

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2394
(Senator Tomac)

AN ACT to amend and reenact sections 43-25-03, 43-25-05, 43-25-07, 43-25-08, 43-25-09, 43-25-10, 43-25-11, 43-25-12, 43-25-13, and 43-25-18 of the North Dakota Century Code, relating to North Dakota board of massage and massage therapist licensure; and to repeal section 43-25-01 of the North Dakota Century Code, relating to massage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-03 of the North Dakota Century Code is amended and reenacted as follows:

43-25-03. Massage therapists to be ~~registered~~ licensed. ~~It is unlawful for any A person or persons to engage may not:~~

1. Engage in the practice or attempt to practice massage for a fee; or ~~for a~~ gratuity or to conduct or teach massage without a ~~certificate of registration~~ license issued ~~pursuant to the provisions of~~ under this chapter;

~~It is unlawful for any person or persons to operate;~~

2. Operate or conduct any a massage establishment ~~which does not conform to unless it meets the sanitary regulations herein contained, or which may be requirements of this chapter and any regulations adopted by the board, or to employ any person as an operator who does not hold a certificate of registration.~~

~~It is unlawful for any person or persons to practice;~~

3. Employ an unlicensed person to work as a massage therapist; or
4. Practice any branch of massage as defined in subsection 3 of section 43-25-02, whether for payment or free demonstration, without first being a ~~registered~~ licensed massage therapist ~~under the provisions of this chapter, or without operating and maintaining a bona fide massage establishment, and without first paying a registration license fee to 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. The governor shall appoint the ~~North Dakota board of massage, to consist of three massage therapists who are members of the North Dakota massage therapy association licensed in this state.~~ The members must be appointed for three years, staggered so that the term of one member expires each year, and each member shall hold office until that member's successor is appointed and qualified.

SECTION 3. AMENDMENT. Section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

43-25-07. Requisites for application and examination - Subjects - Minimum passing grade - Fee for reexamination.

1. Any person who is eighteen years of age or more, a high school graduate, a bona fide resident of ~~the this state of North Dakota~~ for at least one month immediately preceding the application to take the examination, and of good moral character and temperate habits is

entitled to apply to the secretary-treasurer of the board. ~~The person~~ An applicant is entitled to ~~be issued a certificate of registration as a~~ massage therapist licensure if the ~~person~~ applicant:

4. a. Presents a diploma or credentials issued by a school of massage ~~approved by the American massage therapy association or shows that~~ meets the applicant is an active member standards set by the board, which may not be less than the standards of the American massage therapy association.
 2. b. Passes a reasonable demonstrative, oral, and written examination conducted by the board in the art of body massage by hand or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths.
 3. c. Pays the required fees ~~required, which.~~ These fees must accompany the application to the secretary-treasurer of the board.
2. An applicant must achieve a general average score in the examination of seventy-five percent in all subjects involved and no score of less than fifty percent in any one subject. Any applicant failing to pass the requirements is entitled to a reexamination within six months upon payment of an additional fee of fifty dollars or a lesser amount established by the board, but two reexaminations exhaust the privilege under the original application.
 3. Conviction of an offense does not disqualify a person from ~~registration~~ licensure under this chapter unless the board determines ~~that~~ the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or ~~that~~ the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 4. AMENDMENT. Section 43-25-08 of the North Dakota Century Code is amended and reenacted as follows:

43-25-08. Fee for ~~certificate of registration~~ license. The fee to ~~be paid by an applicant to determine fitness to receive a certificate of registration~~ license is one hundred fifty dollars or a lesser amount established by the board.

SECTION 5. AMENDMENT. Section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

43-25-09. ~~Certificate of registration - Recording - Displaying conspicuously~~ License - Display - Renewal - Renewal fee. Each ~~certificate of registration~~ license must be conspicuously displayed at the place of practice and must be recorded in the office of the clerk of the district court in any county where the ~~registered~~ licensed massage therapist practices within thirty days after issuance. On or before January first of each year, each ~~registered~~ 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. Attendance at postgraduate work of at least eighteen continuing education units a year as prescribed by the board is a further requirement for renewal of the ~~certificate~~ license. If the board reasonably believes a massage therapist is in ~~such a~~ physical condition ~~as to jeopardize~~ jeopardizing the health of those who seek relief from the massage therapist, the board may require the applicant to have a physical examination by a competent medical examiner. If the applicant has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a ~~certificate~~ license until the applicant furnishes due proof of being physically and mentally competent and sound. A holder of an expired ~~certificate of registration~~ license may within one year from the date of its expiration have the ~~certificate~~ license renewed upon payment of the required renewal fee and production of a new certificate of physical examination. All ~~certificate holders~~ licenseholders must be designated as ~~certified~~ licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

SECTION 6. AMENDMENT. Section 43-25-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-10. Revocation of ~~certificates~~ license - Preferment of charges.

1. The ~~certificate of registration~~ license of a massage therapist may be revoked, suspended, or annulled upon any ~~one or more~~ of the following grounds:
 4. ~~a. That the registrant~~ The licensee is guilty of fraud in the practice of massage or fraud or deceit in ~~his~~ admission to the practice of massage.
 2. ~~b. That the registrant~~ 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 that, 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 ~~the this state of North Dakota~~ would constitute an offense under ~~the this state's~~ laws ~~thereof~~.
 3. ~~c. That the registrant~~ 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.
 4. ~~d. That the registrant~~ The licensee is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to ~~such an the extent as to incapacitate him or her for the performance of his or her~~ the licensee is incapacitated from performing the professional duties of a massage therapist.
 5. ~~e. That the registrant~~ The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, ~~or that he or she the licensee~~ prescribes medicines, drugs, or vitamins, or the licensee infringes on any other licensed profession.
 6. ~~f. That the registrant~~ The licensee is guilty of willful negligence in the practice of massage, or ~~has been~~ is guilty of employing, allowing, or permitting any ~~unregistered~~ unlicensed person to perform massage in ~~his or her the licensee's~~ establishment.
 7. ~~g. That said registrant~~ The licensee has violated ~~any provisions of~~ this chapter.
8. 2. Any ~~registrant~~ licensee who does not renew ~~his or her registration~~ a massage therapist license for two consecutive years because of sickness or other reason, or ~~because of~~ absence from the state ~~of North Dakota~~, must take the examination as prescribed for an applicant to become a registered operator and ~~to~~ comply with all the provisions ~~hereof, of~~ this chapter applicable to any applicant to become ~~a registrant~~ licensee.
3. Charges may be preferred by any person, or the board may on its own motion direct the executive officer of ~~said the~~ board to prefer ~~said~~ any charges. Any accusation may be filed with the secretary-treasurer of the board charging any ~~registered~~ licensed massage therapist with any of the offenses ~~herein~~ enumerated in this section. ~~Such accusation shall be in writing.~~ An accusation must be signed by the accuser and verified under oath.

SECTION 7. AMENDMENT. Section 43-25-11 of the North Dakota Century Code is amended and reenacted as follows:

43-25-11. Provisions for hearing - Notice.

1. Whenever ~~such~~ accusations ~~as provided in under~~ section 43-25-10 are filed, the board shall set a day for hearing and the secretary-treasurer of the board shall transmit to the accused a ~~true~~ copy of ~~any and all~~ charges filed ~~with him~~ relating to ~~such the~~ such the accusations, and shall notify in writing the accused that on the day fixed for the hearing, which ~~shall~~ may not be less than ten days from the date of ~~such~~ notice, ~~he the accused~~ the accused may appear or show cause ~~if any, why his or her certificate and the accused's license to practice~~ in the this state of North Dakota should not be revoked, suspended, or annulled. For the purpose of ~~such~~ this type of hearing, the board may require by subpoena the attendance of witnesses, to administer oaths and hear testimony and receive evidence, either oral or documentary, for and against the accused, and ~~said the~~ the accused ~~shall have~~

has the right at ~~said~~ the hearing to cross-examine the witnesses, to produce ~~witnesses in~~ his defense witnesses, and to appear personally or by counsel. The notice provided for in this section ~~shall~~ must be substantially in the following form:

To _____ ~~You are hereby notified that charges~~ charges have been filed with the secretary-treasurer of the North Dakota Board of Massage against you as a practicing _____ in _____
(Massage Therapist)

the state of North Dakota, ~~a true.~~ A copy of ~~such the~~ the charges ~~being is~~ is attached hereto, ~~and that the said.~~ The board has fixed the _____ day of _____, A.D. 19____ at the hour of _____ o'clock _____ at _____ in _____ for a hearing on such charges, at which time and place you are ~~hereby notified~~ to appear before the board, and show cause, if you can, why your ~~certificate~~ license to practice massage in the state of North Dakota should not be revoked, suspended, or annulled. At the same time and place the board will hear testimony and receive evidence, either oral or documentary, or both, for and against you relating to ~~such the~~ the charges.

Dated at _____ this _____ day of _____ A.D., 19____.

Secretary-treasurer of the
North Dakota Board of Massage

2. ~~Such notice shall~~ Notice must be sent to the accused by registered ~~or certified~~ mail directed to ~~his the~~ the accused's last known mailing address, and the post-office registration receipt ~~thereof~~, signed by the accused or ~~his the~~ the accused's agent, ~~shall be is~~ is prima facie evidence of service of ~~such~~ the notice.

SECTION 8. AMENDMENT. Section 43-25-12 of the North Dakota Century Code is amended and reenacted as follows:

43-25-12. Power of board to revoke, suspend, or annul certificates licenses. ~~The board may, upon~~ Upon satisfactory proof made that any ~~certificate holder has been~~ licensee is guilty of any of the charges preferred ~~against him or her, the board may~~ the board may revoke, suspend, or annul any ~~certificate license~~ license to do business ~~issued hereunder~~ under this chapter, upon a two-thirds majority vote of the board. An appeal from the final decision of the board may be taken under chapter 28-32. Any person who practices massage after ~~his or her certificate has been revoked, suspended, or annulled must be~~ revocation, suspension, or annulment is deemed to have practiced massage without a ~~certificate license~~ license. However, at any time after six months from the date of conviction, the board may in the exercise of its reasonable discretion by a majority vote, issue a new ~~certificate license~~ license to the person affected, restoring or conferring all rights and privileges of and pertaining to the practice of massage, but the fee must be the same as upon issuance of the original ~~certificate license~~ license.

SECTION 9. AMENDMENT. Section 43-25-13 of the North Dakota Century Code is amended and reenacted as follows:

43-25-13. Records to be kept by the secretary-treasurer of the board. The secretary-treasurer of the board shall keep a record book of the names of all persons to whom ~~certificates licenses~~ licenses have been granted under this chapter, the ~~certificate license~~ license number of each, the date of granting each ~~certificate license~~ license and renewal, and other matters of record. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer and the seal of the board, must be admitted as evidence in any of the courts of ~~the this~~ this state of North Dakota. The original books, records, and papers of the board must be kept at the office of the secretary-treasurer. The secretary-treasurer shall furnish to any person a copy of any ~~such~~ such record, certified by the secretary-treasurer, upon payment of a fee of ten dollars plus twenty-five cents per page copied, the fee to belong to the secretary-treasurer. The secretary-treasurer shall prepare and submit to the governor ~~and to the North Dakota massage therapy association~~ a biennial report detailing income and expenses and a list of massage therapists ~~certified~~ licensed.

SECTION 10. AMENDMENT. Section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

43-25-18. Reciprocity. Any person who has been duly licensed in another state to practice massage ~~which in a state that~~ has and maintains a standard of practice; which is substantially the same as that maintained in this state, and who has been lawfully and continuously engaged in ~~such~~ this practice for two years or more immediately before filing ~~his or her~~ of an application to practice in this state, and who ~~shall submit~~ submits to the board a duly attested certificate from the examining board of the state in which ~~he or she is~~ registered, certifying to the fact of ~~his or her~~ registration and being a person of good moral character and of professional attainments, may upon paying a fee of thirty-five dollars be granted a ~~certificate~~ license to practice in this state without being required to take an examination; ~~provided, however, that no certificate license~~ may be issued to any applicant unless the state ~~or territory~~ from which the certificate is granted extends a like privilege to engage in the practice of massage ~~as defined in this chapter~~ within its borders to persons ~~registered~~ licensed under ~~the provisions of this chapter, to practice in this state removing to such~~ upon practicing in that other state. The board ~~has the power to~~ may enter into reciprocal relations with other states whose requirements are substantially the same as those ~~herein~~ provided in this chapter.

SECTION 11. REPEAL. Section 43-25-01 of the North Dakota Century Code is repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2394.

Senate Vote: Yeas 48 Nays 0 Absent 1

House Vote: Yeas 71 Nays 19 Absent 7

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State