



## 2026 South Dakota Legislature

# House Bill 1223

Introduced by: **Representative** Heinemann

1 **An Act to revise the scope of practice for occupational therapy.**

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

3 **Section 1. That § 36-31-1 be AMENDED:**

4 **36-31-1.** Terms used in this chapter mean:

5 (1) "Board," the State Board of Medical and Osteopathic Examiners;

6 (2) "Instrument-assisted modalities," modalities that produce a biophysiological  
 7 response through the use of instruments or tools to target therapeutic treatment  
 8 to specific tissue, fascia, or muscle;

9 (3) "Occupational therapist," any person licensed to practice occupational therapy as  
 10 defined set forth in this chapter and whose license is in good standing;

11 ~~(3) "Occupational therapy," the evaluation, planning and implementation of a program~~  
 12 ~~of purposeful activities to develop or maintain adaptive skills necessary to achieve~~  
 13 ~~the maximal physical and mental functioning of the individual in his or her daily~~  
 14 ~~pursuits. The practice of occupational therapy includes consultation, evaluation,~~  
 15 ~~and treatment of individuals whose abilities to cope with the tasks of living are~~  
 16 ~~threatened or impaired by developmental deficits, the aging process, learning~~  
 17 ~~disabilities, poverty and cultural differences, physical injury or disease,~~  
 18 ~~psychological and social disabilities, or anticipated dysfunction. Occupational~~  
 19 ~~therapy services include such treatment techniques as task-oriented activities to~~  
 20 ~~prevent or correct physical or emotional deficits or to minimize the disabling effect~~  
 21 ~~of these deficits in the life of the individual; such evaluation techniques as~~  
 22 ~~assessment of sensory integration and motor abilities, assessment of development~~  
 23 ~~of self-care and feeding, activities and capacity for independence, assessment of~~  
 24 ~~the physical capacity for prevocational and work tasks, assessment of play and~~  
 25 ~~leisure performance, and appraisal of living areas for the handicapped; physical~~  
 26 ~~agent modalities limited to the upper extremities to enhance physical functional~~

performance, if certified in accordance with ~~§ 36-31-6~~; and specific occupational therapy techniques such as activities of daily living skills, designing, fabricating, or applying selected orthotic devices or selecting adaptive equipment, sensory integration and motor activities, the use of specifically designed manual and creative activities, specific exercises to enhance functional performance, and treatment techniques for physical capabilities for work activities. Such techniques are applied in the treatment of individual patients or clients, in groups, or through social systems;

(4) "Occupational therapy aide," any person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant;

(5) "Occupational therapy assistant," any person licensed to assist in the practice of occupational therapy, under the supervision of or with the consultation of a licensed an occupational therapist, and whose license is in good standing; and

(6) "~~Physical agent modalities and mechanical agents~~," modalities that produce a biophysiological response through the use of light, water, temperature, sound, or electricity, or mechanical devices. Physical agent modalities include:

~~(a) Superficial thermal agents such as hydrotherapy/whirlpool, cryotherapy (cold packs/ice), fluidotherapy, hot packs, paraffin, water, infrared, and other commercially available superficial heating and cooling technologies;~~

~~(b) Deep thermal agents such as therapeutic ultrasound, phonophoresis, and other commercially available technologies;~~

~~(c) Electrotherapeutic agents such as biofeedback, neuromuscular electrical stimulation, functional electrical stimulation, transcutaneous electrical nerve stimulation, electrical stimulation for tissue repair, high voltage galvanic stimulation, and iontophoresis and other commercially available technologies; and~~

~~(d) Mechanical devices such as vasopneumatic devices and CPM (continuous passive motion);~~

(a) Superficial thermal, deep thermal, or electrotherapeutic agents; or

(b) Mechanical devices, vasopneumatic devices, or continuous passive motion devices.

## **Section 2. That a NEW SECTION be added to chapter 36-31:**

The practice of occupational therapy is the evaluation, planning, and implementation of a program of purposeful activities to develop or maintain adaptive skills

1 necessary to achieve the maximal physical and mental functioning of an individual in the  
 2 individual's daily pursuits, and which involves:

3 (1) Consultation, evaluation, and treatment of individuals whose abilities to cope with  
 4 the tasks of living are threatened or impaired by developmental deficits, the aging  
 5 process, learning disabilities, poverty and cultural differences, physical injury or  
 6 disease, psychological and social difficulties, or anticipated dysfunction;

7 (2) Utilization of task-oriented activities as treatment techniques to prevent or correct  
 8 physical or emotional deficits, or to minimize the disabling effect of these deficits  
 9 in the life of the individual;

10 (3) Evaluation of the individual's:

11 (a) Sensory integration and motor abilities;

12 (b) Self-care and feeding;

13 (c) Activities and capacity for independence;

14 (d) Physical capacity for prevocational and work tasks;

15 (e) Play and leisure performance; and

16 (f) Living areas for the disabled;

17 (4) Physical and mechanical agents, and instrument-assisted modalities, to enhance  
 18 physical functional performance, if the licensee meets the requirements set forth  
 19 in section 5 or 6 of this Act, respectively; and

20 (5) The following specific occupational therapy techniques, applied in the treatment of  
 21 individual patients or clients, in groups, or through social systems:

22 (a) Using activities for daily living skills;

23 (b) Designing, fabricating, or applying selected orthotic devices or selecting  
 24 adaptive equipment;

25 (c) Integrating sensory and motor activities;

26 (d) Using manual and creative activities;

27 (e) Using exercises to enhance functional performance; and

28 (f) Addressing physical capabilities related to work activities.

29 **Section 3. That § 36-31-4 be AMENDED:**

30 **36-31-4.** Nothing in this chapter may be construed as preventing or restricting  
 31 the practice, services, or activities of:

32 (1) Any person licensed in this state by any other law from engaging in the profession  
 33 or occupation for which ~~he~~ the person is licensed; ~~or~~

- 1 (2) Any person employed as an occupational therapist or occupational therapy  
 2 assistant by the government of the United States or any agency ~~of it~~ thereof, if  
 3 ~~such~~ the person provides occupational therapy solely under the direction or control  
 4 of the ~~organization by which he is employed~~ employer; ~~or~~
- 5 (3) Any person pursuing a supervised course of study leading to a degree or certificate  
 6 in occupational therapy at an accredited or approved educational program, if the  
 7 person is designated by a title ~~which~~ that clearly indicates ~~his~~ the person's status  
 8 as a student or trainee; ~~or~~
- 9 (4) Any person fulfilling the supervised fieldwork experience requirements of  
 10 ~~subdivision § 36-31-6-(4)~~, if the experience constitutes a part of the experience  
 11 necessary to meet the requirement of that section; ~~or~~
- 12 (5) Any person employed as an occupational therapy aide; ~~or~~
- 13 (6) Any person performing occupational therapy services in the state if these services  
 14 are performed for no more than ten days in a calendar year in association with an  
 15 occupational therapist licensed under this chapter, if:
- 16 (a) The person is licensed under the law of another state ~~which~~ that has  
 17 licensure requirements at least as stringent as the requirements of this  
 18 chapter; ~~or~~
- 19 (b) The person meets the requirements for certification as an occupational  
 20 therapist, or a registered or a certified occupational therapy assistant,  
 21 established by the American ~~occupational therapy association~~ Occupational  
 22 Therapy Association; or
- 23 (7) Any person when providing therapy as related services as defined in a student's  
 24 individualized educational plan, ~~the therapy shall not be an activity~~ and which  
 25 ~~supplants or duplicates~~ does not supplant or duplicate the educational instruction  
 26 program provided by the teaching profession.

27 **Section 4. That § 36-31-6 be AMENDED:**

28 **36-31-6.** Any applicant ~~applying~~ for a license as an occupational therapist or as  
 29 an occupational therapy assistant shall file a written application provided by the board,  
 30 showing and submit evidence, to the satisfaction of the board, ~~that he meets the following~~  
 31 requirements the applicant:

- 32 (1) ~~Residence: Applicant need not be a resident of this state;~~
- 33 (2) ~~Character: Applicant shall be~~ Is of good moral character;
- 34 (3) ~~Education: Applicant shall present evidence satisfactory to the board of having~~

- 1        ~~(2)~~ Has successfully completed the academic requirements of an educational program  
 2            in occupational therapy, ~~recognized by the board;~~  
 3        ~~(a)~~ ~~The occupational therapy educational program must be accredited by the~~  
 4            ~~committee on allied health education and accreditation/American Medical~~  
 5            ~~Association in collaboration with the American Occupational Therapy Association;~~  
 6        ~~(b)~~ ~~The occupational therapy assistant educational program must be approved by the~~  
 7            ~~American Occupational Therapy Association.~~  
 8        ~~(4)~~ ~~Experience: Applicant shall submit to the board evidence of having, and which is~~  
 9            ~~accredited by the Accreditation Council for Occupational Therapy Education;~~  
 10        ~~(3)~~ Has successfully completed a period of supervised fieldwork experience arranged  
 11            by the recognized educational institution where ~~he~~ the applicant met the academic  
 12            requirements ~~or by the nationally recognized professional association, as follows:~~  
 13            (a)    For an occupational therapist, a minimum of six months ~~of supervised~~  
 14            ~~fieldwork experience is required; or~~  
 15            (b)    For an occupational therapy assistant, a minimum of two months ~~of~~  
 16            ~~supervised fieldwork experience is required.; and~~  
 17        ~~(5)(4)~~ ~~Examination: An applicant for licensure as an occupational therapist or as an~~  
 18            ~~occupational therapy assistant shall pass~~ Has passed an examination approved by  
 19            the board upon recommendation by the occupational therapy ~~committee;~~  
 20        ~~(6)~~ ~~Certification: In order to apply physical agent modalities as defined in § 36-31-1,~~  
 21            ~~an occupational therapist or occupational therapist assistant is qualified pursuant~~  
 22            ~~to this subdivision, as follows:~~  
 23            ~~(a)~~ ~~Has successfully completed twenty five hours of American Occupational Therapy~~  
 24            ~~Association or American Physical Therapy Association approved education covering~~  
 25            ~~physical agent modalities and completed a supervised mentorship to include five~~  
 26            ~~case studies on each class of modality to be incorporated into patient care;~~  
 27            ~~(b)~~ ~~Is certified as a hand therapist by the Hand Therapy Certification commission or~~  
 28            ~~other equivalent entity recognized by the board; or~~  
 29            ~~(c)~~ ~~Has completed education during a basic occupational therapy educational program~~  
 30            ~~that included demonstration of competencies on each class of the physical agent~~  
 31            ~~modalities.~~  
 32        ~~A supervising therapist or mentor may be a physical therapist, a certified hand therapist,~~  
 33            ~~or an occupational therapist who has completed a supervised mentorship and has~~  
 34            ~~five years of clinical experience utilizing each class of physical agent modalities; or~~

1 ~~an occupational therapist who has graduated from an occupational therapy~~  
2 ~~program whose curriculum includes physical agent modality education council.~~

3 **Section 5. That a NEW SECTION be added to chapter 36-31:**

4 In order to apply physical and mechanical agents, an occupational therapist or  
5 occupational therapist assistant must demonstrate to the satisfaction of the board:

- 6 (1) Completion of:
  - 7 (a) Twenty-five hours of education covering physical and mechanical agents,
  - 8 approved by the American Occupational Therapy Association or American
  - 9 Physical Therapy Association; and
  - 10 (b) A supervised mentorship comprised of at least five case studies on each
  - 11 class of agent to be incorporated into patient care;
- 12 (2) Certification as a hand therapist by the Hand Therapy Certification Commission or
- 13 other equivalent entity recognized by the board; or
- 14 (3) Completion of education during an entry-level occupational therapy educational
- 15 program that included a demonstration of competencies on each class of physical
- 16 and mechanical agents.

17 A supervising mentor may be a physical therapist, a certified hand therapist, an  
18 occupational therapist who has completed a supervised mentorship and has five years of  
19 clinical experience utilizing each class of physical and mechanical agent, or an occupational  
20 therapist who has graduated from an occupational therapy program whose curriculum  
21 included physical and mechanical agent education.

22 **Section 6. That a NEW SECTION be added to chapter 36-31:**

23 In order to apply an instrument-assisted modality, an occupational therapist or  
24 occupational therapist assistant must demonstrate, to the satisfaction of the board,  
25 completion of post-professional continuing education that included a demonstration of  
26 competency for the instrument-assisted modality to be used.

27 **Section 7. That § 36-31-7 be AMENDED:**

28 **36-31-7.** ~~The education requirements of subsection 36-31-6(3)(a) for an~~  
29 occupational therapist, as set forth in § 36-31-6, are waived if the applicant:

- 30 (1) Has practiced as an occupational therapy assistant for four years;

1           (2)     Has completed the supervised fieldwork experience requirements ~~of subsection 36-~~  
 2           ~~31-6(4)(a)~~ for an occupational therapist, as set forth in § 36-31-6, before January  
 3           1, 1988; and

4           (3)     Has passed the examination approved by the board for occupational therapists.

5     **Section 8. That § 36-31-9 be AMENDED:**

6           **36-31-9.** Any foreign-trained occupational therapist or occupational therapy  
 7           assistant shall satisfy the examination requirements of ~~subdivision 36-31-6(5)~~ § 36-31-6.  
 8           The board shall require foreign-trained applicants to furnish proof of good moral character  
 9           and completion of educational and supervised fieldwork requirements substantially equal  
 10          to those contained in § 36-31-6 before taking the examination.