

## South Dakota Board of Social Work Examiners

[dss.sd.gov/licensingboards/social.aspx](http://dss.sd.gov/licensingboards/social.aspx)

810 N. Main Street, Suite 298

Spearfish, SD 57783

Phone: 605.642.1600

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### REVISED DRAFT MEETING AGENDA TELECONFERENCE

South Dakota Board of Social Work Examiners  
April 9, 2020-12:00PM CDT/11:00AM MDT

Teleconference with public access at:

Board Office  
629 Main St.  
Spearfish, SD  
605-642-1600

Family Service Inc.  
2210 W. Brown Place  
Sioux Falls, SD  
605-336-1974

The public is invited to attend the meeting via teleconference. Please contact the South Dakota Board of Social Work Examiners at (605)-642-1600 by April 8, 2020, to arrange for teleconference access.

#### Member Listing:

1. Karen Chesley, CSW-PIP, President
2. Michael Forgy, CSW-PIP, Secretary/Treasurer
3. Todd Herrboldt, CSW-PIP, Member
4. Jennifer Gray, CSW-PIP, Member
5. Sharon Stratman, SW, Member
6. Abby Rehorst, Lay Member
7. Cindy Steele, Lay Member
8. Vicki Isler, Ed.D., BCBA-D-Applied Behavior Analyst Committee
9. Amber Bruns, MS, BCBA-Applied Behavior Analyst Committee
10. Lisa Stanley, DVM, Lay Member-Applied Behavior Analyst Committee

**Purpose:** The Board protects the health and safety of the consumer public by licensure of qualified persons, enforcement of the statutes, rules and regulations governing the practice of social work, including the appropriate resolution of complaints.

- 
1. Call to Order/Welcome and introductions-Chesley
  2. Roll Call-Chesley
  3. Corrections or additions to the agenda
  4. Approval of the agenda
  5. Public Comment at 12:10 p.m.- *5 minutes for the public to address the Board*
  6. Approval of the minutes from January 30, 2020
  7. FY Financial Update
  8. Telehealth-Coronavirus
  9. Dual Licensure
  10. Clinical Social Work Supervision by a non-social work professional
  11. ASWB Spring Education Meeting April 23-25, Chicago-CANCELLED
  12. Recommendation for 2020 ASWB elections
  13. Records Retention
  14. Legislative Update

15. Executive Session Pursuant to SDCL 1-25-2
  - a. Complaints/investigations
  - b. #267
  - c. #268
  - d. #269
16. CSW-PIP Contract Approvals
17. CSW-PIP Applicant Approvals-Report
18. Any other business coming in between date of mailing and date of meeting
19. Schedule next meeting date
20. Adjourn

DRAFT

# South Dakota Board of Social Work Examiners

dss.sd.gov/licensingboards/social.aspx

810 N. Main Street, Suite 298

Spearfish, SD 57783

**Phone:** 605.642.1600

**Fax:** 605.722.1006

**Email:** proflic@rushmore.com



## OFFICIAL BOARD MINUTES

### Teleconference

January 30, 2020-12:00PM CST

**Members Present:** Karen Chesley, President  
Michael Forgy, Secretary/Treasurer  
Todd Herrboldt, Member  
Jennifer Gray, Member  
Sharon Stratman, Member

**Members Absent:** Abby Rehorst, Lay Member  
Cindy Steele, Lay Member  
Vicki Isler, ABA Committee Member

**Others Present:** Carol Tellinghuisen, Executive Secretary; Jill Lesselyoung, Executive Assistant, Amber Bruns, Lisa Stanley, ABA Advisory Committee Members; Quincy Kjerstad, Assistant Attorney General; Jessica Tyler, DSS

**Call to Order/Welcome and Introductions:** President Chesley called the meeting to order at 12:02PM CST.

**Roll Call:** Chesley requested Lesselyoung call the roll. Chesley, yes; Forgy, yes; Herrboldt, yes; Gray, yes; Stratman, yes. A quorum was present.

**Corrections or additions to the agenda:** None

**Approval of the agenda:** Herrboldt made a motion to approve the agenda. Stratman seconded the motion. **MOTION PASSED** by roll call vote. Chesley, yes; Forgy, yes; Herrboldt, yes; Gray, yes; Stratman, yes.

**Public Comment:** Chesley called for any comments from the public. There were no public comments.

**Approval of the Minutes from Board meeting October 29, 2019:** Forgy made a motion to approve the minutes from October 29, 2019. Stratman seconded the motion. **MOTION PASSED** by roll call vote. Chesley, yes; Forgy, yes; Herrboldt, yes; Gray, yes; Stratman, yes.

**FY Financial Update:** Lesselyoung reported fiscal year-end figures as of June 30, 2019: revenue of \$111,061.80, expenses of \$112,702.94 and cash balance of \$190,801.34 and year to date figures as of December 31, 2019: revenue of \$85,523.64, expenses of \$51,214.60 and cash balance of \$225,110.38.

**Boards and Commissions Enhanced Portal:** Lesselyoung explained there have upgrades to the Boards and Commissions portal at open.sd.gov. The Board is required to post agendas within 72 hours prior to the meeting for public access. The draft and approved minutes are posted also as well as information for Board members relating to Board compensation and the Boards and Commissions manual. Board members are encouraged to access the site.

**Revised Website:** Lesselyoung advised the Board office had worked with DSS to revise and upgrade the current Board website.

**ABA Update:** Chesley asked for any updates from the ABA members and for updates regarding third-party reimbursement. Bruns advised there are new billing codes that will go into effect in 2021. There are currently 26 actively licensed ABAs.

**Dual Licensure:** Tellinghuisen advised DSS is holding a meeting in Pierre to discuss dual licensure for mental health practitioners and would like input from professionals. Herrboldt and Chesley are planning to attend February 3 along with Tellinghuisen and Lesselyoung. Gray will try to attend also. She advised there was a previous meeting for executive directors held on this subject that she and Lesselyoung attended. Tellinghuisen advised ASWB owns the social work examinations and advised their exam company does not allow other professions to take their exams except for the social work associate. Kjerstad advised he would have quandaries with enforcing the statutes. Tellinghuisen advised the Counselors will accept a CSW-PIP for a supervisor and wondered if the Board would consider allowing the highest-level counselor to supervise the CSW-PIP candidate. Herrboldt advised we need to work toward a co-operative venture. Gray advised there are several staff at her agency that are licensed as addiction counselors and social workers.

**Update ASWB Annual meeting of the Delegate Assembly, Nov. 7-9:** Herrboldt advised the CEO is retiring and there are plans to move into the new building. He advised that discussion was held regarding legal issues of practitioner's errors in use of technology and potential ethical concerns relating to telehealth. Chesley advised on discussions relating to the development of exam questions and small groups from different states' discussion regarding supervision of CSW-PIP candidates. There was discussion on mobility and the massive increase in the amount of complaints. It was Harrington's last term as a member of the finance board.

**ASWB Spring Education Meeting April 23-25, Chicago:** Tellinghuisen and Lesselyoung are interested in attending. Any Board members interested are asked to contact the Board office.

**Executive Session Pursuant to SDCL 1-25-2:** Herrboldt made a motion to enter executive session at 12:36PM. Forgy seconded the motion. **MOTION PASSED** by roll call vote. Chesley, yes; Forgy, yes; Herrboldt, yes; Gray, yes; Stratman, yes. Tyler, Bruns, and Stanley exited the meeting. Stratman made a motion to exit executive session at 12:55PM. Forgy seconded the motion. **MOTION PASSED** by roll call vote. Chesley, yes; Forgy, yes; Herrboldt, yes; Gray, yes; Stratman, yes.

**Complaints/Investigations:** Chesley advised #267 is pending. Herrboldt advised #268, #269 are pending.

**CSW-PIP Supervision Contract Approvals:** Herrboldt made a motion to approve the following contracts. Forgy seconded the motion. **MOTION PASSED** by roll call vote. Chesley, yes; Forgy, yes; Herrboldt, yes; Gray, yes; Stratman, yes.

Brockhoff, J.: Supervision with Thompson beginning January 10, 2020.

Watson, L.: Supervision with Hill beginning January 9, 2020.

Holman, M.: Supervision with Hill beginning January 9, 2020.

Mesman, K.: Supervision with Dramstad beginning January 6, 2020.

Salis, H.: Supervision with Pennock beginning December 9, 2019.

Sims, R.: Supervision with Allen beginning December 6, 2019.

Schumacher, J.: Supervision with Heyer beginning November 22, 2019.

Martin, J.: Supervision with Hill beginning November 11, 2019.

Stangl, B.: Supervision with Tobin beginning October 28, 2019.

Crisp, B.: Supervision with Bunkers beginning December 5, 2019.

Ridl, K.: Supervision with Memmott beginning November 13, 2019.

Cooper, M.: Supervision with Willis beginning January 1, 2020.

Kruger, D.: Supervision with Rhoades beginning January 9, 2020.

Herrboldt made a motion to approve the following contract. Stratman seconded the motion. **MOTION PASSED** by roll call vote. Chesley, yes; Forgy, yes; Herrboldt, yes; Gray, abstain; Stratman, yes.

Chalcraft, J.: Supervision with Gray beginning November 7, 2019.

Applicant 2020-#1: Herrboldt made a motion to deny request for out of state supervision. Forgy seconded the motion. **MOTION PASSED** by roll call vote. Chesley, yes; Forgy, yes; Herrboldt, yes; Gray, yes; Stratman, yes.

#### **CSW-PIP Applicant Approvals:**

Obermeyer, A.: Stratman made a motion to approve for CSW-PIP licensure. Forgy seconded the motion. **MOTION PASSED** by roll call vote. Chesley, yes; Forgy, yes; Herrboldt, yes; Gray, yes; Stratman, yes.

**Executive Secretary Contract:** Herrboldt made a motion to approve the request to renew the current contract with the state cost of living increase if granted by the state. Gray seconded the motion. **MOTION PASSED** by roll call vote. Chesley, yes; Forgy, yes; Herrboldt, yes; Gray, yes; Stratman, yes.

**Any other business coming in between date of mailing and date of meeting:** There was no other business.

**Schedule next meeting date:** The next regular meeting is set for April 9, 2019 beginning at 12:00PM CDT/11:00AM MDT.

Forgy made a motion to adjourn at 1:02PM CST. Stratman seconded the motion. **MOTION PASSED** by roll call vote. Chesley, yes; Forgy, yes; Herrboldt, yes; Gray, yes; Stratman, yes.

Respectfully submitted,



Carol Tellinghuisen  
Executive Secretary

1-27-1.17. Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

BOARD OF SOCIAL WORK EXAMINERS  
 REVENUE SUMMARY  
 FOR MONTH ENDING 02/29/20

COMP	ACCOUNT	BDGT YEAR	GRANT YEAR	CENTER	FUND SRC	SUB FUND	FISCAL YEAR	FISCAL MONTH	YTD AMOUNT	MTD AMOUNT
6503	4293000	0	0	0893000	719		2020	08	\$ 102,425.00	\$ 2,210.00
6503	4920045			0893000	719		2020	08	\$ 3,923.64	\$ -
									\$ 106,348.64	\$ 2,210.00

BOARD OF SOCIAL WORK EXAMINERS  
EXPENDITURE SUMMARY REPORT  
FOR MONTH ENDING 02/29/20

COMP	ACCOUNT	BDGT YEAR	GRANT YEAR	ACCOUNT DESCRIPTION	CENTER	FUND SRC	SUB FUND	FISCAL YEAR	FISCAL MONTH	YTD AMOUNT	MTD AMOUNT
6503	5203350	0	0	NON-TAXABLE MEALS/OUT-ST	0893000	719		2020	08	\$ 186.00	\$ -
6503	5204020	0	0	DUES & MEMBERSHIP FEES	0893000	719		2020	08	\$ 250.00	\$ 250.00
6503	5204080	0	0	LEGAL CONSULTANT	0893000	719		2020	08	\$ 237.00	\$ -
6503	5204090	0	0	MANAGEMENT CONSULTANT	0893000	719		2020	08	\$ 58,460.42	\$ 6,539.32
6503	5204201	0	0	BFM CENTRAL SERVICES	0893000	719		2020	08	\$ 1,277.55	\$ 405.62
6503	5204204	0	0	RECORDS MGMT SERVICES	0893000	719		2020	08	\$ 231.25	\$ -
6503	5204207	0	0	HUMAN RESOURCES SERVICES	0893000	719		2020	08	\$ 406.26	\$ -
6503	5204510	0	0	RENTS-OTHER	0893000	719		2020	08	\$ 2,909.00	\$ 300.00
6503	5204530	0	0	TELECOMMUNICATIONS SRVCS	0893000	719		2020	08	\$ 64.00	\$ -
6503	5101030	0	0	BOARD & COMM MBRS FEES	0893000	719		2020	08	\$ 26.00	\$ -
6503	5102010	0	0	OASI-EMPLOYER'S SHARE	0893000	719		2020	08	\$ 900.00	\$ 300.00
6503	5203260	0	0	AIR-COMM-OUT-OF-STATE	0893000	719		2020	08	\$ 68.85	\$ 22.95
6503	5203280	0	0	OTHER-PUBLIC-OUT-OF-STATE	0893000	719		2020	08	\$ 598.00	\$ -
6503	5203300	0	0	LODGING/OUT-OF-STATE	0893000	719		2020	08	\$ 60.00	\$ -
6503	5205320	0	0	PRINTING-COMMERCIAL	0893000	719		2020	08	\$ 644.64	\$ -
6503	5205980	0	0	PROC CARD PURCH-APPROVED	0893000	719		2020	08	\$ 1,459.03	\$ 208.86
										\$ 48.83	\$ -
										\$ 67,826.83	\$ 8,026.75



**CASH CENTER BALANCE**

**FOR MONTH ENDING 02/29/20**

	SRC	FUND	YEAR	MONTH	BALANCE
6503	1140000	0893000	719	2020	08
				\$	229,323.15
				\$	229,323.15

# South Dakota Board of Social Work Examiners

For more resources, visit the DSS COVID-19 Resources Page:  
<https://dss.sd.gov/keyresources/recentnews.aspx>

## COVID-19 Updates

### **ASWB Examination Updates:**

March 23, 2020

#### **Pearson VUE test centers**

Our test vendor, Pearson VUE, has shut down all test centers in the United States and Canada from March 17 through April 15.

- All testing appointments during those dates have been canceled.
- Pearson VUE is allowing individuals to schedule exams on or after April 16.

Pearson VUE is expecting that test centers will experience very full schedules in the coming months.

- ASWB encourages individuals to schedule a testing appointment as soon as possible and take the first-available time slot offered.
- Online scheduling is recommended for those who are currently registered and have a valid Authorization to Test from ASWB.

Pearson VUE test centers administer testing for many professions, certification programs, and academic assessments in addition to the social work licensing exams.

- Accommodating all individuals who need an appointment will place a significant strain on the system.
- At this time, we have no information about Pearson VUE's plans to expand test availability once testing resumes.

#### **Test approval expiration dates**

ASWB has contacted all individuals whose test appointments were canceled and who have approvals expiring while the suspension of testing is in effect to provide support and assistance as these individuals

**ASWB's COVID-19 Webpage:** <https://www.aswb.org/covid-19>

### **Telehealth:**

Pursuant to Executive Order of the Governor of South Dakota, the social work licenses of all member states of the Emergency Management Assistance Compact (EMAC) are recognized in South Dakota for the duration of the Order, through April 12, 2020. At the time of this posting, members of EMAC include all 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. Individuals holding a social work license in any of those states or territories can practice

in South Dakota by virtue of the Order. Anyone practicing in South Dakota is subject to all rules and regulations surrounding the practice of social work in South Dakota.

The South Dakota Board of Social Work is aware of the disruptions the COVID-19 is causing in the workplace and many questions on telehealth or teletherapy have been directed towards the licensure Board because of this issue. At this time, telehealth is not specifically addressed in the South Dakota Statutes and Administrative Rules governing the practice of Social Work.

However, the South Dakota Board of Social Work Examiners has adopted the NASW Code of Ethics as approved by the 1996 NASW Delegate Assembly and revised by the NASW Delegate Assembly in 2017.

You may find it helpful to reference: Ethical Standards section 1.04 Competence (e)

“(e) Social workers who use technology in providing social work services should comply with the laws governing technology and social work practice in the jurisdiction in which they are regulated and located and, as applicable, in the jurisdiction in which the client is located.”

You may wish to also contact the licensing Board in the state in which the client is located as we do not regulate and cannot provide any guidance on other state’s licensure requirements or regulations.

We understand each of you may have unique circumstances, however the Board is not in the position to provide guidance on these individual circumstances. You may find it helpful to work with your employer’s legal counsel on your individual circumstance as the South Dakota licensing Board is not allowed to provide private legal advice relating to interpretation of statutes and rules.

Here is a link to the complete NASW Code of Ethics: <https://www.socialworkers.org/About/Ethics/Code-of-Ethics>

Here is a link where you can find South Dakota Statutes:

[http://sdlegislature.gov/statutes/Codified\\_laws/DisplayStatute.aspx?Statute=36-26&Type=Statute](http://sdlegislature.gov/statutes/Codified_laws/DisplayStatute.aspx?Statute=36-26&Type=Statute)

Here is a link where you can find the Administrative Rules:

<https://sdlegislature.gov/rules/DisplayRule.aspx?Rule=20:59&Type=All>

## **Processing of Applications:**

Traditionally, out-of-state CSW-PIP applications are subject to full Board approval at a regularly scheduled meeting of the Board. To accommodate the need for timely licensure, all applications will be processed in the Board office and will not be subject to full Board approval but rather approval by one member of the Board thus increasing the speed of licensure.

The Board office is working diligently to make sure completed applications are processed within 3 business days or sooner.

Please contact this office should you encounter an issue obtaining any of the required documentation for your application and we will review those issues individually to see if we may be of assistance. Most Universities are still sending transcripts electronically.

Please visit our “find forms” section here: <https://dss.sd.gov/licensingboards/socialwork/forms.aspx> to obtain an application and review the checklist to ensure you have requested all required documentation to accompany your application.

## Resources:

In an effort to keep informed about the changing circumstances of COVID-19, below are resources that are routinely updated:

- The South Dakota Department of Health Novel Coronavirus (COVID) 19 website:  
<https://doh.sd.gov/news/Coronavirus.aspx>
- The Centers for Disease Control and Prevention (CDC) COVID-19 website:  
<https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- Association of Social Work Boards (ASWB) COVID-19 updates/information:  
<https://www.aswb.org/covid-19>
- National Association of Social Workers (NASW) COVID-19 updates/information:  
<https://www.socialworkers.org/Practice/Infectious-Diseases/Coronavirus>

The Board is working to assist you during this unprecedented time. Please email or call if you have any questions

[proflic@rushmore.com](mailto:proflic@rushmore.com)  
605-642-1600



***Clinical social work supervision by a non-social work professional***

Prepared by Cara Sanner  
ASWB Member Services & Strategic Initiatives  
As of May 20, 2019

## Contents

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## Introduction

This report examines where U.S. jurisdictions allow clinical social work supervised experience to be obtained under the supervision of a non-social work professional. The following U.S. ASWB member jurisdictions were included in the regulations review: all 50 states, the District of Columbia, the U.S. territories of the Virgin Islands and Guam, and the Commonwealth of the Northern Mariana Islands.

The Association of Social Work Boards (ASWB) publishes the Model Social Work Practice Act (Model Law). The Model Law was formerly adopted by the ASWB Delegate Assembly in 1997. The Model Law is regularly reviewed and modified through the actions of the ASWB membership at the annual meeting of the Delegate Assembly. *The Model Law does not include a provision for clinical supervision by any professional other than a licensed clinical social worker.*

ASWB compiles information about social work regulatory requirements in the United States and Canada. The information is collected through a review of social work statutes, administrative rules and other content available on the websites of social work licensing boards. ASWB publishes this information online at [www.aswb.org](http://www.aswb.org). To learn more about a specific jurisdictional requirement, use the link provided on the ASWB website to be connected directly to individual jurisdictions' websites, statutes and/or administrative rules. Contact Cara Sanner, ASWB Regulatory Support Services Coordinator, with questions or comments.

## Summary

Twenty-six of 54 U.S. jurisdictions allow clinical supervision by a non-social work behavioral health professional. This includes:

- Alaska
- Arizona
- California
- Delaware
- District of Columbia
- Georgia
- Hawaii
- Idaho
- Michigan
- Indiana
- Minnesota
- Montana
- Nebraska
- Nevada
- New Jersey
- New York
- North Carolina
- Ohio
- Oregon
- Pennsylvania
- South Dakota
- Vermont
- Virginia
- Washington
- Wisconsin
- Wyoming

Fifteen of the 26 jurisdictions allow an unlimited amount of the total required supervised clinical experience hours to be obtained by a non-social work behavioral health professional. One jurisdiction allows up to 75% of the total hours, five allow up to 50%, and one each allows 47%, 46% and 25%.

## Special provisions

California, Hawaii and Michigan require an applicant to request approval to receive supervision from a non-social work behavioral health professional.

Seven of the 26 jurisdictions include the following exceptions:

- Hawaii – An alternate behavioral health professional is acceptable only if experience was earned prior to 2009.
- Michigan – In cases of extreme hardship where an approved supervisor is not available, an alternative supervision arrangement by a related health practitioner may be approved by the board.
- Nevada – Only candidates licensed by endorsement i.e. those previously licensed in another jurisdiction can submit supervised experience earned under and alternate behavioral health professional.
- North Carolina – An alternate behavioral health professional is only acceptable if an LCSW is not available such as overseas deployment.
- Oregon – An alternate behavioral health professional is only acceptable if the applicant can demonstrate geographic hardship.
- Pennsylvania – The alternate behavioral health professional must have a doctoral degree in a related field and have five years of experience in the last 10 years
- Virginia – An alternate behavioral health professional is only acceptable if the applicant can demonstrate geographic hardship or disability.

### **Alternate professions permitted to provide clinical social work supervision**

Professions named in regulations as acceptable to provide supervision to clinical social workers include the following:

- Addictions therapists – 1 jurisdiction
- Marriage and Family Therapists – 4 jurisdictions
- Mental Health Professionals – 2 jurisdictions
- Mental health professionals as determined by the board – 10 jurisdictions
- Nurses with 4500 hours post masters clinical social work experience – 1 jurisdiction
- Nurses with a specialty in psychiatry – 3 jurisdictions
- Physicians – 2 jurisdictions
- Professional counselors – 5 jurisdictions
- Psychiatrists – 17 jurisdictions
- Psychologists – 18 jurisdictions



<b>Limits on supervision hours with a non-social work professional</b>			
<b>Jurisdiction</b>	<b>Maximum % of total required time</b>	<b>Post degree practice hours allowed</b>	<b>Direct supervisor contact hours allowed</b>
Alaska	unlimited	4,000	100
Arizona	50%	1,600	50
California	47%	1,500	49
Delaware	50%	1,600	50
District of Columbia	50%	1,500	50
Georgia	50%	1,500	60
Hawaii	Unlimited*	3,000	100
Idaho	50%	1,500	50 hours
Indiana	Unlimited	4,000	96
Minnesota	25%	1,000	25
Montana	50%	1,500	50
Nebraska	Unlimited	3,000	300
Nevada	Unlimited	3,000	104
New Jersey	Unlimited	1,920	96
New York	Unlimited	2,000	100
North Carolina	Unlimited	3,000	100
Ohio	Unlimited	3,000	150
Oregon	Unlimited	3,500	100
Pennsylvania	Unlimited	3,000	150
South Dakota	Unlimited	2 years	Not specified
Vermont	Unlimited	3,000	75
Virginia	Unlimited	3,000	100
Washington	46%	460	60
Wisconsin	Unlimited	3,000	104
Wyoming	Unlimited	1,200	100

\*Only allowed for individuals supervised prior to 2009



BOARD OF  
SOCIAL WORK EXAMINERS

RECORDS RETENTION AND  
DESTRUCTION SCHEDULE

State of South Dakota

Bureau of Administration

Records Management Program

(605) 773-3589



DEPARTMENT OF  
EXECUTIVE MANAGEMENT

BUREAU OF  
ADMINISTRATION

PMB 01234

RECORDS MANAGEMENT PROGRAM  
104 S Garfield Avenue, Bldg E  
c/o 500 East Capitol Avenue  
Pierre, SD 57501-5070  
Phone: (605) 773-3589  
Fax: (605) 773-5955

## MEMORANDUM

TO: State Agencies

FROM: Dana Hoffer  
State Records Manager

SUBJECT: **Records Retention and Destruction Schedule Manual**

DATE:

In 1967, the South Dakota Legislature established the Records Management Program and the Records Destruction Board. In the same act, the Legislature required every State agency to develop a records retention and destruction schedule and declared that "No record shall be destroyed or otherwise disposed of by any agency of the State unless it is determined by majority vote of such board (Records Destruction Board) that the record has no further administrative, legal, fiscal, research or historical value."

According to Administrative Rule 24:52:11:01, any State government agency planning to destroy agency records shall notify the State Archivist 30 days before the date of the proposed destruction. The request shall include the name or title of the records, inclusive dates, information content of the records, and quantity. This rule applies to all records, including those granted exclusive or continuous disposal authorization by the Records Destruction Board, with the following exceptions: vouchers and supporting documents; warrants; personnel and payroll records; client/case files; capital asset inventories; cash receipts; and duplicate copies of state publications.

The State Archivist has 30 days to certify that the records have no permanent value and may be destroyed, or to make arrangements to transfer the records to the archives. If the Archivist fails to make a recommendation within this time, the records may be destroyed, provided that the agency has received authorization from the Records Destruction Board.

Finally, if you have any questions about implementing this manual or about your records in general, please contact Records Management at 773-3589. We will welcome an opportunity to discuss the proper implementation of sound records management practices.

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STATE OF SOUTH DAKOTA  
RECORDS RETENTION &  
DESTRUCTION SCHEDULE  
AUTHORIZATION FORM  
(Std Form RM-1 Rev 1/03)

DEPARTMENT:	<u>Social Services</u>
DIVISION:	<u>Community Behavioral Health</u>
OFFICE:	<u>Licensing Boards</u>
PROGRAM:	<u>Social Work Examiners Board</u>
RECORDS OFFICER:	<u>Jessica Tyler</u>
RM CUSTOMER #:	<u>1198</u>

RECORD SERIES NO.	<u>TITLE--DESCRIPTION--RETENTION AND DESTRUCTION SCHEDULE</u>	R.D.B. AUTHORITY NUMBER
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SW-1. ADMINISTRATIVE REFERENCE MATERIAL:

03-008

This series is arranged alphabetically by subject matter and contains information used in the daily administration of the Board by the Executive Secretary. Information may include: correspondence, vendor information, mailing lists, file management, administrative rules, codified laws, license ledgers, and other information of interest or benefit to the Executive Secretary or staff. This record series is maintained for reference, decision making, and to maintain consistency with administrative policies.

**RETENTION:** Retain current in office. Destroy superseded or obsolete.

(NOTE: Cull files at least once a year to avoid build-up of superseded or obsolete material.)

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SW-2. ADMINISTRATIVE RULES PROMULGATION FILES:

03-008

This series is arranged by subject matter and contains administrative rules promulgation files. Information may include: notices of public hearings, affidavits of publication of notices, written comment from the public, transcripts of hearings, and final decisions. Files have little reference activity once the hearing has been held unless someone requests a copy of the transcript. This record series is maintained for documenting the proper promulgation of administrative rules pursuant to SDCL 1-26.

**RETENTION:** FINAL DECISIONS: Retain permanently in office.

ALL OTHER DOCUMENTATION: Retain in office for as long as rules are in effect, then destroy.

(NOTE: SDCL 1-26-7 states in part that "each agency shall keep the original records, documents, and instruments required by the chapter." There is no time frame included for these records. Since SDCL 1-26-6.8 provides that "No rule is enforceable in the Courts unless properly adopted," the records must be maintained at least until a curative statute has been adopted by the Legislature similar to SDCL 1-26A-2, which cures all defects in the adoption of rules appearing in the 1974 printed ARSD.)

(Consider maintaining on microfilm instead of paper and destroying paper after microfilm has been inspected and verified to meet quality standards.)

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SW-3. AGENDAS, BOARD MEETINGS:

03-008

This series is arranged chronologically by meeting date and contains agenda items to be discussed at the next Board meeting. Information may include: date, time and location of the meeting, items under old business, items under new business, financial information, and any licensure related issues. This record series is used to determine the course of the board meetings.

**RETENTION:** Retain current in office. Destroy any superseded or obsolete agendas once the meeting minutes have been approved.

SW-4. ANNUAL REPORTS:

03-008

This series is arranged chronologically and contains the originals of all annual reports written by the Board to summarize its activities for the previous year. Information may include: number of licenses issued, number of inspections conducted (if applicable), number of violations noted, man hours, time reports, and other related information. A copy of this report is filed with the South Dakota Department of Commerce and Regulation annually. This record series is used for reference to compare activities from year to year.

**RETENTION:** Retain 5 years in office, then transfer to State Archives.

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SW-5. APPLICATION FILES:

03-008

This series is arranged alphabetically by applicants' last name and documents the personal data of individuals applying for licensure. Information (if relevant to their level of licensure) may include: original application, college grade transcripts, references, internship verification, examination scores, and any other information requested by the Board. This record series is used to determine eligibility for licensure.

**RETENTION:** SUCCESSFUL APPLICANTS: Transfer to the Licensee Files to be retained 5 years in office after expiration, then microfilm and maintain film for 70 years or for the life of the licensee.

UNSUCCESSFUL APPLICANTS: Transfer to the Applicant Files, Deficient to be retained 5 years in office, then destroy.

(NOTE: Within 5 years of application date, Deficient Files may become Licensee Files if the applicant has provided all necessary documentation, has met all licensure requirements, and has been approved by the Board.)



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SW-6. APPLICANT FILES, DEFICIENT:

03-008

This series is arranged alphabetically and documents personal data of individuals applying for licensure and is a deficient application file. Information (if relevant to their level of licensure) may include: original application, college grade transcripts, references, internship verification, experience verification, and any other information requested by the Board. Applicant has five years to attain licensure approval from the Board before this file is destroyed, then the applicant must start the entire application process over again.

**RETENTION:** Retain 5 years in office, then destroy.

(NOTE: Within 5 years of application date, Deficient Files may become Licensee Files if the applicant has provided all necessary documentation, has met all licensure requirements, and has been approved by the Board.)

SW-7. ASSOCIATION FILES:

03-008

This series is arranged alphabetically and contains the current correspondence and newsletters from professional associations to which the Social Work Examiners Board belongs. Information may include: minutes of association meetings, conference agendas, and expense reports. This record series is used for reference purposes concerning ideas and policies suggested and used by these associations.

**RETENTION:** Retain 1 year in office, then destroy.

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SW-8.     ATTORNEY GENERAL OPINIONS:

03-008

This series contains official opinions handed down by the State Attorney General's Office concerning questions pertaining to the Social Work Examiners Board. This record series is used for occasional reference and as support for the administrative decisions made and actions taken.

**RETENTION:** Retain 3 years in office, then destroy.

(NOTE: All Attorney General's Opinions are printed in the Biennial Report of the Attorney General.)

SW-9.     BOARD APPOINTMENT FILES:

03-008

This series is arranged alphabetically and contains information regarding individual Board members. Information may include: letters of appointment, terms, expiration dates, correspondence, and any related information pertaining to each Board member. This record series is maintained to document member appointments to the Social Work Examiners Board.

**RETENTION:** Retain 3 years in office after termination, then destroy.

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**SW-10.     BUDGETARY ACCOUNTING/MSA REPORTS:**

**03-008**

These daily, weekly, monthly, and year-end computer printout reports are used to monitor and reconcile fiscal year receipts and expenditures for the Board. Reports may include: Daily and/or Monthly Revenue and Journal Voucher Reports, Daily Transaction Progress Reports, Accounts Receivable Reports, General Ledger Reports, Warrant or Payment Registers, Monthly Expenditure Reports, and Annual Budget Reports. This record series is maintained for audit purposes.

**RETENTION:** Retain 2 years in office, then transfer to storage for 2 years. Destroy after 4 years provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.

**SW-11.     CASH RECEIPT TRANSMITTALS:**

**03-008**

This series is arranged chronologically and contains the standard forms used to deposit funds into the State Treasury. Information may include: date, agency name, agency number, accounting codes, memorandums, dollar amounts, total deposits, and authorized signatures. This record series is maintained for documenting and crediting each account with the amount deposited.

**RETENTION:** Retain 2 years in office, then transfer to storage for 2 years. Destroy after 4 years provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.

(NOTE: The State Treasurer's Office maintains the originals.)

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SW-12. COMPLAINT FILES:

03-008

This series is arranged alphabetically by licensee name and contains all related correspondence either received from the general public or initiated by the Board concerning problems which have occurred with social workers, social work associates, certified social workers, and certified social workers engaged in private independent practice (PIP). Information may include: nature of complaint, related correspondence, investigation of the allegation, conclusion of the investigation, final determination, stipulations and agreements, and other related material. This record series is used by the Board to determine if a complaint is substantiated and, if so, to take corrective action against the licensee. If a complaint is substantiated, a copy of the final determination is placed into the respective "Licensee File, Active."

**RETENTION:** UNSUBSTANTIATED: Retain 5 years in office after final determination, then destroy.

(NOTE: If like complaint exists within this 5 years, then retain like complaints for 10 years, then destroy.)

SUBSTANTIATED: Retain 5 years in office, place a copy of the final determination into the respective "Licensee File, Active," then microfilm all related documentation and maintain film for 70 years or for the life of the licensee.

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SW-13. COMPLAINT, NON-JURISDICTIONAL:

03-008

This series is arranged alphabetically by name of the person or facility named in the complaint and contains correspondence regarding allegations about persons or facilities not licensed by the Board, not licensed by the Board at the time of allegation, or other matters the Board cannot take any remedial action to investigate or rectify. Information may include: name of complainant, date and circumstances surrounding alleged activity, and related correspondence between the complainant and the Board. This record series is used to document consumer complaints or allegations about individuals or issues over which the Board has no jurisdiction.

**RETENTION:** Retain 3 years in office, then destroy.

SW-14. CONTINUING EDUCATION PROVIDER FILES:

03-008

This series is arranged chronologically by date of class and contains documentation regarding approved continuing education courses, classes, or programs. Information may include: the approval request form, date of program, curriculum, and supporting documentation. This record series is used to verify that continuing education courses meet the Board's standards.

**RETENTION:** Retain 2 years in office, then destroy.

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SW-15.    CONTRACTS AND AGREEMENTS:

03-008

This series is arranged chronologically, then by name of contractor and contains reference copies of contracts and agreements in which the Board may have an interest. It also contains the Board's copy of contracts and agreements between the Board and other parties. Information may include: terms and conditions, effective dates, costs, and funding sources. This record series is maintained for reference and audit purposes.

**RETENTION:** Retain originals (copies of record) current in office. Destroy 6 years after terminated.

Retain reference copies current in office. Destroy terminated.

(NOTE: SDCL 1-24A-1 requires consulting contracts be filed with the State Auditor.)

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**SW-16.    CORRESPONDENCE, GENERAL:**

**03-008**

This series is arranged chronologically and contains both copies of letters and memorandums sent and originals of letters and memorandums received. This record series is used for occasional reference and documentation.

**RETENTION:** Retain 2 years in office, then destroy.

**SW-17.    LEGISLATION FILES:**

**03-008**

This series is arranged chronologically and constitutes the Social Work Examiners Board's central file of all proposed legislation and legislation from previous years. Information may include: resource material, correspondence, Bill Tracking Printouts, copies of House and Senate bills, national legislation, preliminary bill drafts, and the final drafts of proposed legislation. This record series is used for bill drafting, submission, and tracking during the legislative session.

**RETENTION:** Retain 2 years in office, then destroy.

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SW-18. LICENSEE FILES, ACTIVE:

03-008

This series is arranged alphabetically by last name of licensee and documents personal data for licensed social workers, social work associates, certified social workers, and certified social workers engaged in private independent practice (PIP). Information may include (if relevant to their level of licensure): original application, college grade transcripts, examination scores and related information, references, internship verification, verification of experience, requests for name changes, most current renewal application, and renewal date. This record series is used to document the licensure and renewal process of all Social Workers.

**RETENTION:** Retain 5 years in office after expiration, then microfilm and maintain film for 70 years or for the life of the licensee.



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SW-19. LICENSEE FILES, INACTIVE:

03-008

This series is arranged alphabetically by last name of licensee and documents personal data for licensed but inactive social workers, social work associates, certified social workers, and certified social workers engaged in private independent practice (PIP). Information may include (if relevant to their level of licensure): original application, college grade transcripts, examination scores and related information, references, internship verification, verification of experience, requests for name changes, most current renewal application, and renewal date. This record series is used to document the licensure and renewal process of all Social Workers.

**RETENTION:** Retain 5 years in office after expiration, then microfilm and maintain film for 70 years or for the life of the licensee.

(NOTE: Whenever an Active Licensee does not renew within the timeframe prescribed by law, the Active Licensee file becomes an Inactive Licensee file, until such time the licensee either reactivates his license or allows his license to expire completely.)

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SW-20. LICENSE NUMBER LISTS:

03-008

This database series is arranged alphabetically by last name of licensee for each license type issued by the Social Work Examiners Board. Information may include: license number, licensee name and address, level of licensure, and expiration/renewal date. This record series is used for licensure verification.

**RETENTION:** Retain current information. Delete superseded or obsolete.

SW-21. MINUTES, SOCIAL WORK EXAMINERS BOARD:

03-008

This series is arranged chronologically and contains the official minutes of the Social Work Examiners Board meetings. Information may include: date of meeting, members present, topics discussed, and actions taken. This record series is used for occasional reference and to document action taken by the Board.

**RETENTION:** Retain 5 years in office, then microfilm and maintain film permanently.

SW-22. POLICIES AND PROCEDURES:

03-008

This series is arranged by topic and contains the current procedures or policies implemented by the Board. Information may include the Board's position or interpretation of issues and policies and date of implementation or adoption. This record series is used to determine the proper course of action to take in certain situations.

**RETENTION:** Retain current in office. Destroy superseded or obsolete.

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SW-23. SOCIAL WORK ASSOCIATE VALIDATION FILES:

03-008

This series is arranged chronologically by year, then alphabetically and contains validation of supervision forms submitted annually by social work associates. Information may include: name of associate, information regarding supervisor, and length and frequency of supervision. This record series is maintained to verify supervision of social work associates and the professional competence of the licensee.

**RETENTION:** Retain 5 years in office, then destroy.

SW-24. SURVEYS:

03-008

This series is arranged chronologically and contains surveys conducted by membership associations throughout the country. Information may include: date survey was conducted, issues, legislation, licensure numbers, degrees, application process, and any relative information obtained via survey from sources and licensees. This record series is used mainly for reference purposes and may be used to develop new policies or legislation to address various national issues.

**RETENTION:** Retain 3 years in office, then destroy.

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SW-25. VOUCHERS AND PAYROLL INFORMATION:

03-008

This series is arranged chronologically and may contain copies of travel, non-cash, direct, receiving, and journal vouchers and Board payroll information. Each voucher may include: nature of expense, fund expended from, date, who the funds went to or what account they were transferred to, and authorized signatures. Board member payroll information may include: name, social security number, time worked, and authorized signatures. This record series is used for reference to determine quantities and descriptions of supplies and services ordered, for vendor information, for Board member payroll information, and for audit purposes.

**RETENTION:** Retain 2 year in office, then transfer to storage for 2 years. Destroy after 4 years provided all litigation, claims, and audit findings involving the records have been resolved and final action has been taken.



## 2020 South Dakota Legislature

# House Bill 1276

Introduced by: **Representative Latterell**

1 **An Act to provide for a review of occupational regulation.**

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

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

4 **36-39-1. Definitions.**

5 Terms as used in this chapter mean:

6 (1) "Agency," any state governmental agency, board, commission, committee, council,  
7 or department;

8 (2) "Certification," a voluntary, nontransferable recognition granted by this state to a  
9 person for the purpose of acknowledging that the person evidences qualifications  
10 related to a lawful occupation. The term does not extend to occupational licensure  
11 and does not include credentials that are prerequisites to working lawfully in an  
12 occupation;

13 (3) "Lawful occupation," a course of conduct, a pursuit, or a profession, that includes  
14 the sale of goods or services that are not themselves illegal to sell, irrespective of  
15 whether the person selling the goods or services is subject to an occupational  
16 regulation;

17 (4) "Private certification," a voluntary program in which a private organization grants  
18 nontransferable recognition to a person who evidences qualifications and meets  
19 standards relevant to performing the occupation, as determined by the private  
20 organization;

21 (5) "Occupational licensure," a nontransferable legal authorization for a person to  
22 engage in a lawful occupation, for compensation, based on the person evidencing  
23 the qualifications established by law;

24 (6) "Occupational regulation," a rule, practice, or policy, that allows a person to use  
25 an occupational title or to work in a lawful occupation. The term includes  
26 registration, certification, and occupational licensure but not a business license,

facility license, building permit, or a zoning and land use regulation, except to the extent that state law regulates a person's qualifications to perform a lawful occupation;

(7) "Personal qualifications," the criteria related to a person's background and characteristics. The term includes the completion of an approved educational program, satisfactory performance on an examination, work experience, an apprenticeship, other evidence of having attained requisite knowledge and skills, passing a review of the person's criminal record, and the completion of continuing education; and

(8) "Registration," a process by which a person provides to this state information that includes the person's name and address, the person's agent for service of process, a description of the service that the person intends to provide, and the location at which the service is to be performed, if:

(a) Registration does not include personal qualifications;

(b) Registration is not transferable;

(c) Registration may require a bond or insurance;

(d) Only a person who has engaged in registration may use the title registered;

(e) A person who has not engaged in registration may not perform the occupation for compensation;

(f) Registration does not mean occupational licensure; and

(g) Registration does not include credentials that are prerequisites to working lawfully in an occupation.

**Section 2.** That a NEW SECTION be added:

**36-39-2. Department of Labor and Regulation--Review of occupational regulation.**

Before an agency may be authorized to regulate entry into an occupation and before an agency's regulation of entry into an occupation may be modified, the Department of Labor and Regulation shall conduct a review to ensure that the regulation or modification being proposed is the least restrictive option for ensuring that consumers are protected from present, significant, and substantiated harms. The department may require that proponents submit to the department evidence of present, significant, and substantiated harms to consumers in the state, and may request information from state agencies that contract with persons in regulated occupations and from others who are

1 knowledgeable about the occupation, labor-market economics, and other factors including  
2 costs and benefits.

3 For purposes of this chapter, the rank order of options for ensuring consumer  
4 protection, from the least restrictive to the most restrictive, are as follows:

- 5 (1) Market competition;
- 6 (2) Third-party or consumer-created ratings and reviews;
- 7 (3) Private certification;
- 8 (4) Voluntary bonding or insurance;
- 9 (5) Specific private civil cause of action to remedy consumer harm;
- 10 (6) Deceptive trade practices act;
- 11 (7) Mandatory disclosure regarding attributes of the specific good or service;
- 12 (8) Regulation regarding the process of providing the specific good or service;
- 13 (9) Regulation of the facility in which the specific good or service is sold;
- 14 (10) Inspection;
- 15 (11) Bonding;
- 16 (12) Insurance;
- 17 (13) Registration;
- 18 (14) Certification;
- 19 (15) Specialty occupational certification solely for medical reimbursement; and
- 20 (16) Occupational licensure.

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

22 **36-39-3. Review of occupational regulation--Scope--Recommendations--**  
23 **Report.**

24 In conducting the review required by § 36-16-02, the Department of Labor and  
25 Regulation shall presume that consumers are sufficiently protected by market competition  
26 and by private remedies. The department shall consider the existence of private  
27 certification programs that allow consumers to obtain information about a provider's  
28 knowledge and skills.

29 The presumption set forth in this section is rebuttable if the department  
30 determines, through the use of credible, empirical evidence that significant and  
31 substantiated harm to consumers is occurring and determines that consumers do not have  
32 the information or the means to protect themselves against such harm.

1        If the department finds evidence of such harm, the department shall recommend  
2        the least restrictive option for occupational regulation in order to address the harm. The  
3        department shall use the following guidelines in forming a recommendation:

4        (1) If the department determines that the harm arises from contractual disputes,  
5        including pricing disputes, the department shall consider recommending the  
6        enactment of a specific civil cause of action to remedy the consumer harm and  
7        may also recommend providing for the reimbursement of attorney's fees and court  
8        costs;

9        (2) If the department determines that the harm arises from fraud, the department  
10       shall consider recommending that the state's deceptive trade practices act, as set  
11       forth in chapter 37-24, be amended or that additional provisions be instituted to  
12       reduce the dissemination of misleading information regarding the attributes of a  
13       specific good or service;

14       (3) If the department determines that the harm involves health or safety, the  
15       department shall consider recommending regulation of the production or service  
16       process, or licensure of a facility;

17       (4) If the department determines that the harm arises from unclean facilities, the  
18       department shall consider recommending periodic facility inspections;

19       (5) If the department determines that the harm arises from a provider's failure to  
20       complete a contract or to meet the terms of a contract, the department shall  
21       consider recommending that the provider be bonded;

22       (6) If the department determines that the harm arises from a lack of protection for a  
23       person who is not a party to a contract that is entered into by a provider and a  
24       consumer, the department shall consider recommending that the provider be  
25       insured;

26       (7) If the department determines that the harm arises from transactions with  
27       transient, out-of-state, or fly-by-night providers, the department shall consider  
28       recommending a registration procedure for the provider;

29       (8) If the department determines that the harm arises from a shortfall or imbalance in  
30       the consumer's knowledge about the good or service relative to the provider's  
31       knowledge, the department shall consider recommending certification;

32       (9) If the department determines that the harm arises from an inability to qualify  
33       providers of new or highly-specialized medical services for reimbursement by the  
34       state, the department shall consider recommending the enactment of a specialty  
35       occupational certification solely for the purpose of medical reimbursement, which:



(a) Means a nontransferable legal authorization for a person to qualify for payment or reimbursement from a governmental agency for the nonexclusive provision of new or niche-medical services, based on the person meeting personal qualifications established in law; and

(b) May be recognized by a private health insurance company or other private company;

(10) If the department determines that the harm arises from a systematic shortage of information necessary for a reasonable consumer to distinguish between the quality of providers, and if the department determines that there is an absence of institutions able and willing to provide guidance to consumers, the department shall consider recommending occupational licensure; and

(11) If the department determines that there are multiple types of harm, the department shall consider recommending a combination of responses.

The department shall include information regarding the potential impact of each recommendation made under this section on opportunities for workers, consumer choice and costs, general employment, market competition, and governmental costs, and information regarding the manner in which other states regulate the occupation.

The department shall report its findings and recommendations to the Executive Board of the Legislative Research Council, at the time and in the manner requested by the board.

**Section 4.** That a NEW SECTION be added:

**36-39-4. Department of Labor and Regulation--Review of existing occupational regulation.**

On or about May first of each year, the Executive Board of the Legislative Research Council shall designate various occupations to be reviewed and analyzed by the Department of Labor and Regulation, with respect to the manner in which admissions into the occupations are regulated. The department shall consider:

(1) The justification for occupational licensure;

(2) Less restrictive alternatives to occupational licensure;

(3) Personal qualifications necessary for occupational licensure; and

(5) The scope of practice.

The department shall provide its findings and recommendations to the board on or about December first of each year.

1 **Section 5.** That a NEW SECTION be added:

2 **36-39-5. Review of Criminal Record--Exclusions.**

3 No agency may automatically bar a person from obtaining or retaining an  
4 occupational license, certification, or registration, because of a criminal conviction. The  
5 agency shall provide personalized consideration for each application and in so-doing may  
6 consider only a conviction of a crime that is a felony or a violent misdemeanor and that is  
7 not excluded by this section.

8 In reviewing the application for an occupational license, certification, or  
9 registration, submitted by a person having a criminal conviction, an agency may not  
10 consider:

11 (1) Nonconviction information from the criminal justice system, including information  
12 related to a deferred adjudication, participation in a diversion program, or an arrest  
13 not followed by a conviction;

14 (2) A conviction for which no sentence of incarceration may be imposed;

15 (3) A conviction that has been sealed, dismissed, expunged, or pardoned;

16 (4) A juvenile adjudication;

17 (5) A nonviolent misdemeanor; or

18 (6) A conviction that occurred more than three years before the date of the agency's  
19 consideration, unless the conviction pertained to a felony crime of violence, a felony  
20 related to a criminal sexual act, or a felony related to criminal fraud or  
21 embezzlement.

22 **Section 6.** That a NEW SECTION be added:

23 **36-39-6. Review of criminal record--Permissible considerations.**

24 In reviewing the application for an occupational license, certification, or  
25 registration, submitted by a person having a criminal conviction, an agency may consider:

26 (1) The age of the person at the time the person committed the offense;

27 (2) The length of time since the offense;

28 (3) The completion of the criminal sentence;

29 (4) The attainment of a certificate of rehabilitation or good conduct;

30 (5) The completion of, or active participation in, rehabilitative drug or alcohol  
31 treatment;

32 (6) A testimonial or recommendation, including a progress report, from the person's  
33 probation or parole officer;

1 (7) Evidence of rehabilitation;

2 (8) Education and training;

3 (9) Employment history;

4 (10) Employment aspirations;

5 (11) The person's current family responsibilities; and

6 (12) Any other relevant information submitted by the person.

7 An agency may deny, revoke, suspend, or limit a person's state recognition only if  
8 the agency determines that the state's interest in regulating a lawful occupation would be  
9 directly, substantially, and adversely impaired by the person's nonexcluded criminal  
10 record, as mitigated by the person's current circumstances.

11 **Section 7.** That a NEW SECTION be added:

12 **36-39-7. Petition--Advisory determination--Personal Qualifications.**

13 A person with a criminal record may, at any time, including before the person  
14 obtains any required personal qualifications, petition an agency for an advisory  
15 determination regarding the person's ability to receive state recognition in light of the  
16 person's criminal record. A petition under this section must include the person's criminal  
17 record or an authorization for the agency to obtain the person's criminal record.

18 The agency's determination shall be based on the criteria set forth in § 36-16-06  
19 and issued no later than sixty days after the agency receives the petition. If the agency  
20 determines that the person is eligible to receive state recognition or that the person is  
21 eligible to receive state recognition under certain prescribed conditions, the determination  
22 is binding on the agency, unless there is a relevant, material, and adverse change in the  
23 person's criminal record.

24 If the agency determines that the person does not meet the requirements for state  
25 recognition, the agency may advise the person of actions that the person may take to  
26 remedy the disqualification. Upon taking the actions, the person may petition the agency  
27 for a re-determination.

28 An agency may charge a fee in an amount not exceeding one hundred dollars for  
29 an initial advisory determination under this section.

30 **Section 8.** That a NEW SECTION be added:

31 **36-39-8. Annual report--Compilation--Publication.**

32 Each agency that provides for the issuance of an occupational license, certification,  
33 or registration shall provide an annual report to the Department of Labor and Regulation

1 at the time and in the manner directed by the department. The agency shall include in the  
2 report:

3 (1) The number of times that the agency denied, suspended, or revoked a state  
4 recognition because of a criminal conviction;

5 (2) The nature of the criminal offense that resulted in the denial, suspension, or  
6 revocation; and

7 (3) The number of persons who petitioned the agency under § 36-16-07 for an  
8 advisory determination and the agency's response.

9 The department shall annually compile and publish the information on the  
10 searchable internet website provided for by § 1-27-45.