

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

508P0457

## HOUSE BILL NO. 1189

Introduced by: Representatives Weems, Dreyer, Faehn, Heineman, Krebs, Miles, Noem, Novstrup (Al), Novstrup (David), Olson (Russell), Pederson (Gordon), Peters, Rausch, Thompson, Turbiville, Wick, and Willadsen and Senators Gant, Abdallah, Gray, Maher, McNenny, Napoli, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to require a review of any proposal to establish a new board  
2 or add duties to an existing board.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Applicant," the person proposing state licensure or certification for an occupation  
6 or profession;

7 (2) "Board," any board, commission or other entity of the executive branch of state  
8 government that is responsible for regulating members of an occupation or  
9 profession;

10 (3) "Committee," an interim committee of the Legislative Research Council.

11 Section 2. For the purposes of this Act, registration is a process which requires that, before  
12 rendering services, all practitioners formally notify a regulatory entity of their intent to engage  
13 in the profession or occupation. Notification may include the name and address of the  
14 practitioner, the location of the activity to be performed, and a description of the service to be



1 provided.

2 Section 3. For the purposes of this Act, certification is a process by which a board grants to  
3 an individual who has met certain prerequisite qualifications the right to assume or to use the  
4 title of the profession or occupation, or the right to assume or use the term, certified, in  
5 conjunction with the title.

6 Section 4. For the purposes of this Act, licensure is a process by which a board grants to an  
7 individual, who has met certain prerequisite qualifications, the right to perform prescribed  
8 professional and occupational tasks and to use the title of the profession or occupation.

9 Section 5. Any applicant proposing the establishment of a new board or the addition of  
10 duties to an existing board in the form of regulating another occupation or profession shall  
11 submit a proposal to the Executive Board of the Legislative Research Council not later than  
12 March first. The proposal shall include the information required in section 6 of this Act. The  
13 executive board shall assign the proposal to the committee for a review and assessment of the  
14 merits of the proposal. The provisions of this section do not apply to an agency, occupation, or  
15 profession that is required to be regulated by federal law.

16 Section 6. The applicant shall provide to the committee:

- 17 (1) Proposed qualifications of practitioners;
- 18 (2) Disciplinary procedures that would be applied to practitioners;
- 19 (3) Proposed requirements for continuing education, if any;
- 20 (4) The information required in sections 7 and 8 of this Act; and
- 21 (5) Draft legislation that meets the bill requirements of the Legislative Research Council.

22 Section 7. The applicant shall demonstrate to the committee and if necessary furnish  
23 additional information as requested by the committee to show that:

- 24 (1) The unregulated practice of the occupation or profession creates a direct, immediate

- 1 danger to the public health, safety, or welfare;
- 2 (2) The scope of practice is readily identified and easily distinguished from the scope of
- 3 practice of other professions and occupations;
- 4 (3) The occupational or professional group has an established code of ethics, a voluntary
- 5 certification program, or other measures to ensure a minimum quality of service;
- 6 (4) Practice of the occupation or profession requires specialized skill or training, and
- 7 nationally recognized standards of education and training exist;
- 8 (5) The proposed qualifications for regulation are justified;
- 9 (6) The public will benefit from the proposed regulation of the occupation or profession;
- 10 (7) Public support for the proposed regulation exists;
- 11 (8) The proposed regulation will not significantly increase the cost of services to the
- 12 public; and
- 13 (9) No other board regulates a similar or closely related occupation or profession.

14 Section 8. The applicant shall determine or estimate:

- 15 (1) The number of existing practitioners and the approximate number of people who
- 16 would be regulated in the future;
- 17 (2) The number of people who are likely to use the services of the occupation or
- 18 profession;
- 19 (3) The manner and degree of improved quality of service;
- 20 (4) The degree to which regulation will facilitate clients' access to reimbursement for
- 21 government assistance programs;
- 22 (5) Whether a substantial majority of the public has the knowledge or experience to
- 23 evaluate the practitioner's competence;
- 24 (6) Whether the public can effectively be protected by other means; and

1 (7) Whether regulation will significantly increase the cost of goods and services provided  
2 by the occupation or profession; adversely affect the scope of practice of other  
3 professions and occupations, whether regulated or not, or exclude existing  
4 practitioners or otherwise reduce the number of practitioners in the state.

5 Section 9. If the committee determines that existing remedies do not adequately protect the  
6 public health, safety, or welfare, the committee shall consider the following degrees of  
7 regulation in the following order:

8 (1) Statutory change to provide for civil causes of action or criminal penalties;

9 (2) Inspection of a practitioner's premises and activities and authorization of an  
10 appropriate board to enjoin an activity that is detrimental to the public health, safety,  
11 or welfare;

12 (3) Registration if the threat to public health, safety, and welfare is relatively small;

13 (4) Certification if the consumer has a substantial interest in relying on the qualifications  
14 of the practitioner;

15 (5) Licensure if it is apparent that the public cannot be adequately protected by any other  
16 means.

17 In determining any recommendation for regulation of an occupation or profession, the  
18 committee shall recommend the least restrictive form of regulation consistent with the public  
19 interest. The committee may not recommend any regulation unless necessary to protect the  
20 health, safety, and welfare of the public.

21 Section 10. The committee shall base any recommendation on evidence gathered by the  
22 committee in public hearings from testimony submitted orally or in writing by interested parties  
23 and on evidence compiled by the committee in its study. The committee shall submit a report  
24 to the Executive Board of the Legislative Research Council.