

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

400B0284

HOUSE BILL NO. 1028

Introduced by: The Committee on Health and Human Services at the request of the Board of Examiners for Counselors and Marriage and Family Therapists

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding professional
2 counselors and marriage and family therapists.

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

4 Section 1. That §§ 36-32-1 to 36-32-46, inclusive, be repealed.

5 Section 2. That the code be amended by adding a NEW SECTION to read:

6 Terms as used in sections 2 to 56, inclusive, of this Act mean:

- 7 (1) "Board," the Board of Examiners for Counselors and Marriage and Family Therapists
8 established under this Act;
- 9 (2) "Counselor educator," a professional counselor engaged primarily in developing,
10 implementing, and supervising the educational preparation of professional
11 counselors;
- 12 (3) "Counseling," diagnosis and treatment of mental illness or mental and emotional
13 disorders; individual, group, and marriage and family counseling, and psychotherapy;
14 assessment; crisis intervention; counseling and consulting to facilitate normal growth
15 and development; psychoeducational techniques aimed at the prevention of mental



1 and emotional disorders; consultations to individuals, couples, families, groups,
2 organizations, and communities; and clinical research;

3 (4) "Counseling treatment interventions," the application of cognitive, affective,
4 behavioral, and systemic counseling strategies which include principles of
5 development, wellness, and pathology implemented in the context of a professional
6 counseling relationship;

7 (5) "Doctorate or master's degree in counseling," completion of study following a
8 bachelor's degree in a clearly identified counseling program which stands as a
9 recognizable organizational entity within an approved accredited institution of higher
10 learning;

11 (6) "Licensee," a person who meets the qualifications for licensure pursuant to this Act
12 and holds a valid license to practice counseling;

13 (7) "Postgraduate," following completion of study for a master's or doctoral degree; and

14 (8) "Practice of professional counseling," application of mental health, psychological,
15 and human development principles in order to:

16 (a) Facilitate human development and adjustment throughout the life span;

17 (b) Prevent, diagnose, and treat mental, emotional, or behavioral disorders and
18 associated distresses which interfere with mental health;

19 (c) Conduct assessments and diagnoses for the purpose of establishing treatment
20 goals and objectives; and

21 (d) Plan, implement, and evaluate treatment plans using counseling treatment
22 interventions.

23 Section 3. That the code be amended by adding a NEW SECTION to read:

24 The Board of Examiners for Counselors and Marriage and Family Therapists, consists of

1 nine members, three of whom shall be lay members, one of whom shall be a current or retired
2 counselor educator, and five of whom shall be professionals actively engaged in professional
3 counseling or marriage and family therapy and broadly representing a cross section of the
4 licensed disciplines governed by the board. The Governor shall appoint all the members.

5 Section 4. That the code be amended by adding a NEW SECTION to read:

6 To be eligible for appointment to the board as a professional member, a person shall be
7 licensed under this Act.

8 Section 5. That the code be amended by adding a NEW SECTION to read:

9 Appointments to the board shall be for terms of three years and begin on October thirty-first.
10 The appointee's term shall expire on October thirtieth in the third year of appointment. No
11 member of the board may serve for more than three successive full terms. Appointment to an
12 unexpired term is not considered a full term.

13 Section 6. That the code be amended by adding a NEW SECTION to read:

14 The Governor may remove a member of the board for cause. If a vacancy on the board is
15 caused by death of a member, resignation, removal from the state, or for any other reason, the
16 Governor shall appoint a new member to serve out the unexpired term.

17 Section 7. That the code be amended by adding a NEW SECTION to read:

18 The board shall hold a meeting at least annually. The board may hold other meetings at a
19 time and place set by the president or by a majority of the board. A majority of the board
20 constitutes a quorum to conduct business. A majority of those present and voting constitutes a
21 decision of the board.

22 Section 8. That the code be amended by adding a NEW SECTION to read:

23 The board shall annually elect a president and a vice-president from its members.

24 Section 9. That the code be amended by adding a NEW SECTION to read:

1 The board members shall receive per diem set pursuant to § 4-7-10.4 and expenses at the
2 same rate as other state employees while engaged in official duties.

3 Section 10. That the code be amended by adding a NEW SECTION to read:

4 The board, its members, and its agents are immune from personal liability for actions taken
5 in good faith in the discharge of the board's duties. The state shall hold the board, its members,
6 and its agents harmless from all costs, damages, and attorney fees arising from claims and suits
7 against them with respect to matters to which this immunity applies.

8 Section 11. That the code be amended by adding a NEW SECTION to read:

9 The board shall exist under the Department of Social Services, and the board shall exercise
10 all its prescribed functions, including administrative functions. The board shall submit records,
11 information and reports in the form and at the times as required by the Secretary of the
12 Department of Social Services.

13 Section 12. That the code be amended by adding a NEW SECTION to read:

14 The board shall deposit any moneys coming into the custody of the board with the state
15 treasurer. The state treasurer shall credit the moneys to the Board of Examiners for Counselors
16 and Marriage and Family Therapists account in the state treasury, which account is hereby
17 created. The moneys in the Board of Examiners for Counselors and Marriage and Family
18 Therapists account are hereby continuously appropriated to the board for the purpose of paying
19 the expense of administering and enforcing the provisions of this Act. The expenditures may
20 only be paid on warrants drawn by the state auditor and approved by the board or one of its
21 officers. However, the total expense incurred may not exceed the total moneys collected by the
22 board under the provisions of this Act. The board, for the purposes of this Act, may accept
23 grants, gifts, or contributions.

24 Section 13. That the code be amended by adding a NEW SECTION to read:

1 The board, in regard to both professional counselors and licensees under sections 58 to 97,
2 inclusive, has the following powers and duties:

- 3 (1) Administer, coordinate, and enforce the provisions of this Act;
- 4 (2) Establish educational, training, examination, and competency standards for
5 professional counselors and licensees under sections 58 to 97, inclusive, of this Act;
- 6 (3) Establish standards for the safe and qualified practice of counseling and marriage and
7 family therapy;
- 8 (4) Evaluate the qualifications of applicants for licensure and issue and renew licenses
9 and permits;
- 10 (5) Establish standards and responsibilities for post-graduate board approved supervision
11 for candidates for licensure;
- 12 (6) Adopt ethical standards for the practice of counseling and marriage and family
13 therapy;
- 14 (7) Establish competency standards and responsibilities for post-graduate board
15 approved supervisors;
- 16 (8) Maintain the names of persons that meet the qualifications for a license or permit;
- 17 (9) Conduct all disciplinary proceedings;
- 18 (10) Maintain a record of each complaint received by the board;
- 19 (11) Establish reasonable requirements regarding reentry into practice of inactive
20 practitioners and the reinstatement of previously licensed practitioners;
- 21 (12) Establish continuing education and continuing competency requirements for
22 licensees and permit holders under this Act and the procedures for verifying
23 compliance with the established requirements;
- 24 (13) Establish standards for the practice of distance counseling and distance marriage and

1 family therapy;

2 (14) Communicate license and permit actions and status to relevant state and federal
3 governing bodies, as required by applicable state and federal law, or as the board
4 determines is appropriate; and

5 (15) Employ personnel in accordance with the needs and budget of the board, and enter
6 into contracts as necessary to carry out its responsibilities under this Act.

7 Section 14. That the code be amended by adding a NEW SECTION to read:

8 The board may promulgate rules, pursuant to chapter 1-26, to set standards for professional
9 practice and establish procedures for application, professional practice, licensure, eligibility,
10 renewals, ethical standards, continuing education, supervision, and examination of an applicant
11 for and a holder of licensure as a licensed professional counselor, licensed professional
12 counselor-mental health, and licensed marriage and family therapist.

13 Section 15. That the code be amended by adding a NEW SECTION to read:

14 Each license issued by the board under sections 2 to 56, inclusive, of this Act, shall be
15 conspicuously displayed by the licensee at the primary place of practice of the licensee. Each
16 licensee shall post and keep conspicuously displayed the annual renewal certificate issued by
17 the board in plain sight of patients.

18 Section 16. That the code be amended by adding a NEW SECTION to read:

19 It is a Class 2 misdemeanor for any person to engage in the practice or attempt to practice
20 professional counseling as defined in section 2 of this Act without a license, unless exempted
21 from licensure under sections 2 to 56, inclusive, of this Act.

22 Section 17. That the code be amended by adding a NEW SECTION to read:

23 No person may represent himself or herself, in any manner, as a counselor by using the titles
24 "licensed clinical mental health counselor," "licensed clinical counselor," "licensed professional

1 counselor--mental health," or "licensed professional counselor," unless licensed under sections
2 2 to 56, inclusive, of this Act.

3 Section 18. That the code be amended by adding a NEW SECTION to read:

4 Fraudulent or misleading advertising pertaining to the practice of counseling constitutes a
5 Class 1 misdemeanor.

6 Section 19. That the code be amended by adding a NEW SECTION to read:

7 No licensee under sections 2 to 56, inclusive, of this Act may perform counseling services
8 that are outside the scope of the licensee's relevant education, training, and experience.

9 Section 20. That the code be amended by adding a NEW SECTION to read:

10 The board may use its own staff, or employ, or contract with agents or investigators to assist
11 in the enforcement of sections 2 to 56, inclusive, of this Act or any rule promulgated thereunder.
12 If it appears to the board that a person is violating any provision or rule promulgated under
13 sections 2 to 56, inclusive, of this Act, the board may, in its own name or in the name of the
14 state, bring an action in circuit court to enjoin the act, practice, or violation and to enforce
15 compliance with sections 2 to 56, inclusive of this Act or any rule promulgated thereunder as
16 an alternative to criminal proceedings. The proceedings shall be prosecuted by the Office of the
17 Attorney General or by a person designated by the attorney general and retained by the board
18 as provided in section 21 of this Act.

19 Section 21. That the code be amended by adding a NEW SECTION to read:

20 The board, members, officers, and agents, shall assist any person charged with the
21 enforcement of sections 2 to 56, inclusive, of this Act, and the board, its members, agents, and
22 officers shall furnish evidence to assist in the prosecution of any violation or enforcement of
23 sections 2 to 56, inclusive, of this Act, and the board may make a reasonable expenditure for this
24 purpose. The board may employ an attorney designated by the attorney general. The board shall

1 fix and determine the compensation and period of service of the attorney to be paid out of the
2 funds of the board.

3 Section 22. That the code be amended by adding a NEW SECTION to read:

4 An applicant for a license as a professional counselor-mental health shall file an application
5 and the application fee prescribed by the board on a form and in the manner prescribed by the
6 board. The board shall issue a license as a professional counselor-mental health to an applicant
7 who pays the license fee prescribed by the board and furnishes satisfactory evidence of the
8 following:

9 (1) The applicant has received a doctorate or master's degree in counseling, at a
10 minimum of sixty credit hours, from an accredited counseling program recognized
11 by the board;

12 (2) The applicant has passed the standardized national examinations approved by the
13 board;

14 (3) Within the four years preceding the date of application, the applicant has completed
15 one thousand seven hundred hours of supervised experience in counseling through
16 a plan of supervision approved by the board subsequent to the applicant receiving an
17 acceptable degree in counseling;

18 (4) The applicant has no disciplinary proceeding or unresolved disciplinary complaint
19 pending before a licensing board at the time the license is to be issued;

20 (5) The applicant is of good moral character; and

21 (6) The applicant is not in violation of any provision of sections 2 to 56, inclusive, of this
22 Act, or the rules promulgated under sections 2 to 56, inclusive, of this Act.

23 The board may refuse to grant a license to any person based on failure to demonstrate the
24 requirements of this section. The board may grant a license, the provisions of subdivision (5)

1 notwithstanding, if the applicant has been convicted of, or pled guilty to a felony, any crime
2 involving or relating to the practice of counseling, or any crime involving dishonesty or moral
3 turpitude and the board determines the plea or conviction is of a nature or is sufficiently remote
4 in time that the applicant does not constitute a risk to public safety. An applicant may appeal the
5 denial of a license under procedure in chapter 1-26.

6 Section 23. That the code be amended by adding a NEW SECTION to read:

7 Notwithstanding the requirements of section 22 of this Act, the board may accept a doctorate
8 or master's degree in counseling of at least forty-eight hours from an accredited counseling
9 program recognized by the board, if the applicant's degree was received before July 1, 2026.

10 Section 24. That the code be amended by adding a NEW SECTION to read:

11 If the board suspects that the physical or mental health of any applicant is at risk to
12 jeopardize or endanger those who seek assistance from the applicant, the board may require the
13 applicant to be examined by a competent examiner selected by the board. The board shall pay
14 the cost of the examination. If the examiner confirms that the person's physical or mental health
15 is at risk of jeopardizing or endangering those who seek relief from the applicant, the board may
16 deny the application for a license until the applicant furnishes satisfactory proof of adequate
17 physical and mental health to practice counseling.

18 Section 25. That the code be amended by adding a NEW SECTION to read:

19 Notwithstanding the provisions of section 22 of this Act, the board may issue a license as
20 a professional counselor-mental health to an applicant licensed to practice counseling in another
21 state or territory of the United States if the applicant demonstrates the following qualifications:

- 22 (1) The applicant is currently licensed as a counselor and has been under the jurisdiction
23 of the licensing authority in the other jurisdiction for at least three continuous years
24 prior to the time of submitting an application to the board;

- 1 (2) The applicant is in good standing with the licensing authority in the other
2 jurisdiction;
- 3 (3) Verification from the applicant of an active practice in the three years prior to the
4 time of submitting an application to the board;
- 5 (4) Verification the applicant passed the standard national examination approved by the
6 board; and
- 7 (5) An absence of unprofessional conduct or pending disciplinary complaints in another
8 jurisdiction by the applicant.

9 For purposes of this section, the term, active practice, means the applicant accumulated at least
10 one thousand five hundred hours of clinical experience in the three years immediately preceding
11 the application.

12 Section 26. That the code be amended by adding a NEW SECTION to read:

13 Any professional counselor licensed in another state or territory of the United States who
14 has not passed the national examination required by the board for licensure by endorsement
15 required by section 25 of this Act may be issued a temporary license to practice for up to ninety
16 days, if the applicant demonstrates the following qualifications:

- 17 (1) The applicant is currently licensed as a counselor and has been under the jurisdiction
18 of the licensing authority in the other jurisdiction for at least three continuous years
19 prior to the time of submitting an application to the board;
- 20 (2) The applicant is in good standing with the licensing authority in the other
21 jurisdiction;
- 22 (3) Verification from the applicant of an active practice in the three years prior to the
23 time of submitting an application to the board; and
- 24 (4) An absence of unprofessional conduct or pending disciplinary complaints before the

1 board or in another jurisdiction by the applicant.

2 For purposes of this section, the term, active practice, means the applicant accumulated at least
3 one thousand five hundred hours of clinical experience in the three years immediately preceding
4 the application.

5 An applicant for a temporary license shall submit an application on a form approved by the
6 board, along with the application fee and the temporary license fee prescribed by the board. The
7 board shall issue a temporary license as a professional counselor-mental health to an applicant
8 who meets the requirements of this section and pays the required temporary license fee. A
9 temporary license automatically expires on the passage of the required national examination or
10 expiration of the term for which the temporary license was issued, whichever occurs first. A
11 temporary license may be renewed once.

12 Section 27. That the code be amended by adding a NEW SECTION to read:

13 Any person practicing under a temporary license is subject to supervision and discipline by
14 the board under sections 2 to 56, inclusive, of this Act, in the same manner as any other licensee
15 under sections 2 to 56, inclusive, of this Act. A person practicing under a temporary license
16 submits to the jurisdiction of the board.

17 Section 28. That the code be amended by adding a NEW SECTION to read:

18 Any licensee shall furnish the board with updated information within thirty days upon
19 changing the licensee's name, place of employment, or place of business.

20 Section 29. That the code be amended by adding a NEW SECTION to read:

21 A license issued under sections 2 to 56, inclusive, of this Act, is valid until November
22 thirtieth biennially in odd number years following the date it is issued and automatically expires
23 unless it is renewed.

24 Section 30. That the code be amended by adding a NEW SECTION to read:

1 Any licensee holding a valid license under sections 2 to 56, inclusive, of this Act may renew
2 the license by making application for renewal prior to expiration, paying the required renewal
3 fee, and providing proof of compliance with the continuing education requirements prescribed
4 by the board. Failure of a licensee to renew a license on or before the thirtieth day of November
5 in an odd numbered year constitutes a suspension of the license held by the licensee. The board
6 shall notify the licensee that the renewal application has not been received by the board and that
7 the licensee may not practice counseling. Any person who submits a license renewal application
8 and provides proof of compliance with the continuing education requirements set by the board
9 within thirty days after the expiration date may be granted a license renewal.

10 Section 31. That the code be amended by adding a NEW SECTION to read:

11 Any person licensed under sections 2 to 56, inclusive, of this Act, shall complete at least
12 forty hours of continuing education biennially in odd-numbered years in a manner approved by
13 the board. The required continuing education hours may be obtained by electronic means. The
14 board may extend or waive the continuing education requirement for a licensee upon proof of
15 illness or undue hardship if a written request from the licensee is made to the board prior to the
16 expiration of the license.

17 Section 32. That the code be amended by adding a NEW SECTION to read:

18 The board may place an active license on inactive status upon submission of an application
19 by the licensee to inactivate a license and payment of a fee prescribed by the board. An inactive
20 license expires four years after the date inactive status begins. An inactive license can be
21 reactivated by paying the current license renewal fee and providing proof of at least forty hours
22 of compliant continuing education in the two-year period immediately preceding the reactivation
23 request. If an inactive license is not reactivated prior to its expiration, the license is expired, and
24 all provisions applicable to an applicant for licensure apply to restore the license to active status.

1 Any license on inactive status with the board as of July 1, 2019, expires on November 30,
2 2021, if the licensee does not restore the license to active status prior to expiration by meeting
3 the requirements set forth in this section.

4 Section 33. That the code be amended by adding a NEW SECTION to read:

5 An expired professional counselor-mental health license may be reactivated within four
6 years of the date of expiration by an applicant upon:

- 7 (1) Paying all applicable renewal fees required for the period the license was expired;
- 8 (2) Providing proof of all continuing education required for the period the license was
9 expired; and
- 10 (3) Providing proof of passage of a national examination approved by the board after the
11 date the original license expired.

12 Section 34. That the code be amended by adding a NEW SECTION to read:

13 Sections 2 to 56, inclusive, of this Act, do not apply to the following persons practicing
14 counseling as defined in section 2 of this Act as part of that person's professional duties:

- 15 (1) Any professional licensed or certified under this title acting in a manner consistent
16 with state law regarding the scope of practice;
- 17 (2) Any person employed by a school, college, university, or other institution of higher
18 learning engaged primarily in the education of students;
- 19 (3) Any person employed by a federal, state, county, or local governmental institution
20 or agency while performing those duties for which the person was employed by the
21 institution, agency, or facility;
- 22 (4) Any person who is employed by a licensed health care facility, an accredited
23 prevention or treatment facility, a community support provider, a nonprofit mental
24 health center, or a licensed or registered child welfare agency;

1 (5) Any member of the clergy while acting in a ministerial capacity if the activity is
2 within the scope of performance of regular or specialized duties; and

3 (6) Any students enrolled in a recognized program of study leading to a counseling
4 degree may practice only under the direct supervision of a counselor educator or
5 counselor licensed under sections 2 to 56, inclusive, of this Act.

6 Section 35. That the code be amended by adding a NEW SECTION to read:

7 No licensee under sections 2 to 56, inclusive, of this Act, or employee of a licensee, may
8 disclose information acquired from any person consulting the licensee in a professional capacity
9 necessary to render services in a professional capacity, except:

10 (1) If mandated by state law or authorized to under the Health Insurance Portability and
11 Accountability Act of 1996 (HIPAA), as amended to January 1, 2019;

12 (2) With the written consent of the person or, in the case of death or disability, of the
13 person's own personal representative, other person authorized to sue, or the
14 beneficiary of an insurance policy on the person's life, health, or physical condition;

15 (3) If the information is necessary to prevent or mitigate a serious and imminent threat
16 to the health or safety of a person or the public if the disclosure is to a person
17 reasonably able to prevent or mitigate the threat, including the target of the threat;

18 (4) If the licensed professional counselor or professional counselor-mental health is a
19 party defendant to a civil, criminal, or disciplinary action arising from this
20 professional capacity, in which case any waiver of the privilege accorded by this
21 section is limited to that action;

22 (5) If the client is a defendant in a criminal proceeding and the use of the privilege would
23 violate the defendant's right to a compulsory process or right to present testimony and
24 evidence; or

1 (6) If the person waives the privilege by bringing charges against the licensed
2 professional counselor-mental health.

3 Section 36. That the code be amended by adding a NEW SECTION to read:

4 If both parties to a marriage have obtained counseling by a licensed professional counselor
5 or a licensed professional counselor-mental health, the counselor may not testify in an alimony
6 or divorce action concerning information acquired in the course of the therapeutic relationship.
7 This section does not apply to custody actions.

8 Section 37. The board shall receive complaints regarding the enforcement of sections 2 to
9 56, inclusive, of this Act. A record of each complaint shall be maintained by the board. An
10 investigation shall be conducted by a member, agent or an appointee of the board to determine
11 whether an alleged violation has been committed. The investigator, if a member of the board,
12 may dismiss a complaint if it appears to the member, either with or without the consultation of
13 the board, that no violation has been committed. If the investigator is an agent or an appointee
14 of the board, dismissal of the complaint may only be made by the president. Any agreed
15 disposition made between the investigator and the licensee or permit holder shall be made
16 known to and approved by the board. If the complaint is not dismissed, and an agreed
17 disposition is not reached, the investigator may request the board set a date for hearing on the
18 complaint. All disciplinary proceedings held under the authority of sections 2 to 56, inclusive,
19 of this Act shall be conducted in accordance with chapter 1-26. Any decision of the board
20 entered in a contested proceeding held in accordance with chapter 1-26 may be appealed to the
21 circuit court within thirty days. A license or permit shall remain in effect during the pendency
22 of an appeal unless suspended under section 40 of this Act. The complaining party shall be
23 notified promptly of the final disposition of the complaint.

24 Section 38. That the code be amended by adding a NEW SECTION to read:

1 Upon receiving any complaint regarding the health or safety of patients or the public, the
2 board, or any authorized member, officer, agent, or employee, may enter and inspect during
3 business hours any place where counseling is practiced for the purpose of enforcing this Act in
4 compliance with the Health Insurance Portability and Accountability Act of 1996, as amended
5 to January 1, 2019. Refusal to allow an inspection may constitute unprofessional or
6 dishonorable conduct.

7 Section 39. That the code be amended by adding a NEW SECTION to read:

8 Testimony or documentary evidence of any kind obtained during the investigation of a
9 complaint is not subject to discovery or disclosure under chapter 15-6 or any other provision of
10 law and is not admissible as evidence in any legal proceeding, until the complaint becomes a
11 contested case as defined in § 1-26-1. No person that has participated in the investigation of a
12 complaint may testify as an expert witness or be compelled to testify for any party in any civil
13 action if the subject matter of the complaint investigated is a basis for the civil action.

14 Section 40. That the code be amended by adding a NEW SECTION to read:

15 A license or permit may be revoked, suspended, or canceled upon any of the following
16 grounds:

- 17 (1) The licensee or permit holder is guilty of fraud in the practice of counseling or fraud
18 or deceit in the licensee's admission to the practice of counseling;
- 19 (2) The licensee or permit holder has been convicted during the past five years of a
20 felony. The conviction of a felony means the conviction of any offense which, if
21 committed within the State of South Dakota, would constitute a felony;
- 22 (3) The licensee or permit holder is engaged in the practice of counseling under a false
23 or assumed name and has not registered that name pursuant to chapter 37-11, or is
24 impersonating another practitioner of a like or different name;

- 1 (4) The licensee or permit holder is addicted to the habitual use of intoxicating liquors,
2 narcotics, or stimulants to an extent as to incapacitate the licensee from the
3 performance of the licensee's professional duties;
- 4 (5) The physical or mental condition of the licensee or permit holder is determined by
5 a competent medical examiner to be such as to jeopardize or endanger those who
6 seek relief from the licensee. A majority of the board may demand an examination
7 of the licensee or permit holder by a competent medical examiner selected by the
8 board at the board's expense. If the licensee or permit holder fails to submit to the
9 examination, this constitutes immediate grounds for suspension of the licensee's
10 license or permit;
- 11 (6) Obtaining or attempting to obtain a license, certificate, permit, or renewal through
12 bribery or fraudulent representation;
- 13 (7) Knowingly making a false statement in connection with any application under
14 sections 2 to 56, inclusive, of this Act;
- 15 (8) Knowingly making a false statement on any form established by the board in
16 accordance with sections 2 to 56, inclusive, of this Act, or the rules promulgated
17 under sections 2 to 56, inclusive, of this Act;
- 18 (9) The licensee or permit holder has violated any provision of sections 2 to 56,
19 inclusive, of this Act, or the rules promulgated under sections 2 to 56, inclusive, of
20 this Act; or
- 21 (10) The licensee or permit holder has been found to be in violation of the ethical
22 standards adopted by the board.

23 Section 41. That the code be amended by adding a NEW SECTION to read:

24 The proceedings for cancellation, revocation, or suspension of a license or permit may be

1 initiated when the board has information that any person may have been guilty of any
2 misconduct as provided in section 40 of this Act or is guilty of gross incompetence or
3 unprofessional or dishonorable conduct.

4 Section 42. That the code be amended by adding a NEW SECTION to read:

5 The board may impose any of the following sanctions, individually or in combination, if it
6 finds that a person, entity, licensee, or permit holder has violated any provision of sections 2 to
7 56, inclusive, of this Act, or any rule promulgated thereunder:

- 8 (1) Revoke a license or permit for an indefinite period;
- 9 (2) Suspend a license or permit for a specific or indefinite length of time;
- 10 (3) Place on condition or limit a license or permit;
- 11 (4) Issue a censure or a letter of reprimand;
- 12 (5) Place a licensee or permit holder on probationary status and require the licensee or
13 permit holder to report regularly to the board on the matters which are the basis for
14 probation, limit the licensee's or permit holder's practice to areas prescribed by the
15 board and require professional education until a satisfactory degree of skill has been
16 attained in those areas which are the basis of the probation. The board may withdraw
17 the probation if the board finds the deficiencies that require disciplinary action have
18 been remedied;
- 19 (6) Impose any other sanction the board determines is appropriate;
- 20 (7) Impose a fee to reimburse the board in an amount equal to all or part of the costs
21 incurred for the investigation and proceedings resulting in disciplinary action
22 authorized by sections 2 to 56, inclusive, of this Act, or the issuance of a cease and
23 desist order. The costs include the amount paid by the board for services from
24 attorneys, investigators, court reporters, witnesses, expert witnesses, reproduction of

1 records, board members per diem compensation, board staff time, and expenses
2 incurred for the investigation and disciplinary proceedings; and

3 (8) Deny an application for a license or permit.

4 Section 43. That the code be amended by adding a NEW SECTION to read:

5 The board may suspend a license or permit in advance of a final adjudication or during the
6 appeals process if the board finds that a licensee or permit holder would represent a clear and
7 immediate or imminent danger to the public health and safety if allowed to continue to practice.
8 A licensee or permit holder whose license or permit is suspended under this section is entitled
9 to a hearing before the board within twenty days after the effective date of the suspension. The
10 licensee or permit holder may subsequently appeal the suspension to circuit court in accordance
11 with chapter 1-26.

12 Section 44. That the code be amended by adding a NEW SECTION to read:

13 All proceedings regarding the cancellation, revocation, or suspension of a license or permit
14 shall otherwise conform to the procedure set forth in chapter 1-26.

15 Section 45. That the code be amended by adding a NEW SECTION to read:

16 A party may appeal any act, ruling, or decision of the board regarding refusal to grant,
17 cancellation, revocation, or suspension of a license under chapter 1-26.

18 Section 46. That the code be amended by adding a NEW SECTION to read:

19 At the board's discretion, the board may reinstate or issue a new license or permit. The board
20 may require the applicant to pay all costs of the proceedings resulting in the suspension or
21 revocation of the license or permit and reinstatement or issuance of a new license or permit.

22 Section 47. That the code be amended by adding a NEW SECTION to read:

23 The board shall investigate and report any alleged violation of sections 2 to 56, inclusive,
24 of this Act. The board may employ special counsel subject to the supervision, control, and

1 direction of the attorney general to assist in the prosecution of alleged criminal violations of
2 sections 2 to 56, inclusive, of this Act, and may expend the necessary funds for this purpose.

3 Section 48. That the code be amended by adding a NEW SECTION to read:

4 Any person violating the provisions of sections 2 to 56, inclusive, of this Act, may be
5 enjoined from further violations at the suit of the state's attorney of the county where the
6 violations occurred, or suit may be brought by any citizen of this state. An action for injunction
7 shall be an alternate to criminal proceedings.

8 Section 49. That the code be amended by adding a NEW SECTION to read:

9 Any person who practices counseling through electronic means and provides the counseling
10 services to a patient located in this state is engaged in the practice of counseling in this state
11 regardless of the provider's physical location.

12 Section 50. That the code be amended by adding a NEW SECTION to read:

13 Any service provided by a licensee or supervisee through electronic means shall comply
14 with the provisions of sections 2 to 56, inclusive, of this Act, and the rules promulgated under
15 this Act.

16 Section 51. That the code be amended by adding a NEW SECTION to read:

17 The board shall promulgate rules regarding nonrefundable fees, pursuant to chapter 1-26,
18 within the following limits:

- 19 (1) Application fee, not more than two hundred dollars;
- 20 (2) Biennial renewal fee, not more than five hundred dollars;
- 21 (3) Duplication license fee, not more than fifteen dollars;
- 22 (4) Inactive license fee, not more than one hundred dollars;
- 23 (5) Temporary license fee, not more than two hundred dollars; and
- 24 (6) License verification fee, not more than twenty-five dollars.

1 Section 52. That the code be amended by adding a NEW SECTION to read:

2 Any professional counselor licensed by the board under chapter 36-32 before July 1, 2019,
3 or any person practicing as a professional counselor under a board approved plan of supervision
4 before July 1, 2019, may be licensed as a professional counselor. Any person licensed under this
5 section may practice counseling as defined in section 2 of this Act. No person licensed under
6 this section may perform any counseling services that are outside the scope of the licensee's
7 relevant education, training, and experience.

8 Any person licensed under this section shall renew the license by November 30, 2019, and
9 biennially thereafter. The licensee may renew the license by making application for renewal on
10 a form prescribed by the board, paying the required renewal fee, and providing proof of
11 compliance with the continuing education requirements set forth in section 31 of this Act before
12 the expiration of the license. Failure to renew a license on or before the thirtieth day of
13 November in an odd numbered year constitutes an automatic suspension of the license. The
14 board shall notify the licensee that the renewal application has not been received by the board
15 and that the licensee may not practice counseling. Any person who fulfills all renewal
16 requirements set forth in this section within thirty days after the license expiration date may be
17 granted a license renewal.

18 Any professional counselor license issued by the board under chapter 36-32 on inactive
19 status with the board as of July 1, 2019, shall expire on November 30, 2021, if the licensee does
20 not restore the license to active status prior to expiration by meeting the requirements set forth
21 in this section.

22 Section 53. That the code be amended by adding a NEW SECTION to read:

23 Notwithstanding the requirements of section 22 of this Act, a person licensed pursuant to
24 section 52 of this Act may be issued a license as a professional counselor-mental health if the

1 licensee makes application to the board, on a form prescribed by the board, and demonstrates
2 the following qualifications:

- 3 (1) The applicant is currently licensed as a professional counselor pursuant to section 52
4 of this Act and has been licensed as a professional counselor by the board for at least
5 four continuous years prior to the date of applications or the applicant passed the
6 standard national examinations approved by board to meet the examination
7 requirements of section 22 of this Act;
- 8 (2) The applicant has no disciplinary proceeding or unresolved disciplinary complaint
9 pending before a licensing board at the time the license is to be issued;
- 10 (3) The applicant is of good moral character; and
- 11 (4) The applicant is not in violation of any provision of sections 2 to 56, inclusive, of this
12 Act or the rules adopted pursuant to sections 2 to 56, inclusive, of this Act.

13 The board may refuse to grant a license to any person based on failure to demonstrate the
14 requirements of this section. The board may grant a license, the provisions of subdivision (3)
15 notwithstanding, if the applicant has been convicted of, or pled guilty to a felony, any crime
16 involving or relating to the practice of counseling, or any crime involving dishonesty or moral
17 turpitude and the board determines that the plea or conviction is of a nature or is sufficiently
18 remote in time that the applicant does not constitute a risk to public safety. An applicant may
19 appeal the denial of a license under procedure set forth in chapter 1-26.

20 Upon issuance of a professional counselor-mental health license pursuant to this section, the
21 applicant's professional counselor license maintained pursuant to section 52 of this Act shall
22 automatically expire.

23 Section 54. That the code be amended by adding a NEW SECTION to read:

24 To be eligible for a license as a professional counselor pursuant to section 52 of this Act,

1 any person practicing under a board approved plan of supervision for a professional counselor
2 that is approved as of July 1, 2019, shall, within four years of the date of the plan of supervision
3 was approved, complete one thousand seven hundred hours of board approved supervision, and
4 pass the National Counselor Examination for Licensure and Certification. A person practicing
5 under a board approved plan of supervision under this section may practice counseling as
6 defined in section 2 of this Act. A person practicing counseling under a board approved plan of
7 supervision pursuant to this section may not perform any counseling services that are outside
8 the scope of the person's relevant education, training, and experience.

9 The board may not issue any person a plan of supervision as a professional counselor after
10 July 1, 2019.

11 Section 55. That the code be amended by adding a NEW SECTION to read:

12 Any person who has been issued a plan of supervision as a professional counselor-mental
13 health as of January 1, 2019, shall meet the educational, supervision and examination
14 requirements set forth in section 22 of this Act to be eligible for licensure as a professional
15 counselor-mental health.

16 Section 56. That the code be amended by adding a NEW SECTION to read:

17 Any person licensed as a professional counselor-mental health under § 36-32-42 before
18 June 30, 2019, shall be licensed as a professional counselor-mental health pursuant to sections
19 2 to 56, inclusive, of this Act.

20 Section 57. That the code be amended by adding a NEW SECTION to read:

21 That §§ 36-33-1 to 36-33-33, inclusive, be repealed.

22 Section 58. That the code be amended by adding a NEW SECTION to read:

23 Terms as used in sections 58 to 97, inclusive, of this Act mean:

24 (1) "Board," the Board of Examiners for Counselors and Marriage and Family Therapists

1 established under section 3 of this Act and granted authority over licensees as
2 provided in section 13 of this Act;

3 (2) "Licensee," a person who meets the qualifications for licensure pursuant to sections
4 58 to 97, inclusive, of this Act, and holds a valid license for practicing marriage and
5 family therapy; and

6 (3) "Practice of marriage and family therapy," the rendering of professional marriage and
7 family therapy services to individuals, family groups, and marital pairs, one-on-one
8 or in groups, whether the services are offered directly to the general public or through
9 organizations, either public or private, for a fee, monetary or otherwise. Marriage and
10 family therapy includes the diagnosis and treatment of nervous and mental disorders
11 through application of systemic theory and technique, whether cognitive, affective,
12 or behavioral, within the context of marriage and family systems.

13 Section 59. That the code be amended by adding a NEW SECTION to read:

14 Each license issued by the board under sections 58 to 97, inclusive, of this Act, shall be
15 conspicuously displayed by the licensee at the primary place of practice of the licensee. Each
16 licensee shall post and keep conspicuously displayed the annual renewal certificate issued by
17 the board in plain sight of patients.

18 Section 60. That the code be amended by adding a NEW SECTION to read:

19 It is a Class 2 misdemeanor for any person to engage in the practice, or attempt to practice,
20 marriage and family therapy, as defined in section 58 of this Act without a license, unless
21 exempted from sections 58 to 97, inclusive, of this Act.

22 Section 61. That the code be amended by adding a NEW SECTION to read:

23 No person may represent himself or herself, in any manner, as a marriage or family therapist
24 by using the titles "marital therapist," or "marriage counselor," "family therapist," "licensed

1 marital therapist", "licensed marriage counselor," "licensed family therapist," or "licensed
2 marriage and family therapist," unless licensed under sections 58 to 97, inclusive, of this Act.

3 Section 62. That the code be amended by adding a NEW SECTION to read:

4 Fraudulent or misleading advertising to the practice of marriage and family therapy
5 constitutes a Class 1 misdemeanor.

6 Section 63. That the code be amended by adding a NEW SECTION to read:

7 No licensee under sections 58 to 97, inclusive, of this Act, may perform marriage and family
8 therapy services that are outside the scope of the licensee's relevant education, training, and
9 experience.

10 Section 64. That the code be amended by adding a NEW SECTION to read:

11 Nothing in sections 58 to 97, inclusive, of this Act may be construed to prevent any other
12 qualified professional, including a clinical social worker, psychiatric nurse, professional
13 counselor, clinical and counseling psychologist, physician, attorney-at-law, or member of the
14 clergy, from performing or advertising the performance of marriage and family therapy
15 consistent with the accepted standards of that person's profession, but the professional is
16 prohibited from using a title or description stating or implying that the person is licensed to
17 practice marriage and family therapy under the provisions of sections 58 to 97, inclusive, of this
18 Act.

19 Section 65. That the code be amended by adding a NEW SECTION to read:

20 The board may use its own staff or employ or contract with agents or investigators to assist
21 in the enforcement of sections 58 to 97, inclusive, of this Act, or any rule promulgated by the
22 board. If it appears to the board that a person is violating any provision or rule promulgated
23 pursuant to sections 58 to 97, inclusive, of this Act, the board may, in its own name or in the
24 name of the state, in the circuit court in any county in which jurisdiction is proper, bring an

1 action to enjoin the act, practice, or violation and to enforce compliance with sections 58 to 97,
2 inclusive, of this Act, or any rule promulgated thereunder as an alternative to criminal
3 proceedings. The proceedings shall be prosecuted by the Office of the Attorney General or
4 person designated by the attorney general and retained by the board as provided in section 66
5 of this Act.

6 Section 66. That the code be amended by adding a NEW SECTION to read:

7 The board and its members and officers shall assist any person charged with the enforcement
8 of sections 58 to 97, inclusive, of this Act. The board, its members, agents, and officers shall
9 furnish evidence to assist in the prosecution of any violation or enforcement of sections 58 to
10 97, inclusive, of this Act, and the board may make a reasonable expenditure for that purpose.
11 The board may determine it is best for the enforcement of this Act or in the conduct of its duties
12 to employ an attorney designated by the attorney general. The board shall fix and determine the
13 compensation and period of service for the attorney to be paid out of the board's funds.

14 Section 67. That the code be amended by adding a NEW SECTION to read:

15 An applicant for a license as a marriage and family therapist shall file an application and the
16 application fee prescribed by the board on a form and in the manner prescribed by the board.
17 The board shall issue a license as a marriage and family therapist to an applicant who pays the
18 license fee and furnishes the board satisfactory evidence of the following:

19 (1) The applicant has received a master's or doctoral degree, which consists of at least
20 sixty semester credit hours in marriage and family therapy, from an accredited
21 marriage and family therapy program recognized by the board, or an equivalent
22 course of study approved by the board;

23 (2) The applicant has passed the standardized national examination approved by the
24 board;

- 1 (3) Within the four years preceding the date of application, the applicant has completed
- 2 one thousand seven hundred hours of supervised experience in marriage and family
- 3 therapy through a plan of supervision approved by the board subsequent to the
- 4 applicant receiving an acceptable degree;
- 5 (4) The applicant has no disciplinary proceeding or unresolved disciplinary complaint
- 6 pending before a licensing board at the time the license is to be issued;
- 7 (5) The applicant is of good moral character; and
- 8 (6) The applicant is not in violation of any provision of sections 58 to 97, inclusive, of
- 9 this Act or the rules promulgated pursuant to sections 58 to 97, inclusive, of this Act.

10 The board may refuse to grant a license to any person based on failure to demonstrate the

11 requirements of this section. The board may grant a license, the provisions of subdivision (5)

12 notwithstanding, if the applicant has been convicted of, or pled guilty to a felony, any crime

13 involving or relating to the practice of counseling, or any crime involving dishonesty or moral

14 turpitude and the board determines that the plea or conviction is of a nature or is sufficiently

15 remote in time that the applicant does not constitute a risk to public safety. An applicant may

16 appeal the denial of a license under the procedure in chapter 1-26.

17 Section 68. That the code be amended by adding a NEW SECTION to read:

18 Notwithstanding the requirements of section 67 of this Act, the board may accept a doctorate

19 or master's degree which contains at least forty-eight hours in marriage and family therapy from

20 an accredited marriage and family therapy program recognized by the board, if the applicant's

21 degree was received before July 1, 2026.

22 Section 69. That the code be amended by adding a NEW SECTION to read:

23 If the board suspects that the physical or mental health of any applicant may jeopardize or

24 endanger those who seek assistance from the applicant, the board may require the applicant to

1 be examined by a competent examiner selected by the board. The board shall pay the cost of the
2 examination. If the medical examiner confirms that the person's physical or mental health is at
3 risk of jeopardizing or endangering those who seek relief from the applicant, the board may
4 deny the application for a license until the applicant furnishes satisfactory proof of satisfactory
5 physical and mental health to practice marriage and family therapy.

6 Section 70. That the code be amended by adding a NEW SECTION to read:

7 Notwithstanding the provisions of section 67 of this Act, the board may issue a license as
8 a marriage and family therapist to an applicant licensed to practice marriage and family therapy
9 in another state or territory of the United States if the applicant demonstrates the following
10 qualifications:

- 11 (1) The applicant is currently licensed as a marriage and family therapist and has been
12 under the jurisdiction of the licensing authority in the other jurisdiction for at least
13 three continuous years prior to the time of submitting an application to the board;
- 14 (2) The applicant is in good standing with the licensing authority in the other
15 jurisdiction;
- 16 (3) Verification from the applicant of an active practice in the three years prior to the
17 time of submitting an application to the board;
- 18 (4) Verification the applicant passed the standard national examination approved by the
19 board; and
- 20 (5) An absence of unprofessional conduct or pending disciplinary complaints in another
21 jurisdiction by the applicant.

22 For purposes of this section, the term, active practice, means the applicant accumulated at
23 least one thousand five hundred hours of clinical experience in the three years immediately
24 preceding the application.

1 Section 71. That the code be amended by adding a NEW SECTION to read:

2 Any marriage and family therapist licensed in another state or territory of the United States
3 who has not passed the national examination required by the board for licensure by endorsement
4 under section 70 of this Act may be issued a temporary license to practice for up to ninety days,
5 if the applicant demonstrates the following qualifications:

- 6 (1) The applicant is currently licensed as a marriage and family therapist and has been
7 under the jurisdiction of the licensing authority in the other jurisdiction for at least
8 three continuous years prior to the time of submitting an application to the board;
- 9 (2) The applicant is in good standing with the licensing authority in the other
10 jurisdiction;
- 11 (3) Verification from the applicant of an active practice in the three years prior to the
12 time of submitting an application to the board; and
- 13 (4) An absence of unprofessional conduct or pending disciplinary complaints in another
14 jurisdiction by the applicant.

15 For purposes of this section, the term, active practice, means the applicant accumulated at least
16 one thousand five hundred hours of clinical experience in the three years immediately preceding
17 the application.

18 An applicant for a temporary license shall submit an application on a form approved by the
19 board, along with the application fee and the temporary license fee prescribed by the board. The
20 board shall issue a temporary license as a marriage and family therapist to an applicant who
21 meets the requirements of this section and pays the required temporary license fee. A temporary
22 license automatically expires on the passage of the required national examination or expiration
23 of the term for which the temporary license was issued, whichever occurs first. A temporary
24 license may be renewed once.

1 Section 72. That the code be amended by adding a NEW SECTION to read:

2 Any person practicing under a temporary license is subject to supervision and discipline by
3 the board pursuant to sections 58 to 97, inclusive, of this Act in the same manner as any other
4 licensee pursuant to sections 58 to 97, inclusive, of this Act. A person practicing under a
5 temporary license submits to the jurisdiction of the board.

6 Section 73. That the code be amended by adding a NEW SECTION to read:

7 Any licensee shall furnish the board with updated information within thirty days upon
8 changing the licensee's name, place of employment, or place of business.

9 Section 74. That the code be amended by adding a NEW SECTION to read:

10 A license issued under sections 58 to 97, inclusive, of this Act, is valid until November
11 thirtieth biennially in odd number years following the date it is issued and automatically expires
12 unless renewed.

13 Section 75. That the code be amended by adding a NEW SECTION to read:

14 Any licensee holding a valid license under sections 58 to 97, inclusive, of this Act, may
15 renew that license by making application for renewal prior to expiration, paying the required
16 renewal fee, and providing proof of compliance with the continuing education requirements
17 prescribed by the board. Failure of a licensee to renew a license on or before the thirtieth day
18 of November in an odd numbered year constitutes a suspension of the license held by the
19 licensee. The board shall notify the licensee that the renewal application has not been received
20 by the board and that the licensee may not practice counseling. Any person who submits a
21 license renewal application and provides proof of compliance with the continuing education
22 requirements set by the board within thirty days after the expiration date may be granted a
23 license renewal.

24 Section 76. That the code be amended by adding a NEW SECTION to read:

1 Any person licensed under sections 58 to 97, inclusive, of this Act, shall complete at least
2 forty hours of continuing education biennially in odd-numbered years in a manner and by an
3 instructor approved by the board. The required continuing education hours may be obtained by
4 electronic means. The board may extend or waive the continuing education requirement for a
5 licensee upon proof of illness or undue hardship if a written request from the licensee is made
6 to the board prior to the expiration of the license.

7 Section 77. That the code be amended by adding a NEW SECTION to read:

8 The board may place an active license on inactive status upon submission of an application
9 by the licensee to inactivate a license and payment of a fee prescribed by the board. An inactive
10 license expires four years after the date of inactivation. An inactive license can be reactivated
11 by paying the current license renewal fee and providing proof of at least forty hours of compliant
12 continuing education in the two-year period immediately preceding the reactivation request. If
13 an inactive license is not reactivated prior to its expiration, the license is expired and all
14 provisions applicable to an applicant for licensure apply to restore the license to active status.

15 Any license on inactive status with the board as of July 1, 2019, shall expire on
16 November 30, 2021, if the licensee does not restore the license to active status prior to
17 expiration by meeting the requirements set forth in this section.

18 Section 78. That the code be amended by adding a NEW SECTION to read:

19 An expired license may be reactivated within four years of the date of expiration by an
20 applicant upon:

- 21 (1) Paying all applicable renewal fees required for the period the license was expired;
- 22 (2) Providing proof of all continuing education required for the period the license was
23 expired; and
- 24 (3) Providing proof of passage of a national examination approved by the board after the

1 date the original license expired.

2 Section 79. That the code be amended by adding a NEW SECTION to read:

3 Sections 58 to 97, inclusive, of this Act do not apply to the activities and services of a
4 person practicing marriage and family therapy as defined in section 58 of this Act as part of that
5 person's duties as a:

6 (1) An employee of a recognized educational institution, or a federal, state, county, or
7 local governmental institution or agency while performing those duties for which the
8 person was employed by the institution, agency, or facility;

9 (2) An employee of an organization which is nonprofit, and which meets community
10 needs while performing those duties for which the person was employed by such an
11 agency; or

12 (3) A marriage and family therapy intern or person preparing for the practice of marriage
13 and family therapy under qualified supervision in a training institution or facility or
14 supervisory arrangement recognized and approved by the board, if the person is
15 designated by a title, including marriage therapy intern, family therapy intern, or
16 other title clearly indicating training status.

17 Section 80. That the code be amended by adding a NEW SECTION to read:

18 No cause of action may arise against any licensed marriage and family therapist for failure
19 to warn of and protect from a client's threatened violent behavior or for failing to predict and
20 warn of and protect from a client's violent behavior except if the client has communicated to the
21 marriage and family therapist a serious threat of physical violence against a reasonably
22 identifiable victim. The duty to warn or to take reasonable precautions to provide protection
23 from violent behavior arises only under the limited circumstances specified in this section.

24 Section 81. That the code be amended by adding a NEW SECTION to read:

1 No licensee under sections 58 to 97, inclusive, of this Act, or employee of a licensee may
2 disclose information acquired from any person consulting the licensee in a professional capacity
3 except:

4 (1) If mandated by state law or authorized to under the Health Insurance Portability and
5 Accountability Act of 1996 (HIPAA) as amended to January 1, 2019;

6 (2) If the information is necessary to prevent or mitigate a serious and imminent threat
7 to the health or safety of a person or the public if the disclosure is made to a person
8 reasonably able to prevent or mitigate the threat, including the target of the threat;

9 (3) If the licensed marriage and family therapist is a party defendant to a civil, criminal,
10 or disciplinary action arising from such professional capacity, in which case any
11 waiver of the privilege accorded by this section is limited to that action;

12 (4) If the client is a defendant in a criminal proceeding and the use of the privilege would
13 violate the defendant's right to a compulsory process or right to present testimony and
14 evidence;

15 (5) With the written consent of the person or, in the case of death or disability, of the
16 person's own personal representative, other person authorized to sue, or the
17 beneficiary of an insurance policy on the person's life, health, or physical condition.

18 If more than one person in a family is receiving therapy from the marriage and family
19 therapist, each family member must agree to the waiver for the marriage and family
20 therapist to disclose information received from any family member;

21 (6) If the person waives the privilege by bringing charges against the licensed; or

22 (7) If there is a duty to warn under the limited circumstances set forth in section 80 of
23 this Act.

24 Section 82. That the code be amended by adding a NEW SECTION to read:

1 If both parties to a marriage have obtained marriage and family therapy by a licensed
2 marriage and family therapist, the therapist may not testify in an alimony or divorce action
3 concerning information acquired in the course of the therapeutic relationship. This section does
4 not apply to custody actions.

5 Section 83. That the code be amended by adding a NEW SECTION to read:

6 The board shall receive complaints regarding the enforcement of sections 58 to 97,
7 inclusive, of this Act. A record of each complaint shall be maintained by the board. An
8 investigation shall be conducted by a member, agent, or an appointee of the board to determine
9 whether an alleged violation has been committed. The investigator, if a member of the board,
10 may dismiss a complaint if it appears to the member, either with or without the consultation of
11 the board, that no violation has been committed. If the investigator is an agent or an appointee
12 of the board, dismissal of the complaint may only be made by the president. Any agreed
13 disposition made between the investigator and the licensee or permit holder shall be made
14 known to and approved by the board. If the complaint is not dismissed and an agreed disposition
15 is not reached, the investigator may request the board set a date for hearing on the complaint.
16 All disciplinary proceedings held under the authority of sections 58 to 97, inclusive, of this Act,
17 shall be conducted in accordance with chapter 1-26. Any decision of the board entered in a
18 contested proceeding held in accordance with chapter 1-26 may be appealed to the circuit court
19 within thirty days. A license or permit shall remain in effect during the pendency of an appeal
20 unless suspended under section 86 of this Act. The complaining party shall be notified promptly
21 of the final disposition of the complaint.

22 Section 84. That the code be amended by adding a NEW SECTION to read:

23 Upon receiving any complaint regarding the health or safety of patients or the public, any
24 authorized board member, officer, agent, or employee may enter and inspect during business

1 hours, any place where marriage and family therapy is practiced for the purpose of enforcing
2 sections 58 to 97, inclusive, of this Act, in a manner compliant with the Health Insurance
3 Portability and Accountability Act of 1996, as amended to January 1, 2019. Refusal to allow an
4 inspection may constitute unprofessional or dishonorable conduct.

5 Section 85. That the code be amended by adding a NEW SECTION to read:

6 Testimony or documentary evidence of any kind obtained during the investigation of a
7 complaint is not subject to discovery or disclosure under chapter 15-6 or any other provision of
8 law and is not admissible as evidence in any legal proceeding, until such time as the complaint
9 becomes a contested case as defined in § 1-26-1. No person that has participated in the
10 investigation of a complaint may testify as an expert witness or be compelled to testify for any
11 party in any civil action if the subject matter of the complaint investigated is a basis for the civil
12 action.

13 Section 86. That the code be amended by adding a NEW SECTION to read:

14 The license of a marriage and family therapist may be revoked, suspended, or canceled upon
15 any of the following grounds:

- 16 (1) The licensee is guilty of fraud in the practice of marriage and family therapy or fraud
17 or deceit in the licensee's admission to the practice of marriage and family therapy;
- 18 (2) The licensee has been convicted during the past five years of a felony. The conviction
19 of a felony means the conviction of any offense which, if committed within the State
20 of South Dakota, would constitute a felony;
- 21 (3) The licensee is engaged in the practice of marriage and family therapy under a false
22 or assumed name and has not registered that name under chapter 37-11, or is
23 impersonating another practitioner of a like or different name;
- 24 (4) The licensee is addicted to the habitual use of intoxicating liquors, narcotics, or

1 stimulants to an extent as to incapacitate the licensee from the performance of the
2 licensee's professional duties;

3 (5) The physical or mental condition of the licensee is determined by a competent
4 medical examiner to be at risk to jeopardize or endanger those who seek relief from
5 the licensee. A majority of the board may demand an examination of the licensee by
6 a competent medical examiner selected by the board at the board's expense. If the
7 licensee fails to submit to the examination, this constitutes immediate grounds for
8 suspension of the license;

9 (6) Obtaining or attempting to obtain a license, certificate, or renewal through means of
10 bribery or fraudulent representation;

11 (7) Knowingly making a false statement in connection with any application under
12 sections 58 to 97, inclusive, of this Act;

13 (8) Knowingly making a false statement on any form required by the board in accordance
14 with sections 58 to 97, inclusive, of this Act, or the rules promulgated under sections
15 58 to 97, inclusive, of this Act;

16 (9) The licensee has violated any provision of sections 58 to 97, inclusive, of this Act,
17 or the rules promulgated under sections 58 to 97, inclusive, of this Act,; or

18 (10) The licensee has been found to be in violation of the ethical standards adopted by the
19 board.

20 Section 87. That the code be amended by adding a NEW SECTION to read:

21 Proceedings for cancellation, revocation, or suspension of a license may be initiated when
22 the board has information that any licensee may have been guilty of any misconduct as provided
23 in section 86 of this Act or is guilty of gross incompetence or unprofessional or dishonorable
24 conduct.

1 Section 88. That the code be amended by adding a NEW SECTION to read:

2 The board may impose any of the following sanctions, individually or in combination, if it
3 finds that a person, entity, licensee, or permit holder has violated any provision of sections 58
4 to 97, inclusive, of this Act, or any rule promulgated thereunder:

5 (1) Revoke a license or permit for an indefinite period;

6 (2) Suspend a license or permit for a specific or indefinite length of time;

7 (3) Place on condition or limit a license or permit;

8 (4) Issue a censure or a letter of reprimand;

9 (5) Place a licensee or permit holder on probationary status and require the licensee or
10 permit holder to report regularly to the board on the matters which are the basis for
11 probation, limit the licensee's or permit holder's practice to areas prescribed by the
12 board, and require professional education until a satisfactory degree of skill has been
13 attained in those areas which are the basis of the probation. The board may withdraw
14 the probation if the board finds the deficiencies which require disciplinary action
15 have been remedied;

16 (6) Impose any other sanctions that the board determines is appropriate;

17 (7) Impose a fee to reimburse the board in an amount equal to all or part of the costs
18 incurred for the investigation and proceedings resulting in disciplinary action
19 authorized by sections 58 to 97, inclusive, of this Act, or for the issuance of a cease
20 and desist order. The costs include the amount paid by the board for services from
21 attorneys, investigators, court reporters, witnesses, expert witnesses, reproduction of
22 records, board members per diem compensation, board staff time, and expenses
23 incurred for the investigation and disciplinary proceedings; or

24 (8) Deny an application for a license or permit.

1 Section 89. That the code be amended by adding a NEW SECTION to read:

2 The board may suspend a license or permit in advance of a final adjudication or during the
3 appeals process if the board finds that a licensee or permit holder would represent a clear and
4 immediate or imminent danger to the public health and safety if allowed to continue to practice.
5 A licensee or permit holder whose license or permit is suspended under this section is entitled
6 to a hearing before the board within twenty days after the effective date of the suspension. The
7 licensee or permit holder may subsequently appeal the suspension to circuit court in accordance
8 with chapter 1-26.

9 Section 90. That the code be amended by adding a NEW SECTION to read:

10 All proceedings regarding the cancellation, revocation, or suspension of a license shall
11 otherwise conform to the procedure set forth in chapter 1-26.

12 Section 91. That the code be amended by adding a NEW SECTION to read:

13 A party may appeal any act, ruling, or decision of the board regarding refusal to grant,
14 cancellation, revocation, or suspension of a license under chapter 1-26.

15 Section 92. That the code be amended by adding a NEW SECTION to read:

16 At the board's discretion, the board may reinstate or issue a new license or permit. The board
17 may require the applicant to pay all costs of the proceedings resulting in the suspension,
18 revocation, reinstatement, or issuance of a license or permit.

19 Section 93. That the code be amended by adding a NEW SECTION to read:

20 The board shall investigate and report any alleged violation of sections 58 to 97, inclusive,
21 of this Act. The board may employ special counsel subject to the supervision, control, and
22 direction of the attorney general to assist in the prosecution of alleged criminal violations of
23 sections 58 to 97, inclusive, of this Act, and may expend the necessary funds for this purpose.

24 Section 94. That the code be amended by adding a NEW SECTION to read:

1 Any person violating the provisions of sections 58 to 97, inclusive, of this Act, may be
2 enjoined from further violations at the suit of the state's attorney of the county where the
3 violations occurred, or suit may be brought by any citizen of this state. An action for injunction
4 shall be an alternate to criminal proceedings.

5 Section 95. That the code be amended by adding a NEW SECTION to read:

6 Any person who practices marriage and family therapy through electronic means, and
7 provides the marriage and therapy services to a patient located in this state is engaged in the
8 practice of marriage and family therapy in this state regardless of the provider's physical
9 location.

10 Section 96. That the code be amended by adding a NEW SECTION to read:

11 Any service provided by a licensee or supervise through electronic means shall comply with
12 the provisions of sections 58 to 97, inclusive, of this Act, and the rules promulgated under this
13 Act.

14 Section 97. That the code be amended by adding a NEW SECTION to read:

15 The board shall promulgate rules regarding fees, pursuant to chapter 1-26, within the
16 following limits:

- 17 (1) Application fee, not more than two hundred dollars;
- 18 (2) Biennial renewal fee, not more than five hundred dollars;
- 19 (3) Duplication license fee, not more than fifteen dollars;
- 20 (4) Inactive license fee, not more than one hundred dollars;
- 21 (5) Temporary license fee, not more than two hundred dollars; and
- 22 (6) License verification fee, not more than twenty-five dollars.