

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1155
(Industry, Business and Labor Committee)
(At the request of the Board of Massage)

AN ACT to create and enact a new section to chapter 43-25 of the North Dakota Century Code, relating to the duties of the board of massage; to amend and reenact sections 43-25-02, 43-25-03, 43-25-04, 43-25-05, 43-25-06, 43-25-07, 43-25-08, 43-25-09, 43-25-10, 43-25-13, 43-25-14, 43-25-18, and 43-25-19 of the North Dakota Century Code, relating to the practice of massage; to repeal sections 43-25-11, 43-25-12, and 43-25-16 of the North Dakota Century Code, relating to the practice of massage; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-02 of the North Dakota Century Code is amended and reenacted as follows:

43-25-02. Definitions.

1. "Board" means the North Dakota board of massage.
2. "Massage" means the scientific and systematic manipulation of the soft tissues of the human body through any manual or mechanical means, including superficial hot and cold applications, hydrotherapy, reflexology, and the use of salts or lubricants. "Massage" does not include diagnosing or treating diseases, manipulating the spine or other joints, or prescribing or administering vitamins.
3. "Massage establishment" means any place of business ~~where one or more of the subjects and methods of treatments defined in this section are administered or used~~ in which massage is practiced.
3. 4. "Massage therapist" means ~~a person an individual who practices or administers any of the following subjects and who has studied the underlying principles of anatomy and physiology generally included in a regular course of study by a recognized and approved school of massage: the art of body massage either by hands or with a mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, heat lamps, salt glows, hot and cold packs, tub, shower, or cabinet baths. Massage is the practice of a profession scientifically applied to the patient by the operator's hands and includes such modalities as acupressure and polarity and, after July 1, 1993, massage includes reflexology. Variations of the following procedures are used: touch, stroking, friction, kneading, vibration, percussion, and medical gymnastics. Massage therapists may not diagnose or treat classified diseases, practice spinal or other joint manipulations, or prescribe or administer vitamins~~ massage.

SECTION 2. AMENDMENT. Section 43-25-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-03. Massage therapists to be licensed. A person may not:

1. ~~Engage in the practice or~~ Practice massage, attempt to practice massage ~~for a fee or gratuity, or to conduct or teach massage techniques, for a fee or gratuity or as a free demonstration,~~ without a license issued under this chapter;

2. Operate or conduct a massage establishment unless it meets the ~~sanitary~~ requirements of ~~this chapter and any regulations~~ adopted by the board;
3. Employ an unlicensed person to ~~work as~~ perform 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 licensed massage therapist under this chapter, or without operating and maintaining a bona fide massage establishment, and without first paying a license fee to the board. Use the title "massage therapist" or the abbreviations "L.M.T." or "M.T." without a license issued by the board.~~

SECTION 3. AMENDMENT. Section 43-25-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-04. Exemptions. The following ~~classes of~~ persons are exempt from this chapter:

1. ~~Persons authorized by the laws of this state to practice medicine, surgery, osteopathy, chiropractic, podiatry, or persons holding a drugless practitioner's certificate under the laws of this state.~~
2. ~~Registered nurses and licensed practical nurses under the laws of this state.~~
3. ~~Registered physical therapists and physical therapist assistants under the laws of this state.~~
4. ~~Schools and YMCA clubs who~~ that furnish therapy and massage services to their ~~players and members~~ student athletes.
5. ~~Registered hairdressers and cosmetologists under the laws of this state.~~
6. ~~Registered barbers under the laws of this state.~~
7. ~~Reflexologists licensed under chapter 43-49.~~
8. 2. Any student of a school of massage who is practicing massage in the course of fulfilling a required massage therapy practicum under the direct supervision of a licensed massage therapist or in the course of participating in a school-supervised student massage clinic under the direct supervision of a licensed massage therapist.

~~Any exemption granted under this chapter is effective only insofar as and to the extent that the bona fide practice of the profession or business of the person exempted overlaps into the field comprehended by this chapter, and exemptions under this chapter are only for those~~

3. Any individual who is engaged in a profession or occupation for which the individual is licensed by this state, as long as the individual's activities which are performed in the course of the bona fide practice of the business or individual's profession of the person exempted or occupation and as long as the individual does not represent to the public that the individual is a massage therapist or is engaged in the practice of massage.
4. A health spa or similar business to the extent the spa or business is performing superficial applications, including salt glows and contouring.

SECTION 4. AMENDMENT. Section 43-25-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-05. Board of massage - Terms. The governor shall appoint ~~the~~ a board of massage, to consist of ~~three~~ five members. Three of the members of the board must be massage therapists who are 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. Two additional members, who may not be massage

therapists or immediate family members of a massage therapist, must be appointed as consumer members for two-year terms, staggered so that the term of one member expires each year. Each member ~~shall hold~~ of the board holds office until that member's successor is appointed and qualified.

SECTION 5. 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 - Meeting.

The governor may remove from office members of the board 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 ~~his or her~~ the member's resignation or death, ~~and all such appointees are to be practicing massage therapists in the state.~~

The board shall within two weeks after its appointment meet at some convenient place within the state and shall annually elect a president from their own members, and a secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of ~~his~~ the secretary-treasurer's duties. ~~The board shall hold examinations from time to time at such place or places as the board may designate.~~

~~It shall also be the duty of the board from time to time to examine and inspect or cause to be examined or inspected all massage establishments. The board and its agents and employees are authorized to enter and inspect any such massage establishment at any time during which the establishment is open for the transaction of business.~~

SECTION 6. A new section to chapter 43-25 of the North Dakota Century Code is created and enacted as follows:

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 shall periodically inspect or cause to be inspected all massage establishments. The board and its agents are authorized to enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.

SECTION 7. AMENDMENT. Section 43-25-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-07. (Effective through July 31, 2001) 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 this state 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. An applicant is entitled to massage therapist licensure if the applicant:
 - a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board which may not be less than the standards of the American massage therapy association commission on massage therapy accreditation; or if the board has not adopted standards, the school of massage meets the curriculum guidelines of the American massage therapy association commission on massage therapy accreditation and the school requires at least seven hundred fifty hours of supervised instruction. Any student enrolled in a massage school on or before April 8, 1999, satisfies the requirements in this subdivision if the student presents a diploma or credentials issued by a school of massage that requires at least five hundred hours of instruction.

- 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.
 - c. Pays the required fees. 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 licensure under this chapter unless the board determines the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.

(Effective after July 31, 2001) 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 this state 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.~~ An applicant is entitled to massage therapist licensure may receive a license from the board as a massage therapist if the applicant:
 - a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board; ~~which may not be less than the standards of the American massage therapy association;~~
 - b. ~~Passes a reasonable demonstrative, oral, and written an examination conducted or approved 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;~~ and
 - c. ~~Pays the required fees. These fees, which~~ 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~~ examination 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 licensure under this chapter unless the board determines the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 8. AMENDMENT. Section 43-25-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-08. Fee for license. The fee to receive a license as a massage therapist is one hundred fifty dollars or a lesser amount established by the board.

SECTION 9. AMENDMENT. Section 43-25-09 of the 1999 Supplement to 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 ~~and must be recorded within thirty days after issuance in the office of the register of deeds in any county where the licensed massage therapist practices, unless the board of county commissioners designates a different official.~~
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. 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 license.
3. If the board reasonably believes a massage therapist or applicant is in a physical condition jeopardizing the health of those who seek relief from the ~~massage therapist individual~~, the board may require the ~~applicant individual~~ to have a physical examination by a competent medical examiner. If the ~~applicant 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 ~~applicant individual~~ furnishes due proof of being physically and mentally competent and sound.
4. 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 and production of a new certificate of physical examination.
5. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

SECTION 10. AMENDMENT. Section 43-25-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. The license of a massage therapist may be ~~denied~~, revoked, suspended, or ~~annulled upon~~ 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 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 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, narcotics, or stimulants to the extent the licensee is incapacitated from performing the professional duties of a massage therapist.
 - e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or vitamins, or the licensee infringes on any other licensed profession.

- f. The licensee is guilty of willful 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. ~~Any licensee who does not renew a massage therapist license for two consecutive years because of sickness or other reason, or because of absence from the state, must take the examination as prescribed for an applicant to become a registered operator and comply with all the provisions of this chapter applicable to any applicant to become a licensee.~~
- 3. ~~Charges~~ A complaint may be ~~preferred~~ submitted to the board by any person, or the board may on its own motion direct the executive officer of the board to prefer any charges. ~~Any accusation may be filed with the secretary treasurer of the board charging any licensed massage therapist with any of the offenses enumerated in this section. An accusation. A complaint~~ must be signed by the ~~accuser~~ complainant and verified under oath.
- 3. Any hearing regarding a disciplinary action or a denial of a license must be held pursuant to chapter 28-32.

SECTION 11. AMENDMENT. Section 43-25-13 of the 1999 Supplement to 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 licenses have been granted under this chapter, the license number of each, the date of granting each 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 this state. ~~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 certified copy of any 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 a biennial report detailing income and expenses and a list of massage therapists licensed.

SECTION 12. 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 receive ~~fifty dollars per day and traveling expenses while compensation in an amount of sixty-two dollars per day or prorated for partial days for each day or portion of a day the member is actually engaged in their the performance of official duties and payment for mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. The secretary-treasurer must be paid three dollars per member per year may receive additional compensation as set by the board.~~ The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid ~~said employees to the personnel.~~

SECTION 13. AMENDMENT. Section 43-25-18 of the 1999 Supplement to 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 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 this 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, certifying to the fact of registration and being a person of good moral character and of professional attainments, may upon paying a fee of ~~thirty five~~ 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;

~~however, no license may be issued to any applicant unless the state from which the certificate is granted extends a like privilege to engage in the practice of massage within its borders to persons licensed under this chapter, upon practicing in that other state. The board may enter reciprocal relations with other states whose requirements are substantially the same as those provided in this chapter.~~

SECTION 14. AMENDMENT. Section 43-25-19 of the North Dakota Century Code is amended and reenacted as follows:

43-25-19. Penalty for violation. Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the board may initiate a civil action in a court of competent jurisdiction as necessary to enforce this chapter or any rule adopted under this chapter, including an injunction to restrain a violation, without proof of actual damages sustained by any person.

SECTION 15. REPEAL. Sections 43-25-11, 43-25-12, and 43-25-16 of the North Dakota Century Code are repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1155.

House Vote: Yeas 98 Nays 0 Absent 0

Senate Vote: Yeas 44 Nays 0 Absent 5

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at _____ o'clock _____ M.

Secretary of State