

**SENATE BILL NO. 2085
with House Amendments
SENATE BILL NO. 2085**

Introduced by

Industry, Business and Labor Committee

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

1 A BILL for an Act to create and enact a new subdivision to subsection 2 of section 12-60-24 and
2 section 43-25-08.1 of the North Dakota Century Code, relating to criminal history record checks
3 for massage therapists; and to amend and reenact sections 43-25-05, 43-25-05.1, 43-25-06,
4 43-25-09, 43-25-10, 43-25-14, and 43-25-18 of the North Dakota Century Code, relating to
5 massage therapist licensure.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

9 The North Dakota board of massage for applicants, licensees, or investigations
10 under chapter 43-25.

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

13 **43-25-05. Board of massage - Terms.**

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

15 a. Three ~~of the~~ members of the board must be massage therapists who are licensed
16 in this state and annually work at least five hundred hours practicing massage in
17 this state for at least the previous three years. ~~The~~ These members must be
18 appointed for terms of three years, staggered so that the term of one member
19 expires each year. ~~Two additional members, who may not be massage therapists~~
20 ~~or immediate family members of a massage therapist,~~

21 b. One member of the board must be appointed ~~asa~~ consumer members ~~member.~~
22 To qualify as a consumer member an individual may not be or have been a
23 massage therapist, may not have an immediate family member who is a
24 massage therapist, may not be an owner of or have any affiliation with a

1 massage school, may not be a current or past member of any other health care
2 licensing entity, may not have a fiduciary obligation to a facility rendering health
3 care services, may not have a financial interest in the rendering of health care
4 services, and may not have a direct and substantial financial interest in massage
5 therapy. This member must be appointed for a two-year term~~term~~, staggered so
6 that the term of one member expires each year~~expires~~ with a licensed board
7 member but not with the instructor board member.

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

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

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

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

23 **43-25-05.1. Powers and duties of the board.**

24 The board has the following powers and duties:

- 25 1. The board may adopt and enforce rules as necessary to implement this chapter.
- 26 2. The board may periodically ~~shall~~ inspect or cause to be inspected all massage
27 establishments. The board and ~~its~~the board's agents are ~~authorized to~~may enter and
28 inspect any massage establishment at any time during which the establishment is
29 open for the transaction of business.
- 30 3. The secretary-treasurer ~~may~~shall prepare and submit to the governor a biennial report
31 detailing income and expenses and a list of licensed massage therapists.

1 4. The board may hire office personnel deemed necessary by ~~the board~~ for carrying on
2 ~~the board's~~ official duties and shall set the compensation to be paid to the
3 personnel.

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

6 **43-25-06. Removal of members of board of massage - Officers of the board.**

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

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

14 **43-25-08.1. Criminal history record checks.**

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

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

22 **43-25-09. License - Display - Renewal - Renewal fee.**

- 23 1. Each license must be conspicuously displayed at the place of practice.
- 24 2. On or before January first of each year, each licensed massage therapist shall pay to
25 the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser
26 amount established by the board.
- 27 3. Continuing education of at least ~~thirty-two~~ twenty-four continuing education hours, or
28 equivalent college credits, submitted every two years is a further requirement for
29 renewal of the license. For the first renewal after becoming licensed in this state, a
30 minimum of three hours of the required twenty-four hours must be ethics education.
- 31 The board may accept continuing education attained by remote means. No more than

1 ~~twelve~~nine hours of a licensee's renewal hours may be by remote means. To qualify
2 as continuing education, the remote education must be board-approved for content
3 and suitability.

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

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

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

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

29 5. A holder of an expired license may within one year from the date of its expiration have
30 the license renewed upon payment of the required renewal fee. The board may

1 require production of a new certificate of physical examination and evidence of any
2 required continued educational hours being completed.

3 6. All licenseholders must be designated as licensed massage therapists and may not
4 use any title or abbreviation without the designation "massage therapist".

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

7 **43-25-10. Disciplinary actions - Complaints.**

8 1. The license of a massage therapist may be denied, revoked, suspended, or placed on
9 probation for any of the following grounds:

- 10 a. The licensee is guilty of fraud in the practice of massage or fraud or deceit in
11 admission to the practice of massage.
- 12 b. The licensee has been convicted of an offense determined by the board to have
13 a direct bearing upon a person's ability to serve the public as a massage
14 therapist, or, following conviction of any offense, the person is not sufficiently
15 rehabilitated under section 12.1-33-02.1. The conviction of an offense includes
16 conviction in any jurisdiction in the United States of any offense, which if
17 committed within this state would constitute an offense under this state's laws.
- 18 c. The licensee is engaged in the practice of massage under a false or assumed
19 name, or is impersonating another practitioner of a like or different name.
- 20 d. The licensee is addicted to the habitual use of intoxicating liquors, or other legal
21 or illegal drugs, to the extent the licensee is compromised or impaired from
22 performing the professional duties of a massage therapist or is under the
23 influence while assessing, treating, or seeing a client.
- 24 e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising,
25 the licensee prescribes medicines, drugs, or the licensee infringes on any other
26 licensed profession.
- 27 f. The licensee is guilty of gross negligence in the practice of massage, or is guilty
28 of employing, allowing, or permitting any unlicensed person to perform massage
29 in the licensee's establishment.
- 30 g. The licensee has violated this chapter or any rule adopted by the board.

- 1 2. A licensee who violates this chapter or any rule adopted by the board may be
- 2 assessed a civil penalty of up to ~~one~~two hundred dollars.
- 3 3. A complaint may be submitted to the board by any person or on its own motion. A
- 4 complaint ~~may~~must be signed by the complainant. The president may initiate an
- 5 investigation of the complaint and report to the board.
- 6 4. Any hearing regarding a disciplinary action or a denial of a license must be held
- 7 pursuant to chapter 28-32.

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

10 **43-25-14. Compensation of board members - Clerks.**

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

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

17 **43-25-18. Reciprocity.**

- 18 1. Any ~~person~~individual who has been duly licensed and is in good standing in another
19 state to practice massage in a state that meets required educational hours and
20 requirements in this state, and who has been lawfully and continuously engaged in
21 licensed practice for two years or more immediately before filing of an application to
22 practice in this state, and who submits to the board a duly attested certificate from the
23 examining board of the state in which ~~registered~~licensed, certifying to the fact of
24 ~~registration~~licensure and being a ~~person~~ of good moral character and of professional
25 attainments, may upon paying a fee of one hundred fifty dollars or a lesser fee set by
26 the board be granted a license to practice in this state without being required to take
27 an examination.
- 28 2. An applicant for licensure by reciprocity who has been duly licensed and is in good
29 standing to practice massage in a state with substantially similar licensure standards
30 as determined by the board and who has been lawfully and continuously engaged in
31 licensed practice for five years or more immediately before filing of an application to

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- 1 practice in this state, may be granted a license by the board without being required to
- 2 take an examination if the applicant otherwise meets all of the requirements of
- 3 subsection 1.