

AN ACT

ENTITLED, An Act to revise certain provisions regarding licensure of massage therapists.

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

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

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

- (1) "Board," the Board of Massage Therapy;
- (2) "Licensee," a person who meets the qualifications for licensure pursuant to this chapter and holds a valid license to practice massage therapy;
- (3) "Massage," the systematic mobilization of the soft tissues of the body through the application of hands, feet, or devices for the purposes of therapy, relaxation, or education through means which include:
  - (a) Pressure, friction, stroking, rocking, kneading, percussion, compression, or stretching;
  - (b) External application of water, heat, cold, lubricants, or other topical agents; or
  - (c) The use of devices that mimic or enhance the actions of human hands or feet; and
- (4) "Practice of massage therapy," the performance of massage for a fee or other compensation or holding oneself out to the public as performing massage.

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

36-35-2. The board consists of five members appointed by the Governor. The term of a board member is three years. One member of the board shall be a person not licensed by the board. Four members of the board shall be persons licensed by the board. The Governor shall fill any vacancy by appointment to complete the unexpired portion of the vacancy. No person may serve more than three consecutive full terms on the board. The appointment to an unexpired term is not considered a full term.

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

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

36-35-4. The board shall annually elect from its members a president, vice-president, and secretary.

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

36-35-5. The board shall hold at least two meetings per year at a place and time set by the board. The board may hold additional meetings at a time and place set by the president or a majority of the board.

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

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

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

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

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

36-35-12.1. Upon application and payment of an application fee not to exceed seventy-five

dollars, the board may issue a temporary permit to practice massage therapy to an applicant who has met the requirements of subdivision 36-35-12(1) to (4), inclusive, pending completion and results of the examination required pursuant to subdivision 36-35-12(5), if the applicant intends to practice massage therapy in the state during the time the permit is valid. A temporary permit may be issued no more than twice and is effective for a term of not more than ninety days. A temporary permit automatically expires on the occurrence of the following:

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

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

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

36-35-12.3. A license issued under this chapter is valid until September thirtieth following the date it is issued and automatically expires unless it is renewed.

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

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

- (1) Conviction of or a plea of guilty to any felony, any crime involving or relating to the practice of massage, or any crime involving dishonesty or moral turpitude;
- (2) Providing the board false or misleading information on any application for a license or renewal of a license;
- (3) Willful misconduct or negligence in the practice of massage;
- (4) Exceeding the scope of practice of massage as defined in § 36-35-1;
- (5) Engaging in any lewd or immoral conduct;
- (6) Making fraudulent charges for services;

- (7) Engaging in conduct which endangers the health or welfare of clients or other persons;
- (8) Failure to comply with any provision of this chapter; or
- (9) Engaging in any act that aids, abets, facilitates, or promotes a violation of this chapter.

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

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

36-35-15. Notwithstanding the provisions of § 36-35-12, the board may issue a license to an applicant licensed to practice massage therapy in another state if the applicant demonstrates the following qualifications:

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

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

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

36-35-16. Any licensee holding a valid license under this chapter may renew that license by making application for renewal, paying the required renewal fee, and providing proof of compliance with the continuing education requirements set by the board. If the board has not received a license renewal application by the expiration date, the board shall notify the licensee within five days that

the renewal application has not been received and that the licensee may not practice until the license is renewed. Any person who submits a license renewal application and provides proof of compliance with the continuing education requirements set by the board within thirty days after the expiration date may be granted a license renewal.

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

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

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

36-35-20. The board may receive and investigate any complaint filed with the board alleging a violation of this chapter. The board may inspect the place of business of the licensee named in a complaint during normal business hours or upon written notice.

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

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

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

36-35-24. The board may promulgate rules pursuant to chapter 1-26 to establish:

- (1) The form and information required for any license application;
- (2) A list of recognized facilities or instructors who may provide training or instruction required for licensure or continuing education requirements;
- (3) The amount of license fees;

- (4) The procedures for placing a license on inactive status and the procedures to regain active licensure; and
- (5) Approval of national competency examinations.

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

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

- (1) As part of a licensed practice as a physician, physician assistant, chiropractor, nurse, physical therapist, athletic trainer, or other health care profession licensed or certified under title 36;
- (2) As part of a licensed practice pursuant to chapter 36-14 or 36-15, if the licensee is performing within the scope of the licensed practice and the licensee does not hold himself or herself out to be a massage therapist or to be engaged in the practice of massage therapy;
- (3) In furtherance of duties as an employee of the United States;
- (4) As part of a course of study with a facility or instructor recognized and approved by the board to provide training in massage or the provision of such instruction;
- (5) As part of providing a course of instruction or continuing education by a licensed massage therapist from another state or provider preapproved by the board, in the practice of massage therapy on a temporary basis not in excess of ten days per calendar year; or
- (6) Manipulation of the soft tissues of the human body is restricted to the hands, feet, or ears and the person does not hold himself or herself out to be a massage therapist or to be engaged in the practice of massage therapy.

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

The board may:

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

An Act to revise certain provisions regarding licensure of massage therapists.

I certify that the attached Act  
originated in the  
HOUSE as Bill No. 1027

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1027  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_ ,  
20\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_

\_\_\_\_\_  
Governor

STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State