

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2115

Introduced by

Industry, Business and Labor Committee

(At the request of the Attorney General)

- 1 A BILL for an Act to create and enact a new chapter to title 43 of the North Dakota Century
2 Code, relating to the practice of a regulated occupation or profession.

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

4 **SECTION 1.** A new chapter to title 43 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.** As used in this chapter, unless the context indicates otherwise:

- 7 1. "Board" means a board, commission, or other agency of state government created
8 or identified in this title to regulate a particular occupation or profession, except for
9 the:

- 10 a. State board of accountancy;
11 b. State electrical board;
12 c. North Dakota real estate appraiser qualifications and ethics board;
13 d. State real estate commission;
14 e. Secretary of state with respect to contractor licensing;
15 f. State board of medical examiners; and
16 g. State board of dental examiners.

17 "Board" also includes any agency of state government which is created or identified
18 outside this title to regulate a particular occupation or profession if the agency
19 elects, by administrative rule, to invoke the authority in this chapter.

- 20 2. "Foreign practitioner" means an individual who currently holds and maintains a
21 license in good standing to engage in an occupation or profession in a state or
22 jurisdiction other than this state and who is not the subject of a pending disciplinary
23 action in any state or jurisdiction.

3. "Good standing" means a foreign practitioner holds a current license that is not issued on a temporary or restricted basis, is not encumbered or on probation, and is not suspended or revoked.

4. "License" means a license, certificate, permit, or similar authorization to practice an occupation or profession which is issued by a government agency in another state or jurisdiction that imposes requirements for obtaining and maintaining a license which are at least as stringent as the requirements imposed in this state to obtain and maintain a license to practice the same profession or occupation.

5. "Occupation or profession" means activity for which a license is required from a board or similar activity for which a license is required in another state or jurisdiction.

Location of practice of an occupation or profession. The provision of services to an individual in this state which fall within the standard of practice of a profession or occupation regulated by a board, regardless of the means by which the services are provided or the physical location of the person providing those services, constitutes the practice of that occupation or profession in this state and is subject to regulation by the appropriate board in this state.

Indirect practice without a license.

1. A foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the appropriate board if the services are provided through consultation with the person licensed by the board and if the foreign practitioner has no direct communication in this state with the individual receiving the services except in the presence of the individual who is licensed by the board. Both the foreign practitioner and the individual licensed by the board are responsible for the services provided under this subsection.

2. A foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the appropriate board if the services are provided through a remote means and are a continuation of an existing relationship between the

foreign practitioner and the individual receiving the services which was formed in the state or jurisdiction in which the foreign practitioner is currently licensed.

Emergency practice without a license. Upon prior written notice to the appropriate board, a foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the board, if the services are provided for a period of time not to exceed sixty consecutive days in a calendar year and are provided in response to a disaster declared by the appropriate authority in this state. The notice provided by a foreign practitioner under this section must include verified documentation from the appropriate licensing authority which identifies the requirements for licensure in that jurisdiction and which confirms that the practitioner is licensed and in good standing in that jurisdiction and any other information requested by the board. A notice provided under this section, if accompanied by sufficient documentation, is deemed to be accepted unless denied by the board. If a notice under this section is denied, the foreign practitioner immediately shall cease providing services under this section and may not resume providing services until after a successful appeal of the board's decision under chapter 28-32 or after an application for privileges under this section is reviewed and approved by the board.

Limited practice without a license. Upon prior written application to the appropriate board, a foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the board if the services are provided for no more than thirty full or partial days per year. The one-year period commences on the date the written application is approved by the board. An application from a foreign practitioner under this section must include verified documentation from the appropriate licensing authority which identifies the requirements for licensure in that jurisdiction and which confirms that the practitioner is licensed and in good standing in that jurisdiction and any other information requested by the board. The board may require payment of a fee of twenty-five dollars or other fee established by the board by administrative rule, not to exceed the higher of twenty-five dollars or one-tenth of the fee for an annual license from the board, as a condition of approving an application under this section.

Licensure without examination. A board may issue a license, without examination, to any foreign practitioner who has practiced the occupation or profession for which the

practitioner is licensed at least two years prior to submitting the application to the board, or for any shorter period of time provided in this title or established by the board by administrative rule, and who meets the other requirements for a license. A board is not prohibited from issuing a license under this section to a foreign practitioner if the state or jurisdiction in which the individual is licensed does not extend similar privileges to individuals licensed in this state. This section does not prohibit a board from requiring a foreign practitioner to take an examination regarding the laws of this state and the rules established by the board.

License compacts. A board may establish, by administrative rule, conditions and procedures for foreign practitioners to practice in this state pursuant to written compacts or agreements between the board and one or more other states or jurisdictions or pursuant to any other method of license recognition that ensures the health, safety, and welfare of the public. Any compact or agreement by a board does not become binding on this state until implemented by administrative rules under this section.

Discipline. A foreign practitioner's authority to practice an occupation or profession under this chapter is subject to denial, probation, suspension, revocation, or other form of discipline for the same grounds as individuals licensed by the appropriate board in this state. In addition to other grounds for disciplinary action authorized by law, a person who holds a license issued by a board may be subject to disciplinary action in this state for:

1. Failing to adequately review services provided by a foreign practitioner under this chapter;
2. Unauthorized practice of the person's occupation or profession in another state or jurisdiction, including the delivery of services by a licenseholder in this state to a recipient of services in another state or jurisdiction;
3. Acts occurring in another state or jurisdiction which could subject the person to disciplinary action if those acts occurred in this state; or
4. Acts occurring in another state or jurisdiction which could subject the person to disciplinary action if the person held a license in that state or jurisdiction.

A disciplinary action under this section against a foreign practitioner is subject to chapter 28-32.

Jurisdiction - Service of process. A foreign practitioner who provides services in this state without a license as permitted in this chapter shall be deemed to have consented to the

1 jurisdiction of this state and the appropriate board, to be bound by the laws of this state and the
2 rules established by the appropriate board, and to have appointed the secretary of state as the
3 foreign practitioner's agent upon whom process may be served in any action or proceeding
4 against the practitioner arising out of the practitioner's activities in this state.

5 Service on the secretary of state of any process, notice, or demand is deemed personal
6 service upon the foreign practitioner and must be made by filing with the secretary of state an
7 original and two copies of the process, notice, or demand, with the filing fee of twenty-five
8 dollars. A member of the legislative assembly or a state or county officer may not be charged
9 for filing any process, notice, or demand for service. The secretary of state shall immediately
10 forward a copy of the process, notice, or demand by registered mail, addressed to the foreign
11 practitioner at the address provided by the filer.

12 **Application with other laws.** This chapter applies notwithstanding any other limitation
13 in state law on the practice of an occupation or profession. This chapter supplements and does
14 not repeal the authority provided to each board. Nothing in this chapter prohibits a board from
15 imposing conditions on foreign practitioners by administrative rule or compact which are more
16 restrictive than those imposed in this chapter, if those restrictions are enacted to ensure the
17 health, safety, and welfare of the public. Rules under this section may be adopted as
18 emergency rules under chapter 28-32. Nothing in this chapter alters the scope of practice of a
19 particular occupation or profession as defined by law.