

## 2020 South Dakota Legislature

**House Bill 1136****AMENDMENT 1136I FOR THE INTRODUCED BILL**

1 **An Act to provide for the licensure and regulation of practitioners of acupuncture**  
2 **and Oriental medicine and to establish the Acupuncture Licensing Board and**  
3 **acupuncture regulation fund.**

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

5 **Section 1.** That a NEW SECTION be added:

6 **36-39-1. Definitions.**

7 Terms used in this Act mean:

- 8 (1) "Acupressure," the applications of pressure to acupuncture points;  
9 (2) "Acupuncture needle," a sterile single-use needle designed exclusively for  
10 acupuncture purposes with a solid core and a tapered point, being constructed of  
11 stainless steel, gold, silver, or other materials approved by the board with or  
12 without the use of electrical stimulation;  
13 (3) "Acupuncture points," specific anatomical locations used in the practice of  
14 acupuncture;  
15 (4) "Asian Bodywork Therapy," pressure or manipulation of the body, primarily with  
16 the hands, along meridians or acupuncture points; external application of medicinal  
17 plants or food; and exercise suggestions;  
18 (5) "Board," the Acupuncture Licensing Board established in § 36-39-2;  
19 (6) "Electrical stimulation," a method of stimulating acupuncture points with an  
20 electrical current that may be performed by attaching a device to an acupuncture  
21 needle or may be performed transcutaneously without penetrating the skin;  
22 (7) "Licensed acupuncturist," any person licensed to practice acupuncture pursuant to  
23 this chapter;  
24 (8) "NCCAOM," the National Certification Commission for Acupuncture and Oriental  
25 Medicine, a not-for-profit corporation granting certification to a person who has  
26 met the standards of competence established for either NCCAOM certification in

1 acupuncture or NCCAOM certification in Oriental medicine and is current with the  
2 required continuing education;

3 (9) "Oriental dietary and lifestyle therapy," utilizing herbs, foods, food concentrated,  
4 food supplements, or dietary supplements, while advising a patient regarding  
5 lifestyle modifications according to the principles of Oriental medicine;

6 (10) "Oriental medicine," a system of healing arts using well-established Oriental  
7 medical therapies and procedures for the purpose of normalizing physiological  
8 functions including pain control; the promotion, maintenance and restoration of  
9 health and well-being; strengthening the body; and improving energy balance.  
10 Treatment of the patient is achieved through specialized methods, diagnosing  
11 imbalances within the body and treating the body with acupuncture and other  
12 related Oriental medicine therapies and techniques.

13 **Section 2.** That a NEW SECTION be added:

14 **36-39-2. Board--Membership--Terms of service--Duties--Meetings.**

15 There is hereby established the Acupuncture Licensing Board within the  
16 Department of Health. The board shall submit records, information, and reports in the  
17 form and as required by the secretary of health. The board shall report at least annually  
18 to the Department of Health.

19 The board consists of five members appointed by the Governor. Three members  
20 shall be licensed acupuncturists, one member shall be a licensed health care professional  
21 certified to perform acupuncture, and one member shall represent the consumer. Each  
22 member shall serve a three-year term and may serve no more than three consecutive  
23 three-year terms. The board shall meet up to twice a year to:

24 (1) ~~determine~~Determine and finalize any refusal to grant a license or cancellation,  
25 revocation, or suspension of a license; and

26 (2) Conduct any business that may properly come before the board.

27 Board members shall serve without compensation, but shall be reimbursed for per  
28 diem and travel for up to two meetings per year.

29 At the expiration of a term, or if a vacancy occurs, the Governor shall appoint a  
30 new board member. The Governor may stagger the terms to enable the board to have  
31 different terms expire each year. The Governor may remove any member from the board  
32 for neglect of any duty required by law or for incompetency or unprofessional or  
33 dishonorable conduct.

1 **Section 3.** That a NEW SECTION be added:

2 **36-39-3. Officers of the board--Bond of secretary-treasurer.**

3 The board shall organize annually by electing a president, vice-president, and  
4 secretary-treasurer. The secretary-treasurer of the board may be required to give a bond  
5 in any sum and with any conditions as the board directs.

6 **Section 4.** That a NEW SECTION be added:

7 **36-39-4. Acupuncture and Oriental medicine--Defined.**

8 For the purposes of this chapter, acupuncture and Oriental medical practice is a  
9 comprehensive system of health care using traditional and modern Oriental medical theory  
10 and its unique methods of diagnosis and treatment. The treatment techniques of  
11 acupuncture practice include the insertion of acupuncture needles through the skin and  
12 the use of other biophysical methods of acupuncture point stimulation, including the use  
13 of heat or cold, Asian bodywork therapy techniques, Oriental medicine, electrical  
14 stimulation, Oriental dietary and lifestyle therapies, breathing techniques, and exercise  
15 based on Oriental medicine principles.

16 **Section 5.** That a NEW SECTION be added:

17 **36-39-5. Acupuncture and Oriental medicine--Practices and diagnostic**  
18 **techniques.**

19 The practice of acupuncture and Oriental medicine shall include the following  
20 practices and diagnostic techniques:

21 (1) Acupuncture, the invasive and noninvasive stimulation of anatomical locations of  
22 the body, alone and in combination, including the practice of:

23 (a) Auricular, hand, nose, face, foot or scalp microsystem therapy;

24 (b) Stimulation of points, areas of the body, substances topically applied to the  
25 body, and channels by the use of any of the following:

26 (i) Needles, lancets, moxibustion, Qi Gong, thermal methods, heat,  
27 cold, herbal preparations, laser, light, sound, vibration, pressure,  
28 magnetism, electricity, suction, water, or other devices or means;

29 and

30 (ii) Manual therapy including massage, acupressure, acupuncture,  
31 trigger point dry needling, reflexology, shiatsu, mobilization,

1 ~~manipulation, tui-na and acutotement or stimulation that does not~~  
2 ~~pierce the skin; and~~

3 ~~(iii) Injection therapy including the injection of inert substances which~~  
4 ~~include injectable saline, vitamin B12, and homeopathics for the~~  
5 ~~purpose of the stimulation of acupuncture points, including painful~~  
6 ~~trigger points. Injection therapy of any of the substances mentioned~~  
7 ~~above is limited by training approved by the National Certification~~  
8 ~~Commission for Acupuncture and Oriental Medicine and subject to~~  
9 ~~federal regulation;~~

10 (2) Diagnostic techniques including:

11 (a) The use of observation, listening, smelling, inquiring, palpation,  
12 electrodermal screenings, and thermography;

13 (b) Diagnostic examination, testing and procedures as limited by training; and

14 (c) The use of routine functional testing, either physical or laboratory tests,  
15 may be employed; and

16 (3) Adjunct therapies including:

17 (a) Dietary and nutritional counseling and the prescription or administration of  
18 food, beverages, dietary supplements, and herbal medicines  
19 therapeutically;

20 (b) Recommendation of breathing techniques and therapeutic exercises; and

21 (c) Lifestyle, behavioral, and stress counseling.

22 **Section 6.** That a NEW SECTION be added:

23 **36-39-6. Acupuncture practice--Persons not requiring a license.**

24 The following persons, within the person's scope of practice, may practice  
25 acupuncture without a license under § 36-39-2:

26 (1) A physician or osteopath licensed under chapter 36-4;

27 ~~(2) A chiropractor licensed under chapter 36-5 Any person otherwise licensed under~~  
28 ~~title 36; and~~

29 (3) Any acupuncturist licensed to practice in another state or country who is in the  
30 state for the sole purpose of providing a tutorial or workshop not to exceed thirty  
31 days in one calendar year; and

32 ~~(4) Any acupuncturist licensed to practice in another state or country may practice~~  
33 ~~acupuncture in this state without a license if the acupuncturist is conducting~~

1 ~~treatment in relation to disaster relief for a period of time not to exceed three~~  
2 ~~consecutive months.~~

3 **Section 7.** That a NEW SECTION be added:

4 **36-39-7. Advertising or practicing without valid license--Violation as**  
5 **misdemeanor.**

6 Any person who advertises, practices, or attempts to practice acupuncture or who  
7 uses the title, acupuncturist, or any other authorized title as provided in § 36-39-8 to  
8 induce any person to believe that the person is an acupuncturist without having a valid  
9 license or renewal certificate is guilty of a Class 1 misdemeanor.

10 **Section 8.** That a NEW SECTION be added:

11 **36-39-8. Authorized titles.**

12 Only a person licensed or otherwise authorized under this chapter may use the title  
13 acupuncturist, licensed acupuncturist, ~~doctor of acupuncture and Oriental medicine,~~ or  
14 Oriental medicine practitioner.

15 **Section 9.** That a NEW SECTION be added:

16 **36-39-9. Requirements for licensure--Fees.**

17 Each applicant for licensure under this chapter shall:

- 18 (1) Have successfully completed a graduate level educational program that is offered  
19 by an institution of higher education and accredited by a national or regional  
20 agency recognized by the United States Department of Education, or another  
21 equivalent program approved by the board. In the case of an applicant who has  
22 completed education and training outside of the United States, the applicant shall  
23 document education and clinical experience that meets the standard established in  
24 this section in a manner determined by the board;  
25 (2) Pass a nationally recognized examination approved by the board or have current  
26 active status as a ~~Diplomate of Chinese Herbology,~~ Diplomate of Oriental Medicine,  
27 or Diplomate of Acupuncture of the NCCAOM;  
28 (3) Pass a nationally recognized ethics course administered or approved by the  
29 NCCAOM;  
30 (4) Meet the NCCAOM professional development activity requirements to maintain  
31 NCCAOM certification, or equivalent certification. The NCCAOM shall serve as a

- 1 verifying entity, providing to the board the proof of continuing education and  
2 recertification of all acupuncturists licensed in the state, ~~as well as any reported~~  
3 ~~ethical or criminal disciplinary actions involving any applicant;~~  
4 (5) Complete an application for licensure provided by the board; and  
5 (6) Submit the required fee for licensure established by the board in rules promulgated  
6 under § ~~36-39-1136-39-13.~~

7 **Section 10.** That a NEW SECTION be added:

8 **36-39-10. License renewal.**

9 Each licensee shall renew the acupuncture license every two years, ~~in the even-~~  
10 ~~numbered years,~~ prior to the date established by the board, by submitting the following:

- 11 (1) The completed application for license renewal provided by the board;  
12 (2) Proof of NCCAOM recertification compliance; and  
13 (3) The required fee for license renewal, established by the board in rules promulgated  
14 under § ~~36-39-1136-39-13.~~

15 The board ~~may shall~~ require proof of continuing education ~~or other proof of~~  
16 ~~competency~~ as a requirement for renewal. A licensed acupuncturist who provides the  
17 board with false information or makes a false statement to the board shall be subject to  
18 disciplinary actions, including denial, suspension, or revocation of licensure.

19 Each person licensed under this chapter who wants to renew the license shall obtain  
20 a renewal of license from the secretary-treasurer of the board on or before the thirty-first  
21 day of December of each odd-numbered year. The secretary-treasurer shall issue the  
22 renewal upon payment of the fee established in rules promulgated by the board under  
23 § ~~36-39-13.~~ The renewal license shall be in the form of a receipt acknowledging payment  
24 of the required fee and signed by the secretary-treasurer.

25 **Section 11.** That a NEW SECTION be added:

26 **36-39-11. License renewal--Sixty-day grace period.**

27 Any licensee who fails to renew the license prior to the end of the licensing period  
28 may, within sixty days, renew the license by submitting the following:

- 29 (1) The completed application for licensure renewal form provided by the board;  
30 (2) The required fee for annual license renewal, and  
31 (3) Proof of NCCAOM recertification compliance; and  
32 (4) The required late fee established by the board in rules promulgated under § 36-  
33 39-11.

1           Any license not renewed at the end of the sixty-day grace period is expired and  
2           the licensee is not eligible to practice within the state. For reinstatement of an expired  
3           license within one year of the date of renewal, the board may establish requirements or  
4           fees in addition to the fee for license renewal and may require the former licensee to  
5           reapply as a new applicant.

6           **Section 12.** That a NEW SECTION be added:

7                   **36-39-12. Sterilized equipment required.**

8                   An acupuncturist shall use sterilized equipment that has been sterilized under  
9                   standards of the National Centers for Disease Control and Prevention.

10           **Section 13.** That a NEW SECTION be added:

11                   **36-39-13. Promulgation of rules.**

12                   The board may promulgate rules pursuant to chapter 1-26 to establish:

- 13                   (1) The application form and other requirements for license application and renewal;  
14                   (2) The amount of license fees and license renewal fees, neither of which may exceed  
15                   a maximum of one thousand ~~two-five~~ hundred dollars; and  
16                   (3) Any additional requirements or conditions for the reinstatement of an expired  
17                   license.

18           **Section 14.** That a NEW SECTION be added:

19                   **36-39-14. Proceedings--Right to appeal.**

20                   Any proceeding relative to the cancellation, revocation, or suspension of a license  
21                   shall conform to the procedures set forth in chapter 1-26.

22                   Any party who is aggrieved by an act, ruling, or decision of the Acupuncture  
23                   Licensing Board relating to refusal to grant a license or cancellation, revocation, or  
24                   suspension of a license may appeal pursuant to chapter 1-26.

25           **Section 15.** That a NEW SECTION be added:

26                   **36-39-15. Acupuncture regulation fund--Establishment--Continuous**  
27                   **appropriation.**

28                   There is hereby established in the state treasury the acupuncture regulation fund.  
29                   All fees received by the board shall be forwarded to the state treasurer for deposit into  
30                   the acupuncture regulation fund. Any money in the fund is continuously appropriated to

1 the board for the purposes of the operation of the board and the implementation and  
2 administration of this chapter. The total expenses incurred by the board may not exceed  
3 the total amount of funds collected.

4 **Section 16.** That a NEW SECTION be added:

5 **36-39-16. License signatures and seal--Display of license.**

6 A license to practice acupuncture shall be signed by two members of the board and  
7 authenticated by the seal of the board. The license and renewal certificate shall be  
8 conspicuously displayed at the office of the practitioner.

9 **Section 17.** That a NEW SECTION be added:

10 **36-39-17. Grounds for license refusal or revocation--Promulgation of rules.**

11 The board may, in compliance with chapter 1-26, refuse to grant a license to any  
12 person otherwise qualified, and may revoke the license of any acupuncturist who is not of  
13 good moral character; who solicits professional patronage by agents; who is guilty of  
14 unprofessional conduct, incompetency, habitual intoxication, the use of narcotics, fraud,  
15 or deception; who is convicted of a felony; or who practices contrary to the provisions of  
16 this chapter or the rules of the board. The board shall define by rule, pursuant to chapter  
17 1-26, the grounds for refusing to license or for license revocation.

18 **Section 18.** That a NEW SECTION be added:

19 **36-39-18. Required state and federal criminal background check.**

20 Each applicant for licensure shall submit to a state and federal criminal background  
21 investigation by means of fingerprint checks by the Division of Criminal Investigation and  
22 the Federal Bureau of Investigation. Upon application, the board shall submit completed  
23 fingerprint cards to the Division of Criminal Investigation. Upon completion of the criminal  
24 background check, the Division of Criminal Investigation shall forward to the board all  
25 information obtained as a result of the criminal background check. This information shall  
26 be obtained prior to the permanent licensure of any applicant. The board may require a  
27 state and federal criminal background check for any licensee who is the subject of a  
28 disciplinary investigation by the board. Failure to submit to or cooperate with the criminal  
29 background investigation is grounds for denial of an application or may result in revocation  
30 of a license. The applicant shall pay for any fees charged for the cost of fingerprinting or  
31 the criminal background investigation.



1 **Section 19.** This Act is effective January 1, 2022.

AMENDMENT