

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

HOUSE BILL 1562

5 By: Representative D. Meeks
6

For An Act To Be Entitled

8 AN ACT TO AMEND VARIOUS SECTIONS OF THE LAW REGARDING
9 MASSAGE THERAPISTS; AND FOR OTHER PURPOSES.

Subtitle

12 TO AMEND VARIOUS SECTIONS OF THE LAW
13 REGARDING MASSAGE THERAPISTS.
14
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16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 17-86-102(6)(A)(i), concerning the
20 definition of a massage therapy instructor, is amended to read as follows:

21 (i) Before July 1, 2010, has completed no less than
22 two hundred fifty (250) hours of practical experience as a master massage
23 therapist, which may be gained, in part or in whole, as an assistant to an
24 instructor in a massage school or may be gained, in part or in whole, as a
25 directed instructor in a massage school and has completed no less than two
26 hundred fifty (250) continuing education hours as approved by the board with
27 the two hundred fifty (250) continuing education hours, including the one
28 hundred twenty-five (125) continuing education hours for a master massage
29 therapist license and containing only eighteen (18) continuing education
30 hours in online education courses;

31
32 SECTION 2. Arkansas Code § 17-86-102(9)(A)(i), concerning the
33 definition of a master massage therapist, is amended to read as follows:

34 (i) Before July 1, 2010, is a licensed and
35 registered massage therapist who has completed no fewer than two hundred
36 fifty (250) hours of practical experience as a massage therapist, which may



1 be gained in part or in whole as an assistant to an instructor in a massage
 2 school and has completed no less than one hundred twenty-five (125)
 3 continuing education hours as approved by the board, including the one
 4 hundred twenty-five (125) continuing education hours for a master massage
 5 therapist license and containing no more than ten percent (10%) or thirteen
 6 (13) continuing education hours in online education courses;

7
 8 SECTION 3. Arkansas Code § 17-86-102(10), concerning the definition of
 9 sexual misconduct, is amended to read as follows:

10 (10) "Sexual misconduct" includes:

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

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

17 (C) Sexual activity with consent of a client or at the
 18 request of a client; and

19
 20 SECTION 4. Arkansas Code § 17-86-103, is amended to read as follows:
 21 17-86-103. Penalties.

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

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

31 (c) Any person found guilty of violations of this chapter may be
 32 subject to emergency suspension or revocation of licensure dependent upon the
 33 findings.

34 ~~(e)(d)~~ The courts of this state ~~having general equity jurisdiction~~ are
 35 vested with jurisdiction and power to enjoin the unlawful practice of massage
 36 therapy and related techniques in a proceeding by the board or by any citizen

1 of this state in the county in which the alleged unlawful practice occurred
 2 ~~or~~, the county in which the defendant resides, or in Pulaski County. The
 3 issuance of an injunction shall not relieve a person from criminal
 4 prosecution for violation of the provisions of this chapter, but the remedy
 5 of injunction shall be in addition to liability to criminal prosecution.

6
 7 SECTION 5. Arkansas Code § 17-86-203(e)(1), concerning the powers and
 8 duties of the Arkansas State Board of Massage Therapy, is amended to read as
 9 follows:

10 (e)(1) For purposes of this section, an applicant is not eligible to
 11 receive or hold a license issued by the Arkansas State Board of Massage
 12 Therapy if the applicant has pleaded guilty or nolo contendere to or been
 13 found guilty of a felony or Class A misdemeanor or any offense involving
 14 fraud, theft, ~~or dishonesty,~~ sexual misconduct, sexual solicitation, lewd
 15 behavior, child abuse or molestation, statutory rape, sexual assault, human
 16 trafficking, or other violent crimes.

17
 18 SECTION 6. Arkansas Code § 17-86-301(b), concerning exemptions to
 19 registration requirements under the Massage Therapy Act, is amended to read
 20 as follows:

21 (b) ~~Exemptions:~~ The following are exempt from the licensing
 22 requirements of this chapter:

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

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

35 (3) The practice of massage therapy that is incidental to a
 36 program of study by students enrolled in a licensed massage therapy school

1 approved by the board, and under direct supervision of a licensee employed as
 2 an instructor at the school, ~~is exempt from § 17-86-311(a)(10);~~

3 (4) A person authorized by the laws of this state to practice as
 4 a licensed esthetician and cosmetologist within his or her scope of practice;
 5 and

6 (5)(A) A person engaged in the practice of using minimal touch
 7 over specific points on the body to facilitate balance in the nervous system,
 8 also known as Bowen therapy or Bowen technique, and is certified by a
 9 professional organization or credentialing agency that:

10 (i) Requires a minimum level of training,
 11 demonstration of competence, and adherence to an approved scope of practice
 12 and ethical standards; and

13 (ii) Maintains disciplinary procedures to ensure
 14 adherence to the requirements of the organization or agency.

15 (B) The Arkansas State Board of Massage Therapy may verify
 16 that a practitioner claiming an exemption under subdivision (b)(4) of this
 17 section is certified by a professional organization or credentialing agency.

18
 19 SECTION 7. Arkansas Code § 17-86-302, is amended to read as follows:
 20 17-86-302. Sanitary requirements.

21 (a) It shall be unlawful for ~~any~~ a person or school to be licensed or
 22 ~~any~~ a clinic to be operated under the provisions of this chapter unless the
 23 following requirements are met and practiced:

24 (1) A sink for hand washing with hot and cold running water and
 25 soap must be accessible;

26 (2) A restroom must be accessible;

27 (3) A towel or sheet that has been used by one (1) client may
 28 not be used on another person unless the towel or sheet has been relaundered;

29 (4)(A) Anyone who has any infectious, contagious, or
 30 communicable disease ~~which~~ that may be spread by airborne, droplet, contact,
 31 or indirect methods and who is in contact with the public must not practice
 32 until all risk of disease transmission is cleared.

33 (B) Any employee with such a disease must be immediately
 34 relieved from duty until all risk of disease transmission is cleared;

35 (5)(A) Anyone who has an open cut, burn, wound, or aggravated
 36 skin condition, including without limitation broken or abraded skin that

1 cannot be covered by a finger cot or latex glove that poses potential health
2 risk to a client must not practice until all risk of disease transmission is
3 cleared.

4 (B) An employee with a condition described in subdivision
5 (a)(5)(A) of this section shall be immediately relieved from duty until all
6 potential health risks are cleared;

7 ~~(5)(6)~~ A school or clinic must be equipped with a massage table
8 or tables or a massage chair or chairs or equipped with such standard
9 equipment dictated by the practice engaged in as defined in § 17-86-102; and

10 ~~(6)(7)~~ A clinic or school must comply with all requirements of
11 the Department of Health, city ordinances, and state laws.

12 (b) Failure to comply with any of the requirements as set forth by this
13 section will be grounds for suspension or revocation of license.

14
15 SECTION 8. Arkansas Code § 17-86-303(b),(c), and (d), concerning fees
16 relating to licensure for a massage therapist, are amended to read as
17 follows:

18 ~~(b) Fees are as follows:~~

- 19 ~~(1) Application fee \$75.00 Nonrefundable~~
- 20 ~~(2) Original license fee 80.00~~
- 21 ~~(3) Biennial renewal 80.00~~
- 22 ~~(4) Examination fee or reexamination fee~~
- 23 ~~25.00~~
- 24 ~~(5) Duplicate license fee 10.00~~
- 25 ~~(6) Pocket card fee not to exceed ten dollars (\$10.00)~~

26 ~~(e)(b)~~ A person shall not practice massage therapy until his or her
27 official license has been received from the board.

28 ~~(d)(c)~~ A person who attempts to procure or does procure a license in
29 violation of this section shall be subject to the penalties provided for in §
30 17-86-103.

31
32 SECTION 9. Arkansas Code § 17-86-304(c), concerning fees relating to
33 licensure of a master massage therapist, is repealed.

34 ~~(e) Fees are as follows:~~

- 35 ~~(1) Application fee \$75.00 Nonrefundable~~
- 36 ~~(2) Original license fee 80.00~~

1 five percent (75%) average first-time pass rate on board examinations may be
2 subject to probation, suspension, or revocation of licensure.

3
4 SECTION 14. Arkansas Code § 17-86-307(c), concerning fees relating to
5 a massage therapy clinic and spa, is amended to read as follows:

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

8 (2) In the case of a massage therapy clinic or spa failing an
9 inspection, a reinspection fee of twenty-five dollars (\$25.00) will be
10 charged.

11
12 SECTION 15. Arkansas Code § 17-86-307, concerning a massage therapy
13 clinic and spa, is amended to add additional subsections to read as follows:

14 (d)(1)(A) The owner of a massage therapy clinic or spa shall register
15 the business with the board and obtain a clinic license.

16 (B) The owner may or may not hold a massage therapy
17 license.

18 (C) However, a licensee with a revoked or suspended
19 license is not eligible for a clinic licensure.

20 (2) A massage therapy clinic or spa owned by a licensee with a
21 revoked or suspended license shall have the clinic licensure revoked or
22 suspended.

23 (e) A person maintaining an individual clientele, solo practice, or
24 acting as an independent contractor shall register with the board and obtain
25 an independent clinic licensure.

26
27 SECTION 16. Arkansas Code § 17-86-308(a)(2), concerning reciprocity of
28 massage therapists, is amended to read as follows:

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

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

34
35 SECTION 17. Arkansas Code Title 17, Chapter 86, Subchapter 3, is
36 amended to add additional sections to read as follows:

17-86-314. Probation.

(a) The Arkansas State Board of Massage Therapy may place a licensee that has a suspended license on probation.

(b) The board may require the licensee on probation to:

(1) Report monthly in writing to the board on matters relating to the probation;

(2) Limit practice of massage therapy to areas prescribed by the board; or

(3) Continue or review professional education until the person attains a degree of skill satisfactory to the board in the areas that are a basis of probation.

17-86-315. Active military duty licensure.

(a) If a licensee fails to renew timely his or her license because the licensee is or was on active duty with the United States Armed Forces, the licensee may renew the license by:

(1) Requesting renewal of the license before or after the expiration by:

(A) The licensee;

(B) The licensee's spouse; or

(C)(i) The licensee's power of authority.

(ii) A copy of the power of authority documentation shall be filed with the renewal form if the power of authority requests the renewal;

(2) Completing the appropriate renewal form, including the current address and telephone number for the individual requesting the renewal; and

(3) Filing with the renewal form a copy of the official orders or other official military documentation showing that the licensee is or was on active duty.

(b) A licensee renewing under this section shall pay the applicable renewal fee under § 17-86-309 but shall not pay a late renewal fee.