

House Bill 1028 Section by Section Summary

Title: An Act to revise certain provisions regarding professional counselors and marriage and family therapists.

Section 1: Repeals the current statutes concerning the Board of Examiners for Counselors and Marriage & Family Therapist (Board) and the current licensing requirements for professional counselors (LPC) and professional counselors-mental health (LPC-MH).

The repeal of the current statutory provisions concerning the Board and the licensing for LPCs and LPC-MHs is to allow for the reordering and clarification of the qualifications and expectations of licensure.

Section 2: Creates the definition section of the Act. The proposed definitions of terms are definitions in current law. (Current law)

Section 3: Provides for the establishment of the Board sets out the composition of the Board and appointment by the Governor. Composition is set as nine members, with three members of the public, one counselor educator, and the remaining members as professional members. (Current law)

Section 4: Provides the eligibility for appointment to the Board as a professional member. (Current law)

Section 5: Provides term limits for Board members. (Current law)

Section 6: Provides option for Governor to remove a Board member for cause and appoint a replacement. (Current law)

Section 7: Provides that the Board will meet at least once per year and any other times as set by a majority of the Board or the President, and establishes the quorum for Board meetings. (Clarifies current law)

Section 8: Provides for the election of a Board president and vice president annually. (Current law)

Section 9: Provides for the per diem and expense rate for Board members when conducting Board business. (Current law)

Section 10: Provides immunity for Board members and its agents for actions taken in the good faith discharge of Board duties. (Clarifies current law)

Section 11: Places the Board under the Department of Social Services and requires the Board to report to the Department. (Current law)

Section 12: Creates the Board's fund in the state treasury and requires all monies received by the Board be placed in the fund and drawn from the fund on approval of the Board. (Current law)

Section 13: Enumerates the powers and the duties of the Board. (Clarifies current law)

Section 14: Provides the Board with the authority to promulgate rules necessary to fulfill the Board's powers and duties. (Current law)

Section 15: Requires a license and renewal certificate issued by the Board to an LPC or LPC-MH be conspicuously displayed. (Current law)

Section 16: Makes it a Class 2 misdemeanor to practice counseling, as defined in the Act, without a license. (Current law)

Section 17: Prohibits a person not licensed from using certain titles. (Current law)

Section 18: Makes fraudulent or misleading advertising of counseling a Class 1 misdemeanor. (Current law)

Section 19: Prohibits a licensee from performing counseling outside the licensee's education, training and experience. (Clarifies current law)

Section 20: Provides the Board with the authority to employ or contract with people to assist in the enforcement of the Act and provides that prosecution of enforcement actions will be performed by the Attorney General's Office or its designee. (Updates current law)

Section 21: Provides that the Board will provide information and evidence necessary to assist to prosecute a violation of the Act. (Updates current law)

Section 22: Updates the requirements for licensure as an LPC-MH to be:

- (1) 60-hour doctorate or master's degree in counseling from an approved program;
- (2) Passing of national examinations prescribed by the Board;
- (3) Completion of 1,700 hours of supervised experience in counseling after completion of the required education degree;
- (4) No pending disciplinary actions or unresolved complaints;
- (5) Good moral character;
- (6) No violations of the statutes and rules of the Act.

The section's education requirements are increased (60-hour degree versus 48-hour degree) to account for the national changes to the accepted number of hours in a doctorate or master's degree in counseling in accredited programs. The section also changes the number of supervision hours required for licensure as a professional counselor-mental health to 1,700 hours. (Changes current law)

The section further provides an option for the Board to consider a license application from an applicant with a felony or past counseling crime, the requirements for licensure notwithstanding, if the Board determines the crime was remote enough in time or of a nature that the public is not at risk. (Updates current law)

Section 23: Provides a grandfathering provision to allow the Board to accept a 48-hour doctorate or master's degree in counseling until 2026 to meet the educational requirements for licensure to allow for a transition to the new educational requirements of section 22. (Changes current law)

Section 24: Allows the Board to require an examination and proof of competence to practice counseling from an applicant if competency is questioned due to the mental or physical health of the applicant. The examination is conducted at the expense of the Board. (Current law)

Section 25: Clarifies the current licensure by endorsement process for a professional counselor licensed in another state to allow the Board to license the applicant, if:

- (1) Applicant is licensed in another state and has been under the jurisdiction of the other state for at least three years;
- (2) Applicant is in good standing with the licensing authority in the other state;
- (3) Applicant has actively practiced (at least 1,500 hours of clinical experience) in the past three years;
- (4) Applicant passed the national examination required by the Board;
- (5) Applicant does not have unprofessional conduct or pending disciplinary matters pending in the other jurisdiction

(Clarifies current law)

Section 26: Allows for a temporary license to be issued to an applicant licensed in another state if the applicant has not passed the national examination for licensure by endorsement as provided in section 25. A temporary law is valid for 90 days and can be renewed once. (New law)

Section 27: Provides that a temporary licensee is subject to the jurisdiction of the Board and subject to this Act. (New law)

Section 28: Requires all licensees to provide the Board with updated information if there is a change of name, address, or employment. (Current law)

Section 29: Provides that licenses issues by the Board are valid until November 30th of odd numbered years. This makes the renewal of a license every other year versus the current annual renewal requirement. (Changes current law)

Section 30: Provides for a period of reinstatement for a license that is not renewed as prescribed in section 29. A licensee can reinstate a license that was not renewed by the required date within 30 days of the expiration without out penalty. A license is suspended until reinstated. (New law)

Section 31: Requires a licensee to complete at least 40 hours of continuing education biennially in a manner prescribed by the Board. (Current law)

Section 32: Provides for an inactive license status for licenses and for the process by which a licensee can inactive a license and reactivate an inactive license. Current inactive licenses are provided with an expiration date of November 30, 2021, if not reactivated before that date. (Changes current law)

Section 33: Provides a process for an expired license to be reactivated within four years of expiration if the applicant:

- (1) Pays all applicable renewal fees;
- (2) Provides proof of continuing education for the period the license was expired;
- (3) Provides proof of passing a required national examination after the date the original license expired.

This section provides an option for reactivating an expired license that does not require acquiring supervision hours, if the reactivation happens within a certain period. (New law)

Section 34: Provides exemption from the requirements of the Act. The list of exemptions is the list of current exemptions in law. (Current law)

Section 35: Provides that a licensee, or employee of a licensee, cannot disclose information acquired in the provision of counseling services unless it fits one of these exemptions:

- (1) Mandated by state law or authorized under HIPPA;
- (2) With the written consent of the client or by someone authorized to make the request on behalf of the client;
- (3) The information is necessary to prevent or mitigate a serious or imminent threat if disclosure would reasonably prevent the threat;
- (4) The LPC or LPC-MH is a party defendant to a civil, criminal or disciplinary action;
- (5) The client is a defendant in a criminal proceeding and the use of privilege would violate the defendant's right;
- (6) The client waived the privilege.

(Updates Current law)

Section 36: Provides that if counseling is provided to both parties of a marriage, the counselor may not testify in an alimony or divorce action. This section does not apply to custody actions. (Clarifies current law)

Section 37: Provides for the Board's complaint process. The section requires the Board to receive and investigate complaints and provides the Board with the option to investigate a complaint through a member, investigator or agent. The section provides that an investigating Board member can dismiss a complaint if there is not merit or that the complaint can be moved forward to a settlement agreement or hearing for resolution. (Clarifies current law)

Section 38: Allows the Board to inspect a counseling practice during normal business hours upon a complaint regarding the health and safety of patients or the public. (Current law)

Section 39: Provides that any information obtained by the Board during the review of a complaint is not subject to discovery in any legal proceeding until the complaint becomes a contested case. No person involved in the investigation of the complaint on behalf of the Board may testify as an expert witness or be compelled to testify in a civil matter concerning the complaint. (New law)

Section 40: Provides the grounds on which a license may be revoked, suspended or cancelled following the complaint process. (Current law)

Section 41: Provides that the Board may initiate a revocation, cancellation or suspension of a license or permit when the Board has information the licensee may be guilty of any misconduct provided for in this Act or gross incompetence or unprofessional conduct. (Current law)

Section 42: Provides the remedies the Board may use when addressing violations of this Act. (Clarifies current law)

Section 43: Provides for the summary suspension of a license pending a final adjudication if the Board finds a clear and immediate danger to the public if the licensee is allowed to continue practicing. The section provides for a hearing within 20 days of the suspension and for an appeal of the Board's decision. (Current law)

Section 44: Provides that all disciplinary proceedings will be conducted in accordance with SDCL 1-26. (Current law)

Section 45: Provides the process for a party to appeal a determination of the Board is in accordance with SDCL 1-26. (Current law)

Section 46: Allows the Board to reinstate a suspended, revoked or cancelled license or permit. (Current law)

Section 47: Requires the Board to report alleged violations of the Act that may be subject to criminal prosecution. (Current law)

Section 48: Provides that any person in violation of this Act may be enjoined from further violations at the suit of a state's attorney or any citizen of the state. A civil action is an alternate to criminal proceedings. (Current law)

Section 49: Requires that any person who practices counseling via electronic means (teletherapy) and provides the counseling to a patient located in the state is practicing counseling in South Dakota, regardless of where the person is located. (Clarifies current law)

Section 50: Requires that counseling provided by electronic means (teletherapy) must comply with this Act. (Clarifies current law)

Section 51: Provides the Board with authority to set fees for:

- (1) Applications – no more than \$200
- (2) Renewals – no more than \$500
- (3) Duplicate licenses – no more than \$15
- (4) Inactive licenses – no more than \$100
- (5) Temporary licenses – no more than \$200
- (6) License verification – no more than \$25

These fee caps recognize the need to change the annual fees to biennial fees because of the timeline changes for renewal proposed by this Act. (Updates current law)

Section 52: Provides a grandfathering provision for current LPCs. The section allows an LPC to continue to practice under the LPC license, if issued by July 1, 2019, subject to renewal as prescribed by the Board and the requirements of this Act. This allows an LPC to continue practicing without change, notwithstanding the changes to licensure qualifications. (New law)

Section 53: Provides the requirements for an LPC licensee to move to an LPC-MH license, including:

- (1) The applicant is licensed as an LPC for at least four years OR passage of the required national examination;
- (2) The applicant has no disciplinary proceedings or pending complaints;
- (3) The applicant is of good moral character; and
- (4) The applicant has not violated the provisions of this Act.

The section provides an option for the Board to consider a license application from an applicant with a felony or past counseling crime, the requirements for licensure notwithstanding, if the Board determines the crime was remote enough in time or of a nature that the public is not at risk. (New law)

Section 54: Provides a grandfathering provision for applicants holding a board approved plan of supervision for an LPC as of July 1, 2019. The person will be issued an LPC if the terms of the approved plan are met. (New law)

Section 55: Clarifies that any current board approved plans of supervision for an LPC-MH must meet the requirements of section 22. (New law)

Section 56: Clarifies that any currently licensed LPC-MH will be licensed as an LPC-MH under this Act. (New law)

Section 57: Repeals the current statutes concerning marriage and family therapy to allow for the reordering and clarification of the qualifications and expectations of licensure as a marriage and family therapist (LMFT).

Section 58: Creates the definition section for the marriage and family therapy sections. The proposed definitions of terms are definitions in current law. (Current law)

Section 59: Requires a license and renewal certificate issued by the Board to an LMFT be conspicuously displayed. (Current law)

Section 60: Makes is a Class 2 misdemeanor to practice marriage and family therapy, as defined in the Act, without a license. (Current law)

Section 61: Prohibits a person not licensed from using certain titles. (Current law)

Section 62: Makes fraudulent or misleading advertising of marriage and family therapy counseling a Class 1 misdemeanor. (Current law)

Section 63: Prohibits a licensee from performing marriage and family therapy counseling outside the licensee's education, training and experience. (Clarifies current law)

Section 64: Allows other qualified professionals to advertise or perform marriage and family therapy counseling, if allowed within a respective practice act, if the person does not use a title or description that implies the person is an LMFT. (Current law)

Section 65: Provides the Board with authority to employ or contract with people to assist in the enforcement of the Act and provides for prosecution of enforcement actions will be performed by the Attorney General's Office or its designee. (Clarifies current law)

Section 66: Provides the Board will provide information and evidence necessary to assist to prosecute a violation of the Act. (Updates current law)

Section 67: Updates the requirements for licensure as a LMFT to be:

- (1) A doctorate or master's degree in counseling, with at least 60 hours of marriage and family therapy, from an approved program;
- (2) Passing of national examination prescribed by the Board;
- (3) Completion of 1,700 hours of supervised experience in marriage and family therapy counseling after completion of the required education degree;
- (4) No pending disciplinary actions or unresolved complaints;
- (5) Good moral character;
- (6) No violations of the statutes and rules of the Act.

The section's education requirements are increased (60-hour degree versus 48-hour degree) to account for the national changes to the accepted number of hours in a doctorate or master's degree in counseling in accredited programs and the number of supervision hours for licensure corresponds to the 1,700 hours proposed to the LPC-MH license, as an equivalent level of licensure. (Changes current law)

The section also provides an option for the Board to consider a license application from an applicant with a felony or past counseling crime, the requirements for licensure notwithstanding, if the Board determines the crime was remote enough in time or of a nature that the public is not at risk. (Updates current law)

Section 68: Provides a grandfathering provision to allow the Board to accept a 48-hour doctorate or master's degree until 2026 to meet the educational requirements for licensure to allow for a transition to the new educational requirements of section 67. (Changes current law)

Section 69: Allows the Board to require an examination and proof of competence to practice counseling from an applicant if competency is questioned due to the mental or physical health of the applicant. The examination is conducted at the expense of the Board. (Current law)

Section 70: Clarifies the current licensure by endorsement process for a marriage and family therapist in another state to allow the Board to license the applicant, if:

- (1) Applicant is licensed in another state and has been under the jurisdiction of the other state for at least three years;
- (2) Applicant is in good standing with the licensing authority in the other state;
- (3) Applicant has actively practiced (at least 1,500 hours of clinical experience) in the past three years;
- (4) Applicant passed the national examination required by the Board;
- (5) Applicant does not have unprofessional conduct or pending disciplinary matters pending in the other jurisdiction

(Clarifies current law)

Section 71: Allows for a temporary license to be issued to an applicant licensed in another state if the applicant has not passed the national examination for licensure by endorsement as provided in section 25. A temporary law is valid for 90 days and can be renewed once. (New law)

Section 72: Provides that a temporary licensee is subject to the jurisdiction of the Board and subject to this Act. (New law)

Section 73: Requires all licensees to provide the Board with updated information if there is a change of name, address, or employment. (Current law)

Section 74: Provides that licenses issued by the Board are valid until November 30th of odd numbered years. This makes the renewal of a license every other year versus the current annual renewal requirement. (Changes current law)

Section 75: Provides for a period of reinstatement for a license that is not renewed as prescribed in section 74. A licensee can reinstate a license that was not renewed by the required date within 30 days of the expiration without out penalty. A license is suspended until reinstated. (New law)

Section 76: Requires a licensee to complete at least 40 hours of continuing education biennially in a manner prescribed by the Board. (Current law)

Section 77: Provides for an inactive license status for licenses and for the process by which a licensee can inactive a license and reactivate an inactive license. Current inactive licenses are provided with an expiration date of November 30, 2021, if not reactivated before that date. (Changes current law)

Section 78: Provides a process for an expired license to be reactivated within four years of expiration if the applicant:

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This section provides an option for reactivating an expired license that does not require acquiring supervision hours, if the reactivation happens within a certain period. (New law)

Section 79: Provides exemptions from the requirements of the Act. The list of exemptions is the list of current exemptions in law. (Current law)

Section 80: Provides that an action cannot arise against an LMFT for failure to warn of or protect from harm unless a serious threat has been communicated against a reasonably identifiable victim. (Current law)

Section 81: Provides that a licensee or employee of a licensee cannot disclose information acquired in the provision of counseling services unless it fits on of these exemptions:

- (1) Mandated by state law or authorized under HIPPA;
- (2) Information is necessary to prevent a serious threat;
- (3) The LMFT is a party defendant to a civil, criminal or disciplinary action;
- (4) The client is a defendant in a criminal proceeding and the use of privilege would violate the defendant's right;
- (5) With the written consent of the client or by someone authorized to make the request on behalf of the client;
- (6) The client waived the privilege; or
- (7) If there is a duty to warn under the limited circumstances of section 80.

(Current law)

Section 82: Provides that if counseling is provided to both parties of a marriage, the therapist may not testify in an alimony or divorce action. This section does not apply to custody actions. (Current law)

Section 83: Provides for the Board’s complaint process. The section requires the Board to receive and investigate complaints and provides the Board with the option to investigate a complaint through a member, investigator or agent. The section provides that an investigating Board member can dismiss a complaint if there is not merit or that the complaint can be moved forward to a settlement agreement or hearing for resolution. (Clarifies current law)

Section 84: Allows the Board to inspect a marriage and family therapy counseling practice during normal business hours upon a complaint regarding the health and safety of patients or the public. (Clarifies current law)

Section 85: Provides that any information obtained by the Board during the review of a complaint is not subject to discovery in any legal proceeding until the complaint becomes a contested case. No person involved in the investigation of the complaint on behalf of the Board may testify as an expert witness or be compelled to testify in a civil matter concerning the complaint. (New law)

Section 86: Provides the grounds on which a license may be revoked, suspended or cancelled following the complaint process. (Current law)

Section 87: Provides that the Board may initiate a revocation, cancellation or suspension of a license or permit when the Board has information the licensee may be guilty of any misconduct provided for in this Act or gross incompetence or unprofessional conduct. (Current law)

Section 88: Provides the remedies the Board may use when addressing violations of this Act. (Clarifies current law)

Section 89: Provides for the summary suspension of a license pending a final adjudication if the Board finds a clear and immediate danger to the public if the licensee is allowed to continue practicing. The section provides for a hearing within 20 days of the suspension and for an appeal of the Board’s decision. (Current law)

Section 90: Provides that all disciplinary proceedings will be conducted in accordance with SDCL 1-26. (Current law)

Section 91: Provides the process for a party to appeal a determination of the Board is in accordance with SDCL 1-26. (Current law)

Section 92: Allows the Board to reinstate a suspended, revoked or cancelled license or permit. (Current law)

Section 93: Requires the Board to report alleged violations of the Act that may be subject to criminal prosecution. (Current law)

Section 94: Provides that any person in violation of this Act may be enjoined from further violations at the suit of a state’s attorney or any citizen of the state. A civil action is an alternate to criminal proceedings. (Current law)

Section 95: Requires that any person who practices marriage and family therapy via electronic means (teletherapy) and provides the therapy to a patient located in the state is practicing marriage and family therapy in South Dakota, regardless of where the person is located. (Clarifies current law)

Section 96: Requires marriage and family therapy provided by electronic means (teletherapy) must comply with this Act. (Clarifies current law)

Section 97: Provides the Board with authority to set fees for:

- (1) Applications – no more than \$200
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- (6) License verification – no more than \$25

These fee caps recognize the need to change the annual fees to biennial fees because of the timeline changes for renewal proposed by this Act. (Updates current law)

For additional information, please contact Jennifer Stalley, Executive Secretary, Board of Examiners for Counselors and Marriage & Family Therapists at 605-280-5714.