

# State of South Dakota

NINETY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2016

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## HOUSE HEALTH AND HUMAN SERVICES ENGROSSED NO. **HB 1027** - 01/21/2016

Introduced by: The Committee on Health and Human Services at the request of the Board of  
Massage Therapy

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding licensure of massage  
2 therapists.

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

4 Section 1. That § 36-35-1 be amended to read:

5 36-35-1. Terms in this chapter mean:

6 (1) "Board," the Board of Massage Therapy;

7 (2) "Licensee," a person who meets the qualifications for licensure pursuant to this  
8 chapter and holds a valid license to practice massage therapy;

9 (3) "Massage," the systematic mobilization of the soft tissues of the body through the  
10 application of hands, feet, or devices for the purposes of therapy, relaxation, or  
11 education through means which include:

12 (a) Pressure, friction, stroking, rocking, kneading, percussion, compression, or  
13 stretching;

14 (b) External application of water, heat, cold, lubricants, or other topical agents; or



1 (c) The use of devices that mimic or enhance the actions done by of human hands  
2 or feet; and

3 ~~(3)~~(4) "Practice of massage therapy," the performance of massage for a fee or other  
4 compensation or holding oneself out to the public as performing massage.

5 Section 2. That § 36-35-2 be amended to read:

6 36-35-2. The board consists of five members appointed by the Governor. The ~~terms of the~~  
7 ~~initial members of the board shall be staggered by the drawing of lots with three of the initial~~  
8 ~~members serving a term of three years, two of the initial members serving a term of two years,~~  
9 ~~and one of the initial members serving a term of one year. Any subsequent term on the term of~~  
10 ~~a board member is three years. One member of the board shall be a person not licensed by the~~  
11 ~~board. Four members of the board shall be persons licensed by the board. The Governor shall~~  
12 ~~fill any vacancy by appointment to complete the unexpired portion of ~~that member's term~~ the~~  
13 ~~vacancy. No person may serve more than three consecutive full terms on the board. The~~  
14 ~~appointment to an unexpired term is not considered a full term.~~

15 The terms of members begin on October thirty-first of the calendar year in which the  
16 Governor appoints the member, unless otherwise designated by the Governor. The appointee's  
17 term expires on October thirtieth in the third year of appointment.

18 ~~Any member's term ending June 30, 2013, or thereafter is extended to October thirtieth in~~  
19 ~~the year the term is to expire.~~

20 Section 3. That § 36-35-4 be amended to read:

21 36-35-4. The board shall ~~select~~ annually elect from its members a president, vice-president,  
22 and secretary ~~at its annual meeting. The board may hire an executive secretary to perform any~~  
23 ~~managerial, clerical, or other duties directed by the board.~~

24 Section 4. That § 36-35-5 be amended to read:

1       36-35-5. The board shall hold ~~an annual meeting~~ at least two meetings per year at a place  
2 and time set by the board. The board may hold ~~special~~ additional meetings at a time and place  
3 set by the president or a majority of the board ~~by giving written notice to the board prior to the~~  
4 ~~meeting.~~

5       Section 5. That § 36-35-8 be amended to read:

6       36-35-8. Any person engaged in the practice of massage in this state shall conspicuously  
7 display a valid license from the board in the ~~person's~~ licensee's regular place of business. If the  
8 licensee is providing massage therapy outside of the licensee's regular place of business, the  
9 licensee shall, upon request, produce photo identification and proof of licensure. Failure to  
10 comply with this section is a petty offense.

11       Section 6. That § 36-35-10 be amended to read:

12       36-35-10. Any person who engages in the practice of massage or holds himself or herself  
13 out to the public as engaged in the practice of massage without a license issued pursuant to this  
14 chapter, or owns, operates or manages a business which knowingly employs or contracts with  
15 any unlicensed person to offer or provide massage therapy, is guilty of a Class 1 misdemeanor.  
16 The board may ~~file~~ bring a civil action to enjoin any ~~person engaging in the practice of massage~~  
17 ~~without a license~~ violation of this chapter.

18       Section 7. That § 36-35-12.1 be amended to read:

19       36-35-12.1. Upon application and payment of a an application fee not to exceed seventy-five  
20 dollars, the board may issue a temporary permit to practice ~~as a licensed massage therapist~~  
21 massage therapy to an applicant who has met the requirements of subdivision 36-35-12(1) to  
22 (4), inclusive, pending completion and results of the examination required pursuant to  
23 subdivision 36-35-12(5), if the applicant intends to practice massage therapy in the state during  
24 the time the permit is valid. A temporary ~~license~~ permit may be issued no more than twice and

1 is effective for a term of not more than ~~one hundred eighty~~ ninety days. A temporary ~~license~~  
2 permit automatically expires on the occurrence of the following:

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

6 Section 8. That § 36-35-12.2 be repealed.

7 ~~36-35-12.2. The board shall automatically issue a license with an expiration date of~~  
8 ~~September 30, 2014, to any massage therapist licensed in South Dakota before July 1, 2013.~~

9 Section 9. That § 36-35-12.3 be amended to read:

10 36-35-12.3. ~~Unless automatically issued pursuant to this section, a~~ A license issued under  
11 this chapter is valid until September thirtieth following the date it is issued and automatically  
12 expires unless it is renewed.

13 Section 10. That § 36-35-13 be amended to read:

14 36-35-13. For the purposes of this chapter, any of the following acts constitute  
15 unprofessional conduct:

- 16 (1) Conviction of or a plea of guilty to any felony, any crime involving or relating to the  
17 practice of massage, or any crime involving dishonesty or moral turpitude;
- 18 (2) Providing the board false or misleading information on any application for a license  
19 or renewal of a license;
- 20 (3) Willful misconduct or negligence in the practice of massage;
- 21 (4) Exceeding the scope of practice of massage as defined in § 36-35-1;
- 22 (5) Engaging in any lewd or immoral conduct;
- 23 (6) Making fraudulent charges for services;
- 24 (7) Engaging in conduct which endangers the health or welfare of clients or other

1 persons; ~~or~~

2 (8) Failure to comply with any provision of this chapter; or

3 (9) Engaging in any act that aids, abets, facilitates, or promotes a violation of this  
4 chapter.

5 Section 11. That § 36-35-14 be repealed.

6 ~~—36-35-14. Until July 1, 2008, the board may issue a license to a person who demonstrates~~  
7 ~~completion of a minimum of one hundred hours of training or study in the practice of massage~~  
8 ~~with a facility or instructor recognized by the board or adequate experience derived from the~~  
9 ~~active practice of massage for at least the three years immediately preceding the date of the~~  
10 ~~application. Any person applying for a license under this section is not required to comply with~~  
11 ~~the examination and training or study requirements of § 36-35-12 but shall meet the other~~  
12 ~~criteria set forth in § 36-35-12. Any person applying for a license under this section shall submit~~  
13 ~~an application as required by § 36-35-12 along with proof of active practice for at least three~~  
14 ~~years prior to the date of application. Any person who qualified for licensure pursuant to this~~  
15 ~~section and allowed the license to lapse may be issued a license, notwithstanding the initial time~~  
16 ~~period provided in this section, by complying with this section before June 30, 2012.~~

17 Section 12. That § 36-35-15 be amended to read:

18 36-35-15. Any person holding a valid license or registration to practice massage from  
19 another state whose requirements for licensure or registration are not less restrictive than this  
20 state is exempted from the requirement for any examination for licensure by § 36-35-12. Any  
21 person applying for a license under this section shall submit an application as required by § 36-  
22 35-12 along with proof of a current license. Notwithstanding the provisions of § 36-35-12, the  
23 board may issue a license to an applicant licensed to practice massage therapy in another state  
24 if the applicant demonstrates the following qualifications:

- 1       (1)   Eighteen years of age or older;
- 2       (2)   Absence of unprofessional conduct;
- 3       (3)   Professional liability insurance pursuant to § 36-35-21;
- 4       (4)   Verification from the authority that issued the applicant's license indicating the  
5           applicant is in good standing and currently licensed to practice; and
- 6       (5)   Experience and competency in massage indicated by education that substantially  
7           complies with subdivision 36-35-12(2) or verification of an active massage therapy  
8           practice in the state of licensure in the two years immediately preceding the date of  
9           application for licensure.

10       For the purpose of this section, the term, active massage therapy practice, means the  
11       applicant has had at least two hundred hours of patient contact in the preceding two-year period.

12       Section 13. That § 36-35-16 be amended to read:

13       36-35-16. Any ~~person~~ licensee holding a valid license under this chapter may renew that  
14       license by making application for renewal, paying the required renewal fee, and providing proof  
15       of compliance with the continuing education requirements set by the board. If the board has not  
16       received a license renewal application by the expiration date, the board shall notify the licensee  
17       within five days that the renewal application has not been received and that the licensee may not  
18       practice until the license is renewed. Any person who submits a license renewal application and  
19       provides proof of compliance with the continuing education requirements set by the board  
20       within thirty days after the expiration date ~~shall~~ may be granted a license renewal.

21       Section 14. That § 36-35-18.1 be amended to read:

22       36-35-18.1. The board may ~~issue an inactive massage therapist~~ place a massage therapy  
23       license on inactive status upon submission of an application and payment of the application fee.

24       Section 15. That § 36-35-20 be amended to read:

1       36-35-20. The board ~~shall~~ may receive and ~~may~~ investigate any complaint filed with the  
2 board alleging ~~that any licensed massage therapist has violated the requirements~~ a violation of  
3 this chapter. The board may inspect the place of business of ~~any person with a license issued~~  
4 ~~pursuant to this chapter~~ the licensee named in a complaint ~~pursuant to this section~~ during normal  
5 business hours or upon written notice.

6       Section 16. That § 36-35-22 be amended to read:

7       36-35-22. The board may cancel, suspend, or revoke a license following a contested case  
8 hearing in compliance with chapter 1-26 upon satisfactory proof of incompetence,  
9 unprofessional conduct, or a violation of any provision of this chapter. The board may waive  
10 the requirement of prior notice and an informal meeting set forth in § 1-26-29 if the licensee  
11 presents an immediate threat to the public or has engaged in willful misconduct. Any ~~person~~  
12 licensee may appeal the cancellation, suspension, or revocation of a license in compliance with  
13 chapter 1-26.

14       Section 17. That § 36-35-24 be amended to read:

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

- 17       (1) The form and information required for any license application;
- 18       (2) A list of recognized facilities or instructors who may provide training or instruction  
19             required for licensure or continuing education requirements;
- 20       (3) The amount of license fees;
- 21       (4) ~~The procedures for conducting disciplinary proceedings;~~
- 22       ~~(5) The procedures for conducting complaint investigations;~~
- 23       ~~(6) The procedures for applying for an inactive~~ placing a license on inactive status and  
24             the procedures to regain active licensure; and

1       ~~(7)~~(5) Approval of national competency examinations.

2       Section 18. That § 36-35-25 be amended to read:

3       36-35-25. The provisions of this chapter do not apply to any person performing massage for  
4       compensation if the massage is done under one of the following circumstances:

5       (1)    As part of a licensed practice as a physician, physician assistant, chiropractor, nurse,  
6            physical therapist, athletic trainer, or other health care profession licensed or certified  
7            under ~~Title~~ title 36;

8       (2)    As part of a licensed practice pursuant to chapter 36-14 or 36-15, if the licensee is  
9            performing within the scope of the licensed practice and the licensee does not hold  
10           himself or herself out to be a massage therapist or to be engaged in the practice of  
11           massage therapy;

12       (3)    In furtherance of duties as an employee of the United States;

13       (4)    As part of a course of study with a facility or instructor recognized and approved by  
14           the board to provide training in massage or the provision of such instruction;

15       (5)    As part of providing a course of instruction or continuing education by a licensed  
16           massage therapist from another state or provider preapproved by the board, in the  
17           practice of massage therapy on a temporary basis not in excess of ten days per  
18           calendar year; or

19       (6)    Manipulation of the soft tissues of the human body is restricted to the hands, feet, or  
20           ears and the person does not hold himself or herself out to be a massage therapist or  
21           to be engaged in the practice of massage therapy.

22       Section 19. That chapter 36-35 be amended by adding a NEW SECTION to read:

23       The board may:

24       (1)    Administer, coordinate, and enforce the provisions of this chapter;



- 1       (2)   Evaluate the qualifications of applicants for licensure and permits and issue and  
2           renew licenses and permits;
- 3       (3)   Maintain the names of persons that meet the qualifications for licensure;
- 4       (4)   Conduct all disciplinary proceedings under this chapter;
- 5       (5)   Maintain a record of each complaint received by the board;
- 6       (6)   Establish standards for the safe and qualified practice of massage therapy;
- 7       (7)   Report licensing actions and status to relevant state and federal governing bodies as  
8           may be required, or as the board deems appropriate; and
- 9       (8)   Employ or contract with personnel and enter into contracts pursuant to law to carry  
10          out the board's responsibilities.