

**SENATE BILL NO. 2294**

Introduced by

Senators Dever, Warner

Representatives Meier, Rohr

1 A BILL for an Act to create and enact subdivision nn of subsection 2 of section 12-60-24 of the  
2 North Dakota Century Code, relating to criminal history record checks; to amend and reenact  
3 sections 43-25-05, 43-25-05.1, and 43-25-09, subsections 2 and 3 of section 43-25-10, section  
4 43-25-14, and subsection 1 of section 43-25-18 of the North Dakota Century Code, relating to  
5 the governance of the board of massage and the regulation of massage therapists; to provide a  
6 penalty; to provide for application; to provide an effective date; and to declare an emergency.

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

8 **SECTION 1.** Subdivision nn of subsection 2 of section 12-60-24 the North Dakota Century  
9 Code is created and enacted as follows:

10 nn. The North Dakota board of massage as authorized under chapter 43-25, except  
11 that criminal history record checks need not be made unless required by the  
12 board.

13 **SECTION 2. AMENDMENT.** Section 43-25-05 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **43-25-05. Board of massage - Terms.**

16 1. The governor shall appoint a board of massage, to consist of five members. Three  
17 a. Four members of the members of the board must be massage therapists who are  
18 licensed in this state and actively practiced massage therapy in this state for at  
19 least three consecutive years immediately preceding appointment to the board.  
20 To remain qualified to serve as a massage therapist member of the board, the  
21 massage therapist member shall continue to actively practice massage therapy  
22 during incumbency on the board. The governor shall appoint the massage  
23 therapist members must be appointed for three yearsfour-year terms, staggered

1 so that the term of one member expires each year. ~~Two additional members, who~~  
2 ~~may not be~~

3 b. One member of the board must be a consumer member. The governor shall  
4 appoint the consumer member for a two-year term. The consumer member may  
5 not hold an office on the board. The consumer member may not:

6 (1) Be or ever have been a massage therapists or therapist;

7 (2) Be an immediate family members member of a massage therapist, must be  
8 appointed as consumer members for two-year terms, staggered so that the  
9 term of one member expires each year.;

10 (3) Be or ever have been an owner of or affiliated with any massage school;

11 (4) Be or ever have been a member of any other health care licensing board or  
12 commission;

13 (5) Have a fiduciary obligation to a facility rendering health care services; or

14 (6) Have a financial interest in the rendering of health services.

15 2. Each member of the board holds office until that member's successor is appointed and  
16 qualified. Any member appointed to a term beginning after June 30, 2013, may only  
17 serve for a total of ~~six~~eight consecutive years, after which that member may not be  
18 reappointed unless a period of ~~two~~ten years has passed since that member last  
19 served on the board.

20 3. Within ~~one month~~thirty days after appointment of a new member, the board shall meet  
21 at ~~some convenient place~~a physical location within the state and shall annually elect a  
22 president, vice president, and secretary-treasurer. The secretary-treasurer must be  
23 bonded in the sum of one thousand dollars for the faithful discharge of the  
24 secretary-treasurer's duties.

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

27 **43-25-05.1. Powers and duties of the board.**

28 The board has the following powers and duties:

29 1. The board may adopt and enforce rules as necessary to implement this chapter.

30 2. The board ~~may~~shall periodically inspect or cause to be inspected all massage

31 establishments. The board and ~~its~~the board's agents are ~~authorized to~~may enter and

- 1 inspect any massage establishment at any time during which the establishment is  
2 open for the transaction of business.
- 3 3. The secretary-treasurer ~~may~~shall prepare and submit to the governor a biennial report  
4 detailing income and expenses and a list of licensed massage therapists.
- 5 4. The board may hire office personnel deemed necessary by ~~it~~the board for carrying on  
6 ~~it~~the board's official duties and shall set the compensation to be paid to the  
7 personnel.
- 8 5. The board may require a statewide and nationwide criminal history record check for a  
9 first-time applicant for licensure in this state or for a current licensee who is the subject  
10 of a disciplinary investigation. The nationwide criminal history record check must be  
11 conducted in the manner provided by section 12-60-24. All costs associated with  
12 obtaining a background check are the responsibility of the licensee or applicant.

13 **SECTION 4. AMENDMENT.** Section 43-25-09 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **43-25-09. License - Display - Renewal - Renewal fee.**

- 16 1. Each license must be conspicuously displayed at the place of practice.
- 17 2. On or before January first of each year, each licensed massage therapist shall pay to  
18 the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser  
19 amount established by the board.
- 20 3. ~~Continuing~~Except as otherwise provided in this subsection, continuing education of at  
21 least ~~thirty-two~~twenty-four continuing education hours, or equivalent college credits,  
22 three hours of which must be obtained in ethics courses, submitted every two years is  
23 a further requirement for renewal of the license. The board may accept continuing  
24 education attained by remote means. No more than ~~twelve~~nine hours of a licensee's  
25 renewal hours may be by remote means. To qualify as continuing education, the  
26 remote education must be board-approved for content and suitability.
- 27 a. Odd-numbered licensed individuals shall report ~~their~~ continuing education in  
28 odd-numbered years and even-numbered licensed individuals shall report ~~their~~  
29 continuing education in even-numbered years, based on the calendar year.
- 30 b. ~~This subdivision applies for the~~During a licensed individual's initial licensure  
31 ~~period. Individuals licensed on or before May thirty-first of their initial year, who~~

1 would normally that licensed individual is not required to report hours of  
2 continuing education, based on their license number being odd or even, would  
3 need to report at least sixteen hours. Those not required to submit continuing  
4 education that initial January first would report at least twenty four hours by the  
5 following January first. Individuals licensed after May thirty first of their initial year,  
6 who would normally report hours of continuing education, based on their license  
7 number being odd or even would not be required to report that cycle, but would  
8 report at least forty eight hours for the next cycle. Those not required to submit  
9 continuing education hours that initial January first would report at least sixteen  
10 hours by the following January first. Thereafter, initial licensees would follow the  
11 normal renewal reporting cycle. After the initial licensure period, a licensee shall  
12 report continuing education pursuant to subdivision a.

13 c. The board may grant an individual waiver based on health issues or other good  
14 cause the board deems sufficient.

15 ~~d. A massage therapist who has been practicing for compensation and licensed for~~  
16 ~~a minimum of fifteen consecutive years qualifies for license renewal with no~~  
17 ~~additional continuing education required.~~

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

25 5. A holder of an expired license may within one year from the date of its expiration have  
26 the license renewed upon payment of the required renewal fee. The board may  
27 require production of a new certificate of physical examination and evidence of any  
28 required continued educational hours being completed.

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

1       **SECTION 5. AMENDMENT.** Subsection 2 of section 43-25-10 of the North Dakota Century  
2 Code is amended and reenacted as follows:

3           2. A licensee who violates this chapter or any rule adopted by the board may be  
4           assessed a civil penalty of up to ~~one~~two hundred dollars.

5       **SECTION 6. AMENDMENT.** Subsection 3 of section 43-25-10 of the North Dakota Century  
6 Code is amended and reenacted as follows:

7           3. A complaint may be submitted to the board by any person or on ~~its~~the board's own  
8           motion. A complaint ~~may~~must be signed by the complainant. The president may initiate  
9           an investigation of the complaint and report to the board.

10       **SECTION 7. AMENDMENT.** Section 43-25-14 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12       **43-25-14. Compensation of board members –Clerks.**

13       The board members ~~shall~~are entitled to receive compensation for an in-person meeting in  
14 an amount to be established by rule not to exceed one hundred dollars per day or; prorated  
15 compensation for partial days the member is actually engaged in the performance of other  
16 meetings or official duties; and payment for mileage and travel expenses as provided in  
17 sections 44-08-04 and 54-06-09.

18       **SECTION 8. AMENDMENT.** Subsection 1 of section 43-25-18 of the North Dakota Century  
19 Code is amended and reenacted as follows:

20           1. Any ~~person~~individual who has been duly licensed and is in good standing in another  
21           state to practice massage in a state ~~that~~who meets required educational hours and  
22           requirements in this state, and who has been lawfully and continuously engaged in  
23           licensed practice for two years or more immediately before filing of an application to  
24           practice in this state, and who submits to the board a duly attested certificate from the  
25           examining board of the state in which ~~registered~~licensed, certifying to the fact of  
26           ~~registration~~licensure and being a ~~person~~ of good moral character and of professional  
27           attainments, may upon paying a fee of one hundred fifty dollars or a lesser fee set by  
28           the board be granted a license to practice in this state without being required to take  
29           an examination.

30       **SECTION 9. APPLICATION.** This Act applies to the board of massage composition on the  
31 effective date of this Act; to board members serving on the effective date of this Act; and to

1 board members appointed on and after the effective date of this Act. If initial application of this  
2 Act results in a board member becoming ineligible to serve on the board or a board position  
3 ceasing to exist, the governor shall make the necessary appointments and may appoint a board  
4 member to serve the remainder of a term or may appoint a member for a period shorter than  
5 the statutory term in order to stagger the terms as required under section 43-25-05.

6 **SECTION 10. EFFECTIVE DATE.** This Act becomes effective on July 1, 2015.

7 **SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.