

LEGISLATIVE BILL 605

Approved by the Governor March 11, 2024

Introduced by Albrecht, 17; Dungan, 26.

A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend sections 38-2102, 38-2103, and 38-2120, Reissue Revised Statutes of Nebraska, sections 38-2101, 38-2104, 38-2116, 38-2117, 38-2121, 38-2122, 38-2124, 38-2130, and 38-2139, Revised Statutes Cumulative Supplement, 2022, and section 38-121, Revised Statutes Supplement, 2023; to change provisions of the Mental Health Practice Act to include protections and requirements for certified art therapists; to define terms; to change the membership of the Board of Mental Health Practice; to provide powers and duties to the Board of Mental Health Practice; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 38-121, Revised Statutes Supplement, 2023, is amended to read:

38-121 (1) No individual shall engage in the following practices unless such individual has obtained a credential under the Uniform Credentialing Act:

- (a) Acupuncture;
- (b) Advanced practice nursing;
- (c) Alcohol and drug counseling;
- (d) Asbestos abatement, inspection, project design, and training;
- (e) Athletic training;
- (f) Audiology;
- (g) Speech-language pathology;
- (h) Beginning one year after September 2, 2023, behavior analysis;
- (i) Body art;
- (j) Chiropractic;
- (k) Cosmetology;
- (l) Dentistry;
- (m) Dental hygiene;
- (n) Electrology;
- (o) Emergency medical services;
- (p) Esthetics;
- (q) Funeral directing and embalming;
- (r) Genetic counseling;
- (s) Hearing instrument dispensing and fitting;
- (t) Lead-based paint abatement, inspection, project design, and training;
- (u) Licensed practical nurse-certified until November 1, 2017;
- (v) Massage therapy;
- (w) Medical nutrition therapy;
- (x) Medical radiography;
- (y) Medicine and surgery;
- (z) Mental health practice;
- (aa) Nail technology;
- (bb) Nursing;
- (cc) Nursing home administration;
- (dd) Occupational therapy;
- (ee) Optometry;
- (ff) Osteopathy;
- (gg) Perfusion;
- (hh) Pharmacy;
- (ii) Physical therapy;
- (jj) Podiatry;
- (kk) Psychology;
- (ll) Radon detection, measurement, and mitigation;
- (mm) Respiratory care;
- (nn) Surgical assisting; and
- (oo) Veterinary medicine and surgery.

(2) No individual shall hold himself or herself out as any of the following until such individual has obtained a credential under the Uniform Credentialing Act for that purpose:

- (a) Registered environmental health specialist;
- (b) Certified marriage and family therapist;
- (c) Certified professional counselor;
- (d) Certified art therapist;
- (e) ~~(d)~~ Social worker; or
- (f) ~~(e)~~ Dialysis patient care technician.

(3) No business shall operate for the provision of any of the following services unless such business has obtained a credential under the Uniform Credentialing Act:

- (a) Body art;
- (b) Cosmetology;
- (c) Emergency medical services;
- (d) Esthetics;

- (e) Funeral directing and embalming;
- (f) Massage therapy; or
- (g) Nail technology.

Sec. 2. Section 38-2101, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-2101 Sections 38-2101 to 38-2139 and sections 6 to 8 and 16 to 22 of this act shall be known and may be cited as the Mental Health Practice Act.

Sec. 3. Section 38-2102, Reissue Revised Statutes of Nebraska, is amended to read:

38-2102 The Legislature finds that, because many mental health practitioners are not regulated in this state, anyone may offer mental health services by using an unrestricted title and that there is no means for identifying qualified practitioners, for enforcing professional standards, or for holding such practitioners accountable for their actions. As a result, Therefore the Legislature determines that, in the interest of consumer protection and for the protection of public health, safety, and welfare, individuals should be provided a means by which they can be assured that their selection of a mental health practitioner is based on sound criteria and that the activities of those persons who by any title may offer or deliver therapeutic mental health services should be regulated.

The purpose of licensing mental health practitioners is to provide for an omnibus title for such persons and to provide for associated certification of social workers, master social workers, professional counselors, and marriage and family therapists, and art therapists.

Sec. 4. Section 38-2103, Reissue Revised Statutes of Nebraska, is amended to read:

38-2103 For purposes of the Mental Health Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2104 to 38-2119 and sections 6 to 8 of this act apply.

Sec. 5. Section 38-2104, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-2104 (1) Approved educational program means a program of education and training accredited by an agency listed in subsection (2) of this section or approved by the board. Such approval may be based on the program's accreditation by an accrediting agency with requirements similar to an agency listed in subsection (2) of this section or on standards established by the board in the manner and form provided in section 38-133.

(2) Approved educational program includes a program of education and training accredited by:

(a) The Commission on Accreditation for Marriage and Family Therapy Education;

(b) The Council for Accreditation of Counseling and Related Educational Programs;

(c) The Council on Rehabilitation Education;

(d) The Council on Social Work Education; ~~or~~

(e) The American Psychological Association for a doctoral degree program enrolled in by a person who has a master's degree or its equivalent in psychology; or ~~-~~

(f) The American Art Therapy Association or the Commission on Accreditation of Allied Health Education Programs for a master's degree program in art therapy.

Sec. 6. Art media means the materials used by an individual to create tangible representations of private experiences, thoughts, and emotions. Art media includes, but is not limited to, traditional art making materials such as paint, clay, drawing implements, photography, and collage, as well as, crafts, found objects, and nontraditional materials that can be utilized to make personal art.

Sec. 7. (1) Art therapy means the integrative application of psychotherapeutic principles and methods with specialized training in strategic use of art media, the neurobiological implications of art-making, and art-based assessment models in the evaluation, assessment, and treatment of normal and abnormal cognitive, developmental, emotional, and behavioral disorders and conditions in individuals, families, and groups.

(2) Subject to subsection (3) of this section, art therapy includes, but is not limited to:

(a) Appraisal activities involving selecting, administering, and interpreting art-based appraisal tools and standard diagnostic instruments designed to assess levels of functioning, aptitudes, abilities, and personal characteristics to determine treatment plans and appropriate art-based interventions;

(b) Use of art media and the creative process to assess a client's inner fears, conflicts, and core issues with the goal of improving physical, cognitive, and emotional functioning and increasing self-awareness and self-esteem;

(c) Strategic application of therapeutic interventions in individual and group sessions to facilitate visual, nonverbal, and verbal receptive and expressive communication and engagement;

(d) Use of art-making and the verbal processing of produced imagery to help clients improve cognitive and sensory-motor functions and reduce symptoms of depression, anxiety, post-traumatic stress, and attachment disorders;

(e) Implementation of treatment plans to help clients resolve conflicts and distress, manage anger, cope with traumatic experience and grief, develop

interpersonal skills, and improve educational performance, vocational performance, and social functioning;

(f) Adjustment of appraisal and evaluation techniques and treatments to address multicultural and diversity issues;

(g) Referral activities which evaluate data to identify clients or groups that may be better served by other specialists; and

(h) Provision of consultation, crisis intervention, client advocacy, and education services to clients.

(3) Nothing in this section shall be construed to authorize a certified art therapist to engage in the practice of clinical psychology as provided in section 38-3111.

Sec. 8. Certified art therapist means a person who is certified to practice art therapy pursuant to the Uniform Credentialing Act and who holds a current certificate issued by the department.

Sec. 9. Section 38-2116, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-2116 (1)(a) Mental health practitioner means a person who holds himself or herself out as a person qualified to engage in mental health practice or a person who offers or renders mental health practice services.

(b) Independent mental health practitioner means a person who holds himself or herself out as a person qualified to engage in independent mental health practice or a person who offers or renders independent mental health practice services.

(2)(a) A person who is licensed as a mental health practitioner and certified as a master social worker may use the title licensed clinical social worker.

(b) A person who is licensed as a mental health practitioner and certified as a professional counselor may use the title licensed professional counselor.

(c) A person who is licensed as a mental health practitioner and certified as a marriage and family therapist may use the title licensed marriage and family therapist.

(d) A person who is licensed as a mental health practitioner and certified as an art therapist may use the title licensed art therapist.

(e) ~~(d)~~ No person shall use the title licensed clinical social worker, licensed professional counselor, ~~or licensed marriage and family therapist,~~ or licensed art therapist unless such person he or she is licensed and certified as provided in this subsection.

(3)(a) A person who is licensed as an independent mental health practitioner and certified as a master social worker may use the title licensed independent clinical social worker.

(b) A person who is licensed as an independent mental health practitioner and certified as a professional counselor or who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact may use the title licensed independent professional counselor.

(c) A person who is licensed as an independent mental health practitioner and certified as a marriage and family therapist may use the title licensed independent marriage and family therapist.

(d) A person who is licensed as an independent mental health practitioner and certified as an art therapist may use the title licensed independent art therapist.

(e) ~~(d)~~ No person shall use the title licensed independent clinical social worker, licensed independent professional counselor, ~~or licensed independent marriage and family therapist,~~ or licensed independent art therapist unless such person he or she is licensed and certified or holds a privilege as provided in this subsection.

(4) A mental health practitioner shall not represent himself or herself as a physician or psychologist and shall not represent his or her services as being medical or psychological in nature. An independent mental health practitioner shall not represent himself or herself as a physician or psychologist.

Sec. 10. Section 38-2117, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-2117 Mental health program means an approved educational program in a field such as, but not limited to, social work, professional counseling, marriage and family therapy, human development, psychology, ~~or family relations,~~ or art therapy, the content of which contains an emphasis on therapeutic mental health and course work in psychotherapy and the assessment of mental disorders.

Sec. 11. Section 38-2120, Reissue Revised Statutes of Nebraska, is amended to read:

38-2120 The board shall consist of nine ~~eight~~ professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. Two professional members shall be certified master social workers, two professional members shall be certified professional counselors, two professional members shall be certified marriage and family therapists, one professional member shall be a certified art therapist, and two professional members shall be licensed mental health practitioners that do not hold an associated certification.

Sec. 12. Section 38-2121, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-2121 The requirement to be licensed as a mental health practitioner pursuant to the Uniform Credentialing Act in order to engage in mental health

practice shall not be construed to prevent:

(1) Qualified members of other professions who are licensed, certified, or registered by this state from practice of any mental health activity consistent with the scope of practice of their respective professions;

(2) Alcohol and drug counselors who are licensed by the Division of Public Health of the Department of Health and Human Services and problem gambling counselors who are certified by the Department of Health and Human Services prior to July 1, 2013, or by the Nebraska Commission on Problem Gambling beginning on July 1, 2013, from practicing their profession. Such exclusion shall include students training and working under the supervision of an individual qualified under section 38-315;

(3) Any person employed by an agency, bureau, or division of the federal government from discharging his or her official duties, except that if such person engages in mental health practice in this state outside the scope of such official duty or represents himself or herself as a licensed mental health practitioner, he or she shall be licensed;

(4) Teaching or the conduct of research related to mental health services or consultation with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of mental health services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(5) The delivery of mental health services by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, art therapy, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(6) Duly recognized members of the clergy from providing mental health services in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be mental health practitioners;

(7) The incidental exchange of advice or support by persons who do not represent themselves as engaging in mental health practice, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as mental health practitioners or their services as mental health practice;

(8) Any person providing emergency crisis intervention or referral services or limited services supporting a service plan developed by and delivered under the supervision of a licensed mental health practitioner, licensed physician, or a psychologist licensed to engage in the practice of psychology if such persons are not represented as being licensed mental health practitioners or their services are not represented as mental health practice;

(9) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with mental illness from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan; or

(10) A person who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact from acting as authorized by such privilege.

Sec. 13. Section 38-2122, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-2122 A person shall be qualified to be a licensed mental health practitioner if such person ~~he or she~~:

(1) Has received a master's degree, a doctoral degree, or the equivalent of a master's degree, as determined by the board, that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from an approved educational program. Practicums or internships completed after September 1, 1995, must include a minimum of three hundred clock hours of direct client contact under the supervision of a qualified physician, a licensed psychologist, or a licensed mental health practitioner;

(2) Has successfully completed three thousand hours of supervised experience in mental health practice of which fifteen hundred hours were in direct client contact in a setting where mental health services were being offered and the remaining fifteen hundred hours included, but were not limited to, review of client records, case conferences, direct observation, and video observation. For purposes of this subdivision, supervised means monitored by a qualified physician, a licensed clinical psychologist, or a certified master social worker, certified professional counselor, or marriage and family therapist qualified for certification on September 1, 1994, for any hours completed before such date or by a qualified physician, a psychologist licensed to engage in the practice of psychology, or a licensed mental health practitioner for any hours completed after such date, including evaluative face-to-face contact for a minimum of one hour per week. Such three thousand hours shall be accumulated after completion of the master's degree, doctoral degree, or equivalent of the master's degree; and

(3) Has satisfactorily passed an examination approved by the board. An individual who by reason of educational background is eligible for certification as a certified master social worker, a certified professional counselor, ~~or a certified marriage and family therapist~~, or a certified art therapist shall take and pass a certification examination approved by the board

before becoming licensed as a mental health practitioner.

Sec. 14. Section 38-2124, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-2124 (1) No person shall hold himself or herself out as an independent mental health practitioner unless he or she is licensed as such by the department or unless he or she holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact. A person shall be qualified to be a licensed independent mental health practitioner if he or she:

(a)(i)(A) Graduated with a master's or doctoral degree from an educational program which is accredited, at the time of graduation or within four years after graduation, by the Council for Accreditation of Counseling and Related Educational Programs, the Commission on Accreditation for Marriage and Family Therapy Education, or the Council on Social Work Education, (B) graduated with a master's or doctoral degree which was either approved by the American Art Therapy Association or accredited by the Commission on Accreditation of Allied Health Education Programs at the time of graduation, or (C) ~~(B)~~ graduated with a master's or doctoral degree from an educational program deemed by the board to be equivalent in didactic content and supervised clinical experience to an accredited program;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has three thousand hours of experience supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category; or

(b)(i) Graduated from an educational program which does not meet the requirements of subdivision (a)(i) of this subsection;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has seven thousand hours of experience obtained in a period of not less than ten years and supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category.

(2) The experience required under this section shall be documented in a reasonable form and manner as prescribed by the board, which may consist of sworn statements from the applicant and his or her employers and supervisors. The board shall not in any case require the applicant to produce individual case records.

(3) The application for an independent mental health practitioner license shall include the applicant's social security number.

Sec. 15. Section 38-2130, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-2130 The department, with the recommendation of the board, may issue a certificate based on licensure in another jurisdiction to represent oneself as a certified marriage and family therapist, a certified professional counselor, ~~or a social worker,~~ or a certified art therapist to an individual who meets the requirements of the Mental Health Practice Act relating to marriage and family therapy, professional counseling, ~~or social work,~~ or art therapy, as appropriate, or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for a certificate who is a military spouse may apply for a temporary certificate as provided in section 38-129.01.

Sec. 16. (1) For purposes of this section, qualified supervisor means a qualified physician, a psychologist licensed to engage in the practice of psychology, a licensed mental health practitioner, a licensed independent mental health practitioner, or a certified art therapist who has met standards for supervision specified in rules and regulations approved by the board and adopted and promulgated by the department.

(2) A person who submits a complete application to the department for certification as an art therapist shall be qualified for such certification if such person:

(a) Provides evidence to the department that such person:

(i) Has a master's or doctoral degree in art therapy from an approved educational program or a master's degree in a related mental health field and graduate-level course work determined by the board to be equivalent in didactic content and supervised clinical experience to an approved educational program in art therapy; and

(ii) Has had at least three thousand hours of experience in art therapy supervised by a qualified supervisor following receipt of such graduate degree and at least one-half of such hours were supervised by a certified art therapist acting as the qualified supervisor. The three thousand hours of experience shall include at least one thousand five hundred hours of direct client contact, and at least one-half of such hours shall be supervised by a certified art therapist acting as the qualified supervisor. The direct-client-contact hours shall include at least one hundred hours of supervisor-supervisee-contact hours supervised by a qualified supervisor, with supervision provided at least one hour per week or two hours every two weeks, and at least

one-half of such hours shall be supervised by a certified art therapist acting as the qualified supervisor; and

(b) Passes an examination approved by the board.

(3) An applicant for certification as a certified art therapist who has completed all or part of such applicant's qualifying experience in art therapy in another state or jurisdiction shall have completed not less than one-half of the required three thousand hours of experience and not less than one-half of the direct-client-contact hours and supervisor-supervisee-contact hours supervised by a certified art therapist or a person holding a credential as a Board Certified Art Therapist from the Art Therapy Credentials Board, Inc., as determined by the Board of Mental Health Practice acting as the qualified supervisor.

Sec. 17. (1) The department, with the recommendation of the board, may issue a credential under the Mental Health Practice Act as a certified art therapist based on licensure in another state or jurisdiction to an individual who meets the requirements of section 16 of this act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

(2) A person practicing art therapy in Nebraska before January 1, 2025, may apply for certification as an art therapist under the Mental Health Practice Act if such person completes an application and provides satisfactory evidence to the department that such person:

(a) Holds a credential in good standing as a Board Certified Art Therapist from the Art Therapy Credentials Board, Inc.;

(b) Has engaged in the practice of art therapy during at least three of the five years preceding submission of the application; and

(c) Has met any additional requirements as determined by the department, with the recommendation of the board.

Sec. 18. (1) A person who needs to obtain the required three thousand hours of supervised experience in art therapy as specified in section 16 of this act to qualify for certification as an art therapist shall obtain a provisional certification as an art therapist. To qualify for a provisional certification as an art therapist, such person shall:

(a) Have a minimum of a master's degree in art therapy from an approved educational program; and

(b) Apply prior to earning the three thousand hours of supervised experience.

(2) A provisional art therapist certification shall expire upon receipt of certification as a certified art therapist or five years after the date of issuance, whichever comes first.

(3) A person who holds a provisional certification as an art therapist shall inform all clients that such person holds a provisional certification and is practicing art therapy under supervision and shall identify the supervisor. Failure to make such disclosure is a ground for discipline as set forth in section 38-2139.

Sec. 19. Nothing in the Mental Health Practice Act shall be construed to prevent or restrict any person who has obtained a credential under the Uniform Credentialing Act from engaging in any activity or practice, including use of art and art materials, that is consistent with such person's licensed scope of practice and professional training, as long as such person does not use the title licensed art therapist or certified art therapist.

Sec. 20. Except as otherwise provided in section 38-2136, a certified art therapist shall not disclose any information, including, but not limited to, client records, artwork, verbal or artistic expressions, assessment results, or assessment interpretations, that such certified art therapist may have acquired from any person consulting such certified art therapist in a professional capacity.

Sec. 21. (1) The board may appoint an art therapist advisory committee, as provided in section 38-161, to assist the board in carrying out its duties under the Mental Health Practice Act.

(2) An advisory committee appointed pursuant to this section shall develop recommendations for adoption by the board and promulgation by the department on topics determined by the board as necessary to carry out its duties under the Mental Health Practice Act, including, but not limited to:

(a) Standards of competency and procedures for qualifying art therapists as licensed mental health practitioners and certified art therapists and for certification as provisional art therapists;

(b) Education standards for determining if an applicant's academic training and supervised clinical experience are substantially equivalent to an approved educational program in art therapy;

(c) Standards pertaining to the supervised practice of art therapy by certified provisional art therapists and requirements for approved supervisors;

(d) A code of ethics for the practice of art therapy for approval by the board pursuant to section 38-2138; and

(e) Standards for continuing competency and procedures for compliance with the continuing education requirements and approval of providers of continuing education.

Sec. 22. Nothing in the Mental Health Practice Act shall be construed to require the State of Nebraska, any agency of the State of Nebraska, or any of the entities which operate under rules and regulations of a state agency, which employ or contract for the services of art therapists, to employ or contract with only persons certified pursuant to the act for the performance of any of the professional activities enumerated in section 7 of this act.

Sec. 23. Section 38-2139, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-2139 In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential or privilege to practice in Nebraska subject to the Mental Health Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant, licensee, or privilege holder fails to disclose the information required by section 38-2123 or 38-2129 or section 18 of this act or the Licensed Professional Counselors Interstate Compact.

Sec. 24. This act becomes operative on January 1, 2025.

Sec. 25. Original sections 38-2102, 38-2103, and 38-2120, Reissue Revised Statutes of Nebraska, sections 38-2101, 38-2104, 38-2116, 38-2117, 38-2121, 38-2122, 38-2124, 38-2130, and 38-2139, Revised Statutes Cumulative Supplement, 2022, and section 38-121, Revised Statutes Supplement, 2023, are repealed.