

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

238U0287

SENATE HEALTH AND HUMAN SERVICES ENGROSSED NO. **HB 1126** - 02/25/2013

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Hoffman, Cronin, Erickson, Feickert, Feinstein, Haggar (Don), Hansen, Hickey, May, Nelson, and Sly and Senators Tidemann, Heineman (Phyllis), and Kirkeby

1 FOR AN ACT ENTITLED, An Act to revise the massage therapy licensing requirements.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 36-35-8 be amended to read as follows:

4 36-35-8. Any person engaged in the practice of massage in this state shall conspicuously
5 display a valid license ~~or certified duplicate license~~ from the board in the person's place of
6 business.

7 Section 2. That § 36-35-9 be amended to read as follows:

8 36-35-9. Any fees ~~and civil penalties~~ collected under this chapter shall be used for the
9 operation of the board and the implementation of this chapter.

10 Section 3. That § 36-35-10 be amended to read as follows:

11 36-35-10. Any person who engages in the practice of massage or holds himself or herself
12 out to the public as engaged in the practice of massage without a license pursuant to this chapter
13 is guilty of a Class 1 misdemeanor ~~and upon conviction the court shall assess a civil penalty of~~



1 ~~one thousand dollars payable to the board.~~ The state or the board may file a civil action to enjoin
2 any person engaging in the practice of massage without a license.

3 Section 4. That § 36-35-11 be repealed.

4 ~~— 36-35-11. Any person who advertises services to the public as a massage therapist,
5 bodywork therapist, masseur, masseuse, massagist, or any derivation or abbreviation of those
6 terms or any other term commonly recognized to mean the practice of massage therapy while
7 not licensed under this chapter is guilty of a Class 1 misdemeanor. Upon conviction the court
8 shall assess a civil penalty of one thousand dollars payable to the board. The state or the board
9 may file a civil action to enjoin any person from violating this section.~~

10 Section 5. That § 36-35-12 be amended to read as follows:

11 36-35-12. The board ~~may~~ shall issue a license to engage in the practice of massage to any
12 person who submits an application form and the nonrefundable application fee as approved in
13 § 36-35-17 and who demonstrates the following qualifications:

14 (1) Eighteen years of age or older;

15 (2) ~~Good moral character;~~

16 ~~—(3)—~~High school diploma or equivalent;

17 ~~(4)~~(3) Completion of no less than five hundred hours of training or study in the practice of
18 massage with a facility or instructor recognized by the board;

19 ~~(5)~~(4) Absence of unprofessional conduct;

20 ~~(6)~~(5) Professional liability insurance coverage ~~with limits at or above an amount set by the~~
21 ~~board pursuant to section 15 of this Act;~~ and

22 ~~(7)~~(6) Passing score on ~~an examination administered by a national certification board a~~
23 ~~nationally recognized competency examination~~ approved by the board in rules
24 promulgated pursuant to chapter 1-26.

1 ~~A license issued under this chapter is valid for a period of one year from the date it was~~
2 ~~issued and automatically expires unless it is renewed.~~ The board may refuse to grant a license
3 to any person based on failure to demonstrate the requirements of this section. An applicant may
4 appeal the denial of a license in compliance with chapter 1-26.

5 Section 6. That chapter 36-35 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Upon application and payment of a fee not to exceed seventy-five dollars, the board may
8 issue a temporary permit to practice as a licensed massage therapist to an applicant who has met
9 the requirements of subdivision 36-35-12(1) to (5), inclusive, pending completion and results
10 of the examination required pursuant to subdivision 36-35-12(6). A temporary license may be
11 issued no more than twice and is effective for a term of not more than one hundred eighty days.

12 A temporary license expires on the occurrence of the following:

- 13 (1) Issuance of a regular license;
- 14 (2) Failure to pass the licensing examination; or
- 15 (3) Expiration of the term for which the temporary license was issued.

16 Section 7. That chapter 36-35 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 The board shall automatically issue a license with an expiration date of September 30, 2014,
19 to any massage therapist licensed in South Dakota before July 1, 2013.

20 Section 8. That chapter 36-35 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 Unless automatically issued pursuant to this section, a license issued under this chapter is
23 valid until September thirtieth following the date it is issued and automatically expires unless
24 it is renewed.

1 Section 9. That § 36-35-13 be amended to read as follows:

2 36-35-13. For the purposes of this chapter, any of the following acts constitute
3 unprofessional conduct:

4 (1) Conviction of any felony, any crime involving or relating to the practice of massage,
5 or any crime involving dishonesty or moral turpitude;

6 (2) ~~Abuse of or addiction to alcohol, marijuana, or any controlled substance;~~

7 ~~(3) Providing the board false or misleading information on any application for a license~~
8 ~~or renewal of a license;~~

9 ~~(4)~~(3) Willful misconduct or negligence in the practice of massage;

10 ~~(5) Prescribing or administering controlled substances, narcotics, barbiturates, or other~~
11 ~~potentially habit forming substances unless done through separate licensure under~~
12 ~~state law;~~

13 ~~(6)~~(4) Exceeding the scope of practice of massage as defined in § 36-35-1;

14 ~~(7)~~(5) Engaging in any lewd or immoral conduct;

15 ~~(8)~~(6) Making ~~excessive or~~ fraudulent charges for services;

16 ~~(9)~~(7) Engaging in conduct which endangers the health or welfare of clients or other
17 persons; or

18 ~~(10)~~(8) Failure to comply with any provision of this chapter.

19 Section 10. That § 36-35-15 be amended to read as follows:

20 36-35-15. Any person holding a valid license or registration to practice massage from another
21 state whose requirements for licensure or registration are not less restrictive than this state is ~~not~~
22 ~~required to take the~~ exempted from the requirement for any examination for licensure by § 36-
23 35-12. Any person applying for a license under this section shall submit an application as
24 required by § 36-35-12 along with proof of a current license. ~~This section applies only to~~

1 ~~persons holding licenses from states which offer reciprocity to persons licensed by this state.~~

2 Section 11. That § 36-35-16 be amended to read as follows:

3 36-35-16. Any person holding a valid license under this chapter may renew that license by
4 paying the required renewal fee and providing proof of compliance with the continuing
5 education requirements set by the board ~~at least thirty days prior to the expiration of the current~~
6 ~~license. Any person who submits a license renewal less than thirty days prior to the expiration~~
7 ~~of the license but no later than the expiration date shall submit a seventy-five dollar late fee. If~~
8 ~~the board has not received a license renewal by the expiration date, the board shall notify the~~
9 ~~licensee within five days that the renewal has not been received and that the licensee may not~~
10 ~~practice until the license is renewed. Any person who submits a license renewal and provides~~
11 ~~proof of compliance with the continuing education requirements set by the board within thirty~~
12 ~~days after the expiration date shall submit a one hundred fifty dollar late fee. Any person whose~~
13 ~~license has lapsed shall reapply for a license be granted a license renewal.~~

14 Section 12. That § 36-35-18 be amended to read as follows:

15 36-35-18. ~~Any person holding a valid license under this chapter may obtain a certified~~
16 ~~duplicate license by submitting a fee to be set by the board by rule promulgated pursuant to~~
17 ~~chapter 1-26, not to exceed twenty-five dollars for each certified duplicate. The board may issue~~
18 ~~a duplicate license to a licensee upon request.~~

19 Section 13. That § 36-35-19 be amended to read as follows:

20 36-35-19. Any person licensed under this chapter shall complete eight hours of continuing
21 education relating to competence in the practice of massage on a biennial basis of a type and
22 from a facility or instructor approved by the board. ~~No more than four of the~~ The required
23 continuing education hours may be obtained by electronic means. The board may waive the
24 continuing education requirement upon proof of illness or hardship.

1 Section 14. That § 36-35-20 be amended to read as follows:

2 36-35-20. The board shall receive and may investigate any complaint filed with the board
3 alleging that any licensed massage therapist has violated the requirements of this chapter. The
4 board may inspect the place of business of any person with a license issued pursuant to this
5 chapter named in a complaint pursuant to this section during normal business hours or upon
6 written notice.

7 Section 15. That § 36-35-21 be amended to read as follows:

8 36-35-21. Any person holding a valid license under this chapter and engaged in the practice
9 of massage therapy shall carry malpractice or professional liability insurance coverage with a
10 company with a certificate of authority from the South Dakota Division of Insurance with limits
11 ~~at or in excess of the minimum amount established by the board~~ of no less than two hundred
12 fifty thousand dollars per occurrence. A licensee shall notify the board of any change of carrier
13 occurring after a license or renewal is granted..

14 Section 16. That § 36-35-24 be amended to read as follows:

15 36-35-24. The board may promulgate rules pursuant to chapter 1-26 in the following areas:

- 16 (1) The form and information required for any license application;
- 17 (2) A list of recognized facilities or instructors who may provide training or instruction
18 required for licensure or continuing education requirements;
- 19 (3) The amount of license fees;
- 20 (4) The procedures for conducting disciplinary proceedings;
- 21 (5) ~~The minimum limits of malpractice insurance to be carried by any person licensed~~
22 under this chapter; and procedures for conducting complaint investigations;
- 23 (6) The procedures for applying for an inactive license and the procedures to regain
24 active licensure; and

1 (7) Approval of national competency examinations.

2 Section 17. That ARSD 20:76:02:02 be amended to read as follows:

3 20:76:02:02. License fee schedule. The license fee schedule is as follows:

4 (1) ~~License fee, \$65~~ Temporary permit fee, \$50;

5 (2) Annual license renewal fee, ~~\$65~~ \$45;

6 (3) Inactive license fee, ~~\$65~~ \$25;

7 (4) Application fee, ~~\$100~~ \$75.

8 Section 18. That ARSD 20:76:08:01 be amended to read as follows:

9 20:76:08:01. Recognized facilities. The board may license an applicant who has completed
10 the training required by § 20:76:01:06 from the following South Dakota facilities ~~until July 1,~~
11 ~~2014, at which time the facility shall be accredited pursuant to § 20:76:08:02:~~

12 (1) Black Hills Health & Education Center;

13 (2) Headlines Academy;

14 (3) National American University;

15 (4) Pam's Massage School;

16 (5) SD School of Massage Therapy;

17 (6) Sioux Falls Therapeutic Massage & Education Center; and

18 (7) Springs Bath House School of Massage.