

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

400B0332

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1049** - 1/26/98

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the licensing of certain

2 counselors and to repeal certain provisions relating to the licensing of counselor associates.

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

4 Section 1. That § 36-32-13 be amended to read as follows:

5 36-32-13. ~~The board shall issue a license as a "licensed professional counselor" to each~~

6 ~~applicant who files an application upon a form and in such a manner as the board prescribes,~~

7 ~~accompanied by such fee as is required in this chapter, and who~~ An applicant for a license as a

8 licensed professional counselor shall file an application, and an application fee with the board on

9 a form and in the manner prescribed by the board. The board shall issue a license as a licensed

10 professional counselor to an applicant who pays a license fee and furnishes satisfactory evidence

11 of the following to the board:

12 (1) The applicant is at least nineteen years of age;

13 (2) The applicant is of good moral character;

14 (3) The applicant resides in the State of South Dakota, or is granted an exemption to

15 residency by the board, pursuant to § 36-32-16;

(4) The applicant is not in violation of any of the provisions of this chapter and the rules adopted pursuant to this chapter;

(5) The applicant has received a doctorate or master's degree in counseling, ~~or in a field which is primarily counseling in nature and has included~~ including a supervised counseling ~~practicum~~ internship, which consists of at least forty-eight semester credit hours, which are from an accredited institution of higher learning. The board shall use the standards of nationally recognized professional counseling associations as guides in establishing the standards for counselor licensure;

(6) The applicant has ~~one thousand eight hundred~~ two thousand hours of supervised full-time experience in professional counseling acceptable to the board, ~~no more than fifty percent~~ all of which ~~may~~ shall be obtained ~~prior~~ subsequent to the granting of the master's degree; and

(7) The applicant demonstrates competence in professional counseling by passing an examination, written, oral or situational, or all three, as the board may prescribe by rule promulgated pursuant to chapter 1-26; ~~and~~

~~(8) Within the period from July 1, 1990 until July 1, 1992, an applicant shall be exempt from the provisions of this section who:~~

~~(a) Has at least a master's degree in counseling or a related field from an institution of higher education;~~

~~(b) Is in compliance with subdivisions (1) through (4);~~

~~(c) Has supervised counseling experience acceptable to the board; and~~

~~(d) Has passed an examination selected or prepared by the board for this purpose.~~

Section 2. That § 36-32-14 be repealed.

~~36-32-14. The board shall issue a certificate as a "counselor associate" to each applicant who files an application upon a form and in such manner as the board prescribes by rule promulgated~~

pursuant to chapter 1-26, submits the fees as are required by this chapter, and who furnishes satisfactory evidence of the following to the board:

~~— (1) — The applicant has complied with the provisions prescribed in subdivisions 36-32-13 (1) through (5); and~~

~~— (2) — The applicant has a plan for obtaining counseling experience under the direct supervision of a licensed professional counselor or a licensed mental health care professional.~~

Section 3. That § 36-32-15 be repealed.

~~— 36-32-15. The counselor associate may not practice without direct supervision by a licensed professional counselor. The plan for supervision of the counselor associate shall be approved by the board prior to any actual performance of counseling on the part of the counselor associate.~~

Section 4. That § 36-32-20 be amended to read as follows:

36-32-20. ~~All licenses~~ Any license issued by the board ~~shall expire~~ expires on the first last day of January December of the year ~~succeeding the~~ of issuance thereof. A license may be renewed ~~every~~ each year in the manner and upon the payment of a fee ~~to be promulgated~~ established by the board by rules promulgated pursuant to chapter 1-26. A licensee failing to renew a license prior to February first may be required to pay a late fee as prescribed in rules promulgated by the board. A license not renewed by July first is inactive, and may not be renewed.

Section 5. That § 36-32-22 be amended to read as follows:

36-32-22. The board shall annually ~~publish~~ furnish upon payment of a fee set by the board by rules promulgated pursuant to chapter 1-26, a list of the names and addresses of all persons licensed under this chapter who are:

(1) Licensed professional counselors ~~under this chapter~~; and

(2) ~~Counselor associates under this chapter~~ Licensed professional counselors - mental health.

Section 6. That § 36-32-24 be amended to read as follows:

~~36-32-24. Failure of a licensee to renew his license on or before the first day of July of the year of expiration shall constitute a forfeiture of such license. However, any person who has so forfeited his license under this chapter may have it restored to him by making written application therefor and by payment of the renewal fee for the current term.~~ Any licensed professional counselor or licensed professional counselor - mental health who allows the license to become inactive may, within two years of the expiration of the license, have the inactive license restored to active status by paying the renewal fee for each year during which the license was inactive, along with any applicable late fees. However, no inactive license may be restored unless the applicant meets all continuing education requirements.

Section 7. That § 36-32-25 be amended to read as follows:

~~36-32-25. Any licensee who does not renew his license desiring to regain licensure after allowing a license to be inactive for two or more consecutive years because of sickness or other reason, or absence from the State of South Dakota, shall take the examination as prescribed for an applicant to become a licensee and comply with all the provisions hereof, applicable to any applicant to become a licensee for licensure.~~

Section 8. That § 36-32-26 be amended to read as follows:

~~36-32-26. The board may promulgate rules pursuant to chapter 1-26 that to set standards for professional practice, establish the procedure and fees for the~~ and establish procedures and fees for applications, licensure, license renewal, reciprocal license, duplicate license, eligibility, continuing education, supervision and, examination for licensed professional counselors and counselor associates licensed professional counselors - mental health.

Section 9. That § 36-32-27 be amended to read as follows:

~~36-32-27. No licensed professional counselor or counselor associate~~ licensed professional counselor - mental health or his a counselor's employee may disclose any information he the

counselor may have acquired from persons consulting ~~him~~ the counselor in ~~his~~ a professional capacity that was necessary to enable ~~him~~ the counselor to render services in ~~his~~ a professional capacity to those persons except:

- (1) With the written consent of the person or, in the case of death or disability, of ~~his~~ the person's own personal representative, other person authorized to sue, or the beneficiary of an insurance policy on ~~his~~ the person's life, health, or physical condition;
- (2) That a licensed professional counselor or ~~counselor-associate~~ licensed professional counselor - mental health is not required to treat as confidential a communication that reveals the contemplation or the 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 professional counselor or ~~counselor-associate~~ licensed professional counselor - mental health indicated that the minor was the victim or subject of a crime, the licensed professional counselor or ~~counselor-associate~~ licensed professional - mental health may be required to testify fully in any examination, trial, or other proceeding in which the commission of such a crime is the subject of inquiry;
- (4) If the person waives the privilege by bringing charges against the licensed professional counselor or ~~counselor-associate~~ licensed professional counselor - mental health.

Section 10. That § 36-32-29 be amended to read as follows:

36-32-29. The license of a licensed professional counselor, licensed counselor, or ~~counselor-associate~~ licensed professional counselor - mental health may be revoked, suspended, or canceled upon any of the following grounds:

- (1) The licensee is guilty of fraud in the practice of counseling or fraud or deceit in the licensee's admission to the practice of counseling;
- (2) The licensee has been convicted during the past five years of a felony. The conviction of a felony means the conviction of any offense which, if committed within the State

1 of South Dakota, would constitute a felony;

2 (3) The licensee is engaged in the practice of counseling under a false or assumed name
3 and has not registered that name pursuant to chapter 37-11, or is impersonating
4 another practitioner of a like or different name;

5 (4) The licensee is addicted to the habitual use of intoxicating liquors, narcotics or
6 stimulants to such an extent as to incapacitate the licensee from the performance of
7 the licensee's professional duties;

8 (5) The physical or mental condition of the licensee is determined by a competent medical
9 examiner to be such as to jeopardize or endanger those who seek relief from the
10 licensee. A majority of the board may demand an examination of the licensee by a
11 competent medical examiner selected by the board at the board's expense. If the
12 licensee fails to submit to the examination, this constitutes immediate grounds for
13 suspension of the licensee's license;

14 (6) Obtaining or attempting to obtain a license, certificate, or renewal thereof by bribery
15 or fraudulent representation;

16 (7) Knowingly making a false statement in connection with any application under this
17 chapter;

18 (8) Knowingly making a false statement on any form promulgated by the board in
19 accordance with this chapter or the rules promulgated pursuant to this chapter;

20 (9) The licensee has violated any provision of this chapter or the rules promulgated
21 pursuant to this chapter; and

22 (10) The licensee has been found to be in violation of the ethical standards of the American
23 Counseling Association.

24 Section 11. That § 36-32-35 be repealed.

25 ~~36-32-35. The secretary-treasurer of the board shall keep a record book in which shall be~~

1 ~~entered the names of all persons to whom licenses have been granted under this chapter, the~~
2 ~~license number of each, and the date of granting such license and renewal thereof and other~~
3 ~~matters of record, and the book so provided and kept shall be deemed and considered a book of~~
4 ~~records, and a transcript of any record therein or a license that is not entered therein, the name~~
5 ~~and license number of the date of granting such license to a person charged with a violation of~~
6 ~~any of the provisions of this chapter, certified under the hand of the secretary-treasurer, and the~~
7 ~~seal of the board, shall be admitted as evidence in any of the courts of the state of South Dakota.~~
8 ~~The original books, records and papers of the board shall be kept at the office of the~~
9 ~~secretary-treasurer of said board. The secretary-treasurer shall furnish any person making~~
10 ~~application therefor a copy of any such record, certified by him as secretary-treasurer, upon~~
11 ~~payment of a fee promulgated by the board pursuant to chapter 1-26.~~

1 **BILL HISTORY**

2 1/13/98 First read in House and referred to Commerce. H.J. 28

3 1/22/98 Scheduled for Committee hearing on this date.

4 1/22/98 Commerce Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 177