



## 2020 South Dakota Legislature

# House Bill 1136

Introduced by: **Representative St. John**

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

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

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

5 **36-39-1. Definitions.**

6 Terms used in this Act mean:

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

15 The board consists of five members appointed by the Governor. Three members  
16 shall be licensed acupuncturists, one member shall be a licensed health care professional  
17 certified to perform acupuncture, and one member shall represent the consumer. Each  
18 member shall serve a three-year term and may serve no more than three consecutive  
19 three-year terms. The board shall meet up to twice a year to determine and finalize any  
20 refusal to grant a license or cancellation, revocation, or suspension of a license. Board  
21 members shall serve without compensation, but shall be reimbursed for per diem and  
22 travel for up to two meetings per year.

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

24 **36-39-3. Acupuncture and Oriental medicine--Defined.**

25 For the purposes of this chapter, acupuncture and Oriental medical practice is a  
26 comprehensive system of health care using traditional and modern Oriental medical theory  
27 and its unique methods of diagnosis and treatment. The treatment techniques of  
28 acupuncture practice include the insertion of acupuncture needles through the skin and  
29 the use of other biophysical methods of acupuncture point stimulation, including the use  
30 of heat or cold, Asian bodywork therapy techniques, Oriental medicine, electrical  
31 stimulation, Oriental dietary and lifestyle therapies, breathing techniques, and exercise  
32 based on Oriental medicine principles.

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

2 **36-39-4. Acupuncture and Oriental medicine--Practices and diagnostic**  
3 **techniques.**

4 The practice of acupuncture and Oriental medicine shall include the following  
5 practices and diagnostic techniques:

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

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

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

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

14 (ii) Manual therapy including massage, acupressure, acupuncture,  
15 trigger point dry needling, reflexology, shiatsu, mobilization,  
16 manipulation, tui-na and acutotement or stimulation that does not  
17 pierce the skin; and

18 (iii) Injection therapy including the injection of inert substances which  
19 include injectable saline, vitamin B12, and homeopathics for the  
20 purpose of the stimulation of acupuncture points, including painful  
21 trigger points. Injection therapy of any of the substances mentioned  
22 above is limited by training approved by the National Certification  
23 Commission for Acupuncture and Oriental Medicine and subject to  
24 federal regulation;

25 (2) Diagnostic techniques including:

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

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

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

31 (3) Adjunct therapies including:

32 (a) Dietary and nutritional counseling and the prescription or administration of  
33 food, beverages, dietary supplements, and herbal medicines  
34 therapeutically;

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

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

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

3           **36-39-5. Acupuncture practice--Persons not requiring a license.**

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

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

7           (2) A chiropractor licensed under chapter 36-5;

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

11           (4) Any acupuncturist licensed to practice in another state or country may practice  
12           acupuncture in this state without a license if the acupuncturist is conducting  
13           treatment in relation to disaster relief for a period of time not to exceed three  
14           consecutive months.

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

16           **36-39-6. Authorized titles.**

17           Only a person licensed or otherwise authorized under this chapter may use the title  
18           acupuncturist, licensed acupuncturist, doctor of acupuncture and Oriental medicine, or  
19           Oriental medicine practitioner.

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

21           **36-39-7. Requirements for licensure--Fees.**

22           Each applicant for licensure under this chapter shall:

23           (1) Have successfully completed a graduate level educational program that is offered  
24           by an institution of higher education and accredited by a national or regional  
25           agency recognized by the United States Department of Education, or another  
26           equivalent program approved by the board. In the case of an applicant who has  
27           completed education and training outside of the United States, the applicant shall  
28           document education and clinical experience that meets the standard established in  
29           this section in a manner determined by the board;

1 (2) Pass a nationally recognized examination approved by the board or have current  
2 active status as a Diplomate of Chinese Herbology, Diplomate of Oriental Medicine,  
3 or Diplomate of Acupuncture of the NCCAOM;

4 (3) Pass a nationally recognized ethics course administered or approved by the  
5 NCCAOM;

6 (4) Meet the NCCAOM professional development activity requirements to maintain  
7 NCCAOM certification, or equivalent certification. The NCCAOM shall serve as a  
8 verifying entity, providing to the board the proof of continuing education and  
9 recertification of all acupuncturists licensed in the state, as well as any reported  
10 ethical or criminal disciplinary actions involving any applicant;

11 (5) Complete an application for licensure provided by the board; and

12 (6) Submit the required fee for licensure established by the board in rules promulgated  
13 under § 36-39-11.

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

15 **36-39-8. License renewal.**

16 Each licensee shall renew the acupuncture license every two years, prior to the  
17 date established by the board, by submitting the following:

18 (1) The completed application for license renewal provided by the board;

19 (2) Proof of NCCAOM recertification compliance; and

20 (3) The required fee for license renewal, established by the board in rules promulgated  
21 under § 36-39-11.

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

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

27 **36-39-9. License renewal--Sixty-day grace period.**

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

30 (1) The completed application for licensure renewal form provided by the board;

31 (2) The required fee for annual license renewal, and

32 (3) Proof of NCCAOM recertification compliance; and

1       (4) The required late fee established by the board in rules promulgated under § 36-  
2       39-11.

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

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

9               **36-39-10. Sterilized equipment required.**

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

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

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

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

15              (1) The application form and other requirements for license application and renewal;

16              (2) The amount of license fees and license renewal fees, neither of which may exceed  
17              a maximum of one thousand two hundred dollars; and

18              (3) Any additional requirements or conditions for the reinstatement of an expired  
19              license.

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

21              **36-39-12. Proceedings--Right to appeal.**

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

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

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

1           **36-39-13. Acupuncture regulation fund--Establishment--Continuous**  
2           **appropriation.**

3           There is hereby established in the state treasury the acupuncture regulation fund.  
4           All fees received by the board shall be forwarded to the state treasurer for deposit into  
5           the acupuncture regulation fund. Any money in the fund is continuously appropriated to  
6           the board for the purposes of the operation of the board and the implementation and  
7           administration of this chapter. The total expenses incurred by the board may not exceed  
8           the total amount of funds collected.

9           **Section 14.** This Act is effective January 1, 2022.