15.8037.01003

Sixty-fourth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2085

Introduced by

Industry, Business and Labor Committee

(At the request of the North Dakota Board of Massage)

A BILL for an Act to create and enact a new subdivision to subsection 2 of section 12-60-24 and section 43-25-08.1 of the North Dakota Century Code, relating to criminal history record checks for massage therapists; and to amend and reenact sections 43-25-05, 43-25-05.1, 43-25-06, 43-25-09, 43-25-10, 43-25-14, and 43-25-18 of the North Dakota Century Code, relating to massage therapist licensure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The North Dakota board of massage for applicants, licensees, or investigations under chapter 43-25~~, except that criminal history checks need not be made unless required by the board~~.

SECTION 2. AMENDMENT. Section 43-25-05 of the North Dakota Century Code is amended and reenacted as follows:

43-25-05. Board of massage - Terms.

1. The governor shall appoint a board of massage, to consist of five members.

   a. Three ~~of the~~ members of the board must be massage therapists who are licensed in this state and ~~actively~~annually work at least five hundred hours practicing massage in this state for at least the previous three years. ~~The~~These members must be appointed for terms of three years, staggered so that the term of one member expires each year.~~Two additional members, who may not be massage therapists or immediate family members of a massage therapist, nor have a direct and substantial financial interest in massage therapy.~~

   b. One member of the board must be ~~appointed as~~a consumer ~~members~~member. To qualify as a consumer member an individual may not be or have been a

massage therapist, may not have an immediate family member who is a massage therapist, may not be an owner of or have any affiliation with a massage school, may not be a current or past member of any other health care licensing entity, may not have a fiduciary obligation to a facility rendering health care services, may not have a financial interest in the rendering of health care services, and may not have a direct and substantial financial interest in massage therapy. This member must be appointed for a two-year ~~terms~~term, staggered so that the term ~~of one member expires each year~~expires with a licensed board member but not with the instructor board member.

c. One member of the board must be an instructor at a school of massage that meets the standards set by the board. This member must be appointed for a term of two years, staggered so that the term expires with a licensed board member but not with the consumer board member.

d. Each member of the board holds office until that member's successor is appointed and qualified. Any member appointed to a term beginning after June 30, 2013, may only serve for a total of six consecutive years, after which that member may not be reappointed unless a period of two years has passed since that member last served on the board.

2. Within one month after appointment of a new member, the board shall meet at some convenient place within the state and shall annually elect a president, vice president, and secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of the secretary-treasurer's duties.

SECTION 3. AMENDMENT. Section 43-25-05.1 of the North Dakota Century Code is amended and reenacted as follows:

43-25-05.1. Powers and duties of the board.

The board has the following powers and duties:

1. The board may adopt and enforce rules as necessary to implement this chapter.
2. The board ~~may~~ periodically shall inspect or cause to be inspected all massage establishments. The board and ~~its~~the board's agents ~~are authorized to~~may enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.

3. The secretary-treasurer ~~may~~shall prepare and submit to the governor a biennial report detailing income and expenses and a list of licensed massage therapists.
4. The board may hire office personnel deemed necessary by ~~it~~the board for carrying on ~~its~~the board's official duties and shall set the compensation to be paid to the personnel.

SECTION 4. AMENDMENT. Section 43-25-06 of the North Dakota Century Code is amended and reenacted as follows:

43-25-06. Removal of members of board of massage - Officers of the board.

The governor may remove from office ~~members~~a member of the board for failure to maintain the qualifications for appointment, for neglect of duties as required by this chapter ~~or~~, for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by removal of any member of the board, on the member's resignation or death.

SECTION 5. Section 43-25-08.1 of the North Dakota Century Code is created and enacted as follows:

43-25-08.1. Criminal history record checks.

The board ~~may~~shall require ~~any~~an applicant ~~or licensee~~ under this chapter to submit to a statewide and nationwide criminal history record check. The board may require a licensee under this chapter to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

SECTION 6. AMENDMENT. Section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

43-25-09. License - Display - Renewal - Renewal fee.

1. Each license must be conspicuously displayed at the place of practice.
2. On or before January first of each year, each licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board.
3. Continuing education of at least ~~thirty-two~~twenty-four continuing education hours, or equivalent college credits, ~~including at least three hours of ethics,~~ submitted every two

years is a further requirement for renewal of the license. For the first renewal after becoming licensed in this state, a minimum of three hours of the required twenty-four hours must be ethics education. The board may accept continuing education attained by remote means. No more than ~~twelve~~nine hours of a licensee's renewal hours may be by remote means. To qualify as continuing education, the remote education must be board-approved for content and suitability.

a. Odd-numbered licensed individuals shall report ~~their~~ continuing education in odd-numbered years and even-numbered licensed individuals shall report ~~their~~ continuing education in even-numbered years, based on the calendar year.

b. ~~This subdivision applies for the~~Licensed individuals during their initial licensure period~~. Individuals licensed on or before May thirty-first of their initial year, who would normally~~ are not required to report hours of continuing education~~, based on their license number being odd or even, would need to report at least sixteen hours. Those not required to submit continuing education that initial January first would report at least twenty-four hours by the following January first. Individuals licensed after May thirty-first of their initial year, who would normally report hours of continuing education, based on their license number being odd or even would not be required to report that cycle, but would report at least forty-eight hours for the next cycle. Those not required to submit continuing education hours that initial January first would report at least sixteen hours by the following January first~~. Thereafter, ~~initial~~the licensees ~~would follow the normal renewal reporting cycle~~shall report continuing education pursuant to subdivision a.

c. The board may grant an individual waiver based on health issues or other good cause deemed sufficient by the board.

4. If the board reasonably believes a massage therapist or applicant ~~is in~~has a physical or mental condition jeopardizing the health of those who seek relief from the individual, the board may require the individual to have ~~a physical~~an appropriate examination by a ~~competent medical~~qualified examiner approved by the board. If the individual has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the individual furnishes due proof of being physically and mentally competent and sound.

5. A holder of an expired license may within one year from the date of its expiration have the license renewed upon payment of the required renewal fee. The board may require production of a new certificate of physical examination and evidence of any required continued educational hours being completed.
6. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

SECTION 7. AMENDMENT. Section 43-25-10 of the North Dakota Century Code is amended and reenacted as follows:

43-25-10. Disciplinary actions - Complaints.

1. The license of a massage therapist may be denied, revoked, suspended, or placed on probation for any of the following grounds:
   a. The licensee is guilty of fraud in the practice of massage or fraud or deceit in admission to the practice of massage.
   b. The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within this state would constitute an offense under this state's laws.
   c. The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.
   d. The licensee is addicted to the habitual use of intoxicating liquors, or other legal or illegal drugs, to the extent the licensee is compromised or impaired from performing the professional duties of a massage therapist or is under the influence while assessing, treating, or seeing a client.
   e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or the licensee infringes on any other licensed profession.
   f. The licensee is guilty of gross negligence in the practice of massage, or is guilty of employing, allowing, or permitting any unlicensed person to perform massage in the licensee's establishment.

g. The licensee has violated this chapter or any rule adopted by the board.

2. A licensee who violates this chapter or any rule adopted by the board may be assessed a civil penalty of up to ~~one~~two hundred dollars.

3. A complaint may be submitted to the board by any person or on its own motion. A complaint ~~may~~must be signed by the complainant. The president may initiate an investigation of the complaint and report to the board.

4. Any hearing regarding a disciplinary action or a denial of a license must be held pursuant to chapter 28-32.

SECTION 8. AMENDMENT. Section 43-25-14 of the North Dakota Century Code is amended and reenacted as follows:

43-25-14. Compensation of board members - Clerks.

The board members ~~shall~~are entitled to receive compensation ~~for an in-person meeting~~ in an amount to be established by rule not to exceed one hundred dollars per day or prorated for partial days the member is actually engaged in the performance of other meetings and official duties and payment for mileage and travel expenses as provided in sections 44-08-04 and 54-06-09.

SECTION 9. AMENDMENT. Section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

43-25-18. Reciprocity.

1. Any ~~person~~individual who has been duly licensed and is in good standing in another state to practice massage in a state that meets required educational hours and requirements in this state, and who has been lawfully and continuously engaged in licensed practice for two years or more immediately before filing of an application to practice in this state, and who submits to the board a duly attested certificate from the examining board of the state in which ~~registered~~licensed, certifying to the fact of ~~registration~~licensure and being ~~a person~~ of good moral character and of professional attainments, may upon paying a fee of one hundred fifty dollars or a lesser fee set by the board be granted a license to practice in this state without being required to take an examination.

2. An applicant for licensure by reciprocity who has been duly licensed and is in good standing to practice massage in a state with substantially similar licensure standards

as determined by the board and who has been lawfully and continuously engaged in licensed practice for five years or more immediately before filing of an application to practice in this state, may be granted a license by the board without being required to take an examination if the applicant otherwise meets all of the requirements of subsection 1.