

AN ACT

ENTITLED, An Act to revise the massage therapy licensing requirements.

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

Section 1. That § 36-35-8 be amended to read as follows:

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 person's place of business.

Section 2. That § 36-35-9 be amended to read as follows:

36-35-9. Any fees collected under this chapter shall be used for the operation of the board and the implementation of this chapter.

Section 3. That § 36-35-10 be amended to read as follows:

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 pursuant to this chapter is guilty of a Class 1 misdemeanor. The board may file a civil action to enjoin any person engaging in the practice of massage without a license.

Section 4. That § 36-35-11 be repealed.

Section 5. That § 36-35-12 be amended to read as follows:

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

- (1) Eighteen years of age or older;
- (2) High school diploma or equivalent;
- (3) Completion of no less than five hundred hours of training or study in the practice of massage with a facility or instructor recognized by the board;
- (4) Absence of unprofessional conduct;

- (5) Professional liability insurance coverage pursuant to section 15 of this Act; and
- (6) Passing score on a nationally recognized competency examination approved by the board in rules promulgated pursuant to chapter 1-26.

The board may refuse to grant a license to any person based on failure to demonstrate the requirements of this section. An applicant may appeal the denial of a license in compliance with chapter 1-26.

Section 6. That chapter 36-35 be amended by adding thereto a NEW SECTION to read as follows:

Upon application and payment of a fee not to exceed seventy-five dollars, the board may issue a temporary permit to practice as a licensed massage therapist to an applicant who has met the requirements of subdivision 36-35-12(1) to (5), inclusive, pending completion and results of the examination required pursuant to subdivision 36-35-12(6). A temporary license may be issued no more than twice and is effective for a term of not more than one hundred eighty days. A temporary license 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 7. That chapter 36-35 be amended by adding thereto a NEW SECTION to read as follows:

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

Section 8. That chapter 36-35 be amended by adding thereto a NEW SECTION to read as follows:

Unless automatically issued pursuant to this section, 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 9. That § 36-35-13 be amended to read as follows:

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

- (1) Conviction of 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;  
or
- (8) Failure to comply with any provision of this chapter.

Section 10. That § 36-35-15 be amended to read as follows:

36-35-15. Any person holding a valid license or registration to practice massage from another state whose requirements for licensure or registration are not less restrictive than this state is exempted from the requirement for any examination for licensure by § 36-35-12. Any person applying for a license under this section shall submit an application as required by § 36-35-12 along with proof of a current license.

Section 11. That § 36-35-16 be amended to read as follows:

36-35-16. Any person holding a valid license under this chapter may renew that license by 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 by the expiration date, the board shall notify the licensee within five days that the renewal has not been received and that the licensee may not practice until the license is renewed. Any person who submits a license renewal and provides proof of compliance with the continuing education requirements set by the board within thirty days after the expiration date shall be granted a license renewal.

Section 12. That § 36-35-18 be amended to read as follows:

36-35-18. The board may issue a duplicate license to a licensee upon request.

Section 13. That § 36-35-19 be amended to read as follows:

36-35-19. Any person licensed under this chapter shall complete eight hours of continuing education relating to competence in the practice of massage on a biennial basis of a type and from a facility or instructor approved by the board. The required continuing education hours may be obtained by electronic means. The board may waive the continuing education requirement upon proof of illness or hardship.

Section 14. That § 36-35-20 be amended to read as follows:

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

Section 15. That § 36-35-21 be amended to read as follows:

36-35-21. Any person holding a valid license under this chapter and engaged in the practice of massage therapy shall carry malpractice or professional liability insurance coverage with a company with a certificate of authority from the South Dakota Division of Insurance with limits of no less than two hundred fifty thousand dollars per occurrence. A licensee shall notify the board of any change

of carrier occurring after a license or renewal is granted.

Section 16. That § 36-35-24 be amended to read as follows:

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

- (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 conducting disciplinary proceedings;
- (5) The procedures for conducting complaint investigations;
- (6) The procedures for applying for an inactive license and the procedures to regain active licensure; and
- (7) Approval of national competency examinations.

Section 17. That ARSD 20:76:02:02 be amended to read as follows:

20:76:02:02. License fee schedule. The license fee schedule is as follows:

- (1) Temporary permit fee, \$50;
- (2) Annual license renewal fee, \$45;
- (3) Inactive license fee, \$25;
- (4) Application fee, \$75.

Section 18. That ARSD 20:76:08:01 be amended to read as follows:

20:76:08:01. Recognized facilities. The board may license an applicant who has completed the training required by § 20:76:01:06 from the following South Dakota facilities:

- (1) Black Hills Health & Education Center;
- (2) Headlines Academy;
- (3) National American University;

- (4) Pam's Massage School;
- (5) SD School of Massage Therapy;
- (6) Sioux Falls Therapeutic Massage & Education Center; and
- (7) Springs Bath House School of Massage.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1126

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

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

Attest:

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

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

Attest:

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

House Bill No. 1126

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

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Received at this Executive Office
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

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

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

\_\_\_\_\_  
Governor

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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