

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1128
(Representatives Hatlestad, Longmuir, Pyle, Richter, Rohr, Strinden)
(Senators Bekkedahl, Kreun)

AN ACT to amend and reenact subsection 2 of section 43-25-02, subsection 1 of section 43-25-05, subsection 1 of section 43-25-07, section 43-25-09, subsection 1 of section 43-25-10, and subsection 1 of section 43-25-18, relating to the practice and licensure of massage therapy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-25-02 of the North Dakota Century Code is amended and reenacted as follows:

2. a. "Massage" means the 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 handstouch;
 - (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.

SECTION 2. AMENDMENT. Subsection 1 of section 43-25-05 of the North Dakota Century Code is amended and reenacted as follows:

1. The governor shall appoint a board of massage therapy, 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 a current or former massage therapy instructor 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 three years has passed since that member last served on the board.

SECTION 3. AMENDMENT. Subsection 1 of section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

1. Any ~~person~~individual who is eighteen years of age or more ~~and of good moral character and temperate habits~~older 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 an approved massage therapy education program that meets the standards set by the board;
 - b. Receives a passing score on an examination approved by the board; ~~and~~
 - c. Pays the required fees, which must accompany the application to the board; and
 - d. Meets any other requirements set by the board by rule.

SECTION 4. 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 ~~licensee shall display the licensee's original~~ license ~~must be conspicuously displayed or~~ license renewal card at the licensee's place of practice.
2. Except as otherwise provided under this subsection, twenty-four hours of continuing education, or equivalent college credits, submitted every two years is required 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 ~~ten hours~~fifty percent 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. Licensees with odd-numbered licenses shall report required continuing education on or before February twenty-eighth of each odd-numbered 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.
 - 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 a and b.
 - d. The board may grant an individual waiver based on health issues or other good cause deemed sufficient by the board.
3. If the board reasonably believes a massage therapist or applicant has a physical or ~~mental~~behavioral health condition jeopardizing the health of those who seek massage from the individual, the board may require the individual to have an appropriate examination by a qualified examiner approved by the board. Refusal to submit to an examination, if the refusal is not due to circumstances beyond the licensee's control, constitutes grounds for discipline under section 43-25-10. 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.
 4. A holder of an expired license may within two years from the date of its expiration have the license renewed upon payment of the required renewal fee. The board may require a new certificate of physical examination and evidence of completion of any required continued educational hours.
 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~~shall 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
 - e. 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 5. AMENDMENT. Subsection 1 of section 43-25-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The license of a massage therapist may be denied, revoked, suspended, or 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, 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, or other legal or illegal drugs, to the extent the licensee is compromised or impaired from performing the professional duties of a massage therapist or is under the influence while assessing, treating, or seeing a client.
- e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or the licensee infringes on any other licensed profession.
- f. The licensee is guilty of gross 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 or applicant failed to submit to a physical or behavioral health examination ordered by the board under section 43-25-09.
- h. The licensee has violated this chapter or any rule adopted by the board.

SECTION 6. AMENDMENT. Subsection 1 of section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Any individual who has been duly licensed in another city, county, state, territory, or jurisdiction of the United States, to practice massage, 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, if the applicant provides evidence satisfactory to the board ~~the applicant:~~
 - a. ~~Is~~The applicant is licensed in good standing in any other city, county, state, territory, or jurisdiction of the United States;
 - b. ~~Actively~~The applicant actively practiced for at least two of the last three years;
 - c. ~~Graduated~~The applicant 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~~The applicant passed an examination acceptable to the board; and
 - e. A massage license granted to the applicant in any other city, county, state, territory, or jurisdiction is not subject to suspension, revocation, or otherwise restricted in any manner for disciplinary purposes; ~~and.~~

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 Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1128.

House Vote: Yeas 81 Nays 9 Absent 4

Senate Vote: Yeas 45 Nays 1 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State