

# 2021 South Dakota Legislature

## Draft 175

*Requested by: at the request of the Department of Health*

1 **An Act to revise certain provisions regarding the practice of chiropractic.**

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

3 **Section 1.** That a NEW SECTION be added:

4 **36-5-1.1. Definitions.**

5 Terms used in this chapter mean:

6 (1) "Board," the South Dakota Board of Chiropractic Examiners;

7 (2) "Chiropractic assistant," a properly qualified person who has completed an  
8 educational training program approved by the board, who assists in basic health  
9 care duties in the practice of chiropractic under the supervision of a doctor of  
10 chiropractic, and who performs delegated duties commensurate with the  
11 chiropractic assistant's education and training, but who do not evaluate, interpret,  
12 design, or modify established treatment programs of chiropractic care or violate  
13 any statute;

14 (3) "Chiropractic radiography," the application of X-radiation within the scope of  
15 practice of chiropractic for diagnostic purposes only; and

16 (4) "Chiropractic specialist," a chiropractor who has graduated from a postdoctoral  
17 specialty program accredited by the board.

18 **Section 2.** That § 36-5-2 be AMENDED.

19 **36-5-2. Advertising or practicing without license or annual license renewal--**  
20 **Misdemeanor.**

21 Any person who advertises, practices, or attempts to practice chiropractic or who  
22 uses the title chiropractor or any word or title having a tendency to induce any person to  
23 believe that the person is a chiropractor without first having secured a license from the  
24 ~~Board of Chiropractic Examiners~~board or an annual license renewal from the ~~Board of~~  
25 ~~Chiropractic Examiners~~board is guilty of a Class 1 misdemeanor.

26 **Section 3.** That § 36-5-2.1 be AMENDED.

1           **36-5-2.1. Injunction for violation authorized.**

2           The ~~Board of Chiropractic Examiners is empowered to~~ board may commence  
3 ~~actions~~ an action for ~~injunctions~~ an injunction for ~~violations~~ a violation of this chapter or  
4 regulations promulgated hereunder.

5           **Section 4.** That § 36-5-2.2 be AMENDED.

6           **36-5-2.2. Liability of violators for enforcement expenses.**

7           Any ~~individual~~ person violating the ~~provisions~~ a provision of this chapter or  
8 regulations promulgated hereunder may also be required by the court to pay all expenses,  
9 including legal fees, incurred by the ~~Board of Chiropractic Examiners~~ board in enforcing  
10 this chapter and the regulations promulgated hereunder.

11          **Section 5.** That § 36-5-3 be AMENDED.

12          **36-5-3. Composition of board--Appointment and terms--Vacancies.**

13          The ~~Board of Chiropractic Examiners shall be~~ Governor shall appoint all members  
14 of the board. The board shall be composed of one lay person, who is not licensed by the  
15 board but uses the services licensed, and four members who are chiropractors, and  
16 appointed by the Governor for terms of three calendar years in active practice in the state.  
17 The term of a member begins on January first, unless otherwise designated by the  
18 Governor. The term of a member expires on December thirty-first in the third year of the  
19 member's appointment. No member may serve more than three consecutive full terms.  
20 The Governor shall, by appointment, fill any vacancy occurring in the board. The  
21 appointment to an unexpired term is not considered a full term. The Governor may stagger  
22 terms to enable the board to have different terms expire each year.

23          **Section 6.** That § 36-5-3.1 be REPEALED.

24          **36-5-3.1. Lay member of board--Appointment and term of office.**

25          **Section 7.** That § 36-5-4 be AMENDED.

26          **36-5-4. Officers of board--Rules and regulations--Examination of**  
27 **candidates.**

28          The ~~Board of Chiropractic Examiners shall organize annually by electing a~~  
29 ~~president, vice president, and secretary treasurer, and the board shall have the power to~~  
30 ~~adopt~~ elect annually from its members a president, vice president, and secretary. No

1 member may serve as president more than three consecutive one-year terms. The board  
2 may promulgate rules and regulations in compliance with, pursuant to chapter 1-26 as  
3 shall be reasonably necessary, to carry out and make effective the provisions and purposes  
4 of this chapter. The board shall hold examination of examine candidates for license and  
5 the transaction of such transact any business as may properly come that comes before it  
6 at least twice annually in June and December of each year, at such times and places as  
7 may be designated by the board. The secretary treasurer of the board may be required  
8 to give a bond in such sum and with such conditions as the board may direct.

9 **Section 8.** That § 36-5-4.1 be AMENDED.

10 **36-5-4.1. Records and reports.**

11 ~~The Board of Chiropractic Examiners shall continue within the Department of~~  
12 ~~Health, and shall retain all its prescribed functions, including administrative functions. The~~  
13 ~~board shall submit such any records, information, and reports in the form and at such the~~  
14 ~~times as required by the secretary of health Department of Health, except that the board~~  
15 ~~shall report at least annually.~~

16 **Section 9.** That § 36-5-5 be REPEALED.

17 **36-5-5. Compensation and expenses of board members.**

18 **Section 10.** That § 36-5-6 be AMENDED.

19 **36-5-6. Acceptance of funds by the board--Separate fund--Payments from**  
20 **fund--Expense limited by revenue.**

21 ~~All money, after the payments provided in § 36-5-5, shall be retained in a special~~  
22 ~~fund for defraying the expenses of the Board of Chiropractic Examiners in carrying out the~~  
23 ~~provisions of this chapter. The board shall deposit all funds it receives or collects under the~~  
24 ~~provisions of this chapter in the bank that is authorized by the board. The board may~~  
25 ~~expend funds for administrative, consultative, and other necessary services for the board~~  
26 ~~in an amount set by the board. The funds may be withdrawn by the executive director as~~  
27 ~~authorized by the board. All compensation and other expenses of the board must be paid~~  
28 ~~from the funds received under the provisions of this chapter. No expenses may be incurred~~  
29 ~~by the board in excess of the board's revenue.~~

30 **Section 11.** That § 36-5-8 be AMENDED.

1           **36-5-8. Educational requirements for license.**

2           Any person is eligible for ~~examination~~licensure who has satisfactorily completed  
3 two years of preprofessional study in a liberal arts or science course at any college or  
4 university ~~approved by the Board of Examiners~~ and who is a graduate of a chiropractic  
5 school approved by the ~~Board of Examiners~~ or will be a graduate of a chiropractic school  
6 approved by the Board of Examiners within ninety days after taking the examination. The  
7 chiropractic school shall require at a minimum for graduation a period of actual attendance  
8 equivalent to the standard four year course, teaching adequate courses in the basic  
9 sciences and all subjects pertaining to the practice of chiropractic board. The minimum  
10 requirements for licensure of any person graduating on or after January 1, 2011 ~~shall be~~  
11 is a baccalaureate degree in addition to a doctor of chiropractic degree. The baccalaureate  
12 degree may be granted by an accredited undergraduate program or by a chiropractic  
13 college or university that can offer a dual degree.

14 **Section 12.** That § 36-5-9 be REPEALED.

15           **36-5-9. Certifications of satisfactory course completion to be filed.**

16 **Section 13.** That § 36-5-10 be REPEALED.

17           **36-5-10. Application for examination.**

18 **Section 14.** That § 36-5-11 be AMENDED.

19           **36-5-11. Application for license--Fee.**

20           Any applicant for a license pursuant to this chapter shall apply on a form prescribed  
21 by the board and pay the fee for the license required pursuant to this chapter. The fee for  
22 the license shall be set by rule, promulgated by the Board of Chiropractic Examiners  
23 pursuant to chapter 1-26, and may not exceed three hundred dollars. The fee ~~applicant~~  
24 ~~shall be paid to the secretary treasurer of the board when the application is submitted~~  
25 also satisfy all other qualifications required pursuant to this chapter.

26 **Section 15.** That § 36-5-12 be AMENDED.

27           **36-5-12. Scope of examinations.**

28           ~~The board shall conduct a written examination in anatomy, bacteriology,~~  
29 ~~physiology, chemistry, pathology, histology, gynecology, symptomatology, hygiene and~~  
30 ~~public health, physical diagnosis, diagnostic X ray, principles and practice of chiropractic,~~

1 ~~and such other subjects as the board determines by rule. The board may waive~~  
2 ~~examination in some or all of these subjects or their equivalents if the applicant has passed~~  
3 ~~the examinations given by the National Board of Chiropractic Examiners. The board shall~~  
4 ~~require all applicants to attain a general average of not less than seventy five percent and~~  
5 ~~a grade of at least seventy percent in each subject and to perform satisfactory clinical~~  
6 ~~demonstrations to be entitled to a license to practice chiropractic. However, an applicant~~  
7 ~~who has not graduated at the time of the examination is not entitled to a license until the~~  
8 ~~applicant graduates and provides the board with the certifications from an attended school~~  
9 ~~as required in § 36-5-9. The board may permit an applicant who failed only one subject~~  
10 ~~to be reexamined only in such subject without an additional fee. The board may, by rule,~~  
11 ~~limit the number and frequency of reexaminations. An applicant shall pass all parts of the~~  
12 ~~National Board of Chiropractic Examiners exams that are available at the time of~~  
13 ~~graduation.~~

14 **Section 16.** That § 36-5-13 be AMENDED.

15 **36-5-13. License without examination on certification from another state or**  
16 **national board--Fee.**

17 Any person licensed to practice chiropractic under the laws of any other state  
18 having equivalent requirements of this chapter or licensed by the National Board of  
19 Chiropractic Examiners may, ~~in the discretion of the Board of Chiropractic Examiners,~~ be  
20 issued a license to practice chiropractic in this state without examination, upon payment  
21 of the fee set by rule, promulgated by the board pursuant to chapter 1-26, not to exceed  
22 three hundred dollars pursuant to § 36-5-11.

23 **Section 17.** That § 36-5-14 be AMENDED.

24 **36-5-14. Display of license.**

25 ~~The A practitioner shall conspicuously display the practitioner's license to practice~~  
26 ~~chiropractic shall be signed by each member of the Board of Chiropractic Examiners and~~  
27 ~~authenticated by the seal of the board, and the license and renewal certificate shall be~~  
28 ~~conspicuously displayed at the office of the practitioner.~~

29 **Section 18.** That § 36-5-14.1 be AMENDED.

1           **36-5-14.1. Annual renewal of license--Fee.**

2           ~~Each person receiving a license under the provisions of~~ Any license issued pursuant  
3 to this chapter shall procure from the secretary treasurer of the board be renewed  
4 annually on or before the thirty-first day of December ~~of each year, a renewal of license.~~  
5 The renewal shall be issued by the ~~secretary treasurer board~~ upon payment of the fee set  
6 by rule, promulgated by the board pursuant to chapter 1-26, not exceeding the sum of  
7 three hundred dollars. The renewal license shall be in the form of a receipt acknowledging  
8 payment of the required fee and signed by the ~~secretary treasurer~~ executive secretary of  
9 the board.

10 **Section 19.** That § 36-5-14.2 be AMENDED.

11           **36-5-14.2. Additional requirements for annual license.**

12           ~~The Board of Chiropractic Examiners board~~ may provide, by rule, promulgated  
13 pursuant to chapter 1-26, additional requirements for the obtaining of an annual license.

14 **Section 20.** That § 36-5-15.1 be AMENDED.

15           **36-5-15.1. Chiropractic physician preceptor program.**

16           ~~The Board of Chiropractic Examiners board~~ may establish a ~~chiropractor student~~  
17 chiropractic physician preceptor associate program. The board may promulgate rules  
18 pursuant to chapter 1-26 to implement this section.

19 **Section 21.** That § 36-5-15.2 be AMENDED.

20           **36-5-15.2. Regulation and licensing of practice of chiropractic and**  
21 **chiropractic radiography--Enforcement--Hearing officers.**

22           ~~The Board of Chiropractic Examiners board~~ shall:

- 23 (1) Establish, by rule promulgated pursuant to chapter 1-26, standards for, and to  
24 promote, the safe and qualified practice of chiropractic;  
25 (2) Be responsible for all disciplinary proceedings under this chapter;  
26 (3) Establish, by rule promulgated pursuant to chapter 1-26, educational, training, and  
27 competency standards governing the examination and practice of practitioners  
28 under this chapter. ~~The board may, by rule, and~~ specify the minimum educational  
29 qualifications general practitioners shall have to present themselves as chiropractic  
30 specialists to the public;

- 1 (4) Examine, or cause to be examined, for competency, eligible applicants for licenses  
2 to practice chiropractic and chiropractic radiography;
- 3 (5) Issue licenses to those applicants who successfully complete the licensure  
4 examination and renew the licenses of those who continue to meet the licensure  
5 standards of this chapter and the board's rules; and
- 6 (6) Establish, by rule, ~~and collect~~ promulgated pursuant to chapter 1-26, an annual  
7 registration fee, not to exceed fifty dollars from those persons practicing  
8 chiropractic radiography.

9 ~~The board may authorize a hearing examiner to conduct any hearing required to~~  
10 ~~determine violations of this chapter and the rules of the board.~~

11 **Section 22.** That § 36-5-15.3 be AMENDED.

12 **36-5-15.3. Education and experience requirement rules for practice of**  
13 **chiropractic radiography.**

14 ~~The Board of Chiropractic Examiners board may,~~ by rule promulgated pursuant to  
15 chapter 1-26, establish minimum educational and training requirements and continuing  
16 education requirements to practice chiropractic radiography. The board may also require,  
17 or substitute, clinical experience in addition to, or in lieu of, educational and training  
18 requirements.

19 **Section 23.** That § 36-5-15.4 be REPEALED.

20 **36-5-15.4. Definitions.**

21 **Section 24.** That § 36-5-15.5 be AMENDED.

22 **36-5-15.5. Unlicensed practice of chiropractic radiography as misdemeanor.**

23 Any person who ~~shall practice~~ practices or ~~attempt~~ attempts to practice chiropractic  
24 radiography without first having secured a license from the ~~Board of Chiropractic~~  
25 ~~Examiners board~~ and an annual license renewal is guilty of a Class 1 misdemeanor.

26 **Section 25.** That § 36-5-17 be AMENDED.

27 **36-5-17. Appeal from board.**

28 An appeal from the decision of the ~~Board of Chiropractic Examiners board~~ may be  
29 taken as provided by chapter 1-26.

1 **Section 26.** That § 36-5-18 be REPEALED.

2 **36-5-18. South Dakota Chiropractors Association--Purpose.**

3 **Section 27.** That § 36-5-19 be AMENDED.

4 **36-5-19. Peer review committee--Immunity from liability--Conditions--**  
5 **Official immunity unaffected--Fee.**

6 The ~~Board of Examiners~~board may act as a peer review committee or may appoint  
7 other licensed chiropractors to perform such function. No monetary liability on the part of,  
8 and no cause of action for damages may arise against any member of a duly appointed  
9 peer review committee comprised of chiropractors licensed to practice in this state, for  
10 any act or proceeding undertaken or performed within the scope of the functions of such  
11 committee formed to maintain the professional standards of the ~~Board of Examiners~~board  
12 as provided in rules promulgated by the board pursuant to chapter 1-26, if the committee  
13 member acts without malice, has made a reasonable effort to obtain the facts of the  
14 matter on which the member acts, and acts in reasonable belief that the action taken is  
15 warranted by the facts as known by the member after a reasonable effort to obtain facts.  
16 The provisions of this section do not affect the official immunity of an officer or employee  
17 of a public corporation. The contested case provisions of chapter 1-26 do not apply to  
18 activities of the peer review committee. All licensees shall, as a condition of licensure, fully  
19 cooperate with and promptly respond to inquiries and requests from the committee. The  
20 recommendations of the committee as to necessity for services of a licensee, and as to  
21 reasonableness of charges and procedures shall be reported to the person who requested  
22 the review and one member of the ~~Board of Examiners~~board as designated by the board.  
23 The board may, by rules promulgated pursuant to chapter 1-26, establish a fee not to  
24 exceed seven hundred fifty dollars to help defray the cost of the review. However, no  
25 patient of a licensee requesting a peer review is subject to this fee.

26 **Section 28.** That § 36-5-20 be AMENDED.

27 **36-5-20. Disciplinary committee--Immunity from liability--Conditions--**  
28 **Official immunity unaffected.**

29 The ~~Board of Examiners~~board may act as a disciplinary committee or may appoint  
30 other chiropractors licensed to practice in this state to perform such functions to maintain  
31 the professional standards of the board. No monetary liability on the part of, and no cause  
32 of action for damages may arise against any member of a duly appointed disciplinary



1 committee for any act or proceeding undertaken or performed within the scope of the  
2 functions of the committee, if the committee member acts without malice, has made a  
3 reasonable effort to obtain the facts of the matter on which the member acts, and acts in  
4 a reasonable effort to obtain the facts. The provisions of this section do not affect the  
5 official immunity of an officer or employee of a public corporation.

6 The board may promulgate rules pursuant to chapter 1-26 governing the  
7 administration and enforcement of this section and the conduct of licensees, including:

- 8 (1) Purpose of disciplinary committee;
- 9 (2) Composition of the disciplinary committee;
- 10 (3) Qualifications of disciplinary committee;
- 11 (4) Procedure governing the conduct of investigations and hearings by the disciplinary  
12 committee.

13 **Section 29.** That § 36-5-21 be AMENDED.

14 **36-5-21. Ethics committee--Immunity from liability--Conditions--Official**  
15 **immunity unaffected--Promulgation of rules.**

16 The ~~Board of Examiners~~board may act as an ethics committee or may appoint  
17 other chiropractors licensed to practice in this state to perform such functions to maintain  
18 the professional standards of the board. No monetary liability on the part of, and no cause  
19 of action for damages may arise against any member of a duly appointed ethics committee  
20 for any act or proceeding undertaken or performed within the scope of the functions of  
21 the committee if the committee member acts without malice, has made a reasonable effort  
22 to obtain the facts of the matter on which the member acts, and acts in the reasonable  
23 belief that the action taken is warranted by the facts as known by the member after a  
24 reasonable effort to obtain the facts. The provisions of this section do not affect the official  
25 immunity of an officer or employee of a public corporation.

26 The board may promulgate rules pursuant to chapter 1-26 governing the  
27 administration and enforcement of this section and the conduct of licensees, including:

- 28 (1) Purpose of ethics committee;
- 29 (2) Composition of the ethics committee;
- 30 (3) Qualifications of ethics committee;
- 31 (4) Procedure governing the conduct of investigations and hearings by the ethics  
32 committee;
- 33 (5) Adoption of declaratory rules on ethical issues.

1 **Section 30.** That § 36-5-22 be AMENDED.

2 **36-5-22. Criminal background investigation of applicants for licensure.**

3 Each applicant for licensure as a chiropractor, in this state shall submit to a state  
4 and federal criminal background investigation by means of fingerprint checks by the  
5 Division of Criminal Investigation and the Federal Bureau of Investigation. Upon  
6 application, the ~~Board of Chiropractic Examiners board~~ shall submit completed fingerprint  
7 cards to the Division of Criminal Investigation. Upon completion of the criminal  
8 background check, the Division of Criminal Investigation shall forward to the board all  
9 information obtained as a result of the criminal background check. This information shall  
10 be obtained prior to permanent licensure of the applicant. The ~~Board of Chiropractic~~  
11 ~~Examiners board~~ may require a state and federal criminal background check for any  
12 licensee who is the subject of a disciplinary investigation by the board. Failure to submit  
13 or cooperate with the criminal background investigation is grounds for denial of an  
14 application or may result in revocation of a license. The applicant shall pay for any fees  
15 charged for the cost of fingerprinting or the criminal background investigation.

16 **Section 31.** That § 36-5-23 be REPEALED.

17 **36-5-23. Chiropractic assistant defined.**

18 **Section 32.** That § 36-5-24 be AMENDED.

19 **36-5-24. Application for certification as chiropractic assistant.**

20 A chiropractic assistant seeking a certification of registration under this chapter  
21 shall complete and submit an application as prescribed by the ~~Board of Chiropractic~~  
22 ~~Examiners board~~. The board may promulgate rules pursuant to chapter 1-26 to establish  
23 an annual registration fee, not to exceed one hundred dollars, from those persons  
24 registered as chiropractic assistants.

25 **Section 33.** That § 36-5-25 be AMENDED.

26 **36-5-25. Minimum educational and training requirements--Continuing**  
27 **education requirements.**

28 The ~~Board of Chiropractic Examiners board~~ may promulgate rules pursuant to  
29 chapter 1-26 to establish minimum educational and training requirements and continuing  
30 education requirements to practice as a chiropractic assistant. The board may also require,

1 or substitute, clinical experience in addition to, or in lieu of, educational and training  
2 requirements.

3 **Section 34.** That § 36-5-26 be AMENDED.

4 **36-5-26. Out-of-state applicants.**

5 The ~~Board of Chiropractic Examiners~~ board may register an applicant from outside  
6 the state whose education and training meet the qualifications established by the board.

7 **Section 35.** That § 36-5-27 be AMENDED.

8 **36-5-27. Additional requirements for certification.**

9 The ~~Board of Chiropractic Examiners~~ board may provide by rules promulgated  
10 pursuant to chapter 1-26, additional requirements for obtaining a chiropractic assistant  
11 certificate of registration.

12 **Section 36.** That § 36-5-28 be AMENDED.

13 **36-5-28. Revocation or suspension of registration.**

14 The registration of a chiropractic assistant may be revoked or suspended upon  
15 violation of any section of this chapter or of any rule adopted by the ~~Board of Chiropractic~~  
16 ~~Examiners~~ board. All proceedings concerning the revocation or suspension of a registration  
17 shall conform to contested case procedure set forth in chapter 1-26.

18 **Section 37.** That § 36-5-29 be AMENDED.

19 **36-5-29. Unauthorized practice as chiropractic assistant--Misdemeanor.**

20 Any person who practices or attempts to practice as a chiropractic assistant without  
21 first having secured a certificate of registration from the ~~Board of Chiropractic Examiners~~  
22 board and an annual renewal is guilty of a Class 1 misdemeanor.