

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

238U0287

HOUSE BILL NO. 1126

Introduced by: Representatives Hoffman, Cronin, Erickson, Feickert, Feinstein, Haggar (Don), Hansen, Hickey, May, Nelson, and Sly and Senators Tidemann, Heineman (Phyllis), and Kirkeby

1 FOR AN ACT ENTITLED, An Act to repeal the massage therapy licensing requirements and
2 regulatory board.

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

4 Section 1. That § 36-35-1 be repealed.

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

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

7 ~~—(2)—"Massage," the systematic mobilization of the soft tissues of the body through the~~
8 ~~application of hands or devices for the purposes of therapy, relaxation, or education~~
9 ~~through means which include:~~

10 ~~—(a)—Pressure, friction, stroking, rocking, kneading, percussion, compression, or~~
11 ~~stretching;~~

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

13 ~~—(c)—The use of devices that mimic or enhance actions done by hands;~~

14 ~~—(3)—"Practice of massage therapy," the performance of massage for a fee or other~~



1 ~~compensation or holding oneself out to the public as performing massage.~~

2 Section 2. That § 36-35-2 be repealed.

3 ~~—36-35-2. The board consists of five members appointed by the Governor. The terms of the~~
4 ~~initial members of the board shall be staggered by the drawing of lots with three of the initial~~
5 ~~members serving a term of three years, two of the initial members serving a term of two years,~~
6 ~~and one of the initial members serving a term of one year. Any subsequent term on the board~~
7 ~~shall be three years. One member of the board shall be a person not licensed by the board. Four~~
8 ~~members of the board shall be persons licensed by the board. The Governor shall fill any~~
9 ~~vacancy by appointment to complete the unexpired portion of that member's term. No person~~
10 ~~may serve more than three consecutive full terms on the board. The appointment to an unexpired~~
11 ~~term is not considered a full term.~~

12 ~~— The terms of members shall begin on October thirty-first of the calendar year in which the~~
13 ~~Governor appoints the member, unless otherwise designated by the Governor. The appointee's~~
14 ~~term shall expire on October thirtieth in the third year of appointment.~~

15 ~~— Members terms that end June 30, 2012, are extended to October 30, 2012.~~

16 Section 3. That § 36-35-3 be repealed.

17 ~~—36-35-3. Any member of the board may resign by giving written notice to the board and to~~
18 ~~the Governor. Resignations are effective when delivered to the Governor and the board.~~

19 Section 4. That § 36-35-4 be repealed.

20 ~~—36-35-4. The board shall select a president, vice-president, and secretary at its annual~~
21 ~~meeting. The board may hire an executive secretary to perform any managerial, clerical, or other~~
22 ~~duties directed by the board.~~

23 Section 5. That § 36-35-5 be repealed.

24 ~~—36-35-5. The board shall hold an annual meeting at a place and time set by the board. The~~

1 ~~board may hold special meetings at a time and place set by the president or a majority of the~~
2 ~~board by giving written notice to the board prior to the meeting.~~

3 Section 6. That § 36-35-6 be repealed.

4 ~~—36-35-6. Three board members present at any meeting constitute a quorum. No board action~~
5 ~~may occur unless approved by a majority vote of the entire board.~~

6 Section 7. That § 36-35-7 be repealed.

7 ~~—36-35-7. Board members shall receive a per diem set pursuant to § 4-7-10.4 and expenses~~
8 ~~at the same rate as other state employees while actually engaged in official duties.~~

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

10 ~~—36-35-8. Any person engaged in the practice of massage in this state shall conspicuously~~
11 ~~display a valid license or certified duplicate license from the board in the person's place of~~
12 ~~business.~~

13 Section 9. That § 36-35-9 be repealed.

14 ~~—36-35-9. Any fees and civil penalties collected under this chapter shall be used for the~~
15 ~~operation of the board and the implementation of this chapter.~~

16 Section 10. That § 36-35-10 be repealed.

17 ~~—36-35-10. Any person who engages in the practice of massage or holds himself or herself~~
18 ~~out to the public as engaged in the practice of massage without a license pursuant to this chapter~~
19 ~~is guilty of a Class 1 misdemeanor and upon conviction the court shall assess a civil penalty of~~
20 ~~one thousand dollars payable to the board. The state or the board may file a civil action to enjoin~~
21 ~~any person engaging in the practice of massage without a license.~~

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

23 ~~—36-35-11. Any person who advertises services to the public as a massage therapist,~~
24 ~~bodywork therapist, masseur, masseuse, massagist, or any derivation or abbreviation of those~~

1 ~~terms or any other term commonly recognized to mean the practice of massage therapy while~~
2 ~~not licensed under this chapter is guilty of a Class 1 misdemeanor. Upon conviction the court~~
3 ~~shall assess a civil penalty of one thousand dollars payable to the board. The state or the board~~
4 ~~may file a civil action to enjoin any person from violating this section.~~

5 Section 12. That § 36-35-12 be repealed.

6 ~~—36-35-12. The board may issue a license to engage in the practice of massage to any person~~
7 ~~who submits an application form and the nonrefundable application fee as approved in § 36-35-~~
8 ~~17 and who demonstrates the following qualifications:~~

9 ~~—(1)—Eighteen years of age or older;~~

10 ~~—(2)—Good moral character;~~

11 ~~—(3)—High school diploma or equivalent;~~

12 ~~—(4)—Completion of no less than five hundred hours of training or study in the practice of~~
13 ~~massage with a facility or instructor recognized by the board;~~

14 ~~—(5)—Absence of unprofessional conduct;~~

15 ~~—(6)—Professional liability insurance coverage with limits at or above an amount set by the~~
16 ~~board; and~~

17 ~~—(7)—Passing score on an examination administered by a national certification board~~
18 ~~approved by the board in rules promulgated pursuant to chapter 1-26.~~

19 ~~—A license issued under this chapter is valid for a period of one year from the date it was~~
20 ~~issued and automatically expires unless it is renewed. The board may refuse to grant a license~~
21 ~~to any person based on failure to demonstrate the requirements of this section. An applicant may~~
22 ~~appeal the denial of a license in compliance with chapter 1-26.~~

23 Section 13. That § 36-35-13 be repealed.

24 ~~—36-35-13. For the purposes of this chapter, any of the following acts constitute~~

1 unprofessional conduct:

2 ~~— (1) Conviction of any felony, any crime involving or relating to the practice of massage,~~

3 ~~or any crime involving dishonesty or moral turpitude;~~

4 ~~— (2) Abuse of or addiction to alcohol, marijuana, or any controlled substance;~~

5 ~~— (3) Providing the board false or misleading information on any application for a license~~

6 ~~or renewal of a license;~~

7 ~~— (4) Willful misconduct or negligence in the practice of massage;~~

8 ~~— (5) Prescribing or administering controlled substances, narcotics, barbiturates, or other~~

9 ~~potentially habit forming substances unless done through separate licensure under~~

10 ~~state law;~~

11 ~~— (6) Exceeding the scope of practice of massage as defined in § 36-35-1;~~

12 ~~— (7) Engaging in any lewd or immoral conduct;~~

13 ~~— (8) Making excessive or fraudulent charges for services;~~

14 ~~— (9) Engaging in conduct which endangers the health or welfare of clients or other~~

15 ~~persons; or~~

16 ~~— (10) Failure to comply with any provision of this chapter.~~

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

18 ~~— 36-35-14. Until July 1, 2008, the board may issue a license to a person who demonstrates~~

19 ~~completion of a minimum of one hundred hours of training or study in the practice of massage~~

20 ~~with a facility or instructor recognized by the board or adequate experience derived from the~~

21 ~~active practice of massage for at least the three years immediately preceding the date of the~~

22 ~~application. Any person applying for a license under this section is not required to comply with~~

23 ~~the examination and training or study requirements of § 36-35-12 but shall meet the other~~

24 ~~criteria set forth in § 36-35-12. Any person applying for a license under this section shall submit~~

1 an application as required by ~~§ 36-35-12~~ along with proof of active practice for at least three
2 years prior to the date of application. Any person who qualified for licensure pursuant to this
3 section and allowed the license to lapse may be issued a license, notwithstanding the initial time
4 period provided in this section, by complying with this section before June 30, 2012.

5 Section 15. That § 36-35-15 be repealed.

6 ~~—36-35-15. Any person holding a valid license to practice massage from another state whose~~
7 ~~requirements for licensure are not less restrictive than this state is not required to take the~~
8 ~~examination for licensure. Any person applying for a license under this section shall submit an~~
9 ~~application as required by § 36-35-12 along with proof of a current license. This section applies~~
10 ~~only to persons holding licenses from states which offer reciprocity to persons licensed by this~~
11 ~~state.~~

12 Section 16. That § 36-35-16 be repealed.

13 ~~—36-35-16. Any person holding a valid license under this chapter may renew that license by~~
14 ~~paying the required renewal fee and providing proof of compliance with the continuing~~
15 ~~education requirements set by the board at least thirty days prior to the expiration of the current~~
16 ~~license. Any person who submits a license renewal less than thirty days prior to the expiration~~
17 ~~of the license but no later than the expiration date shall submit a seventy-five dollar late fee. If~~
18 ~~the board has not received a license renewal by the expiration date, the board shall notify the~~
19 ~~licensee within five days that the renewal has not been received and that the licensee may not~~
20 ~~practice until the license is renewed. Any person who submits a license renewal within thirty~~
21 ~~days after the expiration date shall submit a one hundred fifty dollar late fee. Any person whose~~
22 ~~license has lapsed shall reapply for a license.~~

23 Section 17. That § 36-35-17 be repealed.

24 ~~—36-35-17. Any applicant for a license under this chapter shall submit a nonrefundable~~

1 ~~application fee not to exceed one hundred dollars. Any person who has a license issued or~~
2 ~~renewed by the board shall submit a license fee in an amount not to exceed sixty-five dollars.~~
3 ~~Fees shall be set by the board by rule promulgated pursuant to chapter 1-26.~~

4 Section 18. That § 36-35-18 be repealed.

5 ~~— 36-35-18. Any person holding a valid license under this chapter may obtain a certified~~
6 ~~duplicate license by submitting a fee to be set by the board by rule promulgated pursuant to~~
7 ~~chapter 1-26, not to exceed twenty-five dollars for each certified duplicate.~~

8 Section 19. That § 36-35-18.1 be repealed.

9 ~~— 36-35-18.1. The board may issue an inactive massage therapist license upon payment of the~~
10 ~~application fee.~~

11 Section 20. That § 36-35-19 be repealed.

12 ~~— 36-35-19. Any person licensed under this chapter shall complete eight hours of continuing~~
13 ~~education relating to competence in the practice of massage on a biennial basis of a type and~~
14 ~~from a facility or instructor approved by the board. No more than four of the required continuing~~
15 ~~education hours may be obtained by electronic means. The board may waive the continuing~~
16 ~~education requirement upon proof of illness or hardship.~~

17 Section 21. That § 36-35-20 be repealed.

18 ~~— 36-35-20. The board may inspect the place of business of any person with a license issued~~
19 ~~pursuant to this chapter during normal business hours or upon written notice.~~

20 Section 22. That § 36-35-21 be repealed.

21 ~~— 36-35-21. Any person holding a valid license under this chapter and engaged in the practice~~
22 ~~of massage therapy shall carry professional liability insurance coverage with limits at or in~~
23 ~~excess of the minimum amount established by the board.~~

24 Section 23. That § 36-35-22 be repealed.

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

8 Section 24. That § 36-35-23 be repealed.

9 ~~36-35-23. Any person whose license has been cancelled, suspended, or revoked by the board~~
 10 ~~may not reapply for a license until one year after it was cancelled, suspended, or revoked unless~~
 11 ~~a different time has been set by the board.~~

12 Section 25. That § 36-35-24 be repealed.

13 ~~36-35-24. The board may promulgate rules pursuant to chapter 1-26 in the following areas:~~

- 14 ~~(1) The form and information required for any license application;~~
- 15 ~~(2) A list of recognized facilities or instructors who may provide training or instruction~~
 16 ~~required for licensure or continuing education requirements;~~
- 17 ~~(3) The amount of license fees;~~
- 18 ~~(4) The procedures for conducting disciplinary proceedings;~~
- 19 ~~(5) The minimum limits of malpractice insurance to be carried by any person licensed~~
 20 ~~under this chapter; and~~
- 21 ~~(6) The procedures for applying for an inactive license and the procedures to regain~~
 22 ~~active licensure.~~

23 Section 26. That § 36-35-25 be repealed.

24 ~~36-35-25. The provisions of this chapter do not apply to any person performing massage for~~

1 compensation if the massage is done under one of the following circumstances:

2 ~~— (1) — As part of a licensed practice as a physician, physician assistant, chiropractor, nurse,~~
3 ~~physical therapist, athletic trainer, or other health care profession licensed or certified~~
4 ~~under Title 36;~~

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

9 ~~— (3) — In furtherance of duties as an employee of the United States;~~

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

12 ~~— (5) — As part of providing a course of instruction or continuing education in the practice~~
13 ~~of massage therapy on a temporary basis not in excess of ten days; or~~

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