansas State Board of Massage Therapy accepted school of massage therapy;
- (ii) Passed an examination required or accepted by the ~~State Board of Health~~ 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 continuing education programs approved by the ~~Department of Health~~ Arkansas State Board of Massage Therapy; and
- (ii) Assist in the instruction of the procedures

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

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

(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 ~~department~~ 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 (5)(A)(i) of this section, has completed no less than two hundred fifty (250) continuing education hours as approved by the ~~department~~ board as a licensed master massage therapist; and

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

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

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

(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 ~~State Board of Health~~ board;

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

(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 ~~department~~ 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 less than one hundred twenty-five (125) continuing education hours as approved by the ~~department~~ board; and

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

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

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

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

(A) Offers a postsecondary curriculum approved by the ~~State Board of Health~~ board; 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 5. Arkansas Code § 17-86-103(b), concerning penalties relating to the practice of massage therapy, is amended to read as follows:

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

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

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

(2) 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 7. Arkansas Code § 17-86-104 is amended 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 ~~Department of Health~~ Arkansas State Board of Massage Therapy shall apply to the Identification Bureau of the ~~Department~~ Division of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Division of Arkansas State Police and the Federal Bureau of Investigation.

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

17-86-201. Members.

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

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

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

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

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

~~(4)(A) A board member shall begin his or her appointed term on July 1 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.~~

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

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

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

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

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

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

17-86-203. Powers and duties.

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

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

(b)(1)(A) ~~The Department of Health~~ board 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 department~~ board and its agents and employees may enter and inspect a massage therapy clinic, spa, or school during operating hours of the business.

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

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

~~department~~ board 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 ~~department~~ board from the agency performing the state and federal criminal background check.

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

17-86-204. Records.

(a)(1) The ~~Department of Health~~ Arkansas State Board of Massage Therapy 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 ~~department~~ board 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 ~~department~~ board, or cancelled by the licensee.

(b)(1) 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.

(2) 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 by the ~~department~~ board.

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

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

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

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

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

17-86-205. Disposition of funds.

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

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

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

(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~~ board shall be paid from the moneys received.

SECTION 10. 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, massotherapist, 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 ~~Department of Health~~ Arkansas State Board of Massage Therapy 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 rules contained in § 17-86-302, in state law, in local ordinances, or in those rules which may be adopted by the ~~State Board of Health~~ board;

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

(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 ~~department~~ board 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. However, the ~~department~~ board 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 ~~department~~ board to present and instruct ~~department-approved~~ board-approved school curriculum or continuing education programs, or both, may present and instruct such ~~department-approved~~ board-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 ~~department~~ board, 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 ~~department~~ board 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 11. Arkansas Code § 17-86-302(a)(6), concerning sanitary requirements regarding the practice of massage therapy, is amended to read as follows:

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

SECTION 12. 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 ~~Department of Health~~ Arkansas State Board of Massage Therapy satisfactory proof that he or she is eighteen (18) years of age or older;

(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 ~~department~~ board;

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

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

(B) A Social Security card;

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

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

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

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

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

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

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

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

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

(a) A person who holds a license as a massage therapist issued by the ~~Department of Health~~ Arkansas State Board of Massage Therapy and who submits satisfactory evidence to the ~~department~~ board 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 14. Arkansas Code § 17-86-305(a), concerning the licensure of massage therapy instructors, is amended to read as follows:

(a) A person who holds a license as a master massage therapist issued by the ~~Department of Health~~ Arkansas State Board of Massage Therapy and who submits satisfactory evidence to the ~~department~~ board 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 15. Arkansas Code §§ 17-86-306 through 17-86-312 are 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 ~~Department of Health~~ Arkansas State Board of Massage Therapy.

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

(c)(1) Inspection of the school premises shall be made by the ~~department~~ board, to include without limitation proof of required forms completed and returned to the ~~department~~ board 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) A school shall require a physical examination by a medical doctor documenting 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 ~~department~~ board or its appointee during the inspection.

(e)(1) The ~~department~~ board may certify the school and provide for licensure thereof if the school follows a curriculum 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)~~(A) One hundred seventy-five (175) hours of anatomy, physiology, pathology, and contraindications to massage therapy;

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

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

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

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

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

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

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

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

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

(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~~ board 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.

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 ~~Department of Health~~ Arkansas State Board of Massage Therapy.

(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 ~~department~~ board 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).

17-86-308. Reciprocity.

(a)(1) The ~~Department of Health~~ 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 or a copy of 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 ~~department~~ board.

(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 ~~department~~ board approval.

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

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

(a)(1)(A) 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.

(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 ~~Department of Health~~ Arkansas State Board of Massage Therapy.

(b) The ~~department~~ 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.

(2) Each license for a massage therapy school is valid for a period of one (1) year and expires on June 30 of each year, whereupon 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.

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

(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 ~~department~~ board.

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

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

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

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

(B) Before the ~~department~~ board 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 ~~department~~ board.

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

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

(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 ~~department~~ board before resuming the active practice of massage therapy.

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

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

(i)(1) 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).

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

(3) A licensee whose massage therapy school license has expired shall submit a new application to the ~~department~~ board 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 ~~department~~ board approval of appropriate continuing education courses otherwise not approved by the ~~department~~ board.

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

(C) Proof of residency shall accompany the request.

17-86-310. Display of license.

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

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

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

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

17-86-311. Disciplinary actions and penalties.

(a) The ~~Massage Therapy Technical Advisory Committee~~ 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) A felony listed under § 17-3-102;
- (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) Unprofessional conduct;
- (7) Failure to comply with the ~~Department of Health's~~ board's Massage Therapy Code of Ethics or any valid rule or order of the ~~department~~ 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 this chapter; or
- (10) Failure to have licensed personnel to perform massage therapy techniques in his or her clinic or school.

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

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

board or the laws of the state pertaining to any occupation, profession, or business licensed or regulated by the ~~department~~ board, the ~~committee~~ board 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 ~~committee~~ board may require that the licensee or permit holder pay a penalty to the ~~department~~ board.

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

(E) In addition to any other sanctions authorized by this chapter, the ~~committee~~ board 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 ~~committee~~ board shall revoke the license of a person who engages in the practice of massage of the breasts unless the massage therapist:

(A) 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

(B) 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.

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

(e) In denying, suspending, or revoking any license, the ~~committee~~ board 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 of the ~~State Board of Health~~ board.

17-86-312. Fees.

(a) All registration fees and other fees due the ~~Department of Health~~ Arkansas State Board of Massage Therapy shall be paid in accordance with the provisions of this chapter and all other laws and rules 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 16. Arkansas Code Title 17, Chapter 86, Subchapter 3, is amended to add an additional section to read as follows:

17-86-315. Temporary licenses for students.

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

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

years from the date of issuance.

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

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

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

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

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

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

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

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

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

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

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

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

(b) It is found and determined by the General Assembly of the State of Arkansas that the Arkansas State Board of Massage Therapy will preserve the public peace, health, and safety by regulating massage therapy in this state; that the transfer of authority to the board will occur on July 1, 2021; and that the board's initial members should be appointed prior to July 1, 2021, to allow for a seamless transfer of duties and ensure that the regulation of massage therapy is not disrupted or impeded by the transfer. Therefore, an emergency is declared to exist, and Section 21 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 bill 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 bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Pilkington