

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2092
(Industry, Business and Labor Committee)
(At the request of the State Board of Massage)

AN ACT to amend and reenact sections 43-25-02 and 43-25-05, subsection 3 of section 43-25-05.1, and sections 43-25-07, 43-25-08, 43-25-09, 43-25-13, and 43-25-18 of the North Dakota Century Code, relating to the licensing and regulation of massage therapy.

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 therapy.
2.
 - a. ~~"Massage" means the scientific and systematic manipulation of the soft tissues of the human body through any manual or mechanical means, using western and eastern modalities, including superficial hot and cold applications, hydrotherapy, reflexology, shiatsu, acupressure, and the use of salts or lubricants for the purpose of promoting, maintaining, and restoring the health and well-being of the client. The term includes assessment, effleurage (stroking or gliding), petrissage (kneading), tapotement (percussion), compression, vibration, friction, and active or passive range of motion and stretching either by hand, forearm, elbow, knee, foot, or with mechanical appliances for the purpose of body massage practice of massage therapy by the manual application of a system of structured touch to the soft tissues of the human body, including:~~
 - (1) Assessment, evaluation, or treatment;
 - (2) Pressure, friction, stroking, rocking, gliding, kneading, percussion, or vibration;
 - (3) Active or passive stretching of the body within the normal anatomical range of movement;
 - (4) Use of manual methods or mechanical or electrical devices or tools that mimic or enhance the action of human hands;
 - (5) Use of topical applications such as lubricants, scrubs, or herbal preparations; and
 - (6) Use of hot or cold applications.
 - b. Except as provided in this chapter, "massage" does not include diagnosis or other services that require a license to practice medicine or surgery, osteopathic medicine, chiropractic, occupational therapy, physical therapy, or podiatry and does not include service provided by professionals who act under their state-issued professional license, certification, or registration.
3. "Massage establishment" means any place of business in which massage is practiced.
4. "Massage therapist" means an individual ~~who practices~~licensed to practice massage.
5. "Remote education" means asynchronous education that is not in person, live, or presented in real time.

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 therapy - Terms.

1. The governor shall appoint a board of massage, to consist of five members.
 - a. Three members of the board must be massage therapists who are licensed in this state and annually work at least five hundred hours practicing massage in this state and have done so for at least the previous three years. These members must be appointed for terms of three years, staggered so that the term of one member expires each year.
 - b. One member of the board must be a consumer member. To qualify as a consumer member an individual may not be or have been a massage therapist, may not have an immediate family member who is a massage therapist, may not be an owner of or have any affiliation with a massage school, may not be a current or past member of any other health care licensing entity, may not have a fiduciary obligation to a facility rendering health care services, may not have a financial interest in the rendering of health care services, and may not have a direct and substantial financial interest in massage therapy. This member must be appointed for a two-year term, staggered so that the term expires with a licensed board member but not with the instructor board member.
 - c. One member of the board must be ~~ana~~ current or former massage therapy instructor at a school of a massage therapy program that meets the standards set by the board. This member must be appointed for a term of two years, staggered so that the term expires with a licensed board member but not with the consumer board member.
 - d. Each member of the board holds office until that member's successor is appointed and qualified. Any member appointed to a term beginning after June 30, 2013, may only serve for a total of six consecutive years, after which that member may not be reappointed unless a period of ~~two~~three years has passed since that member last served on the board.
2. Within one month after appointment of a new member, the board shall meet at some convenient place within the state and shall annually elect a president, vice president, secretary, and ~~secretary-treasurer~~treasurer. The ~~secretary-treasurer~~treasurer must be bonded in the sum of ~~one at least fifty~~ thousand dollars for the faithful discharge of the ~~secretary-treasurer's~~treasurer's duties.
3. Each member of the board must be a citizen of North Dakota and the United States.

SECTION 3. AMENDMENT. Subsection 3 of section 43-25-05.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The ~~secretary-treasurer~~board shall prepare and submit to the governor a biennial report detailing income and expenses and a list of licensed massage therapists.

SECTION 4. AMENDMENT. Section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

43-25-07. Requisites for licensure and examination - Subjects - Minimum passing grade - Fee for re-examination.

1. Any person who is eighteen years of age or more and of good moral character and temperate habits is entitled to apply to the board. An applicant 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 an~~ approved massage therapy education program that meets the standards set by the board;

- b. ~~Passes~~Receives a passing score on an examination conducted or approved by the board; and
 - c. Pays the required fees, which must accompany the application to the board.
2. Any applicant failing to obtain licensure within ~~six months~~one year of the initial license or relicense application is entitled to reapply within six months after notification that the application was rejected, upon payment of a fee of fifty dollars or a lesser amount established by the board. Two applications 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.
 4. The board may approve alternate educational methods or methodology for applicants to complete educational requirements if the applicant has graduated from a school of massage that is accredited by a national or regional accrediting agency recognized by the United States department of education.

SECTION 5. AMENDMENT. Section 43-25-08 of the North Dakota Century Code is amended and reenacted as follows:

43-25-08. Fee for license.

The application fee to receive a license as a massage therapist is one hundred fifty dollars or a lesser amount established by the board.

SECTION 6. AMENDMENT. Section 43-25-09 of 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.
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.~~
3. ~~Continuing education of at least twenty-four~~Except as otherwise provided under this subsection, twenty-four hours of continuing education hours, or equivalent college credits, submitted every two years is a further requirementrequired for renewal of the license. Of the twenty-four hours, twelve hours must be classroom, hands-on hours. For the first renewal after becoming licensed in this state, a minimum of three hours of the required twenty-four hours must be ethics education. If an applicant for renewal is in good standing and has been actively practicing massage for the fifteen years immediately preceding the renewal, six hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. If an applicant for renewal is in good standing and has been actively practicing massage for the twenty-five years immediately preceding the renewal, three hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. The board may accept continuing education attained by remote means. No more than ~~nineteen~~ hours of a licensee's renewal hours may be by remote means. To qualify as continuing education, the remote education must be board-approved for content and suitability as defined in this chapter.
 - a. ~~Odd-numbered licensed individuals~~Licensees with odd-numbered licenses shall report required continuing education ~~in~~on or before February twenty-eighth of each odd-numbered years and even-numbered licensed individuals shall report continuing

~~education in even-numbered years, based on the calendar year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.~~

~~b. Licensees with even-numbered licenses shall report required continuing education on or before February twenty-eighth of each even-numbered year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.~~

~~b.c. Licensed individuals during their initial licensure period are not required to report hours of continuing education. Thereafter, the licensees shall report continuing education pursuant to subdivisions subdivisions a and b.~~

~~e.d. The board may grant an individual waiver based on health issues or other good cause deemed sufficient by the board.~~

~~4.3. If the board reasonably believes a massage therapist or applicant has a physical or mental condition jeopardizing the health of those who seek reliefmassage from the individual, the board may require the individual to have an appropriate examination by a qualified examiner approved by the board. If the individual has had or has any communicable disease deemed sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the individual furnishes due proof of being physically and mentally competent and sound.~~

~~5.4. A holder of an expired license may within one yeartwo years from the date of its expiration have the license renewed upon payment of the required renewal fee. The board may require production of a new certificate of physical examination and evidence of completion of any required continued educational hours being completed.~~

~~6.5. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".~~

~~6. An applicant with training and credentials outside of the United States must submit at the applicant's own expense qualifications, credentials, and work experience to one of the following credentialing agencies for review:~~

~~a. International education research foundation;~~

~~b. International consultants of Delaware, inc.; or~~

~~c. A credentialing agency approved by the board.~~

~~7. Failure to have a review completed by a credentialing agency under subsection 6 and the massage therapy application procedures indemnified by the board may result in the board denying the application. The board may accept or refuse any recommendation made by the credentialing agency.~~

SECTION 7. 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 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 recordboard may implement rules for record retention. Licensee information is retained by the board from the date a license is granted until five years after inactive status. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurersecretary and the seal of the board, must be admitted as evidence in any of the courts of this state. The secretary-treasurersecretary shall furnish to any person a certified copy of any record upon payment of a fee of ten dollars plus twenty-five cents per page copied.~~

SECTION 8. AMENDMENT. Section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

43-25-18. Reciprocity.

1. ~~Any individual who has been duly licensed and is in good standing in another state, territory, or jurisdiction of the United States, to practice massage in a state that meets required educational hours and requirements in this state, and who has been lawfully and continuously engaged in licensed 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 licensed, certifying to the fact of licensure and being of good moral character and of professional attainments, may upon paying a fee of 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-~~
2. ~~An applicant for licensure by reciprocity who has been duly licensed and is in good standing to practice massage in a state with substantially similar licensure standards as determined by the board and who has been lawfully and continuously engaged in licensed practice for five years or more immediately before filing of an application to practice in this state, may be granted a license by the board without being required to take an examination if the applicant otherwise meets all of the requirements of subsection 1., if the applicant provides evidence satisfactory to the board the applicant:~~
 - a. Is licensed in good standing in any other state, territory, or jurisdiction of the United States;
 - b. Actively practiced for at least two of the last three years;
 - c. Graduated from a school of massage or massage therapy program approved by the board which may be proven by presentation of a diploma or credentials;
 - d. Passed an examination acceptable to the board;
 - e. A massage license granted to the applicant in any other state, territory, or jurisdiction is not subject to suspension, revocation, or otherwise restricted in any manner for disciplinary purposes; and
2. To qualify for licensure under this section, an applicant shall submit to a statewide and nationwide criminal history record check as required by section 43-25-08.1.

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 Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2092.

Senate Vote: Yeas 42 Nays 3 Absent 2

House Vote: Yeas 72 Nays 17 Absent 5

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State