

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

508L0427

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1080 - 01/28/2005

Introduced by: Representatives Murschel, Brunner, Buckingham, Cutler, Davis, Dykstra, Haley, Hennies, Kraus, McLaughlin, Miles, Roberts, Rounds, Schafer, Street, Thompson, and Willadsen and Senators Schoenbeck, Abdallah, Koskan, and Moore

1 FOR AN ACT ENTITLED, An Act to provide for notification to the petitioner when an ex parte
2 protection order is served.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 25-10-7 be amended to read as follows:

5 25-10-7. An ex parte temporary protection order is effective for a period of thirty days
6 except as provided in § 25-10-7.1. The respondent shall be personally served forthwith with a
7 copy of the ex parte order along with a copy of the petition, affidavit, and notice of the date set
8 for the hearing. The ex parte order shall be served without delay under the circumstances of the
9 case including service of the ex parte order on a Sunday or holiday. The law enforcement agency
10 serving the order shall notify the petitioner by telephone or written correspondence when the
11 order is served if the petitioner has provided to the law enforcement agency either a telephone
12 number or address, or both, where the petitioner may be contacted. The law enforcement agency
13 is immune from civil and criminal liability if the agency makes a good faith attempt to notify
14 the petitioner in a manner consistent with the provisions of this section.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

391L0372

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1089** -
01/28/2005

Introduced by: Representatives Cutler, McCoy, and Miles and Senators Sutton (Dan),
Duniphan, Gray, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to to provide for licensure and regulation of massage
2 therapists and to provide funding from licensure fees.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms in this Act mean:

5 (1) "Board," the Board of Massage Therapy;

6 (2) "Massage," the systematic mobilization of the soft tissues of the body through the
7 application of hands or devices for the purposes of therapy, relaxation, or education
8 through means which include:

9 (a) Pressure, friction, stroking, rocking, kneading, percussion, compression, or
10 stretching;

11 (b) External application of water, heat, cold, lubricants, or other topical agents; or

12 (c) The use of devices that mimic or enhance actions done by hands;

13 (3) "Practice of massage therapy," the performance of massage for a fee or other
14 compensation or holding oneself out to the public as performing massage.



1 Section 2. The board consists of five members appointed by the Governor. The terms of the
2 initial members of the board shall be staggered by the drawing of lots with three of the initial
3 members serving a term of three years, two of the initial members serving a term of two years,
4 and one of the initial members serving a term of one year. Any subsequent term on the board
5 shall be three years. One member of the board shall be a person not licensed by the board. Four
6 members of the board shall be persons licensed by the board. The Governor shall fill any
7 vacancy by appointment to complete the unexpired portion of that member's term. No person
8 may serve more than three consecutive full terms on the board. The appointment to an unexpired
9 term is not considered a full term.

10 Section 3. Any member of the board may resign by giving written notice to the board and
11 to the Governor. Resignations are effective when delivered to the Governor and the board.

12 Section 4. The board shall select a president, vice-president, and secretary at its annual
13 meeting. The board may hire an executive secretary to perform any managerial, clerical, or other
14 duties directed by the board.

15 Section 5. The board shall hold an annual meeting at a place and time set by the board. The
16 board may hold special meetings at a time and place set by the president or a majority of the
17 board by giving written notice to the board prior to the meeting.

18 Section 6. Three board members present at any meeting constitute a quorum. No board
19 action may occur unless approved by a majority vote of the entire board.

20 Section 7. Board members shall receive a per diem set pursuant to § 4-7-10.4 and expenses
21 at the same rate as other state employees while actually engaged in official duties.

22 Section 8. Any person engaged in the practice of massage in this state shall conspicuously
23 display a valid license or certified duplicate license from the board in the person's place of
24 business.

1 Section 9. Any fees and civil penalties collected under this Act shall be used for the
2 operation of the board and the implementation of this Act.

3 Section 10. Any person who engages in the practice of massage or holds himself or herself
4 out to the public as engaged in the practice of massage without a license pursuant to this Act is
5 guilty of a Class 1 misdemeanor and upon conviction the court shall assess a civil penalty of one
6 thousand dollars payable to the board. The state or the board may file a civil action to enjoin any
7 person engaging in the practice of massage without a license.

8 Section 11. Any person who advertises services to the public as a massage therapist,
9 bodywork therapist, masseur, masseuse, massagist, or any derivation or abbreviation of those
10 terms or any other term commonly recognized to mean the practice of massage therapy while
11 not licensed under this Act is guilty of a Class 1 misdemeanor. Upon conviction the court shall
12 assess a civil penalty of one thousand dollars payable to the board. The state or the board may
13 file a civil action to enjoin any person from violating this section.

14 Section 12. The board may issue a license to engage in the practice of massage to any person
15 who submits an application form and the nonrefundable application fee as approved in section
16 17 of this Act and who demonstrates the following qualifications:

- 17 (1) Eighteen years of age or older;
- 18 (2) Good moral character;
- 19 (3) High school diploma or equivalent;
- 20 (4) Completion of no less than five hundred hours of training or study in the practice of
21 massage with a facility or instructor recognized by the board;
- 22 (5) Absence of unprofessional conduct;
- 23 (6) Malpractice insurance coverage with limits at or above an amount set by the board;
- 24 and

1 (7) Passing score on an examination administered by a national certification board
2 accredited by the National Commission of Certifying Agencies and in good standing
3 with the National Organization of Competency Assurance.

4 A license issued under this Act is valid for a period of two years from the date it was issued
5 and automatically expires unless it is renewed. The board may refuse to grant a license to any
6 person based on failure to demonstrate the requirements of this section. An applicant may appeal
7 the denial of a license in compliance with chapter 1-26.

8 Section 13. For the purposes of this Act, any of the following acts constitute unprofessional
9 conduct:

- 10 (1) Conviction of any felony, any crime involving or relating to the practice of
11 massage, or any crime involving dishonesty or moral turpitude;
- 12 (2) Abuse of or addiction to alcohol, marijuana, or any controlled substance;
- 13 (3) Providing the board false or misleading information on any application for a license
14 or renewal of a license;
- 15 (4) Willful misconduct or negligence in the practice of massage;
- 16 (5) Prescribing or administering controlled substances, narcotics, barbiturates, or other
17 potentially habit forming substances unless done through separate licensure under
18 state law;
- 19 (6) Exceeding the scope of practice of massage as defined in section 1 of this Act;
- 20 (7) Engaging in any lewd or immoral conduct;
- 21 (8) Making excessive or fraudulent charges for services;
- 22 (9) Engaging in conduct which endangers the health or welfare of clients or other
23 persons; or
- 24 (10) Failure to comply with any provision of this Act.

1 Section 14. For two years following the effective date of this Act, the board may issue a
2 license to a person who demonstrates completion of a minimum of one hundred hours of
3 training or study in the practice of massage with a facility or instructor recognized by the board
4 or adequate experience derived from the active practice of massage for at least the three years
5 immediately preceding the date of the application. Any person applying for a license under this
6 section is not required to comply with the examination and training or study requirements of
7 section 12 of this Act but shall meet the other criteria set forth in section 12 of this Act. Any
8 person applying for a license under this section shall submit an application as required by
9 section 12 of this Act along with proof of active practice for at least three years prior to the date
10 of application.

11 Section 15. Any person holding a valid license to practice massage from another state whose
12 requirements for licensure are not less restrictive than this state is not required to take the
13 examination for licensure. Any person applying for a license under this section shall submit an
14 application as required by section 12 of this Act along with proof of a current license. This
15 section applies only to persons holding licenses from states which offer reciprocity to persons
16 licensed by this state.

17 Section 16. Any person holding a valid license under this Act may renew that license by
18 paying the required renewal fee and providing proof of compliance with the continuing
19 education requirements set by the board at least thirty days prior to the expiration of the current
20 license. Any person who submits a license renewal late shall submit a seventy-five dollar late
21 fee. Any person whose license has lapsed shall reapply for a license.

22 Section 17. Any applicant for a license under this Act shall submit a nonrefundable
23 application fee of one hundred dollars. Any person who has a license issued or renewed by the
24 board shall submit a license fee in an amount set by the board, but not to exceed three hundred

1 dollars.

2 Section 18. Any person holding a valid license under this Act may obtain a certified
3 duplicate license by submitting a fee of twenty-five dollars for each certified duplicate.

4 Section 19. Any person licensed under this Act shall complete continuing education relating
5 to competence in the practice of massage on an annual basis in an amount, type, and from a
6 facility or instructor approved by the board. The board may waive the continuing education
7 requirement upon proof of illness or hardship.

8 Section 20. The board may inspect the place of business of any person with a license issued
9 pursuant to this Act during normal business hours or upon written notice.

10 Section 21. Any person holding a valid license under this Act and engaged in the practice
11 of massage therapy shall carry professional liability insurance coverage with limits at or in
12 excess of the minimum amount established by the board.

13 Section 22. The board may cancel, suspend, or revoke a license following a contested case
14 hearing in compliance with chapter 1-26 upon satisfactory proof of incompetence,
15 unprofessional conduct, or a violation of any provision of this Act. The board may waive the
16 requirement of prior notice and an informal meeting set forth in § 1-26-29 if the licensee
17 presents an immediate threat to the public or has engaged in willful misconduct. Any person
18 may appeal the cancellation, suspension, or revocation of a license in compliance with chapter
19 1-26.

20 Section 23. Any person whose license has been cancelled, suspended, or revoked by the
21 board may not reapply for a license until one year after it was cancelled, suspended, or revoked
22 unless a different time has been set by the board.

23 Section 24. The board may promulgate rules pursuant to chapter 1-26 in the following
24 areas:

- 1 (1) The form and information required for any license application;
- 2 (2) A list of recognized facilities or instructors who may provide training or instruction
3 required for licensure or continuing education requirements;
- 4 (3) The amount of license fees;
- 5 (4) The procedures for conducting disciplinary proceedings; and
- 6 (5) The minimum limits of malpractice insurance to be carried by any person licensed
7 under this Act.

8 Section 25. The provisions of this Act do not apply to any person performing massage for
9 compensation if the massage is done under one of the following circumstances:

- 10 (1) As part of a licensed practice as a physician, physician assistant, chiropractor, nurse,
11 physical therapist, athletic trainer, or other health care profession licensed or certified
12 under Title 36;
- 13 (2) In furtherance of duties as an employee of the United States;
- 14 (3) As part of a course of study with a facility or instructor recognized and approved by
15 the board to provide training in massage or the provision of such instruction;
- 16 (4) As part of providing a course of instruction or continuing education in the practice
17 of massage therapy on a temporary basis not in excess of ten days; or
- 18 (5) Manipulation of the connective tissues of the human body is restricted to the hands,
19 feet, or ears and the person does not hold himself or herself out to be a massage
20 therapist or to be engaged in the practice of massage therapy.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

466L0298

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1106 - 01/28/2005

Introduced by: Representatives Boomgarden, Cutler, Deadrick, Jerke, Michels, and Schafer
and Senators Olson (Ed), Abdallah, Broderick, Kooistra, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise the duties of certain licensed mental health
2 professionals with regard to certain insanity and guilty-but-mentally-ill proceedings.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-10-4 be amended to read as follows:

5 23A-10-4. In an appropriate case a court shall, upon motion of a prosecuting attorney, order
6 the defendant to submit to a ~~psychiatric~~ mental health examination by a psychiatrist or licensed
7 psychologist, designated for this purpose by the prosecuting attorney in an order of the court.
8 The court may also appoint medical experts and require that the defendant submit ~~himself for~~
9 to examination by such court-appointed medical experts. No statement made by an accused in
10 the course of any examination provided for by this section, whether the examination was with
11 or without the consent of the accused, ~~shall~~ may be admitted in evidence against ~~him~~ the
12 defendant on the issue of guilt in any criminal proceeding except for the purpose of impeaching
13 the defendant.

14 Section 2. That § 23A-10-7 be amended to read as follows:

15 23A-10-7. Subject to court approval, the defendant may be examined at an approved



1 community health center by a psychiatrist or licensed psychologist, of ~~his~~ the defendant's own
2 choosing at ~~his~~ the defendant's own expense or, if indigent, at county expense. Examination of
3 the defendant shall be on the issue of ~~his~~ the defendant's insanity when the offense occurred.
4 Notice of the independent examination shall be given to the prosecuting attorney at least five
5 days before the examination date. A psychiatrist or licensed psychologist, who examines an
6 indigent defendant may receive a reasonable fee.

7 Section 3. That § 23A-7-16 be amended to read as follows:

8 23A-7-16. In addition to the requirements of §§ 23A-7-4 and 23A-7-5, if a defendant
9 charged with a felony pleads guilty but mentally ill, the court may not accept the plea until the
10 defendant has been examined by a licensed psychiatrist or licensed psychologist, and the court
11 has examined the ~~psychiatric~~ mental health reports. The court shall hold a hearing on the
12 defendant's mental condition; and if there is a factual basis on which the court can conclude that
13 the defendant was mentally ill at the time of the offense, the plea shall be accepted.

14 Section 4. That § 23A-27-40 be amended to read as follows:

15 23A-27-40. If a defendant is found "guilty but mentally ill" and is placed on probation, the
16 sentencing court, upon recommendation of a licensed psychiatrist or licensed psychologist, shall
17 make treatment a condition of probation. Reports as specified by the sentencing court shall be
18 filed with the court service department and the sentencing court. The defendant's failure to
19 continue treatment, except by agreement with the treating agency and the sentencing court, is
20 basis for commencing a probation revocation hearing and grounds for probation revocation.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

375L0597

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1117 - 01/28/2005

Introduced by: Representatives Jensen, Davis, Dennert, and Novstrup and Senators Koskan and Bartling

1 FOR AN ACT ENTITLED, An Act to permit a county to file a lien against the property of the
2 parents for payment of temporary care, temporary custody, shelter, or detention provided to
3 a child if a judge has ordered payments of part of the costs.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 26-7A-94 be amended to read as follows:

6 26-7A-94. The following provisions govern the payment of costs of custodial care of any
7 child who is the subject of proceedings under this chapter or chapter 26-8A, 26-8B, or 26-8C:

8 (1) The child's parents, guardian, or custodian shall pay the costs of custodial care of the
9 child at all times while the child is in the custodial care of the parents, guardian, or
10 custodian;

11 (2) The costs of custodial care of any child before disposition of the child shall be paid
12 initially by the county in which the proceedings are conducted except for the costs
13 of custodial care of an apparent or alleged abused or neglected child in the temporary
14 custody of the Department of Social Services who is placed in a licensed foster home
15 or in licensed facilities. Custodial care costs for such a child shall be paid by the



1 Department of Social Services;

2 (3) The cost of placing any child in a detention facility after disposition shall be
3 sustained initially by the county in which the proceedings are concluded;

4 (4) If the court commits a child to the Department of Corrections and the child has to
5 await placement, the county in which the proceedings are concluded shall pay
6 initially the costs of custodial care for seven days immediately following issuance of
7 the final decree of disposition while the child awaits placement. After the seven-day
8 period has expired, the Department of Corrections shall pay the costs of custodial
9 care or reimburse the county responsible for providing that care;

10 (5) If the court places a child at the Human Services Center, and the child has to await
11 placement, the county in which the proceedings are concluded shall pay the costs of
12 custodial care for seven days immediately following issuance of the final decree of
13 disposition. After the seven-day period has expired, the Department of Human
14 Services shall pay the costs of custodial care or reimburse the county responsible for
15 providing that care while the child awaits placement; and

16 (6) The county may file a lien pursuant to §§ 26-7A-95 and 26-7A-98 on all property,
17 both real and personal, of the parents, jointly or severally, of any child placed in
18 temporary care, temporary custody, shelter, or detention if the county is responsible
19 for the costs after disposition and the judge has ordered repayment of any part of the
20 costs. No lien may be created or may arise if the child is not adjudicated to be an
21 abused or neglected child, a child in need of supervision, or a delinquent child at the
22 completion of the adjudicatory hearing and the proceedings terminated. The lien filed
23 pursuant to this section may not exceed ten thousand dollars plus any taxable court
24 costs. This limit does not apply to any claim or lien against the parents of a child

1 adjudicated to be an abused or neglected child. The priority of the county lien shall
2 be established pursuant to § 44-2-1. The lien is enforceable pursuant to the provisions
3 of chapter 23A-20.