

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JAN 04 2023

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

TAMMY H. DOWNS, CLERK
By: *[Signature]* DEP CLERK

STEPHEN HAILE, an individual,)	
)	Case No. <u>4:23-cv-5-KGB</u>
Plaintiff,)	
)	
-v-)	Jury Demand? No
)	
ASA HUTCHINSON, in his official capacity)	
as Governor of Arkansas,)	This case assigned to District Judge <u>Baker</u>
)	and to Magistrate Judge <u>Kearney</u>
Defendant.)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This civil rights case seeks to vindicate Mr. Haile’s opportunity to be considered for an appointment to the Arkansas Social Work Licensing Board. He and his wife have fostered over three hundred children during their nearly two decades as foster parents. During this time, Mr. Haile has also worked with several social workers and served on a foster parent board. Mr. Haile wants to use this knowledge and leadership experience to serve the state as a member of the Board. He is excluded as a candidate for appointment by statute, however, based on his race.

2. The Arkansas Social Work Licensing Board oversees statewide regulation of social workers, who frequently work with vulnerable or marginalized populations and are involved in making life-altering decisions. The Governor appoints Board members from among those who submit online applications for the position, with the consent of the state senate. In June 2022, the Board seat reserved for the “Representative of the Elderly” became available and has not yet been filled. Plaintiff Stephen Haile is a community member who has applied for and is interested in

being considered for this seat. But he will not be considered for appointment under Arkansas law because he is not African American.

3. Ark. Code § 17-103-201(c) (“Race Quota”) requires “no fewer than two African-American members” on the nine-member Board. The Race Quota therefore requires the Governor to engage in racial balancing in determining who to appoint or reappoint to the Board.

4. The Race Quota perpetuates patronizing stereotypes, establishes a permanent government mandate for the Governor and state senate to engage in outright racial discrimination, and limits opportunities for many Arkansas citizens to get involved in the important work of protecting children and other vulnerable populations.

5. The Race Quota is a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Mr. Haile’s ability to serve on the Board should be based on his qualifications, not his race.

JURISDICTION AND VENUE

6. This action arises under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. This Court has jurisdiction over this federal claim under 28 U.S.C. §§ 1331 (federal question) and 1343(a)(3) (redress for deprivation of civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred and continue to occur in this district.

PARTIES

8. Plaintiff Stephen Haile is a resident of Conway, Arkansas and a citizen of the United States. He is a white man over sixty years of age, has never served on the Board, and is not actively engaged in or retired from professional social work. While Mr. Haile is otherwise

qualified for the “Representative of the Elderly” position on the Board, the Race Quota precludes him from being appointed for this open position because of his race.

9. Defendant Asa Hutchinson is being sued in his official capacity as Governor pursuant to *Ex parte Young*, 209 U.S. 123, 189 (1908). The Governor appoints candidates to the Social Work Licensing Board with the consent of the state senate. The Governor enforces the Race Quota by declining to appoint prospective board members if doing so would be inconsistent with the racial balance dictated by the Race Quota.

FACTUAL ALLEGATIONS

Social Work Licensing Board & Race Quota

10. In 1981, the Arkansas Legislature created the Social Work Licensing Board (“Board”) to replace the “Board of Social Work Registration.”¹

11. The mission of the Board is to “protect the public by setting standards of qualification, training, and experience for those who seek to represent themselves to the public as social workers and by promoting high standards of professional performance for those engaged in the practice of social work.”²

12. The Board is composed of nine appointed members that possess the following qualifications: three members who are licensed certified social workers (LCSW), two members who are licensed master social workers (LMSW), one member who is a licensed social worker (LSW), one member who is a psychiatrist, one member who is a representative of the public at large, and one member who is sixty years of age or older and not actively engaged in or retired

¹ See https://www.dfa.arkansas.gov/images/uploads/budgetManuals/0254_social_work_licensing_board_2005.pdf; <https://naswar.org/wp-content/uploads/2015/12/ACA-17-103-101.pdf>.

² See <https://www.healthy.arkansas.gov/programs-services/topics/arkansas-social-work-licensing-board>.

from professional social work. *See* Ark. Code § 17-103-201. All members must be residents of Arkansas and citizens of the United States. *See* Ark. Code § 17-103-201(b). No more than nine members may serve on the Board at one time.

13. Board members serve three-year terms, and no member may serve more than two consecutive terms. *See* Ark. Code §§ 17-103-201(b), (d)(1)–(3).

14. The Race Quota provision challenged here requires the Governor and state senate to ensure that the Board is composed of “no fewer than two African-American members.” *See* Ark. Code § 17-103-201(c).

15. According to the Board’s website, the “Representative of the Elderly” seat and the two seats for licensed master social workers became available in June 2022.³ The member serving as the “Representative of the Elderly” and the member serving as one of the licensed master social workers are African American.

16. The Governor has not yet appointed anyone to fill the open positions but is expected to reappoint the African American members of the Board. The Governor’s decision is motivated, in part, by a desire to comply with the Race Quota, which he has done since taking office in 2015.

Enforcement of the Race Quota

17. There are no set deadlines for prospective applicants that wish to serve as the “Representative of the Elderly” on the Board to submit their applications.

18. Interested applicants are to submit their applications through the Governor's website. The Board’s website contains a copy of the Social Work Licensing Act, which includes the Race Quota. *See* **Exh. 1**.

³ *See* https://www.healthy.arkansas.gov/images/uploads/pdf/ASWLB_About_the_Board.pdf.

19. Mr. Haile is interested in being appointed to the “Representative of the Elderly” seat on the Board and submitted his application through the Governor’s website on January 2, 2023.

20. Mr. Haile is qualified for the position because he is a resident of Arkansas, a citizen of the United States, at least sixty years old, has not served two consecutive terms on the Board, and is not actively engaged in or retired from professional social work.

21. Apart from meeting the statutory requirements for the “Representative of the Elderly” opening, Mr. Haile also has valuable experience that would allow him to significantly contribute to the Board, including his own fostering experience, interactions with social workers, and service on a foster parent board. Moreover, the Arkansas Department of Human Services’ Division of Children and Family Services honored Mr. Haile and his wife with an award in 2017 for being the type of foster parents that are willing to take “hard-to-place children” and who are devoted to “child advocacy and reunification efforts with biological families.”⁴ Because the Governor intends to appoint an African American candidate to the “Representative of the Elderly” position in part to comply with the requirements of the Race Quota, Mr. Haile will be categorically excluded from consideration because he is not African American.

⁴ See <https://www.swtimes.com/story/news/state/2017/05/17/state-agency-honors-foster-families/20968829007/>.

**CLAIM I:
VIOLATION OF THE EQUAL PROTECTION
CLAUSE TO THE FOURTEENTH AMENDMENT**

22. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1 through 21.

23. Under the Fourteenth Amendment to the United States Constitution, “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

24. The Race Quota discriminates on the basis of race in violation of the Equal Protection Clause in requiring that the Board have at least two African American members.

25. Race-based classifications are subject to strict scrutiny. *See Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995).

26. Under strict scrutiny, the Equal Protection Clause prohibits the government from discriminating based on race unless its means are narrowly tailored to a compelling government interest. *See Adarand Constructors*, 515 U.S. at 220.

27. The Race Quota does not serve a compelling government interest.

28. The Race Quota does not serve an interest in remedying past discrimination. The Arkansas Legislature has not identified specific instances of racial discrimination against individuals in appointments to the Board.

29. The Governor’s appointments to the Board must comply with the racial classifications contained in the Race Quota.

30. Under the Race Quota, individuals who are not African American are categorically excluded from consideration for positions when appointing them would result in fewer than two African American members on the Board.

31. Racial balancing is not a compelling government interest that can sustain a racial classification under the Equal Protection Clause.

32. Even if the Race Quota served a compelling government interest, the mechanism it uses is not narrowly tailored to that interest.

33. The Race Quota contains no end date. Instead, the Race Quota lasts in perpetuity, thereby creating a perpetual requirement of racial balancing for its own sake. The Race Quota also contains no “good faith” exception. Instead, the Board must always contain no fewer than two African American members.

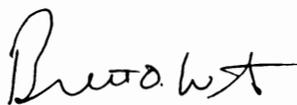
REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. A declaration that the Race Quota in Ark. Code § 17-103-201(c) violates the Equal Protection Clause to the Fourteenth Amendment to the United States Constitution;
- B. A preliminary injunction forbidding the Governor and his agents from enforcing, or attempting to enforce, the Race Quota in Ark. Code § 17-103-201(c);
- C. A permanent injunction forbidding the Governor and his agents from enforcing, or attempting to enforce, the Race Quota in Ark. Code § 17-103-201(c);
- D. An award of attorneys’ fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and
- E. Such other relief as the Court deems just and proper.

DATED: 1-4-23

Respectfully submitted,



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** Pro Hac Vice applications forthcoming*

EXHIBIT - 1

DEPARTMENT OF HEALTH
STATE OF ARKANSAS
SOCIAL WORK LICENSING BOARD

THE SOCIAL WORK LICENSING ACT



Act Effective July 1981

Act Revisions 1983, 1987, 1989, 1995, 1997, 2001, 2003,
2005, 2009, 2015, 2019

Rule Revisions Effective July 1, 2021

Arkansas Code Annotated (A.C.A.) Title 17, Subtitle 3., Chapter 103
Current through all legislation of the 2019 Regular Session (including corrections and edits by the
Arkansas Code Revision Commission)

Subchapter 1

-General Provisions

17-103-101. Title

17-103-102. Purpose

17-103-103. Definitions

17-103-104. Exemptions

17-103-105. Violations

17-103-106. Penalties and enforcement

17-103-107. Privileged communications.

17-103-108. Privileged communications – Not repealed.

17-103-101. Title.

This chapter shall be known and may be cited as the “Social Work Licensing Act”.

History. Acts 1999, No. 1122, § 1.

17-103-102. Purpose.

(a) The purpose of this chapter is to:

(1) Declare the practice of social work a professional practice affecting the public health, safety, and welfare;

(2) Subject the practice of social work to effective regulation and control to promote, preserve, and protect the public interest; and

(3) Declare a matter of public interest and concern that the practice of social work, as defined in this chapter, merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of social work in the State of Arkansas.

(b) This chapter shall be liberally construed to carry out these objectives and purposes.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 1.

17-103-103. Definitions.

As used in this chapter:

(1) “Licensed certified social worker” means an individual who:

(A) Applies social work theory, knowledge, methods, principles, values, and ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, and to address needs of organizations and communities;

(B) Practices with specialized knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment for mental, emotional, and behavioral disorders and conditions;

(C) Conducts management, information and referral, mediation, client education, supervision of employees, consultation, research, advocacy, and outcome evaluation;

(D) May operate a private practice;

(E) May practice macro social work independently; and

- (F) May engage in the activities included in the practice of a licensed master social worker;
- (2) "Licensed master social worker" means an individual who:
- (A) Applies specialized knowledge and advanced practice skills in the areas of assessment, diagnosis, treatment planning, implementation and evaluation, case management, information and referral, mediation, client education, counseling, advocacy, supervision of nonclinical, baccalaureate-level social workers and nonlicensed master's level employees, nonclinical consultation, research, community organization and development, administration of social work policies, programs and activities, and outcome evaluation;
 - (B) Practices social work under supervision within a recognized, organized setting such as a social, medical, or governmental agency; and
 - (C) (i) May engage only in supervised practice as set forth in rules established by the Arkansas Social Work Licensing Board.
(ii) A licensed master social worker shall not practice privately or independently;
- (3) "Licensed social worker" means an individual who:
- (A) Conducts a basic generalist practice that includes assessment, case management, information and referral for counseling, advocacy, nonclinical counseling, supervision and counseling, client education, research, community organization, and the development, implementation, and administration of policies, programs, and activities;
 - (B) Is not qualified to diagnose and treat mental illness nor to provide psychotherapy services;
 - (C) Practices only in organized settings such as a social, medical, or governmental agency; and
 - (D) (i) Engages only in supervised practice as set forth in the rules established by the board.
(ii) A licensed social worker shall not practice privately or independently; and
- (4) "Practice of social work" means a professional service which effects change in social conditions, human behavior, and emotional responses of individuals, couples, families, groups, and organizations. "Social work practice" can only be performed with specialized knowledge and skills related to human development, the potential for human growth, the availability of social resources, and the knowledge of social systems. The disciplined application of social work knowledge and skills includes, but is not restricted to, the following:
- (A) Counseling with individuals, couples, families, and groups for purposes of assessment and enhancement of the problem-solving and coping capacities of people; and
 - (B) The application of social work knowledge and skills in social planning, administration, and research.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 1.

17-103-104. Exemptions.

- (a) This chapter does not prevent members of the clergy, Christian Science practitioners, and licensed professionals such as physicians, nurses, psychologists, counselors, and attorneys from doing work within the standards and ethics of their respective professions, if they do not hold themselves out to the public by any title or description of services as being social workers as defined under this chapter.
- (b) (1) This chapter does not limit or prohibit the employment by a licensed hospital in this state of persons who perform services commonly within the definition of social work or of practices performed by social workers if the services are performed within the course and

scope of their employment as employees of the hospital and only if the person does not represent himself or herself to the public as a social worker.

(2) This chapter does not require a regular employee of a licensed hospital in this state to be licensed as a licensed social worker, a licensed master social worker, or a licensed certified social worker as a condition of employment by or performance of services as a social worker while employed in a licensed hospital in this state.

(c) This chapter does not limit the activities and services of a graduate or undergraduate student who is currently enrolled in a social work program that is accredited by the Council on Social Work Education if he or she does not represent himself or herself as a social worker.

(d) (1) This chapter does not require a person to be licensed as a licensed social worker who is engaged in the practice of a specialty area of social work while an employee of an agency or department of the state in any of the following job classifications, but only if the person is engaged in that practice as an employee of the agency or department and only if the person does not represent himself or herself to the public as a social worker:

(A) A family service worker;

(B) A social service worker; or

(C) An adult protective services worker.

(2) It is the intent of the General Assembly to restrict licensure to those individuals who are represented to be social workers. It is not the intent of the General Assembly to license persons such as state employees in the job classifications of social service workers and family service workers.

History. Acts 1999, No. 1122, § 1; 2009, No. 297, § 1; 2011, No. 859, § 13; 2015, No. 1170, § 1; 2019, No. 623, § 1.

17-103-105. Violations.

The following acts constitute violations of this chapter:

(1) Representing oneself to be a social worker or engaging in the practice of social work unless licensed as a licensed social worker, a licensed master social worker, or a licensed certified social worker under this chapter;

(2) Entering the private independent practice of clinical social work without being certified by the Arkansas Social Work Licensing Board;

(3) Obtaining or attempting to obtain a license or renewal of a license by bribery or fraudulent representation; and

(4) Knowingly making a false statement on any form promulgated by the board in accordance with this chapter or the rules under this chapter.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 1.

17-103-106. Penalties and enforcement.

(a) Violations of this chapter shall constitute Class A misdemeanors.

(b) (1) (A) When the Arkansas Social Work Licensing Board is made aware of a possible violation of § 17-103-105, a registered letter with a return receipt requested shall be mailed to the individual in question, calling to his or her attention the pertinent aspects of the law and the rules of the board.

(B) If the individual continues the alleged illegal practice, the information shall be forwarded to the appropriate law enforcement authorities for legal action.

(2) The board shall assist the prosecuting attorney in the enforcement of this chapter.

(3) Any member of the board may present evidence of a violation to the appropriate prosecuting attorney.

History. Acts 1999, No. 1122, § 1; 2003, No. 1274, § 1; 2019, No. 315, § 1668.

17-103-107. Privileged communications.

- (a) (1) A licensed certified social worker, licensed master social worker, or licensed social worker or his or her secretary, stenographer, or clerk shall not disclose any information acquired from a person consulting him or her in his or her professional capacity except with the written consent of:
- (A) The person; or
 - (B) In the case of death or disability of the person:
 - (i) The person's own legal guardian;
 - (ii) Another person authorized to sue on behalf of the person; or
 - (iii) The beneficiary of an insurance policy on the person's life, health, or physical condition.
- (2) A licensed certified social worker, licensed master social worker, or licensed social worker is not required to treat as confidential a communication that reveals the intended commission of a crime or a harmful act.
- (3) If the person is a minor under the laws of this state and the information acquired by the licensed certified social worker, licensed master social worker, or licensed social worker indicates that the minor was the victim or subject of a crime, the licensed certified social worker, licensed master social worker, or the licensed social worker may be required to testify fully in any examination, trial, or other proceedings in which the commission of such a crime is the subject of inquiry.
- (4) The licensed certified social worker, licensed master social worker, or the licensed social worker may disclose a person's acquired information:
- (A) If the person waives the privilege by bringing charges against the licensed certified social worker, licensed master social worker, or the licensed social worker; or
 - (B)
 - (i) In the course of formally reporting to, conferring with, or consulting with administrative superiors, colleagues, or consultants who share professional responsibility.
 - (ii) Under any circumstance specified in this subdivision (a)(4)(B), a recipient of the disclosed information is bound under this section to regard the information as privileged.
- (b) This section does not prohibit a licensed social worker, a licensed master social worker, or a licensed certified social worker from voluntarily testifying in court hearings concerning matters of adoption, child abuse, child neglect, or other matters pertaining to children, the elderly, and handicapped and mentally disabled adults, except as prohibited under applicable state and federal laws.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 2.

17-103-108. Privileged communications — Not repealed.

Notwithstanding the provisions of this section or any other law, the privileged communications provisions codified at § 17-103-107 are not repealed.

History. Acts 1999, No. 1122, § 1.

A.C.A. Title 17, Subtitle. 3., Chapter 103, Subchapter 2

Subchapter 2

-Arkansas Social Work Licensing Board

17-103-201. Creation – Members.

17-103-202. Organization and functions.

17-103-203. Powers and duties.

17-103-204. Disposition of funds.

17-103-205. Fees.

17-103-201. Creation — Members.

(a) There is created the Arkansas Social Work Licensing Board.

(b) All members of the Arkansas Social Work Licensing Board shall be appointed by the Governor with the consent of the Senate for terms of three (3) years and shall be residents of the state and citizens of the United States.

(c) The Arkansas Social Work Licensing Board shall have nine (9) members, with no fewer than two (2) African-American members, and shall be composed of the following:

(1) (A) Three (3) members who are licensed certified social workers, two (2) members who are licensed master social workers, and one (1) member who is a licensed social worker.

(B) (i) The professional members shall be appointed from the list of social workers licensed by this chapter and shall have five (5) years of full-time social work practice experience before appointment to the Arkansas Social Work Licensing Board.

(ii) The experience required under subdivision (c)(1)(B)(i) of this section may consist of direct social work practice, teaching, or administration in social work;

(2) (A) One (1) member who is a psychiatrist certified by the American Board of Psychiatry and Neurology, Inc.

(B) The member appointed under subdivision (c)(2)(A) of this section shall be in good standing with the American Board of Psychiatry and Neurology, Inc.;

(3) One (1) member who is a representative of the public at large; and

(4) (A) One (1) member who is sixty (60) years of age or older, not actively engaged in or retired from professional social work and shall represent the elderly.

(B) The member appointed under subdivision (c)(4)(A) of this section shall be appointed from the state at large and shall be a full voting member.

(C) The same member may not represent both the public at large and the elderly.

(d) (1) A member of the Arkansas Social Work Licensing Board may be removed from office by the Governor for cause.

(2) In case of death, resignation, or removal, the vacancy of the unexpired term shall be filled by the Governor in the same manner as other appointments.

(3) A member shall not serve more than two (2) consecutive terms.

(e) (1) A member of the Arkansas Social Work Licensing Board may receive expense reimbursement in accordance with § 25-16-902.

(2) All reimbursements for expenses authorized by this chapter shall be paid from the Social Work Licensing Fund.

(3) Money shall not be paid from the General Revenue Fund Account for the administration of this chapter.

(f) In addition to the expense reimbursement under subsection (e) of this section, each member of the Arkansas Social Work Licensing Board may receive a stipend in accordance with § 25-16-904.

History. Acts 1999, No. 1122, § 1; 2009, No. 261, § 4; 2015, No. 1170, § 3.

17-103-202. Organization and functions.

- (a) (1) At least two (2) regular meetings of the Arkansas Social Work Licensing Board shall be held each calendar year.
- (2) At the first regular meeting each year, the board shall elect a chair, a vice chair, and a secretary.
- (3) Other regular meetings may be held at such time as the rules of the board may provide.
- (b) Special called meetings may be held at the discretion of the Chair of the Arkansas Social Work Licensing Board or at the written request of any three (3) members of the board.
- (c) Reasonable notice of all meetings shall be given in the manner prescribed by the laws of this state.
- (d) A quorum of the board shall consist of four (4) members.
- (e) The board may employ a Director of the Arkansas Social Work Licensing Board, in consultation with the Secretary of the Department of Health, for the performance of its functions and fix the compensation of the director within the limits of funds available to the board.
- (f) The board shall adopt a seal that shall be affixed to all certificates issued by the board.
- History.** Acts 1999, No. 1122, § 1; 2015, No. 1170, § 3; 2019, No. 910, § 4909.

17-103-203. Powers and duties.

- (a) The Arkansas Social Work Licensing Board has all the powers and duties granted under this chapter.
- (b) In addition to the duties set forth elsewhere in this chapter, the board shall:
- (1) Establish the criteria and process for licensure through endorsement;
 - (2) Make available under the Freedom of Information Act of 1967, § 25-19-101 et seq., the following information:
 - (A) A list of the names and addresses of all persons licensed under this chapter;
 - (B) A list of the names and addresses of all persons who hold a certification of registration under this chapter;
 - (C) A list of names of social workers who have been found in violation of this chapter or any rules promulgated under this chapter; and
 - (D) The findings of fact, conclusions of law, and order regarding a social worker who has been found in violation of this chapter or any rules promulgated under this chapter;
 - (3) Establish mechanisms for appeal and decisions regarding applications and granting of licenses, with such mechanisms to include provisions for judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;
 - (4) Make rules consistent with law as may be necessary to regulate its proceedings;
 - (5) Compile an annual report;
 - (6) Establish rules defining unprofessional conduct and set forth and publish a code of ethics and standards for practice;
 - (7) Establish fees and publish financial records;
 - (8) Establish continuing education requirements and notify the applicants for licensing of the requirement; and
 - (9) At the time of license renewal, require each applicant to present satisfactory evidence that, in the period since the license was issued, he or she has completed the continuing education requirements specified by the board.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 3; 2019, No. 623, § 2.

17-103-204. Disposition of funds.

(a) The Director of the Arkansas Social Work Licensing Board or his or her designee shall receive and account for all money derived under the provisions of this chapter and shall pay the money to the Treasurer of State, who shall keep the money in a separate fund to be known as the "Social Work Licensing Fund".

(b) Money may be paid out of the fund only by warrant drawn by the Chief Fiscal Officer of the State on the State Treasury.

(c) There shall be audits of the fund as required by law.

(d) The director shall be bonded to handle the finances of the Arkansas Social Work Licensing Board in compliance with state rules.

(e) The board may make expenditures from the fund for any purpose that is reasonable and necessary to carry out the provisions of this chapter.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 3; 2019, No. 910, §§ 4910, 4911.

17-103-205. Fees.

The Arkansas Social Work Licensing Board shall establish, charge, and collect for:

(1) The filing of an application for a license under this chapter, a nonrefundable fee of not more than one hundred fifty dollars (\$150);

(2) A nonrefundable renewal of a license issued in accordance with this chapter, a fee of not more than one hundred fifty dollars (\$150);

(3) Replacement of a license, a nonrefundable fee of not more than forty dollars (\$40.00);

(4) Endorsement of an Arkansas social work license, a nonrefundable fee of not more than forty dollars (\$40.00);

(5) Renewal of a license after the expiration date, a nonrefundable late fee of not more than one hundred fifty dollars (\$150);

(6) A criminal background check processing fee, the fee amount to be determined by the Department of Arkansas State Police;

(7) The filing of an application for a certificate of registration under this chapter, a nonrefundable fee of not more than fifty dollars (\$50.00); and

(8) Renewal of a certificate of registration issued under this chapter, a nonrefundable fee of not

History. Acts 1999, No. 1122, § 1; 2001, No. 1481, § 1; 2013, No. 409, § 1; 2015, No. 1170, § 3.

A.C.A. Title 17, Subtitle 3., Chapter 103, Subchapter 3

-Licensing

17-103-301. License required.

17-103-302. Endorsement.

17-103-303. [Repealed].

17-103-304. Expiration and renewal.

17-103-305. Renewal, revocation, suspension – Disciplinary proceedings.

17-103-306. Qualifications - Issuance

17-103-307. Criminal Background checks.

17-103-308. Licensure certificate

17-103-309. Practice by electronic, telephonic or other means.

17-103-301. License required.

(a) A person shall not practice or offer to practice social work under this chapter unless the person is licensed, a student under this chapter, or otherwise entitled to practice under subsections (b) and (c) of this section.

(b) A person shall not engage in the private independent practice of social work unless that person is licensed under this chapter as a licensed certified social worker.

(c) A person shall not engage in social work consultation unless that person is licensed under this chapter as a licensed certified social worker.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 4.

17-103-302. Endorsement.

The Arkansas Social Work Licensing Board may grant a license without examination to a person meeting all of the other requirements of this chapter and who at the time of application is licensed as a social worker by a similar board of another state, territory, district, or Canadian province whose standards, in the opinion of the Arkansas Social Work Licensing Board, are substantially equivalent to those required by this chapter.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 4; 2019, No. 623, § 3.

17-103-303. [Repealed.]

17-103-304. Expiration and renewal.

(a) A license is effective at the time of issuance by the Arkansas Social Work Licensing Board.

(b) The license of a licensed social worker, licensed master social worker, and licensed certified social worker is valid for two (2) years after the date of issuance.

(c) (1) A license may be renewed by the payment of a renewal fee as set by the board.
 (2) A notice of license renewal shall be sent to a licensee at the most recent address as it appears in the records of the board approximately two (2) months before the expiration date of the license.

(3) Before the expiration date of the license, the licensee shall:

(A) Submit a renewal application and fee online; or

(B) Mail the renewal application and fee to the office of the board.

(4) Upon receipt of an application and fee, the board shall verify the accuracy of the application and, if approved, issue to the applicant a notice of license renewal valid for the next two (2) years.

(d) (1) If a licensee fails to renew his or her license before the expiration date, the license shall lapse the last day of the month of the calendar year that is exactly two (2) years from the calendar year and month in which the license was issued.

(2) A license that has lapsed for a period of less than three (3) months may be renewed by submission of:

(A) A completed renewal application;

(B) A fee that is two (2) times the amount of the renewal fee specified; and

(C) An attestation that the licensee has not practiced social work since the day that his or her license lapsed, and the licensee will not practice social work until his or her license is approved for renewal by the board.

(3) If a license has lapsed for three (3) months or longer, the applicant for the license shall be considered a new applicant subject to appropriate provisions of this chapter.

(4) A license that has expired over three (3) months is not renewable.

(e) At the time of license renewal, an applicant shall present satisfactory evidence that in the period since the license was issued, he or she has completed the continuing education requirements as required by the board.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 6.

17-103-305. Renewal, revocation, suspension — Disciplinary proceedings.

(a) The Arkansas Social Work Licensing Board may refuse to issue or renew a license or may revoke or suspend a license issued under this chapter or may impose other appropriate restrictions or additional impositions, including without limitation supervision, probation, counseling, reporting, drug screening, and additional continuing education for any of the following causes or reasons:

- (1) Violation of a provision of this chapter;
- (2) Gross negligence in the practice of social work;
- (3) Engaging in a course of unprofessional conduct as defined by the rules established by the board or violation of the code of ethics made and published by the board; or
- (4) Failing to meet one (1) of the qualifications for issuance of a license under § 17-103-307.

(b) The board shall refuse to issue or shall revoke the license of a person who has been found guilty of a felony listed under § 17-3-102 or criminal offense involving violence, dishonesty, fraud, deceit, breach of client trust, or abuse of the vulnerable unless the person requests and the board grants a waiver under § 17-3-102(b).

(c) (1) The board shall conduct hearings.

(2) Decisions shall be determined by a majority vote of the board. All proceedings shall be conducted in accordance with the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 6; 2019, No. 990, § 123.

17-103-306. Qualifications — Issuance.

- (a) (1) The Arkansas Social Work Licensing Board shall issue a Licensed Social Worker license to an applicant who qualifies as follows:
- (A) Has a baccalaureate degree in a social work program from a program accredited by the Council on Social Work Education or the Canadian Association for Social Work Education, or has received before June 17, 1986, a baccalaureate degree in a social work program from an accredited educational institution;
 - (B) Has passed an examination approved by the board for this purpose and level of practice;
 - (C) Has applied for a criminal background check and meets the qualifications for issuance of a license under § 17-103-307;
 - (D) [Repealed.]
 - (E) Is physically and mentally competent to provide social work services with reasonable skill and safety;
 - (F) Is not affected by a mental or physical disease or condition that would impair the applicant's competency to provide social work services;
 - (G) Has not pleaded guilty or nolo contendere to or been found guilty of a felony listed under § 17-3-102 or criminal offense involving violence, dishonesty, fraud, deceit, breach of client trust, or abuse of the vulnerable;
 - (H) Does not use drugs or alcohol to an extent that the use affects the applicant's professional competency; and
 - (I) Has not engaged in fraud or deceit in making the application.

- (2) (A) The board shall issue a Provisional Licensed Social Worker license one (1) time only to an applicant who qualifies under this subsection.
 (B) A Provisional Licensed Social Worker license is good for one (1) year and up to three (3) attempts to pass the examination approved by the board for this purpose and level of practice.
- (b) (1) The board shall issue a Licensed Master Social Worker license to an applicant who qualifies as follows:
 (A) Has a master's degree in social work from a program accredited by the Council on Social Work Education or the Canadian Association for Social Work Education, or has received before June 17, 1986, a master's degree in a social work program from an accredited educational institution;
 (B) Has passed an examination approved by the board for this purpose and level of practice;
 (C) Has applied for a criminal background check and meets the qualifications for issuance of a license under § 17-103-307;
 (D) Has good moral character;
 (E) Is physically and mentally competent to provide social work services with reasonable skill and safety;
 (F) Is not afflicted by a mental or physical disease or condition that would impair the applicant's competency to provide social work services;
 (G) Has not pleaded guilty or nolo contendere to or been found guilty of a felony listed under § 17-3-102 or criminal offense involving violence, dishonesty, fraud, deceit, breach of client trust, or abuse of the vulnerable;
 (H) Does not use drugs or alcohol to an extent that the use affects the applicant's professional competency; and
 (I) Has not engaged in fraud or deceit in making the application.
- (2) (A) The board shall issue a Provisional Licensed Master Social Worker license one (1) time only to an applicant who qualifies under this subsection.
 (B) A Provisional Licensed Master Social Worker license is good for one (1) year and up to three (3) attempts to pass the examination approved by the board for this purpose and level of practice.
- (c) (1) The board shall issue a license as a Licensed Certified Social Worker to an applicant who qualifies as follows:
 (A) Has a master's degree in social work from a program accredited by the Council on Social Work Education or the Canadian Association for Social Work Education, or has received before June 17, 1986, a master's degree in a social work program from an accredited educational institution;
 (B) (i) Has at least twenty-four (24) months of supervised social work experience under a licensed certified social worker.
 (ii) The supervised social work experience required under subdivision (c)(1)(B)(i) of this section shall include at least four thousand (4,000) hours in a social work position under the supervision of a licensed certified social worker or a social worker whom the board determines to have qualifications equivalent to those required of a licensed certified social worker;
 (C) Has passed an examination approved by the board for this purpose and level of practice;
 (D) Has applied for a criminal background check and meets the qualifications for issuance of a license under § 17-103-307;
 (E) Has good moral character;
 (F) Is physically and mentally competent to provide social work services with reasonable skill and safety;

- (G) Is not affected by a mental or physical disease or condition that would impair the applicant's competency to provide social work services;
 - (H) Has not pleaded guilty or nolo contendere to or been found guilty of a felony listed under § 17-3-102 or criminal offense involving violence, dishonesty, fraud, deceit, breach of client trust, or abuse of the vulnerable;
 - (I) Does not use drugs or alcohol to an extent that the use affects the applicant's professional competency; and
 - (J) Has not engaged in fraud or deceit in making the application.
- (2) (A) The board shall issue a Provisional Licensed Master Social Worker license one (1) time only to an applicant who qualifies under this subsection.
- (B) A Provisional Licensed Master Social Worker license is good for one (1) year and up to three (3) attempts to pass the examination approved by the board for this purpose and level of practice.
- (C) A Provisional Licensed Certified Social Worker license is not available.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 6; 2019, No. 990, §§ 124127.

17-103-307. Criminal background checks.

- (a) Each applicant for a license issued by the Arkansas Social Work Licensing Board is required to apply for a state and national criminal background check, to be conducted by the Division of Arkansas State Police and the Federal Bureau of Investigation.
- (b) The criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.
- (c) The applicant shall sign a release of information to the board and shall be responsible for the payment of any fee associated with the criminal background check.
- (d) Upon completion of the criminal background check, the Identification Bureau of the Division of Arkansas State Police shall forward to the board all releasable information obtained concerning the applicant.
- (e) For purposes of this section, the board shall follow the licensing restrictions based on criminal records under § 17-3-102.
- (f)
 - (1) Information received by the board from the Identification Bureau of the Division of Arkansas State Police under this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative or the person whose license is subject to revocation or his or her authorized representative.
 - (2) No record, file, or document shall be removed from the custody of the division.
- (g) Information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.
- (h) Rights of privilege and confidentiality established in this section do not extend to any document created for purposes other than the criminal background check.
- (i) The board shall adopt the necessary rules to fully implement the provisions of this section.

History. Acts 1999, No. 1122, § 1; 2003, No. 1087, § 17; 2003, No. 1384, § 1; 2005, No. 1923, § 4; 2011, No. 570, § 123; 2015, No. 1170, § 6; 2017, No. 367, §§ 21, 22; 2017, No. 664, §§ 15, 16; 2019, No. 990, § 128.

17-103-308. Licensure certificate.

- (a) Under this chapter, a licensee involved in independent private practice with the public shall:
 - (1) Display his or her license; and
 - (2) Immediately notify clients if his or her license expires without renewal or is suspended or revoked.

(b) Under this chapter, a licensee whose license expires without renewal or is suspended or revoked shall immediately:

- (1) Notify his or her employer, employees, and partners that he or she is no longer licensed;
and
- (2) Remove from public display his or her license certificate and license card.

History. Acts 2003, No. 1274, § 2; 2015, No. 1170, § 6.

17-103-309. Practice by electronic, telephonic, or other means.

The provision of social work services to a client within this state through any means, including without limitation electronic means or by telephone, regardless of the location of the social worker, constitutes the practice of social work and is subject to this chapter and to rules adopted under this chapter.

History. Acts 2015, No. 1170, § 7.