

**SENATE BILL NO. 2243**

Introduced by

Senators Thane, Lee, T. Mathern

Representatives Gulleason, Koppang

1 A BILL for an Act to create and enact chapter 43-51 of the North Dakota Century Code, relating  
2 to licensing of marriage and family therapists; and to provide a penalty.

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

4 **SECTION 1.** Chapter 43-51 of the North Dakota Century Code is created and enacted  
5 as follows:

6 **43-51-01. Definitions.** In this chapter, unless the context otherwise requires:

- 7 1. "Advertise" includes issuing or causing to be distributed any card, sign, or device to  
8 any person; causing, permitting, or allowing any sign or marking on or in any  
9 building; or using radio, television, or any other means designed to secure public  
10 attention.
- 11 2. "Board" means the marriage and family therapist licensure board.
- 12 3. "Licensed marriage and family therapist" means a person licensed under this  
13 chapter.
- 14 4. "Marriage and family therapy" means the diagnosis and treatment of disorders,  
15 whether cognitive, affective, or behavioral, within the context of marriage and  
16 family systems. The term involves the professional application of family systems  
17 theories and techniques in the delivery of services to individuals, couples, and  
18 families.
- 19 5. "Practice of marriage and family therapy" means rendering professional marriage  
20 and family therapy services to individuals, couples, and families, singly or in  
21 groups, whether offered directly to the general public or through organizations for a  
22 fee, monetary or otherwise.

- 1           6. "Qualified supervision" means the supervision of clinical services in accordance  
2           with standards established by the board and under the supervision of an individual  
3           who has been recognized by the board as an approved supervisor.
- 4           7. "Recognized educational institution" means any educational institution that grants a  
5           bachelor's, master's, or doctoral degree and is recognized by the board and by a  
6           regionally recognized educational body; or a postgraduate training institute  
7           accredited by the commission on accreditation for marriage and family therapy  
8           education.
- 9           8. "Use a title or description" means to hold oneself out to the public as having a  
10          particular status by means of stating this on signs, mailboxes, address plates,  
11          stationery, announcements, calling cards, or other instruments of professional  
12          identification.

13           **43-51-02. Prohibited acts.** Except as specifically provided in this chapter, unless  
14   licensed under this chapter, a person may not:

- 15          1. Advertise the performance by oneself of marriage and family therapy;  
16          2. Use a title or description of marital or marriage therapist; marital or marriage and  
17          family therapist; or any other name, style, or description denoting the person as a  
18          marriage and family therapist; or  
19          3. Practice marriage and family therapy.

20           **43-51-03. Exemptions.**

- 21          1. A person is exempt from the requirements of this chapter:  
22           a. If practicing marriage and family therapy is part of the person's duties as an  
23           employee of:  
24           (1) A recognized academic institution;  
25           (2) A governmental institution or agency while performing those duties for  
26           which the person was employed by that institution or agency; or  
27           (3) An organization that is nonprofit and is determined by the board to meet  
28           community needs while performing those duties for which the person  
29           was employed by such agency;  
30           b. If the person is a marriage and family therapy intern or person preparing for  
31           the practice of marriage and family therapy and is under qualified supervision

1 in a training institution, facility, or supervisory arrangement recognized and  
2 approved by the board, provided the person is designated by a title clearly  
3 indicating training status; or

4 c. If the person has been issued a temporary permit by the board to engage in  
5 the activities for which licensure is required.

6 2. This chapter does not prevent licensed certified social workers, licensed  
7 professional counselors, psychiatric nurses, psychologists, physicians, members of  
8 the clergy, or members of other professional groups from advertising that they  
9 perform work of a marriage and family therapy nature consistent with the accepted  
10 standards of their respective professions. However, subsection 2 of  
11 section 43-51-02 applies to this situation.

12 **43-51-04. Marriage and family therapist licensure board.** The governor shall  
13 appoint the three members of the board. The governor shall designate the chairman, who may  
14 not serve more than four years as chairman. Two members must be licensed practicing  
15 marriage and family therapists who for at least five years immediately before appointment have  
16 been actively engaged as marriage and family therapists in rendering professional services in  
17 marriage and family therapy, or in the education and training process of earning a master's,  
18 doctoral, or postdoctoral degree in marriage and family therapy or in marriage and family  
19 therapy research, and have spent the majority of the time devoted to this activity in this state  
20 during the two years before appointment. One member must be a representative of the general  
21 public who has no direct affiliation with the practice of marriage and family therapy or other  
22 mental health professions.

23 **43-51-05. Board - Term - Vacancies.** Of the first board members appointed, one must  
24 continue in office for two years, one must continue in office for three years, and one must  
25 continue in office for four years. An initial member's successor must be appointed to a term of  
26 four years, unless the appointment is to fill a vacancy of an unexpired term. The initial  
27 members, with the exception of the representative of the general public, are deemed to be and  
28 become licensed practicing marriage and family therapists immediately upon their appointment  
29 and qualification as members of the board. The governor shall nominate a new member to fill a  
30 vacancy on the board within thirty days of the vacancy. If any board member dies, resigns,  
31 becomes disqualified, or otherwise ceases to be a board member, the vacancy must be filled by

1 the governor by appointment for the unexpired term. The appointment of any member of the  
2 board automatically terminates thirty days after the member is no longer a resident of the state.  
3 Upon the expiration of a term of office, a board member must continue to serve until a  
4 successor has been appointed and qualified. A person may not be appointed more than once  
5 to fill an unexpired term, or more than two consecutive full terms. The governor may remove  
6 any member of the board, or the chairman from the position of chairman, for neglect of duty,  
7 malfeasance, conviction of a felony or crime of moral turpitude while in office, but for no other  
8 reason. A board member may not be removed until a public hearing of the charges against the  
9 board member has been held, and there has been at least thirty days between written notice to  
10 the board member of the charges and the date fixed for the hearing.

11 **43-51-06. Board - Compensation.** A board member may not participate in any matter  
12 before the board in which the board member has a pecuniary interest, personal bias, or other  
13 similar conflict of interest. Members shall serve without compensation, but are entitled to be  
14 reimbursed for actual and necessary expenses incurred in the performance of official board  
15 business as are other state officers.

16 **43-51-07. Board - Office.** The principal office of the board must be located in  
17 Bismarck, but the board may act and exercise all of its powers at any other place.

18 **43-51-08. Board powers and duties - Meetings.**

- 19 1. The board shall administer and enforce this chapter.
- 20 2. The board shall examine and pass on the qualifications of all applicants under this  
21 chapter, and shall issue a license to each successful applicant, attesting to the  
22 applicant's professional qualifications to be a marriage and family therapist.
- 23 3. The board shall adopt a seal which must be affixed to all licenses issued by the  
24 board.
- 25 4. The board is authorized to employ any employee it may find necessary for the  
26 proper performance of the board's duties.
- 27 5. The board may authorize expenditures necessary to carry out this chapter from the  
28 fees it collects and other available funds, but expenditures may not exceed the  
29 revenues of the board during any fiscal year.

1           **43-51-09. License application.** Any person desiring to obtain a license as a practicing  
2 marriage and family therapist must apply to the board on a form and in a manner the board  
3 prescribes.

4           **43-51-10. Licensure qualifications.** An applicant is entitled to a license if the  
5 applicant provides satisfactory evidence to the board that the applicant:

- 6           1. Has a master's degree or a doctoral degree in marriage and family therapy from a  
7 recognized educational institution, or a graduate degree in an allied field from a  
8 recognized institution and has graduate level coursework that is equivalent to a  
9 master's degree in marriage and family therapy as determined by the board;
- 10          2. Has successfully completed two calendar years of work experience in marriage  
11 and family therapy under qualified supervision following receipt of a qualifying  
12 degree; and
- 13          3. Passes an examination administered by the board.

14           **43-51-11. Examination.** The board shall conduct an examination at least once a year  
15 at a time and place designated by the board. Examinations may be written or oral, as  
16 determined by the board. In a written examination, each applicant must be designated so that  
17 the applicant's name is not disclosed to the board until the examinations have been graded. An  
18 examination must include questions in theoretical and applied fields to test an applicant's  
19 knowledge and competence to engage in the practice of marriage and family therapy. An  
20 applicant is deemed to have passed an examination upon affirmative vote of at least four  
21 members of the board. Any person who fails an examination conducted by the board may not  
22 take the examination again for a period of at least six months.

23           **43-51-12. Temporary permits.** The board may issue a temporary permit for up to one  
24 year to a person upon filing of an application for licensure under this chapter while the  
25 application is being processed by the board, or while the applicant is awaiting the opportunity to  
26 take the first written examination offered by the board after filing an application.

27           **43-51-13. Reciprocal licenses.** The board shall issue a license by examination of  
28 credentials to any person licensed or certified as a marriage and family therapist in another  
29 state with requirements for the license or certification of marriage and family therapists which  
30 are equivalent to or exceed the requirements of this state, provided the applicant submits an  
31 application on forms prescribed by the board and pays the appropriate licensure fee.

1           **43-51-14. Fees.** The board shall establish, annually, the fee for original licensure.  
2 Licenses are valid for two years and must be renewed biennially, with a renewal fee in an  
3 amount determined by the board, not to exceed one hundred dollars. An applicant for renewal  
4 of an expired license must pay a reregistration fee in an amount determined by the board.

5           **43-51-15. Renewal of license.** Ninety days before the expiration of a license the  
6 secretary of the board shall forward to a licenseholder an application for renewal. The  
7 secretary shall issue a new license upon receipt of the completed application form and the  
8 renewal fee on or before the expiration of the license.

9           **43-51-16. Denial, revocation, or suspension of license.**

10          1. The board may deny, revoke, or suspend a license on the following grounds:

11           a. Conviction of an offense determined by the board to have a direct bearing on  
12 the person's ability to serve the public in the practice of marriage and family  
13 therapy, or, following conviction of any offense, failure to be sufficiently  
14 rehabilitated under section 12.1-33-02.1. The board shall compile, maintain,  
15 and publish a list of offenses described in this subdivision.

16           b. Violation of ethical standards of a nature rendering the person found by the  
17 board to have engaged in such a violation unfit to practice marriage and  
18 family therapy. The board shall identify and publish these ethical standards.

19           c. Fraud or misrepresentation in obtaining a license.

20           d. Any just and sufficient cause that renders a person unfit to practice marriage  
21 and family therapy.

22          2. The board may not deny, suspend, or revoke a license for the reasons set forth in  
23 subsection 1 without prior notice and opportunity for a hearing.

24          3. Any person may file a complaint with the board seeking denial, suspension, or  
25 revocation of a license issued or to be issued by the board. A complaint must be in  
26 a form prescribed by the board and must be verified under oath by the complainant  
27 or authorized agent of a complainant. If the board determines a complaint alleges  
28 facts that if true would require denial, revocation, or suspension of a license, the  
29 board promptly shall conduct a hearing. If the board is of the opinion a complaint  
30 does not state facts that warrant a hearing, the complaint may be dismissed. The

board may conduct a hearing for denial, suspension, or revocation of a license on its own motion.

4. Any interested person is permitted to intervene and participate in board hearings on denial, suspension, or revocation of licenses.

5. Any person whose license has been suspended or revoked may apply to the board for vacation of the suspension or reinstatement of the license.

**43-51-17. Board procedures.** Any person may be heard by the board in person or by attorney. Every vote on an official act of the board must be entered of record. A record must be made of every hearing before the board. One or more board members, a hearing officer, or other officer appointed by the board must preside at a hearing.

**43-51-18. Expert witnesses.** In any proceeding before the board involving the granting, suspension, or revocation of a license, or in other proceedings in which expert testimony relating to the practice of marriage and family therapy is necessary, the board shall hear evidence from a qualified expert witness or witnesses selected by the parties. Any expert witness who testifies in a board proceeding must be compensated by the respective parties. An expert witness selected to testify on behalf of the board, when it is a party to the proceeding, who is an employee of an agency of the state of North Dakota, must be permitted to testify without loss of income or other benefits.

**43-51-19. Confidentiality and privileged communications.** A person licensed under this chapter, or any of the licensee's employees or associates, may not be required to disclose any information acquired in rendering marriage and family therapy services, except:

1. As mandated by law;
2. To prevent a clear and immediate danger to a person;
3. When the therapist is a defendant in a proceeding arising from the therapy, in which case client confidences may be disclosed only in the course of that proceeding;
4. When the client is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses in the client's behalf; or
5. If there is a waiver previously obtained in writing, information may be revealed only in accordance with the terms of the waiver. If more than one person in a family

1 receives therapy conjointly, each family member who is legally competent to  
2 execute a waiver must agree to the waiver referred to in this subsection. Without  
3 such a waiver from each family member legally competent to execute a waiver, a  
4 therapist cannot disclose information received from any family member.

5 **43-51-20. Privilege - Alimony and divorce actions.** If both parties to a marriage have  
6 obtained marriage and family therapy by a licensed marriage and family therapist, the therapist  
7 is excluded from testifying in an annulment, separation, or divorce action concerning  
8 information acquired in the course of the therapeutic relationship, unless both parties agree to  
9 allow the therapist to testify. This section does not apply to child custody proceedings.

10 **43-51-21. Annual report.** The board shall publish and submit to the governor an  
11 annual report of the board's work and any additional information collected by the board as it  
12 may wish to include.

13 **43-51-22. Penalty.** Any person who willfully violates this chapter is guilty of a class B  
14 misdemeanor.