

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

663B0780

## HOUSE BILL NO. 1250

Introduced by: Representative Rounds and Senator Sohlt

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding marriage and family  
2 therapists.

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

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

6 (1) "Board," the Board of Examiners for Counselors and Marriage and Family  
7 Therapists;

8 (2) "Licensee," a person who holds a license to practice marriage and family therapy; and

9 (3) "Practice of marriage and family therapy,":

10 (a) The rendering of professional marriage and family therapy services to  
11 individuals, family groups, and marital pairs, one-on-one or in groups, whether  
12 the services are offered directly to the general public or through organizations,  
13 either public or private, for compensation; and

14 (b) The diagnosis and treatment of nervous and mental disorders through the  
15 application of systemic theory and technique, whether cognitive, affective, or



1 behavioral, within the context of marriage and family systems.

2 Section 2. That the code be amended by adding a NEW SECTION to read:

3 Each license issued by the board under this Act, shall be conspicuously displayed by the  
4 licensee at the primary place of practice of the licensee. Each licensee shall post and keep  
5 conspicuously displayed the annual renewal certificate issued by the board.

6 Section 3. That the code be amended by adding a NEW SECTION to read:

7 It is a Class 2 misdemeanor for any person to engage or attempt to engage in the practice of  
8 marriage and family therapy, without a license, unless exempted under this Act.

9 Section 4. That the code be amended by adding a NEW SECTION to read:

10 Unless licensed in accordance with this Act, no person may represent himself or herself as  
11 a marriage or family therapist by using the titles "marital therapist," "marriage counselor,"  
12 "family therapist," "licensed marital therapist", "licensed marriage counselor," "licensed family  
13 therapist," or "licensed marriage and family therapist," or any other similar title.

14 Section 5. That the code be amended by adding a NEW SECTION to read:

15 No advertising regarding the practice of marriage and family counseling may be fraudulent  
16 or misleading. A violation of this section is a Class 1 misdemeanor.

17 Section 6. That the code be amended by adding a NEW SECTION to read:

18 No licensee may perform marriage and family therapy services that are outside the scope of  
19 the licensee's relevant education, training, and experience.

20 Section 7. That the code be amended by adding a NEW SECTION to read:

21 Nothing in this Act may be construed to prevent any other qualified professional, including  
22 a clinical social worker, psychiatric nurse, professional counselor, clinical and counseling  
23 psychologist, physician, or member of the clergy, from performing or advertising the  
24 performance of marriage and family therapy consistent with the accepted standards of that

1 person's profession, provided the person does not use a title or description stating or implying  
2 that the person is licensed to practice marriage and family therapy under this Act.

3 Section 8. That the code be amended by adding a NEW SECTION to read:

4 The board may use its own staff or employ or contract with agents or investigators to assist  
5 in the enforcement of this Act, or any rule promulgated by the board. If it appears to the board  
6 that a person is violating any provision of this Act or rule promulgated under this Act, the board  
7 may, in its own name or in the name of the state, in the circuit court in any county in which  
8 jurisdiction is proper, bring an action to enjoin the act, practice, or violation and to enforce  
9 compliance with this Act, or any rule promulgated under this Act, as an alternative to criminal  
10 proceedings. The proceedings shall be prosecuted by the Office of the Attorney General or by  
11 a person designated by the attorney general and retained by the board as provided in this Act.

12 Section 9. That the code be amended by adding a NEW SECTION to read:

13 The board and its members and officers shall assist any person charged with the enforcement  
14 of this Act. The board, its members, agents, and officers shall furnish evidence to assist in the  
15 prosecution of any violation or enforcement of this Act, and the board may make a reasonable  
16 expenditure for that purpose. The board may determine it is best for the enforcement of this Act,  
17 or in the conduct of its duties to employ an attorney designated by the attorney general. The  
18 board shall fix and determine the compensation and period of service for the attorney to be paid  
19 out of the board's funds.

20 Section 10. That the code be amended by adding a NEW SECTION to read:

21 An applicant for a license as a marriage and family therapist shall file an application, in the  
22 manner prescribed by the board, together with the application fee prescribed by the board. The  
23 board shall issue a license as a marriage and family therapist to an applicant who pays the  
24 license fee and demonstrates that:

- 1       (1)    The applicant has received a master's or a doctoral degree, which consists of at least  
2            sixty credit hours in marriage and family therapy, from an accredited marriage and  
3            family therapy program recognized by the board, or an equivalent course of study  
4            approved by the board;
- 5       (2)    The applicant has passed a standardized national examination approved by the board;
- 6       (3)    Within the four year period preceding the application, the applicant completed one  
7            thousand seven hundred hours of supervised experience in marriage and family  
8            therapy under a plan of supervision approved by the board subsequent to the  
9            applicant receiving an acceptable degree;
- 10      (4)    The applicant has no pending disciplinary proceeding or unresolved disciplinary  
11            complaint;
- 12      (5)    The applicant is of good moral character; and
- 13      (6)    The applicant is not in violation of this Act or any rules promulgated pursuant to this  
14            Act.

15       The board may refuse to issue a license to an applicant who fails to meet the requirements  
16       of this section. The board may grant a license, the provisions of subdivision (5) notwithstanding,  
17       if the applicant has been convicted of, or pled guilty to a felony, to any crime involving or  
18       relating to the practice of counseling, or to any crime involving dishonesty or moral turpitude,  
19       if and the board determines that the applicant does not constitute a risk to public safety. An  
20       applicant may appeal the denial of a license in accordance with chapter 1-26.

21       Section 11. That the code be amended by adding a NEW SECTION to read:

22       Notwithstanding any other provisions, the board may accept a master's or a doctoral degree,  
23       which contains at least forty-eight credit hours in marriage and family therapy, from an  
24       accredited marriage and family therapy program recognized by the board, if the applicant

1 received the degree before July 1, 2026.

2 Section 12. That the code be amended by adding a NEW SECTION to read:

3 If the board suspects that the physical or mental health of an applicant may jeopardize or  
4 endanger anyone who seeks assistance from the applicant, the board may require that the  
5 applicant be examined by a competent examiner selected by the board. The board shall pay all  
6 costs of the examination.

7 If the medical examiner confirms that the applicant's physical or mental health may  
8 jeopardize or endanger anyone who seeks services from the applicant, the board may deny the  
9 license until the applicant furnishes proof that the applicant's physical and mental health is  
10 sufficient to practice marriage and family therapy.

11 Section 13. That the code be amended by adding a NEW SECTION to read:

12 Notwithstanding any other provisions, the board may issue a license as a marriage and  
13 family therapist to an applicant who is licensed to practice marriage and family therapy in  
14 another state or territory of the United States, if the applicant demonstrates that:

- 15 (1) The applicant is currently licensed as a marriage and family therapist and has been  
16 under the jurisdiction of the licensing authority in the other jurisdiction for at least  
17 three years prior to the time of submitting an application to the board;
- 18 (2) The applicant is in good standing with the licensing authority in the other  
19 jurisdiction;
- 20 (3) The applicant has been in an active practice during the three year period prior to the  
21 time of submitting an application to the board;
- 22 (4) The applicant passed a standard national examination approved by the board; and
- 23 (5) The applicant has no record of unprofessional conduct or any pending disciplinary  
24 complaints in the other jurisdiction.

1 For purposes of this section, the term, active practice, means at least one thousand five  
2 hundred hours of clinical experience.

3 Section 14. That the code be amended by adding a NEW SECTION to read:

4 If a marriage and family therapist licensed in another state or territory of the United States  
5 has not passed the national examination required by the board for licensure by endorsement, the  
6 board may provide the applicant with a temporary license to practice for up to ninety days,  
7 provided the applicant demonstrates that:

8 (1) The applicant is currently licensed as a marriage and family therapist and has been  
9 under the jurisdiction of the licensing authority in the other jurisdiction for at least  
10 three years prior to the time of submitting an application to the board;

11 (2) The applicant is in good standing with the licensing authority in the other  
12 jurisdiction;

13 (3) The applicant has been in an active practice during the three year period prior to the  
14 time of submitting an application to the board; and

15 (4) The applicant has no record of unprofessional conduct or any pending disciplinary  
16 complaints in the other jurisdiction.

17 For purposes of this section, the term, active practice, means at least one thousand five hundred  
18 hours of clinical experience.

19 An applicant for a temporary license shall submit an application on a form approved by the  
20 board, along with the application fee and a temporary license fee prescribed by the board. The  
21 board shall issue a temporary license as a marriage and family therapist to an applicant who  
22 meets the requirements of this section and pays the required fees. A temporary license expires  
23 upon the applicant's passage of the required national examination or at the conclusion of the  
24 term for which the license was issued, whichever occurs first. A temporary license may only be

1 renewed once.

2 Section 15. That the code be amended by adding a NEW SECTION to read:

3 Any person practicing under a temporary license is subject to supervision and discipline by  
4 the board, in the same manner as any other person licensed under this Act. A person practicing  
5 under a temporary license submits to the jurisdiction of the board.

6 Section 16. That the code be amended by adding a NEW SECTION to read:

7 A licensee shall furnish the board with updated information within thirty days, upon a  
8 change in the licensee's name, place of employment, or place of business.

9 Section 17. That the code be amended by adding a NEW SECTION to read:

10 Any license issued under this Act, other than a temporary license, is valid until November  
11 thirtieth of the next odd numbered year following the date of issuance. A license expires  
12 automatically, unless it is renewed.

13 Section 18. That the code be amended by adding a NEW SECTION to read:

14 Any licensee holding a license under this Act, may renew that license by submitting an  
15 application for renewal prior to the date of expiration, paying the required renewal fee, and  
16 providing proof of compliance with the continuing education requirements prescribed by the  
17 board. If a licensee fails to renew a license on or before the thirtieth day of November in an odd  
18 numbered year, the license is automatically suspended.

19 The board shall notify the licensee that a renewal application has not been received by the  
20 board and that the licensee may not practice counseling. Any person who submits a license  
21 renewal application and provides proof of compliance with the continuing education  
22 requirements set by the board within thirty days after the expiration date may be granted a  
23 license renewal.

24 Section 19. That the code be amended by adding a NEW SECTION to read:

1 Any person licensed under this Act, shall complete at least forty hours of continuing  
2 education every two years in a manner and with an instructor approved by the board. The  
3 required continuing education hours may be obtained through electronic means. The board may  
4 extend or waive the continuing education requirements for a licensee upon a showing of good  
5 cause, prior to expiration of the license.

6 Section 20. That the code be amended by adding a NEW SECTION to read:

7 The board may place a license on inactive status at the request of a licensee and the payment  
8 of a fee prescribed by the board. An inactive license expires four years after the date of issuance.  
9 An inactive license may be reactivated by payment of the license renewal fee and proof of  
10 having completed at least forty hours of continuing education during the two-year period  
11 immediately preceding the reactivation request. If a license is not reactivated prior to its  
12 expiration, all provisions applicable to an applicant for licensure apply in order for the license  
13 to be restored to active status.

14 Any license that is on an inactive status, as of July 1, 2019, expires on November 30, 2021,  
15 unless the licensee meets the requirements for restoration prior to that time.

16 Section 21. That the code be amended by adding a NEW SECTION to read:

17 An expired license may be reactivated within the four year period following its expiration  
18 if the applicant:

- 19 (1) Pays all applicable renewal fees required for the period of expiration;
- 20 (2) Provides proof of all continuing education required for the period of expiration; and
- 21 (3) Provides proof of passing a national examination approved by the board after the date  
22 the license expired.

23 Section 22. That the code be amended by adding a NEW SECTION to read:

24 This Act does not apply to the activities and services of a person practicing marriage and



1 family therapy as part of the person's duties if the person is:

- 2 (1) An employee of an accredited educational institution, or a federal, state, county, or  
3 local governmental institution or agency;
- 4 (2) An employee of a not-for-profit entity that meets community needs; or
- 5 (3) A marriage and family therapy intern or person preparing for the practice of marriage  
6 and family therapy under qualified supervision in a training institution or facility or  
7 supervisory arrangement recognized and approved by the board.

8 Section 23. That the code be amended by adding a NEW SECTION to read:

9 No cause of action may arise against any licensed marriage and family therapist for failing  
10 to warn of and protect others from a client's threatened violent behavior or for failing to predict,  
11 warn of and protect others from a client's violent behavior except if the client has communicated  
12 to the marriage and family therapist a serious threat of physical violence against an identifiable  
13 victim. The duty to warn or to take reasonable precautions to provide protection from violent  
14 behavior arises only under the limited circumstances specified in this section.

15 Section 24. That the code be amended by adding a NEW SECTION to read:

16 No licensee, or an employee of a licensee may disclose information acquired from any  
17 person consulting the licensee in a professional capacity that was necessary to render services  
18 in a professional capacity, except:

- 19 (1) If mandated by law or authorized to under the Health Insurance Portability and  
20 Accountability Act of 1996, as amended through January 1, 2019;
- 21 (2) If the information is necessary to prevent or mitigate a serious and imminent threat  
22 to the health or safety of a person or the public, provided the disclosure is made to  
23 a person reasonably able to prevent or mitigate the threat, including the target of the  
24 threat;

1 (3) If the licensed marriage and family therapist is a party defendant to a civil, criminal,  
2 or disciplinary action arising from such professional capacity, in which case any  
3 waiver of the privilege accorded by this section is limited to that action;

4 (4) If the client is a defendant in a criminal proceeding and the use of the privilege would  
5 violate the defendant's right to a compulsory process or right to present testimony and  
6 evidence;

7 (5) With the written consent of the person or, in the case of the person's death or  
8 disability, with the written consent of the person's personal representative, other  
9 person authorized to sue, or the beneficiary of an insurance policy on the person's  
10 life, health, or physical condition, provided that if more than one person in a family  
11 is receiving therapy from the marriage and family therapist, each family member  
12 shall agree to the waiver for the marriage and family therapist to disclose information  
13 received from any family member;

14 (6) If the person waives the privilege by bringing charges against the licensee; or

15 (7) If there is a duty to warn under other limited circumstances set forth in this Act.

16 Section 25. That the code be amended by adding a NEW SECTION to read:

17 If both parties to a marriage have obtained marriage and family therapy by a licensed  
18 marriage and family therapist, the therapist may not testify in an alimony or divorce action  
19 concerning information acquired in the course of the therapeutic relationship. This section does  
20 not apply to custody actions.

21 Section 26. That the code be amended by adding a NEW SECTION to read:

22 The board shall receive complaints regarding the enforcement of this Act. A record of each  
23 complaint shall be maintained by the board. An investigation shall be conducted by a member,  
24 agent, or an appointee of the board to determine whether an alleged violation has been

1 committed. The investigator, if a member of the board, may dismiss a complaint if it appears  
2 to the member, either with or without consulting of the board, that no violation has been  
3 committed. If the investigator is an agent or an appointee of the board, dismissal of the  
4 complaint may only be made by the board president. Any agreed disposition made between the  
5 investigator and the licensee or permit holder shall be made known to and approved by the  
6 board.

7 If the complaint is not dismissed and an agreed disposition is not reached, the investigator  
8 may request that the board set a date for a hearing on the complaint. All disciplinary proceedings  
9 held under the authority of this Act, shall be conducted in accordance with chapter 1-26. Any  
10 decision of the board entered in a contested proceeding may be appealed to the circuit court  
11 within thirty days. A license or permit shall remain in effect during the pendency of an appeal  
12 unless suspended under section 29 of this Act.

13 Section 27. That the code be amended by adding a NEW SECTION to read:

14 Upon receiving a complaint regarding the health or safety of patients or the public, any  
15 authorized board member, officer, agent, or employee may enter and inspect, during business  
16 hours, any place where marriage and family therapy is practiced for the purpose of enforcing  
17 this Act. Refusal to allow an inspection may constitute unprofessional or dishonorable conduct.

18 Section 28. That the code be amended by adding a NEW SECTION to read:

19 Testimony or documentary evidence of any kind obtained during the investigation of a  
20 complaint is not subject to discovery or disclosure under chapter 15-6 or under any other  
21 provision of law and is not admissible as evidence in any legal proceeding, until such time as  
22 the complaint becomes a contested case, as defined in § 1-26-1. No person who has participated  
23 in the investigation of a complaint may testify as an expert witness or be compelled to testify  
24 for any party in any civil action, if the subject matter of the complaint investigated is a basis for

1 the civil action.

2 Section 29. That the code be amended by adding a NEW SECTION to read:

3 The license of a marriage and family therapist may be suspended, revoked, or canceled if:

4 (1) The licensee is found to be guilty of fraud in the practice of marriage and family  
5 therapy or of fraud or deceit in the licensee's admission to the practice of marriage  
6 and family therapy;

7 (2) The licensee has been convicted during the past five years of a felony, or of any crime  
8 which, if committed within this state would constitute a felony;

9 (3) The licensee is engaged in the practice of marriage and family therapy under a false  
10 or assumed name and has not registered that name under chapter 37-11, or is  
11 impersonating another practitioner having a like or different name;

12 (4) The licensee is addicted to the habitual use of intoxicating liquors, narcotics, or  
13 stimulants, to an extent that incapacitates the licensee from the performance of  
14 professional duties;

15 (5) The physical or mental condition of the licensee is determined by a competent  
16 medical examiner to be at risk of jeopardizing or endangering those who seek  
17 services from the licensee, provided that a majority of the board may demand an  
18 examination of the licensee at the board's expense, and further provided that if the  
19 licensee fails to submit to the examination, this constitutes grounds for the immediate  
20 suspension of the license;

21 (6) Obtaining or attempting to obtain a license, certificate, or renewal through means of  
22 bribery or fraudulent representation;

23 (7) Knowingly making a false statement in connection with any application under this  
24 Act;

1 (8) Knowingly making a false statement on any form required by the board in accordance  
2 with this Act or any rules promulgated under this Act;

3 (9) The licensee has violated this Act or rules promulgated under this Act; or

4 (10) The licensee has been found to be in violation of ethical standards adopted by the  
5 board.

6 Section 30. That the code be amended by adding a NEW SECTION to read:

7 Proceedings for the suspension, revocation, or cancellation of a license may be initiated  
8 when the board has information that any licensee may have committed any misconduct as  
9 provided in section 29 of this Act or is guilty of gross incompetence or unprofessional or  
10 dishonorable conduct.

11 Section 31. That the code be amended by adding a NEW SECTION to read:

12 If the board finds that a person, entity, licensee, or permit holder has violated this Act, the  
13 board may:

14 (1) Revoke a license or permit for an indefinite period;

15 (2) Suspend a license or permit for a specific or an indefinite period;

16 (3) Place a limit or condition on a license or permit;

17 (4) Issue a censure or a letter of reprimand;

18 (5) Place a licensee or permit holder on probationary status and require that the licensee  
19 or permit holder report regularly to the board on the matters that are the basis for the  
20 probation, limit the licensee's or permit holder's practice to areas prescribed by the  
21 board, and require professional education until a satisfactory degree of skill has been  
22 attained in those areas that are the basis of the probation, provided the board may  
23 withdraw the probation if the board finds the deficiencies that required disciplinary  
24 action have been remedied;

1 (6) Impose any other sanctions that the board determines is appropriate;

2 (7) Impose a fee to reimburse the board in an amount equal to some or all of the costs  
3 incurred for the investigation and proceedings resulting in disciplinary action under  
4 this Act, or for the issuance of a cease and desist order; or

5 (8) Deny an application for a license or permit.

6 Section 32. That the code be amended by adding a NEW SECTION to read:

7 The board may suspend a license or permit in advance of a final adjudication or during the  
8 appeals process, if the board finds that allowing a licensee or permit holder to continue  
9 practicing would represent a clear and immediate or imminent danger to public health and  
10 safety. A licensee or permit holder whose license or permit is suspended under this section is  
11 entitled to a hearing before the board within twenty days after the effective date of the  
12 suspension. The licensee or permit holder may subsequently appeal the suspension to the circuit  
13 court in accordance with chapter 1-26.

14 Section 33. That the code be amended by adding a NEW SECTION to read:

15 All proceedings regarding the suspension, revocation, or cancellation of a license shall  
16 conform to the procedure set forth in chapter 1-26.

17 Section 34. That the code be amended by adding a NEW SECTION to read:

18 A party may appeal any act, ruling, or decision regarding a license, in accordance with  
19 chapter 1-26.

20 Section 35. That the code be amended by adding a NEW SECTION to read:

21 At the board's discretion, the board may reinstate or issue a new license or permit. The board  
22 may require the applicant to pay all costs of the proceedings resulting in the suspension,  
23 revocation, reinstatement, or issuance of a license or permit.

24 Section 36. That the code be amended by adding a NEW SECTION to read:

1 The board shall investigate and report any alleged violation of this Act. The board may  
2 employ special counsel subject to the supervision, control, and direction of the attorney general  
3 to assist in the prosecution of alleged criminal violations of this Act, and may expend the  
4 necessary funds for this purpose.

5 Section 37. That the code be amended by adding a NEW SECTION to read:

6 Any person violating the provisions of this Act, may be enjoined from further violations at  
7 the suit of the state's attorney of the county where the violations occurred. In the alternative,  
8 suit may be brought by any resident of this state.

9 Section 38. That the code be amended by adding a NEW SECTION to read:

10 Any person who practices marriage and family therapy through electronic means, and  
11 provides marriage and therapy services to a patient located in this state is engaged in the practice  
12 of marriage and family therapy in this state regardless of the provider's physical location. Any  
13 service provided by a licensee or supervision provided through electronic means shall comply  
14 with this Act and rules promulgated under this Act.

15 Section 39. That the code be amended by adding a NEW SECTION to read:

16 The board shall promulgate in accordance with chapter 1-26, to establish the following:

- 17 (1) An application fee, not exceeding two hundred dollars;
- 18 (2) A biennial renewal fee, not exceeding five hundred dollars;
- 19 (3) A duplicate license fee, not exceeding fifteen dollars;
- 20 (4) An inactive license fee, not exceeding one hundred dollars;
- 21 (5) A temporary license fee, not exceeding two hundred dollars; and
- 22 (6) A license verification fee, not exceeding twenty-five dollars.

23 Section 40. That §§ 36-33-1, 36-33-2, 36-33-4 to 36-33-9, inclusive, and 36-33-11 to 36-33-33,  
24 inclusive be repealed.