



State of Wisconsin
2009 - 2010 LEGISLATURE

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LRB-02737
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d-note
RMPUM

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 10/29/08
soon please

Gen

1 AN ACT ..., relating to: changes to the regulation of massage therapy and
2 bodywork, creating the message therapy and bodywork therapy examining
3 board, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 15.08 (1m) (b) of the statutes is amended to read:
5 15.08 (1m) (b) The public members of the chiropractic examining board, the
6 dentistry examining board, the hearing and speech examining board, the medical
7 examining board, perfusionists examining council, respiratory care practitioners
8 examining council and council on physician assistants, the board of nursing, the
9 message therapy and bodywork therapy examining board, the nursing home
10 administrator examining board, the veterinary examining board, the optometry

1 examining board, the pharmacy examining board, the marriage and family therapy,
 2 professional counseling, and social work examining board, and the psychology
 3 examining board shall not be engaged in any profession or occupation concerned with
 4 the delivery of physical or mental health care.

History: 1971 c. 40; 1975 c. 86, 199; 1977 c. 418; 1979 c. 32; 1979 c. 34 ss. 32e to 32s, 2102 (45) (a); 1979 c. 221; 1981 c. 94; 1983 a. 403, 524; 1985 a. 332, 340; 1987 a. 399; 1989 a. 229, 316, 359; 1991 a. 39, 160, 316; 1993 a. 105, 107, 184, 490; 1995 a. 245; 1997 a. 175; 1999 a. 180; 2001 a. 80, 89, 105.

5 SECTION 2. 15.407 (7) of the statutes is renumbered 15.405 (6r) and 15.405 (6r)

6 (a), (b) (intro.), 2, and 3, as renumbered, are amended to read:

7 15.405 (6r) ~~MASSAGE THERAPY AND BODYWORK COUNCIL~~ THERAPY EXAMINING BOARD.

8 (a) There is created a massage therapy and bodywork ~~council~~ therapy examining
 9 board in the department of regulation and licensing, ~~-serving the department in an~~
 10 ~~advisory capacity.~~ The ~~council~~ examining board shall consist of the following 7
 11 ~~members, appointed for 4-year terms, who are;~~

- 12 1. Six ~~mass~~ massage therapists or bodyworkers ~~certified~~ bodywork therapists
 13 licensed under ch. 460 and who have engaged in the practice of massage therapy or
 14 bodywork therapy for at least 2 years preceding appointment. One member
 15 appointed under this subdivision shall be a representative of a massage therapy or
 16 bodywork therapy school approved by the educational approval board under s. 38.50.
 17 One member appointed under this subdivision shall be a representative of a massage
 18 therapy or bodywork therapy program offered by a public entity. No other members
 19 appointed under this subdivision shall be directly or indirectly affiliated with a
 20 massage therapy or bodywork therapy school or program.

21 (b) ^(intro.) In appointing members under par. (a), the governor shall ensure, to the
 22 maximum extent practicable, that the membership of the ~~council~~ examining board
 23 is diverse, based on all of the following factors:

1 2. Affiliation and nonaffiliation with a professional association for the practice
2 of massage therapy or bodywork therapy.

3 3. Professional associations with which massage therapists or bodyworkers
4 bodywork therapists in this state are affiliated.

History: 1973 c. 149; 1975 c. 39, 86, 199, 383, 422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 229, 316, 341, 359; 1991 a. 316; 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 727m; 1999 a. 32, 180, 186; 2001 a. 74, 89; 2005 a. 31.

5 **SECTION 3.** 15.405 (6r) (a) 2. of the statutes is created to read:

6 15.405 (6r) (a) 2. One public member.

7 **SECTION 4.** 146.81 (1) (hp) of the statutes is amended to read:

8 146.81 (1) (hp) A massage therapist or ~~bodyworker-certified~~ bodywork
9 therapist licensed under ch. 460.

History: 1979 c. 221; 1981 c. 39 s. 22; 1983 a. 27; 1983 a. 189 s. 329 (1); 1983 a. 535; 1985 a. 315; 1987 a. 27, 70, 264; 1987 a. 399 ss. 403br, 491r; 1987 a. 403; 1989 a. 31, 168, 199, 200, 229, 316, 359; 1991 a. 39, 160, 269; 1993 a. 27, 32, 105, 112, 183, 385, 443, 496; 1995 a. 27 s. 9145 (1); 1995 a. 77, 98, 352; 1997 a. 27, 67, 75, 156, 175; 1999 a. 9, 32, 151, 180, 188; 2001 a. 38, 70, 74, 80, 89; 2005 a. 262, 387; 2007 a. 108.

10 **SECTION 5.** 146.997 (1) (d) 13. of the statutes is amended to read:

11 146.997 (1) (d) 13. A massage therapist or ~~bodyworker~~ bodywork therapist
12 issued a certificate licensed under ch. 460.

History: 1999 a. 176, 186; 2001 a. 38, 70, 74, 89, 105; 2003 a. 33; 2005 a. 22; 2007 a. 20 s. 9121 (6) (a); 2007 a. 130.

13 **SECTION 6.** 180.1901 (1m) (ag) of the statutes is amended to read:

14 180.1901 (1m) (ag) The ~~department of regulation and licensing~~ massage
15 therapy and bodywork therapy examining board under ch. 460.

History: 1989 a. 303; 1993 a. 473; 1995 a. 167; 1997 a. 75, 156, 175; 1999 a. 9, 32, 180; 2001 a. 74, 80; 2003 a. 41.

16 **SECTION 7.** 252.15 (1) (ar) 1. of the statutes is amended to read:

17 252.15 (1) (ar) 1. A person or entity that is specified in s. 146.81 (1), but does
18 not include a massage therapist or ~~bodyworker~~ bodywork therapist issued a
19 certificate licensed under ch. 460.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; 2007 a. 97, 106, 130.

20 **SECTION 8.** 440.03 (13) (b) 38. of the statutes is amended to read:

1 440.03 (13) (b) 38. Massage therapist or ~~bodyworker~~ bodywork therapist.

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31, 340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231, 237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80; 2003 a. 151; 2005 a. 25; 2007 a. 20 ss. 3449 to 3462, 9121 (6) (a); 2007 a. 153, 189.

2 SECTION 9. 440.08 (2) (a) 46r. of the statutes is amended to read:

3 440.08 (2) (a) 46r. Massage therapist or ~~bodyworker~~ bodywork therapist:

4 March 1 of each odd-numbered year.

History: 1991 a. 39 ss. 3305, 3313; 1991 a. 78, 160, 167, 269, 278, 315; 1993 a. 3, 16, 102, 105, 107, 443, 463, 465; 1993 a. 490 ss. 228 to 230, 274, 275; 1995 a. 27, 233, 321, 322, 461; 1997 a. 27, 75, 81, 96, 156, 191, 237, 261, 300; 1999 a. 9, 32; 2001 a. 16, 70, 74, 80, 89; 2003 a. 150, 270, 285, 327; 2005 a. 25, 31, 242, 292, 297, 407; 2007 a. 20, 174, 189.

5 SECTION 10. Chapter 460 (title) of the statutes is amended to read:

6 CHAPTER 460

7 MASSAGE THERAPY AND BODYWORK THERAPY

8 SECTION 11. 460.01 (1g) of the statutes is created to read:

9 460.01 (1g) "Adjunctive therapy" means any of the following to simulate or
10 enhance a manual action:

11 (a) The use of a device.

12 (b) The application of water, lubricants, or other non-prescription topical
13 agents to the skin.

14 (c) The application of heat or cold to the skin in the absence of an
15 electromagnetic device.

16 SECTION 12. 460.01 (1) of the statutes is renumbered 460.01 (2m) and amended
17 to read:

18 460.01 (2m) "Certificate License holder" means a person granted a certificate
19 license under this chapter.

History: 2001 a. 74.

20 SECTION 13. 460.01 (2) of the statutes is renumbered 460.01 (1r) and amended
21 to read:

1 460.01 (1r) "~~Council~~ Examining Board" means the massage therapy and
2 bodywork ~~council~~ therapy examining board.

3 History: 2001 a. 74.

3 SECTION 14. 460.01 (3) of the statutes is amended to read:

4 460.01 (3) "Manual action" includes holding, positioning, rocking, kneading,
5 compressing, decompressing, gliding, or percussing the soft tissue of the human body
6 or applying a passive range of motion to the human body without joint mobilization
7 or manipulation.

8 History: 2001 a. 74.

8 SECTION 15. 460.01 (4) of the statutes is amended to read:

9 460.01 (4) "Massage therapy or bodywork therapy" means the science and
10 healing art that uses manual actions and adjunctive therapies to palpate and
11 manipulate the soft tissue of the human body; in order to improve circulation, reduce
12 tension, relieve soft tissue pain, or increase flexibility, and, "Massage therapy or
13 bodywork therapy" includes determining whether ~~massage therapy or bodywork is~~
14 manual actions and adjunctive therapies are appropriate or contraindicated, or
15 whether a referral to another health care practitioner is appropriate. "Massage
16 therapy or bodywork therapy" does not include making a medical, physical therapy,
17 or chiropractic diagnosis.

18 History: 2001 a. 74.

18 SECTION 16. 460.02 of the statutes is amended to read:

19 **460.02 Certificate License required.** Except as provided in s. 460.03, no
20 person may provide massage therapy or bodywork therapy, designate himself or
21 herself as a massage therapist or ~~bodyworker~~ bodywork therapist, or use or assume
22 the title "massage therapist and ~~bodyworker~~ bodywork therapist" or "massage
23 therapist" or "~~bodyworker~~ bodywork therapist" or any title that includes "massage
24 therapist," bodywork therapist, or "bodyworker," or append to the person's name the

Handwritten notes: "B.W.T." circled with an arrow pointing to the text below. "B.W." circled. "B.T." circled. "SECTION 16" written above the circles.

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letters "M.T.," "R.M.T.," "L.M.T.," "C.M.T.," "B.W.T.," "B.W.," "L.B.W.," "R.B.W.," or
 2 "C.B.W.," or use any other title or designation that represents or may tend to
 3 represent that he or she is ~~certified~~ licensed under this chapter, unless the person is
 4 ~~certified~~ licensed under this chapter.

History: 2001 a. 74.

5 **SECTION 17.** 460.03 of the statutes is amended to read:

6 **460.03 Applicability.** A ~~certificate~~ license under this chapter is not required
 7 for any of the following:

8 (1) A person holding a license, permit, registration, or certification granted by
 9 this state or the federal government who engages in a practice of massage therapy
 10 or bodywork therapy within the scope of his or her license, permit, registration, or
 11 certification and who does not imply that he or she is ~~certified~~ licensed under this
 12 chapter. A person who is exempt from licensure under this subsection may use the
 13 terms "bodywork," "bodyworker," and "bodywork therapy" to identify his or her
 14 practice.

15 (2) A person who is authorized to practice massage therapy or bodywork
 16 therapy in another state or country and is providing a consultation to or
 17 demonstration with a ~~certificate~~ license holder. A person who is exempt from
 18 licensure under this subsection may use the terms "bodywork," "bodyworker," and
 19 "bodywork therapy" to identify his or her practice.

History: 2001 a. 74.

20 **SECTION 18.** 460.03 (3) of the statutes is created to read:

21 460.03 (3) A person who manipulates only the soft tissues of the hands, feet,
 22 or ears of the human body, provided that the services are not represented or implied
 23 to be massage therapy or bodywork therapy.

24 **SECTION 19.** 460.03 (4) of the statutes is created to read:

1 460.03 (4) (a) A person who does any of the following and who satisfies the
2 requirements of par. (b):

3 1. Uses touch, words, and directed movement to deepen a client's awareness
4 of his or her existing patterns of movement and to suggest to the client new patterns
5 of movement.

6 2. Uses touch to affect the energy systems or acupoints of the human body.

7 3. Uses touch and movement education to effect change in the structure of the
8 body while engaged in the practice of structural integration.

9 (b) The person is certified or credentialed by a professional organization or
10 credentialing agency identified by the examining board by rule. The examining
11 board may only identify by rule those professional organizations and credentialing
12 agencies that grant a certificate or credential to an individual after that individual
13 demonstrates an adequate level of training and competency and adherence to ethical
14 standards.

15 (c) A person who is exempt from licensure under this subsection may use the
16 terms "bodywork," "bodyworker," and "bodywork therapy" to identify his or her
17 practice.

change component

~~SECTION 20. 460.04 (title) of the statutes is amended to read:~~ *renumbered 460.05 (title) and replaced.*

460.04 (title) Duties of department examining board.

History: 2001 a. 74; 2007 a. 104.

20 **SECTION 21.** 460.04 (1) of the statutes is renumbered 460.05 (4) and amended
21 to read:

22 460.05 (4) The department shall examining board may assign a unique
23 certificate number to each person certified under this chapter.

History: 2001 a. 74; 2007 a. 104.

license
licensed

SECTION 22

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SECTION 22. 460.04 (2) of the statutes is renumbered 460.04^{S,} and 460.04^S (intro.),

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(1) and (5), as renumbered, are amended to read:

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~~460.04 (intro.) The department examining board shall promulgate rules that~~
~~establish all of the following:~~
~~(1) Standards that govern the professional conduct of certificate license holders~~
~~in practicing massage therapy or bodywork therapy. The standards shall prohibit~~
~~a certificate license holder from having sexual contact or sexual intercourse with a~~
~~client.~~
~~(5) A requirement that an applicant for a certificate license under this chapter~~
~~submit evidence satisfactory to the department examining board that the applicant~~
~~has current proficiency in the use of an automated external defibrillator achieved~~
~~through instruction provided by an individual, organization, or institution of higher~~
~~education approved under s. 46.03 (38) to provide such instruction.~~
~~SECTION 23. 460.04 (6) of the statutes is created to read:~~
~~460.04 (6) Requirements to be satisfied by a person seeking a temporary license~~
~~under s. 460.08. The rules promulgated under this subsection shall require the~~
~~person to be a graduate of a massage therapy or bodywork therapy school and may~~
~~require the holder of a temporary license to make disclosures to clients and to~~
~~practice under the supervision of a massage therapist or bodywork therapist licensed~~
~~under this chapter.~~
~~SECTION 24. 460.04 (7) of the statutes is created to read:~~
~~460.04 (7) A requirement that an applicant for a license under this chapter pass~~
~~an examination on state laws and administrative rules governing massage therapy~~
~~or bodywork therapy.~~

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History: 2001 a. 74; 2007 a. 104.

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under this chapter.

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SECTION 24. 460.04 (7) of the statutes is created to read:

22

460.04 (7) A requirement that an applicant for a license under this chapter pass

23

an examination on state laws and administrative rules governing massage therapy

24

or bodywork therapy.

1 SECTION 25. 460.04 (3) of the statutes is repealed.

2 SECTION 26. 460.04 (4) of the statutes is repealed.

3 SECTION 27. 460.05 (title) of the statutes is amended to read:

4 460.05 (title) **Certification Licensure of massage therapists or bodyworkers**
5 **bodywork therapists.**

History: 2001 a. 74; 2005 a. 22, 25, 254, 277; 2007 a. 104.

6 SECTION 28. 460.05 (1) (intro.) of the statutes is amended to read:

7 460.05 (1) (intro.) The department examining board shall grant a certificate
8 license as a massage therapist or ~~bodyworker~~ bodywork therapist to a person who
9 satisfies all of the following:

History: 2001 a. 74; 2005 a. 22, 25, 254, 277; 2007 a. 104.

10 SECTION 29. 460.05 (1) (c) of the statutes is amended to read:

11 460.05 (1) (c) The person submits an application for the certificate license to
12 the department examining board on a form provided by the department examining
13 board.

History: 2001 a. 74; 2005 a. 22, 25, 254, 277; 2007 a. 104.

14 SECTION 30. 460.05 (1) (e) of the statutes is amended to read:

15 460.05 (1) (e) Except as provided in sub. (2), the person submits evidence
16 satisfactory to the department examining board that he or she has done all of the
17 following:

18 1. Graduated from a school of massage therapy or bodywork approved by the
19 educational approval board under s. 38.50 or completed a training program approved
20 by the department examining board under the rules promulgated under s. 460.04(2)

21 (b) ~~4.~~ ~~460.045(2)~~

22 2. Completed at least 6 classroom hours in the laws of this state and rules of
23 the department examining board relating to the practice of massage therapy or

460.045
plain

1 bodywork [✓]therapy in a course of instruction approved by the department [✓]examining
2 board.

3 History: 2001 a. 74; 2005 a. 22, 25, 254, 277; 2007 a. 104.

3 **SECTION 31.** 460.05 (1) (g) of the statutes is amended to read:

4 460.05 (1) (g) The person submits evidence satisfactory to the department
5 examining[✓]board that he or she has in effect malpractice liability insurance coverage
6 in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all
7 occurrences in one year.

8 History: 2001 a. 74; 2005 a. 22, 25, 254, 277; 2007 a. 104.

8 **SECTION 32.** 460.05 (2) of the statutes is amended to read:

9 460.05 (2) The department examining[✓]board may waive a requirement
10 specified in sub. (1) (e) if a person establishes, to the satisfaction of the department
11 examining[✓]board, that he or she has education, training, or other experience that is
12 substantially equivalent to the requirement.

13 History: 2001 a. 74; 2005 a. 22, 25, 254, 277; 2007 a. 104.

13 **SECTION 33.** 460.05 (3) of the statutes is repealed.

14 **SECTION 34.** 460.06 of the statutes is renumbered 460.06 (intro.) and amended
15 to read:

16 **460.06 Examinations.** (intro.) The department examining[✓]board may not
17 grant a certificate license[✓] under this chapter unless the applicant passes achieves a
18 passing grade on the national certification following exam[✓] inations

19 (1) A nationally administered, entry-level competency examination for
20 therapeutic massage and bodywork therapy[✓] that is offered by the National
21 Certification Board for Therapeutic Massage and Bodywork or an examination
22 relating to the practice of massage therapy or bodywork that is administered by a
23 national board that is accredited by the National Commission for Certifying
24 Agencies meets generally accepted psychometric principles and standards or a

1 substantially equivalent examination approved by the department examining
2 board.

3

~~(2) The department shall promulgate rules that also require an applicant to
4 pass an examination on state laws and administrative rules governing massage~~

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~~therapy or bodywork therapy under s. 460.04 (7). The examining board shall~~

6

~~prepare, conduct, and grade the examination required under this subsection.~~ plain

History: 2001 a. 74 s. 16.

7 SECTION 35. 460.07 (1) of the statutes is amended to read:

8 460.07 (1) Each person who is certified licensed under this chapter shall
9 conspicuously display the certificate license in the place of business where he or she
10 practices massage therapy or bodywork therapy so that the certificate license can
11 easily be seen and read.

History: 2001 a. 74; 2007 a. 20, 104.

12 SECTION 36. 460.07 (2) (intro.) of the statutes is amended to read:

13 460.07 (2) (intro.) ~~The renewal dates for certificates granted under this chapter~~
14 ~~are specified under s. 440.08 (2) (a).~~ Renewal applications shall be submitted to the
15 department on a form provided by the department on or before the applicable
16 renewal date specified under s. 440.08 (2) (a) and shall include all of the following:

History: 2001 a. 74; 2007 a. 20, 104.

17 SECTION 37. 460.07 (2) (c) of the statutes is amended to read:

18 460.07 (2) (c) Evidence satisfactory to the department examining board that
19 the applicant has in effect malpractice liability insurance coverage in an amount that
20 is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one
21 year.

History: 2001 a. 74; 2007 a. 20, 104.

22 SECTION 38. 460.08 of the statutes is created to read:

1 **460.08 Temporary license.** The examining board may grant a temporary
 2 license for a period not to exceed 6 months to an applicant who satisfies the
 3 requirements established in the rules under s. 460.04⁵ (6). A temporary license may
 4 not be renewed.

5 **SECTION 39.** 460.09 of the statutes is amended to read:

6 **460.09 Reciprocal certificate.** Upon application and payment of the fee
 7 specified in s. 440.05 (2), the ~~department~~ examining board shall grant a massage
 8 therapist or ~~bodyworker certificate~~ bodywork therapist license to a person who holds
 9 a similar ~~certificate~~ license in another state or territory of the United States or
 10 another country if the ~~department~~ examining board determines that the
 11 requirements for receiving the ~~certificate~~ license in the other state, territory, or
 12 country are substantially equivalent to the requirements under s. 460.05.

History: 2001 a. 74.

13 **SECTION 40.** 460.095 of the statutes is created to read:

14 **460.095 Massage therapy and bodywork therapy school and instructor**
 15 **requirements.** Massage therapy schools located in this state shall do all of the
 16 following:

17 (1) Provide and require as a prerequisite to graduation completion of a course
 18 of instruction on state laws and regulations applicable to massage therapy and
 19 bodywork therapy in preparation for the exam required under s. 460.06 (2).

20 (2) Require the following employees of the school ^{to} satisfy the following
 21 requirements:

22 (a) Instructors teaching courses in anatomy, physiology, kinesiology, and
 23 pathology shall have any of the following:

1 (b) Instructors teaching courses in theory and the practice of massage therapy
2 or bodywork therapy shall have any of the following:

3 SECTION 41. 460.10 of the statutes is renumbered 460.10 (1) and amended to
4 read:

5 **460.10 Continuing education.** (1) The department examining board may
6 promulgate rules establishing requirements all of the following:

7 (a) Requirements and procedures for a certificate license holder to complete
8 continuing education programs or courses of study to qualify for renewal of his or her
9 certificate license. The rules promulgated under this paragraph may not require a
10 license holder to complete more than 24 hours of continuing education program or
11 courses of study in order to qualify for renewal of his or her license. plain

12 (2) The department examining board may waive all or part of any requirement
13 established in rules promulgated under this section par. (a) if it determines that sub. (1)
14 prolonged illness, disability, or other exceptional circumstances have prevented a
15 certificate license holder from completing the requirement.

History: 2001 a. 74.

16 SECTION 42. 460.10 (1) (b) of the statutes is created to read:

17 460.10 (1) (b) Qualifications applicable to providers of continuing education
18 programs and courses required under par. (a).

19 SECTION 43. 460.11 of the statutes is amended to read:

20 **460.11 Practice requirements.** (1) A certificate license holder may not
21 practice massage therapy or bodywork therapy on a client unless the certificate
22 license holder first obtains the informed consent of the client and has informed the
23 client that he or she may withdraw the consent at any time.

1 (2) A ~~certificate~~ license holder shall keep confidential any information that a
 2 client in confidence gives to the ~~certificate~~ license holder and any other information
 3 that the ~~certificate~~ license holder obtains about a client in the course of practicing
 4 massage therapy or bodywork therapy that a reasonable person in the client's
 5 position would want kept confidential, unless the information is otherwise required
 6 by law to be disclosed or the client specifically authorizes the disclosure of the
 7 information.

8 (3) A ~~certificate~~ license holder may not, whether for compensation or not,
 9 practice massage therapy or bodywork therapy for a sexually oriented business, as
 10 defined by the department examining board by rule.

History: 2001 a. 74.

11 **SECTION 44.** 460.12 (1), (2), (3), (4), and (5) (b) of the statutes ~~is~~ ^{are} amended to read:

12 **460.12 Duty to make reports.** (1) A ~~certificate~~ license holder shall submit
 13 a report to the department examining board if he or she has reasonable cause to
 14 believe that another ~~certificate~~ license holder has committed a crime relating to
 15 prostitution under ss. 944.30 to 944.34 or has had sexual contact or sexual
 16 intercourse with a client. If the report relates to sexual contact or sexual intercourse
 17 with a client, the report may not identify the client unless the client has provided
 18 written consent for disclosure of this information.

19 (2) The department examining board may use a report made under sub. (1) as
 20 the basis for an investigation under s. 460.14 (1). If, after an investigation, the
 21 department examining board has reasonable cause to believe that a ~~certificate~~
 22 license holder has committed a crime, the department examining board shall report
 23 the belief to the district attorney for the county in which the crime, in the opinion of
 24 the department examining board, occurred.

1 (3) If, after an investigation, the ~~department~~ [✓] examining board determines that
2 a report submitted under sub. (1) is without merit, the ~~department~~ [✓] examining board
3 shall remove the report from the record of the ~~certificate~~ [✓] license holder who is the
4 subject of the report.

5 (4) All reports and records made from reports under sub. (1) and maintained
6 by the [✓] examining board, the department, district attorneys, and other persons,
7 officials, and institutions shall be confidential and are exempt from disclosure under
8 s. 19.35 (1). Information regarding the identity of a client with whom a ~~certificate~~
9 [✓] license holder is suspected of having sexual contact or sexual intercourse shall not
10 be disclosed by persons who have received or have access to a report or record unless
11 disclosure is consented to in writing by the client. The report of information under
12 sub. (1) and the disclosure of a report or record under this subsection does not violate
13 any person's responsibility for maintaining the confidentiality of patient health care
14 records, as defined in s. 146.81 (4) and as required under s. 146.82. Reports and
15 records may be disclosed only to the [✓] examining board, the department, and the
16 appropriate staff of a district attorney or a law enforcement agency within this state
17 for purposes of investigation or prosecution.

18 (5) (b) A ~~certificate~~ [✓] license holder shall submit a written report to the
19 ~~department~~ [✓] examining board if he or she is convicted of a felony or misdemeanor, or
20 is found to have committed a violation, in this state or elsewhere, and if the
21 circumstances of the felony, misdemeanor, or violation substantially relate to the
22 practice of massage therapy or bodywork [✓] therapy. The report shall identify the date,
23 place, and nature of the conviction or finding and shall be submitted within 30 days
24 after the entry of the judgment of conviction or the judgment finding that he or she

1 committed the violation. If the report is submitted by mail, the report is considered
2 to be submitted on the date that it is mailed.

3 History: 2001 a. 74.

3 **SECTION 45.** 460.13 of the statutes is amended to read:

4 **460.13 Advertising.** A ~~certificate~~ license holder may not advertise that he or
5 she practices massage therapy or bodywork therapy unless the advertisement
6 includes ~~his or her certificate number~~ and a statement that the ~~certificate~~ license
7 holder is a “~~certified~~ licensed massage therapist and ~~bodyworker~~ bodywork
8 therapist” or “~~certified~~ licensed massage therapist” or “~~certified bodyworker~~ licensed
9 bodywork therapist.”

10 History: 2001 a. 74.

10 **SECTION 46.** 460.14 (1) of the statutes is amended to read:

11 460.14 (1) Subject to the rules promulgated under s. 440.03 (1), the department
12 examining board may make investigations and conduct hearings to determine
13 whether a violation of this chapter or any rule promulgated under this chapter has
14 occurred.

15 History: 2001 a. 74; 2005 a. 277.

15 **SECTION 47.** 460.14 (2) (intro.) of the statutes is amended to read:

16 460.14 (2) (intro.) Subject to the rules promulgated under s. 440.03 (1), the
17 ~~department~~ examining board may reprimand a ~~certificate~~ license holder or deny,
18 limit, suspend, or revoke a ~~certificate~~ license under this chapter if it finds that the
19 applicant or ~~certificate~~ license holder has done any of the following:

20 History: 2001 a. 74; 2005 a. 277.

20 **SECTION 48.** 460.14 (2) (a) of the statutes is amended to read:

21 460.14 (2) (a) Made a material misstatement in an application for a ~~certificate~~
22 license or for renewal of a ~~certificate~~ license.

23 History: 2001 a. 74; 2005 a. 277.

23 **SECTION 49.** 460.14 (2) (b) of the statutes is amended to read:

1 460.14 (2) (b) Subject to ss. 111.321, 111.322, and 111.335, been convicted of an
2 offense the circumstances of which substantially relate to the practice of massage
3 therapy or bodywork therapy.

History: 2001 a. 74; 2005 a. 277.

4 **SECTION 50.** 460.14 (2) (e) of the statutes is amended to read:

5 460.14 (2) (e) Subject to ss. 111.321, 111.322, and 111.34, practiced massage
6 therapy or bodywork therapy while his or her ability to practice was impaired by
7 alcohol or other drugs.

History: 2001 a. 74; 2005 a. 277.

8 **SECTION 51.** 460.14 (2) (g) of the statutes is amended to read:

9 460.14 (2) (g) Engaged in unprofessional conduct in violation of the standards
10 established in rules promulgated under s. ~~460.04~~ (2) (a) (1). ^{460.045}

History: 2001 a. 74; 2005 a. 277.

11 **SECTION 52.** 460.14 (2) (h) of the statutes is amended to read:

12 460.14 (2) (h) Engaged in conduct while practicing massage therapy or
13 bodywork therapy that jeopardizes the health, safety, or welfare of a client or that
14 evidences a lack of knowledge of, inability to apply, or the negligent application of,
15 principles or skills of massage therapy or bodywork therapy.

History: 2001 a. 74; 2005 a. 277.

16 **SECTION 53.** 460.14 (2m) (intro.) of the statutes is amended to read:

17 460.14 (2m) (intro.) Subject to the rules promulgated under s. 440.03 (1), the
18 ~~department~~ examining board shall revoke a ~~certificate~~ license under this chapter if
19 the ~~certificate~~ license holder is convicted of any of the following:

History: 2001 a. 74; 2005 a. 277.

20 **SECTION 54.** 460.14 (3) of the statutes is amended to read:

1 460.14 (3) The department examining board may restore a certificate license
 2 that has been suspended or revoked on such terms and conditions as the department
 3 examining board may deem appropriate.

History: 2001 a. 74; 2005 a. 277.

4 **SECTION 55.** 460.14 (4) of the statutes is repealed.

5 **SECTION 56.** 460.15 (1) of the statutes is renumbered 460.15 and amended to
 6 read:

(B) Penalties Penalty

7 **460.15** ~~Except as provided in sub. (2), any~~ Any person who violates this chapter
 8 or any rule promulgated under this chapter shall forfeit not more than \$1,000 for
 9 each violation.

History: 2001 a. 74.

10 **SECTION 57.** 460.15 (2) of the statutes is repealed.

11 **SECTION 58.** 460.17 of the statutes is amended to read:

12 **460.17 Local regulation.** A city, village, town, or county may not enact an
 13 ordinance that regulates the practice of massage therapy or bodywork therapy by a
 14 person who is issued a certificate licensed by the department examining board under
 15 this chapter. No provision of any ordinance enacted by a city, village, town, or county
 16 that is in effect before February 1, 1999, and that relates to the practice of massage
 17 therapy or bodywork therapy, may be enforced against a person who is issued a
 18 certificate licensed by the department examining board under this chapter.

History: 2001 a. 74 s. 19.

19 **SECTION 59.** 895.48 (1m) (a) (intro.) and 2. of the statutes ~~is~~ *are* amended to read:

20 895.48 (1m) (a) *(Intro.)* ~~Except as provided in par. (b), any~~ physician or athletic trainer
 21 licensed under ch. 448, chiropractor licensed under ch. 446, dentist licensed under
 22 ch. 447, emergency medical technician licensed under s. 256.15, first responder
 23 certified under s. 256.15 (8), physician assistant licensed under ch. 448, registered
 24 nurse licensed under ch. 441, or a massage therapist or ~~bodyworker~~ issued a

1 ~~certificate~~ [✓] bodywork therapist licensed under ch. 460 who renders voluntary health
 2 care to a participant in an athletic event or contest sponsored by a nonprofit
 3 corporation, as defined in s. 66.0129 (6) (b), a private school, as defined in s. 115.001
 4 (3r), a public agency, as defined in s. 46.856 (1) (b), or a school, as defined in s. 609.655
 5 (1) (c), is immune from civil liability for his or her acts or omissions in rendering that
 6 care if all of the following conditions exist:

7 2. The physician, athletic trainer, chiropractor, dentist, emergency medical
 8 technician, first responder, physician assistant, registered nurse, massage therapist
 9 or ~~bodyworker~~ [✓] bodywork therapist does not receive compensation for the health care,
 10 other than reimbursement for expenses.

History: 1977 c. 164; 1987 a. 14; 1989 a. 31; 1993 a. 109; 1995 a. 227; 1997 a. 67, 156, 191; 1999 a. 7, 9, 32, 56, 186; 2001 a. 74; 2003 a. 33; 2005 a. 155, 188, 486; 2007 a. 130.

11 **SECTION 60.** 908.03 (6m) (a) of the statutes is amended to read:

12 908.03 (6m) (a) *Definition.* In this subsection, "health care provider" means
 13 a massage therapist or ~~bodyworker~~ [✓] bodywork therapist ~~issued a certificate~~ [✓] licensed
 14 under ch. 460, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447,
 15 a physician assistant licensed under ch. 448, or a health care provider as defined in
 16 s. 655.001 (8).

History: Sup. Ct. Order, 59 Wis. 2d R250; Sup. Ct. Order, 67 Wis. 2d vii (1975); 1983 a. 447; Sup. Ct. Order, 158 Wis. 2d xxv (1990); 1991 a. 32, 269; 1993 a. 105; 1995 a. 27 s. 9126 (19); 1997 a. 67, 156; 1999 a. 32, 85, 162; 2001 a. 74, 109; Sup. Ct. Order No. 04-09, 2005 WI 148, 283 Wis. 2d xv; 2007 a. 20 s. 9121 (6) (a).

17 **SECTION 61. Nonstatutory provisions.**

18 (1) EXEMPTIONS FROM CERTAIN LICENSURE REQUIREMENTS. Notwithstanding
 19 section 460.05 (1) (e) ~~and (f)~~ ^{and section 460.05 (1) (f) of the statute} of the statutes, as affected by this act, the massage
 20 therapy and bodywork therapy examining board shall grant a license under section
 21 460.05 of the statutes ^{as affected by this act,} to a person who no later than the first day of the 13th month
 22 beginning after the effective date of this paragraph provides sufficient evidence to

1 the massage therapy and bodywork therapy examining board that the person
2 satisfies one of the following requirements:

3 (a) The person was actively engaged in the practice of massage therapy or
4 bodywork therapy practicing for an average of 10 hours per week for at least 10
5 years.

6 (b) The person passed a nationally administered entry-level competency
7 assessment examination that meets generally accepted psychometric principles and
8 standards.

9 (c) The person was actively engaged in the practice of massage therapy or
10 bodywork therapy practicing for an average of 10 hours per week for at least 3 years
11 and successfully completed a 200-hour licensure program approved by the examining
12 board.

13 (d) At least 180 days before the effective date of this paragraph, the person
14 graduated from a massage therapy or bodywork therapy training program that
15 consisted of at least 600 hours of training.

16 (END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

PI
LRB-0273/?dn
TKK: *EF*

Date

ATTN: Rep. Kaufert and Anthony Driessen:

As requested in the e-mail correspondence and attachments from Mr. Driessen dated September 11 and 12, 2008, this bill makes numerous changes to the statutes regulating massage therapists and bodyworkers. Please review the draft carefully to ensure that I have accomplished your intent. I have a number of questions:

X I. Examining Board. The drafting instructions direct me to establish a massage therapy or bodywork therapy board. However, for the following reasons, this draft establishes a massage therapy ^{and} bodywork therapy examining board.

Chapter 15 governs the structure and power of executive branch agencies and subunits within the agencies, including part-time regulatory and advisory bodies such as examining boards and councils. The rule-making and credentialing powers, among other powers, granted in this draft to the massage therapy and bodywork therapy examining board fit within the parameters of examining boards as defined under s. 15.01 (7) and described under s. 15.08.

X Although there is precedent for the creation of ^{boards} within the regulation and licensing chapters (see, for example s. 15.405 (3), (10r), and (11), creating the Auctioneer Board, the Real Estate Appraisal Board, and the Real Estate Board, respectively), none of these boards have rule-making or credentialing powers as would the Massage Therapy and Bodywork Therapy Board. *Examining*

Let me know if you have any questions about this approach.

II. Exemptions from certain licensure requirements. Temporary transitional provisions that will not extend beyond July 1 of the even-numbered year of the legislature's next session (July 1, 2012) are generally placed in the nonstatutory sections. For that reason, I placed the short-term exemptions from the licensing requirements proposed for s. 460.05 (3) in a nonstatutory provision. Let me know if this is a problem.

III. Appointment of members of the examining board. What does it mean that one member "shall be a representative of a massage therapy or bodywork therapy program offered by a public entity"?

IV. Exceptions to licensure. I have a couple of questions on this point:

X A. I restructured the exceptions proposed in the sample draft for s. 460.03 (3) (a) and (b) to conform to LRB drafting conventions. I also separated out the different "movement therapies" into proposed s. 460.03 (4). Finally, rather than listing in the statutes variations of movement therapies which may change and multiply, such as Rolfing Structural Integration, the Rolf Method of Structural Integration, and the Rolf Institute's Rolf Movement Integration, I require the Examining Board to identify, by rule, those movement therapies for which certification is an exception to licensure under this chapter.

Is this approach acceptable?

X B. What are "energy systems" and "acupoints"? Can the following definition of "acupuncture points" be used in proposed s. 460.03 (4) (a) 2., stats., instead of these two terms: "specific areas of the human body known as acupuncture points or meridians"?

C. What is "structural integration"?

V. Duties of the examining board.

A. The drafting instructions replace the word shall with may under s. 460.04 (1). In general, use of the word "may" indicates a discretionary power, rather than a duty. Because the examining board will not be required to assign a unique license number to persons licensed under the chapter, I renumbered this provision s. 460.05 (5). Okay?

X B. I moved language regarding the examining board's duty to promulgate rules governing the exam on state laws and administrative rules from s. 460.06 to s. 460.04 (7), stats. A new subsection, s. 460.06 (2), stats., requires the examining board to prepare, conduct, and grade the exam required under this subsection. Okay?

X VI. Exam. The suggested amendments to s. 460.06, stats., eliminate the references to national certification of both the exam required for licensure and the administrator of that exam.

X A. In the absence of such national certification, what does it mean that the exam meet, "generally accepted psychometric principles and standards"? Specifically, generally accepted by whom? And what are psychometric principles and standards?

X B. Should the examining board be required to approve the "generally accepted" exam taken by applicants for licensure?

VII. Temporary licenses. Because of the way Chapter 460 is structured, I created a separate section for temporary licensure, rather than including this information under s. 460.02. See proposed s. 460.08, stats. The examining board is directed under s. 460.04 (6), stats., to promulgate rules applicable to temporary licenses. Are these changes acceptable?

5

Do you want to specify in the statutes minimum standards that an applicant for a temporary license must meet, rather than leaving the determination of these standards entirely to the examining board?

VIII. School and instructor requirements. The bill creates new requirements for schools and instructors located in Wisconsin. I have the following questions about these new requirements:

A. As drafted, these requirements apply to "massage therapy or bodywork therapy" schools rather than just "massage therapy" schools. Okay?

B. The requirements appear to conflict with (or, at the least, are not harmonized with) the requirement under s. 460.05 (1) (e) 1., stats., that a person seeking a license graduate from "a school of massage therapy or bodywork therapy approved by the educational board under s. 38.50."

1. Is it necessarily true that a school approved by the educational board under s. 38.50, stats., will satisfy the requirements imposed under proposed s. 460.095, or vice versa?

2. Did you intend these new requirements to replace the requirement that a school be approved by the educational board?

C. Proposed s. 460.095 (1) requires schools to "certify to the board that their graduates have passed the state jurisprudence exam that is required by s. 460.06." I have several questions about this instruction:

1. I assumed that what you referred to as the "state jurisprudence exam" is the examination required under proposed s. 460.06 (2) that covers state laws and administrative rules. Is that correct?

2. I wonder why this is a requirement of the schools when passing the exam is already required of an applicant for licensure? (See proposed s. 460.06 (2), which now provides that no person may be licensed unless the person has passed this exam. Unless, by this language you want to require students of massage therapy and bodywork therapy to pass this exam before they may graduate (obtain a degree) from a massage therapy or bodywork therapy school in Wisconsin?

3. Are you requiring the school to administer the exam? If not, how can the schools certify that their graduates have passed the exam? If so, this conflicts with the language I propose under s. 460.06 (2), which requires the examining board to prepare, conduct, and grade this exam. Of course I can change proposed s. 460.06 (2).

In this draft, the examining board is required to administer the exam and the massage therapy and bodywork therapy schools must provide a course for their students that addresses the material to be included on the examining board's exam. Are you comfortable with this approach?

D. The language proposed in the drafting request governing standards that must be met by instructors at massage therapy schools is somewhat vague and may not necessarily ensure that the instructors have relevant training. For example, a person with "professional training and experience in a health related field and two years of experience" could be a person who completed coursework in hospital administration and has worked for two years in a clinic dealing with information technology. Similarly, a person with two years of post-secondary education and training could have taken a program of study in early childhood education or accounting or even photography. And because professional is not a defined term, a "practicing professional" need not necessarily be a massage therapist or bodywork therapist, but could be a photographer or chef.

I did not include the language proposed in the drafting request for s. 460.095 (2) (a) 1. and 2. and (b) 1. and 2. I recommend that more specific language be prepared for these subdivisions; language which identifies, if possible, degrees or experience that the instructor must have completed in order to satisfy this instructor requirement. To the extent that you do not wish to specifically identify degrees or experience in the statutes, I recommend that you require the examining board to establish such specific requirements by rule.

x You may wish^{ing} to review the requirements for persons providing practical instruction at barber and cosmetology schools under s. 440.63, stats. Let me know which approach you would like to take.

x E. Must schools located outside of Wisconsin meet any (minimum) requirements in order for a person who graduates from such a school to be eligible to obtain a license in Wisconsin? As drafted, there is no such requirement under s. 460.09, stats.

F. Did you want the examining board to engage in any formal review of schools and instructors to determine whether the schools and instructors satisfy the requirements imposed under this new section, or to enforce compliance with this section? As drafted, there is no such review or enforcement.

IX. Advertising. The drafting instructions propose the addition of "Except as provided in 460.03 (1) and (2)" to s. 460.13, stats. I am not clear why the change is proposed, and this additional language does not appear in this draft.

Sections 460.03 (1) and (2) provide exceptions to licensure and do not address advertising in any way. Section 460.13 by its terms only applies to persons holding a license under Chapter 460. Under current law, a person who falls within one of the exceptions under s. 460.03 (1) and (2) may (already) advertise that he or she practices massage therapy or bodywork therapy.

x Is it your intent that persons who are not licensed under this chapter but who fall within one of the exceptions under s. 460.03 (1) and (2) be prohibited from advertising that they practice massage therapy or bodywork therapy? If so, s. 460.13, stats., will need to be reworked to apply to persons other than license holders. Or am I missing something?

X. Effective Date. Did you wish to establish a delayed effective date to provide for the establishment of the examining board and the promulgation of administrative rules?

I look forward to working with you on the next draft.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0273/P1dn
TKK:kjf:ph

November 7, 2008

ATTN: Rep. Kaufert and Anthony Driessen:

As requested in the e-mail correspondence and attachments from Mr. Driessen dated September 11 and 12, 2008, this bill makes numerous changes to the statutes regulating massage therapists and bodyworkers. Please review the draft carefully to ensure that I have accomplished your intent. I have a number of questions:

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Chapter 15 governs the structure and power of executive branch agencies and subunits within the agencies, including part-time regulatory and advisory bodies such as examining boards and councils. The rule-making and credentialing powers, among other powers, granted in this draft to the Massage Therapy and Bodywork Therapy Examining Board fit within the parameters of examining boards as defined under s. 15.01 (7) and described under s. 15.08.

Although there is precedent for the creation of boards within the regulation and licensing chapters (see, for example s. 15.405 (3), (10r), and (11), creating the Auctioneer Board, the Real Estate Appraisers Board, and the Real Estate Board, respectively), none of these boards have rule-making or credentialing powers as would the Massage Therapy and Bodywork Therapy Examining Board.

Let me know if you have any questions about this approach.

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Is this approach acceptable?

B. What are “energy systems” and “acupoints”? Can the following definition of “acupuncture points” be used in proposed s. 460.03 (4) (a) 2., stats., instead of these two terms: “specific areas of the human body known as acupuncture points or meridians”?

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VI. Examination. The suggested amendments to s. 460.06, stats., eliminate the references to national certification of both the examination required for licensure and the administrator of that examination.

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B. The requirements appear to conflict with (or, at the least, are not harmonized with) the requirement under s. 460.05 (1) (e) 1., stats., that a person seeking a license graduate from “a school of massage therapy or bodywork therapy approved by the Educational Approval Board under s. 38.50.”

1. Is it necessarily true that a school approved by the Educational Approval Board under s. 38.50, stats., will satisfy the requirements imposed under proposed s. 460.095, or vice versa?

2. Did you intend these new requirements to replace the requirement that a school be approved by the Educational Approval Board?

C. Proposed s. 460.095 (1) requires schools to “certify to the board that their graduates have passed the state jurisprudence exam that is required by s. 460.06.” I have several questions about this instruction:

1. I assumed that what you referred to as the “state jurisprudence exam” is the examination required under proposed s. 460.06 (2) that covers state laws and administrative rules. Is that correct?

2. I wonder why this is a requirement of the schools when passing the examination is already required of an applicant for licensure? (See proposed s. 460.06 (2), which now provides that no person may be licensed unless the person has passed this examination). Unless, by this language you want to require students of massage therapy and bodywork therapy to pass this examination before they may graduate (obtain a degree) from a massage therapy or bodywork therapy school in Wisconsin?

3. Are you requiring the school to administer the examination? If not, how can the schools certify that their graduates have passed the examination? If so, this conflicts with the language I propose under s. 460.06 (2), which requires the examining board to prepare, conduct, and grade this examination. Of course I can change proposed s. 460.06 (2).

In this draft, the examining board is required to administer the examination and the massage therapy and bodywork therapy schools must provide a course for their students that addresses the material to be included on the examining board’s examination. Are you comfortable with this approach?

D. The language proposed in the drafting request governing standards that must be met by instructors at massage therapy schools is somewhat vague and may not necessarily ensure that the instructors have relevant training. For example, a person with “professional training and experience in a health related field and two years of experience” could be a person who completed coursework in hospital administration and has worked for two years in a clinic dealing with information technology. Similarly, a person with two years of post-secondary education and training could have taken a program of study in early childhood education or accounting or even photography. And because professional is not a defined term, a “practicing professional” need not

necessarily be a massage therapist or bodywork therapist, but could be a photographer or chef.

I did not include the language proposed in the drafting request for s. 460.095 (2) (a) 1. and 2. and (b) 1. and 2. I recommend that more specific language be prepared for these subdivisions; language which identifies, if possible, degrees or experience that the instructor must have completed in order to satisfy this instructor requirement. To the extent that you do not wish to specifically identify degrees or experience in the statutes, I recommend that you require the examining board to establish such specific requirements by rule.

You may wish to review the requirements for persons providing practical instruction at barbering and cosmetology schools under s. 440.63, stats. Let me know which approach you would like to take.

E. Must schools located outside of Wisconsin meet any (minimum) requirements in order for a person who graduates from such a school to be eligible to obtain a license in Wisconsin? As drafted, there is no such requirement under s. 460.09, stats.

F. Did you want the examining board to engage in any formal review of schools and instructors to determine whether the schools and instructors satisfy the requirements imposed under this new section, or to enforce compliance with this section? As drafted, there is no such review or enforcement.

IX. Advertising. The drafting instructions propose the addition of "Except as provided in 460.03 (1) and (2)" to s. 460.13, stats. I am not clear why the change is proposed, and this additional language does not appear in this draft.

Sections 460.03 (1) and (2) provide exceptions to licensure and do not address advertising in any way. Section 460.13 by its terms only applies to persons holding a license under Chapter 460. Under current law, a person who falls within one of the exceptions under s. 460.03 (1) and (2) may (already) advertise that he or she practices massage therapy or bodywork therapy.

Is it your intent that persons who are not licensed under this chapter but who fall within one of the exceptions under s. 460.03 (1) and (2) be prohibited from advertising that they practice massage therapy or bodywork therapy? If so, s. 460.13, stats., will need to be reworked to apply to persons other than license holders. Or am I missing something?

X. Effective Date. Did you wish to establish a delayed effective date to provide for the establishment of the examining board and the promulgation of administrative rules?

I look forward to working with you on the next draft.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

Kuczenski, Tracy

From: Field, Adam
Sent: Thursday, December 18, 2008 10:12 AM
To: Kuczenski, Tracy
Subject: LRB 0273 Changes

Attachments: ResponsetoFirstOfficialDraftbyLRB.doc

Hi Tracy,

Here are the changes in response to the drafter's note. Let me know if anything is unclear or you have any questions. Appreciate your help!

Adam



ResponsetoFirstOffi
cialDraftby...

Adam R. Field

Office of Rep. Dean Kaufert
55th Assembly District

RE: Preliminary Draft of Massage Therapy Licensing Bill 2009-10

Dated: December 1, 2008

To: Representative Dean Kaufert

Cc: Tracy Kuczenski, Legislative Attorney, Legislative Reference Bureau

From: American Massage Therapy Association, Wisconsin Chapter (AMTA-WI) via constituent Betsy Krizenesky and Attorney Anthony Driessen.

The AMTA-WI Chapter appreciates the careful attention of Attorney Tracy Kuczenski to your draft request of September 11 and 12, 2008. The preliminary bill draft does accomplish many of the legislative changes of the drafting request as submitted. The thorough Drafter's Note to the preliminary draft requests clarification in several respects. As noted below, we are responding to the detailed Drafter's Note that Ms. Kuczenski nicely presented.

As general background it is important to note that the bill request submitted by Representative Kaufert is the result of over a year of consensus building and opinion gathering conducted by the AMTA-WI Chapter. In July 2007 a massive, statewide, written survey (3,800) was done of the members of the massage therapy and bodywork profession, which was followed by over 30 town hall meetings around the state through April 2008. The actual contents of the drafting request and the language initially submitted were a result of careful and thorough negotiations among the two major professional organizations of the profession (AMTA-WI and the Associated Bodywork and Massage Professionals); related professions seeking exemptions from the proposed law; the independent schools in Wisconsin as approved by the Wisconsin Educational Approval Board; the Wisconsin Technical College System schools; and the Wisconsin Physical Therapy Association. The best language from the laws of the other 40 regulated states was also used in the drafting request as initially submitted.

Responses to specific questions posed by the drafting attorney follow:

✓ I. Examining Board

Yes, we are receptive to an Examining Board being created; that is what was intended on our part. Reference to a "Board" on our part only was intended to parallel the way examining boards are referred to in abbreviated form in other licensing statutes. The exact responsibilities and authority for the Examining Board should **not** infringe on the current authorities of the Wisconsin Educational Approval Board or the Wisconsin Technical Colleges. That is why our original draft was so specific regarding the schools and the new Examining Board's not changing the regulation of the schools.

✓ II. Exemptions from certain licensure requirements.

This rearrangement is acceptable as proposed.

III. Appointment of members of the [examining] board

The phrase "public entity" refers to the massage therapy and bodywork programs offered by the Wisconsin Technical College schools. It is our intent to assure a position on the board to both private (EAB approved) and public schools offering massage therapy and bodywork programs in Wisconsin.

can I just say WI T. college?

IV. Exceptions to licensure

A. The restructuring of exemption listings is acceptable. However, listing by name the specific variations of movement therapies in statutory language is **intentional** and should **not** be left to the board to identify by rule. Rather it should be as initially contained in our original bill draft request.

This is very important agreed-upon language among members of the Federation of Therapeutic Massage, Bodywork and Somatic Practice Organizations <http://www.federationmbs.org/> of which the American Massage Therapy Association is a member. Input from members of this politically active federation is critical to the Wisconsin proposal. There are a number of practitioners of the various federation therapies working in the State who attended our town hall meetings and would therefore most likely testify at public hearings or make floor amendments during the legislative process. The agreed-upon language in our draft request is reflected in most of the statutes of the most recently regulated states, such as Colorado, Pennsylvania, California, Massachusetts and Indiana, as well as many recent updates of older statutes and rules.

✓ Additionally, the revised language of the P1 draft in section 460.03 (4) (b) does not reflect the intent of the drafting request vis-a-vis exemption qualifications. Please use the entire text in the original drafting request of 460.03 (3) (b), which specifies that the person “is recognized by or meets the established standards”. It is not the intent to require exempted individuals be certified or credentialed by credentialing agencies or organizations, only require that they would qualify for certification.

✓ B. Re s. 460.03 (4) (a) 2. “Energy systems” and “acupoints” are agreed-upon terms of art used by bodywork therapies that are similar to, but distinguish themselves from practices in Traditional Chinese Medicine, which uses the terms “acupuncture points or meridians”. Furthermore the substitution of “acupuncture points or meridians” in this provision is **not acceptable** in the P1 draft our exemption language, as in fact Asian Bodywork Therapists are currently able to get certified under Chapter 460 and wish to be included in the massage therapy and bodywork therapy licensing law.

✓ C. “Structural integration” is a separate category of bodywork therapists seeking exemption status under Wisconsin law. The International Association of Structural Integrators defines it as “a somatic practice utilizing fascial manipulation, awareness, and movement education...based on the work of Dr. Ida P. Rolf.” <http://www.theiasi.org/index.php> This particular exemption is reflected in the statutes of the most recently regulated states.

*as a requirement that each was then 16. It
that in this*

✓ V. Duties of the [examining] board

A. The renumbering proposed is acceptable

✓ B. It is the intention of the legislation to have the board prepare the examination on state laws and administrative rules but not to conduct or grade the exam. In the case of those educated within the State, the jurisprudence exam is to be conducted and graded by the massage therapy and bodywork school itself. Passage is to be accomplished by a student as a condition of graduation. It is the intention of the legislation to have the examining board specify by rule requirements regarding this jurisprudence exam for those transferring in from out of state.

✓ VI. Examination.

A. The requested change in language regarding examination required for licensure removes the requirement that the exam be a “certifying” exam as well as that the exam be accredited by the National Commission for Certifying Agencies, a private entity. At the time that the original Wisconsin massage therapy and bodywork law was enacted in 1998 the National Certification Exam for Therapeutic Massage and Bodywork (NCETMB) <http://www.ncbtmb.org/> was the only nationally administered exam available to the profession. In October 2007 a nationally administered, entry-level exam became available. This exam was developed by the Federation of State Massage Therapy Boards on behalf of its 30 Member Boards. <http://www.fsmtb.org/> The legislative intent, which is fully supported by all of the massage therapy and bodywork schools in Wisconsin, is to offer a choice of nationally administered, psychometrically sound exams to applicants for licensure. Both the NCETMB (one of current exams used) and the Massage & Bodywork Licensing Examination

(MBLEx) are administered through Pearson VUE at high-security test centers across the United States. The proposed description as “meeting generally accepted psychometric principles and standards” is standard among recently regulated states and those redoing their rules and statutes. The rapidly growing national trend among the 41 regulated states is to accept both exams for state licensure, greatly increasing portability for licensees among the states.

✓ B. It is the legislative intent that the board be required to approve but not administer the exams, as this is done through Pearson VUE at high-security test centers across the US.

✓ VII. Temporary Licenses

The renumbering is acceptable as is leaving the determination of the standards for applicants for temporary licensure to the board.

VII. School and instructor requirements

✓ A. Yes, please change the wording to “massage therapy or bodywork therapy schools”

✓ B. 1. It is the intent that the massage therapy and bodywork schools will satisfy the requirements imposed under proposed s. 460.095. There are two distinct categories of schools providing massage therapy and bodywork education in Wisconsin: those approved by the Wisconsin Educational Approval Board and those in the Wisconsin Technical College System. Both entities have their own strict supervisory procedures which do not need to be duplicated by a formal review by an examining board.

2. There is no intention that s. 460.95 replace the requirement that a school be approved by the Education Approval Board or the Wisconsin Technical College System.

✓ C. 1. It is correct that the state jurisprudence exam is the exam specified in s. 460.06 (2), which covers Wisconsin laws and administrative rules.

✓ 2. The intent is that the schools require passage of this exam before students may graduate from a massage therapy or bodywork therapy school in Wisconsin. This approach is acceptable to the schools and reduces the regulatory burden on the state.

✓ 3. Yes, it is the intent that the schools themselves administer the exam, meaning that the drafter needs to change what was originally proposed in s. 460.06 (2). It is also the intent that the schools provide and require completion for graduation, a course of instruction on state laws and regulations applicable to massage therapy and bodywork therapy. Currently there is language in RL92 specifying the length of the course but not mandating the schools to prepare or offer the course. Nonetheless, currently the schools do prepare and offer this course.

✓ D. The language in the drafting request s. 460.095(2) (a) 1. and 2. and (b) 1. and 2., describing standards that must be met by instructors at massage therapy schools, is intentional and the result of many hours of delicate discussions and negotiations with the schools. This language is a much needed improvement over the current situation of no mandated standards whatsoever, yet it provides for hiring flexibility for the schools. During the 30+ town hall meetings over the 9 month comment period, members of the profession strongly expressed a need for establishment of standards for instructors. In reintroducing the drafting request language it must be noted that in (a) “any of the following” is acceptable but provision (b) has two requirements that must be met. Thus the language in (b) should read “**both** of the following”.

✓ E. Standards for applicants with of out of state diplomas are specified by current administrative rule RL 92.

✓ F. There is no intent or desire to include in the statutes any requirement of the board to engage in a formal review of schools and instructors as this is the function of the Wisconsin Educational Approval Board and the Wisconsin Technical College System; the two entities that regulate and supervise the private and public schools offering massage therapy and bodywork therapy training in Wisconsin.

✓ IX. Advertising

The change proposed in the draft request “except as provided in 460.03 (1) and (2)” was a request by the Wisconsin Physical Therapy Association to unquestionably ensure that Physical Therapists may advertise doing massage therapy. While we appreciate that it might be redundant, it was included as a result of long and careful negotiations with the WPTA.

✓ X. Effective Date

Yes, it is the intent to have an effective date specified; six months after the date of enactment.

There were two additional items not addressed in the Drafter’s Note which we would like to clarify:

✓ 1) 2007 Wisconsin Act 104 mandates proof of certification of massage therapists and bodyworkers in the use of an automated external defibrillator upon initial application for state certification. This was included in Section 22 of the P1 draft, 460.045 (5). Since the Act also mandates such certification upon renewal, 460.07 (2) (d) needs to be added to Section 35 of the P1 draft, with references to the department be changed to “examining board”. The specific text of this can be found in Section 40 of 2007 Wisconsin Act 104.

odpcc!

✓ 2) The drafter rearranged Section 12 460.01(1g) “Adjunctive Therapy” means any of the following....which we request be changed to reflect legislative intent. The wording “to simulate or enhance a manual action” needs to be **moved** to the end of 460.01 (1g) (a) and slightly modified so that it only applies to devices, not water or lubricants, etc., which are specified in 460.01 (1g) (b). Requested wording of 460.01 (1g) (a) is “The use of a device that simulates or enhances a manual action.”

Thank you once again for your work on our drafting request. We look forward to working with you on the next draft which we are optimistic will be a final version, ready for jacketing!

Betsy Krizeneky, WCMT
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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0273/P1

TKK:kjf:ph

insert

d-note

hmc

End of
This week or
sooner

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 1/21/09
by 1/30/09 or sooner
if possible

Repeal

1 AN ACT *to repeal* 460.04 (title), 460.04 (3), 460.04 (4), 460.05 (3), 460.14 (4) and
2 460.15 (2); *to renumber and amend* 15.407 (7), 460.01 (1), 460.01 (2), 460.04
3 (1), 460.04 (2), 460.06, 460.10 and 460.15 (1); *to amend* 15.08 (1m) (b), 146.81
4 (1) (hp), 146.997 (1) (d) 13., 180.1901 (1m) (ag), 252.15 (1) (ar) 1., 440.03 (13) (b)
5 38., 440.08 (2) (a) 46r., chapter 460 (title), 460.01 (3), 460.01 (4), 460.02, 460.03,
6 460.05 (title), 460.05 (1) (intro.), 460.05 (1) (c), 460.05 (1) (e), 460.05 (1) (g),
7 460.05 (2), 460.07 (1), 460.07 (2) (intro.), 460.07 (2) (c), 460.09, 460.11, 460.12
8 (1), (2), (3), (4) and (5) (b), 460.13, 460.14 (1), 460.14 (2) (intro.), 460.14 (2) (a),
9 460.14 (2) (b), 460.14 (2) (e), 460.14 (2) (g), 460.14 (2) (h), 460.14 (2m) (intro.),
10 460.14 (3), 460.17, 895.48 (1m) (a) (intro.) and 2. and 908.03 (6m) (a); and *to*
11 *create* 15.405 (6r) (a) 2., 460.01 (1g), 460.03 (3), 460.03 (4), 460.045 (6), 460.045
12 (7), 460.08, 460.095 and 460.10 (1) (b) of the statutes; **relating to:** changes to
13 the regulation of massage therapy and bodywork, creating the Massage

1 Therapy and Bodywork Therapy Examining Board, and granting rule-making
2 authority.

Analysis by the Legislative Reference Bureau

*insert
analysis*

~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 15.08 (1m) (b) of the statutes is amended to read:

4 15.08 **(1m)** (b) The public members of the chiropractic examining board, the
5 dentistry examining board, the hearing and speech examining board, the medical
6 examining board, perfusionists examining council, respiratory care practitioners
7 examining council and council on physician assistants, the board of nursing, the
8 massage therapy and bodywork therapy examining board, the nursing home
9 administrator examining board, the veterinary examining board, the optometry
10 examining board, the pharmacy examining board, the marriage and family therapy,
11 professional counseling, and social work examining board, and the psychology
12 examining board shall not be engaged in any profession or occupation concerned with
13 the delivery of physical or mental health care.

14 **SECTION 2.** 15.405 (6r) (a) 2. of the statutes is created to read:

15 15.405 **(6r)** (a) 2. One public member.

16 **SECTION 3.** 15.407 (7) of the statutes is renumbered 15.405 (6r), and 15.405 (6r)

17 (a), (b) (intro.), 2. and 3., as renumbered, are amended to read:

18 15.405 **(6r)** MASSAGE THERAPY AND BODYWORK COUNCIL THERAPY EXAMINING BOARD.

19 (a) There is created a massage therapy and bodywork council therapy examining
20 board in the department of regulation and licensing, ~~serving the department in an~~

1 ~~advisory capacity.~~ The ~~council~~ examining board shall consist of the following 7
2 members, appointed for 4-year terms, who are:

3 1. Six ~~massage therapists or bodyworkers~~ certified bodywork therapists
4 licensed under ch. 460 and who have engaged in the practice of massage therapy or
5 bodywork therapy for at least 2 years preceding appointment. One member
6 appointed under this subdivision shall be a representative of a massage therapy or
7 bodywork therapy school approved by the educational approval board under s. 38.50.
8 One member appointed under this subdivision shall be a representative of a massage
9 therapy or bodywork therapy program offered by a public entity. No other members
10 appointed under this subdivision shall be directly or indirectly affiliated with a
11 massage therapy or bodywork therapy school or program.
technical college in this state

12 (b) (intro.) In appointing members under par. (a), the governor shall ensure, to
13 the maximum extent practicable, that the membership of the ~~council~~ examining
14 board is diverse, based on all of the following factors:

15 2. Affiliation and nonaffiliation with a professional association for the practice
16 of massage therapy or bodywork therapy.

17 3. Professional associations with which massage therapists or ~~bodyworkers~~
18 bodywork therapists in this state are affiliated.

19 **SECTION 4.** 146.81 (1) (hp) of the statutes is amended to read:

20 146.81 (1) (hp) A massage therapist or ~~bodyworker~~ certified bodywork
21 therapist licensed under ch. 460.

22 **SECTION 5.** 146.997 (1) (d) 13. of the statutes is amended to read:

23 146.997 (1) (d) 13. A massage therapist or ~~bodyworker~~ bodywork therapist
24 issued a certificate licensed under ch. 460.

25 **SECTION 6.** 180.1901 (1m) (ag) of the statutes is amended to read:

1 180.1901 (1m) (ag) The ~~department of regulation and licensing~~ massage
2 therapy and bodywork therapy examining board under ch. 460.

3 SECTION 7. 252.15 (1) (ar) 1. of the statutes is amended to read:

4 252.15 (1) (ar) 1. A person or entity that is specified in s. 146.81 (1), but does
5 not include a massage therapist or ~~bodyworker~~ bodywork therapist issued a
6 certificate licensed under ch. 460.

7 SECTION 8. 440.03 (13) (b) 38. of the statutes is amended to read:

8 440.03 (13) (b) 38. Massage therapist or ~~bodyworker~~ bodywork therapist.

9 SECTION 9. 440.08 (2) (a) 46r. of the statutes is amended to read:

as affected by 2007 Wisconsin Act 20,

10 440.08 (2) (a) 46r. Massage therapist or ~~bodyworker~~ bodywork therapist:
11 March 1 of each odd-numbered year.

12 SECTION 10. Chapter 460 (title) of the statutes is amended to read:

13 **CHAPTER 460**

14 **MASSAGE THERAPY AND BODYWORK THERAPY**

15 SECTION 11. 460.01 (1) of the statutes is renumbered 460.01 (2m) and amended
16 to read:

17 460.01 (2m) "Certificate License holder" means a person granted a certificate
18 license under this chapter.

19 SECTION 12. 460.01 (1g) of the statutes is created to read:

20 460.01 (1g) "Adjunctive therapy" means any of the following to simulate or

21 enhance a manual action: *that simulates or enhances a manual action*

22 (a) The use of a device

23 (b) The application of water, lubricants, or other nonprescription topical agents
24 to the skin.

1 (c) The application of heat or cold to the skin in the absence of an
2 electromagnetic device.

3 **SECTION 13.** 460.01 (2) of the statutes is renumbered 460.01 (1r) and amended
4 to read:

5 460.01 (1r) “~~Council~~ Examining Board” means the massage therapy and
6 bodywork ~~council~~ therapy examining board.

7 **SECTION 14.** 460.01 (3) of the statutes is amended to read:

8 460.01 (3) “Manual action” includes holding, positioning, rocking, kneading,
9 compressing, decompressing, gliding, or percussing the soft tissue of the human body
10 or applying a passive range of motion to the human body without joint mobilization
11 or manipulation.

12 **SECTION 15.** 460.01 (4) of the statutes is amended to read:

13 460.01 (4) “Massage therapy or bodywork therapy” means the science and
14 healing art that uses manual actions and adjunctive therapies to palpate and
15 manipulate the soft tissue of the human body, in order to improve circulation, reduce
16 tension, relieve soft tissue pain, or increase flexibility, ~~and~~. “Massage therapy or
17 bodywork therapy” includes determining whether ~~massage therapy or bodywork is~~
18 manual actions and adjunctive therapies are appropriate or contraindicated, or
19 whether a referral to another health care practitioner is appropriate. “Massage
20 therapy or bodywork therapy” does not include making a medical, physical therapy,
21 or chiropractic diagnosis.

22 **SECTION 16.** 460.02 of the statutes is amended to read:

23 **460.02 Certificate License required.** Except as provided in s. 460.03, no
24 person may provide massage therapy or bodywork therapy, designate himself or
25 herself as a massage therapist or ~~bodyworker~~ bodywork therapist, or use or assume

1 the title "massage therapist and ~~bodyworker~~ bodywork therapist" or "massage
2 therapist" or "~~bodyworker~~ bodywork therapist" or any title that includes "massage
3 therapist," bodywork therapist, or "bodyworker," or append to the person's name the
4 letters "M.T.," "R.M.T.," "L.M.T.," "C.M.T.," "B.W.," "B.T.," "B.W.," "L.B.W.," "R.B.W.,"
5 or "C.B.W.," or use any other title or designation that represents or may tend to
6 represent that he or she is certified licensed under this chapter, unless the person is
7 certified licensed under this chapter.

INERT 6

(8) change component

SECTION 17. 460.03 of the statutes is amended to read:

(intro.)

renumbered 460.03(1m) (intro.) and

9 **460.03 Applicability** A certificate license under this chapter is not required
10 for any of the following: (1m)(intro.)

INERT 6

11 (a) (1) A person holding a license, permit, registration, or certification granted by
12 this state or the federal government who engages in a practice of massage therapy
13 or bodywork therapy within the scope of his or her license, permit, registration, or
14 certification and who does not imply that he or she is certified licensed under this
15 chapter. A person who is exempt from licensure under this subsection may use the
16 terms "bodywork," "bodyworker," and "bodywork therapy" to identify his or her
17 practice.

18 (b) (2) A person who is authorized to practice massage therapy or bodywork
19 therapy in another state or country and is providing a consultation to or
20 demonstration with a certificate license holder. A person who is exempt from
21 licensure under this subsection may use the terms "bodywork," "bodyworker," and
22 "bodywork therapy" to identify his or her practice.

(23)

SECTION 18. 460.03(3) of the statutes is created to read:

(1m)(c)

① 460.03 ^③(3) ^{(1m)(c)} A person who manipulates only the soft tissues of the hands, feet,
 2 or ears of the human body, provided that the services are not represented or implied
 3 to be massage therapy or bodywork therapy.

4 SECTION 19. 460.03 ^(2m)(4) of the statutes is created to read:

⑤ 460.03 ^(2m)(4) (a) A person who does any of the following and who satisfies the
 6 requirements of par. (b):

7 1. Uses touch, words, and directed movement to deepen a client's awareness
 8 of his or her existing patterns of movement and to suggest to the client new patterns
 9 of movement.

10 2. Uses touch to affect the energy systems or acupoints of the human body.

11 3. Uses touch and movement education to effect change in the structure of the
 12 body while engaged in the practice of structural integration.

⑬ (b) The person ^{(recognized by or meets the established standards of either} ~~is certified or credentialed by~~ ^{association} a professional organization or
 ⑭ credentialing agency identified by the examining board by rule. The examining
 ⑮ board may only identify by rule those professional organizations and credentialing
 ⑯ agencies that ^{recognizes a person in a practice} ~~grant a certificate or credential to an individual~~ after that ~~individual~~ ^{person}
 17 demonstrates an adequate level of training and competency and adherence to ethical
 ⑱ standards.

INSERT 7-18

19 (c) A person who is exempt from licensure under this subsection may use the
 20 terms "bodywork," "bodyworker," and "bodywork therapy" to identify his or her
 21 practice.

22 ~~SECTION 20. 460.04 (title) of the statutes is repealed.~~

23 SECTION 21. 460.04 (1) of the statutes is renumbered 460.05 (4) and amended
 24 to read:

1 460.05 (4) The ~~department shall~~ examining board may assign a unique
2 certificate license number to each person certified license under this chapter.

EXCERPT 8-3

3 **SECTION 22.** 460.04 (2) of the statutes is renumbered 460.045, and 460.045
4 (intro.), (1) and (5) as renumbered are amended to read:

5 **460.045 Duties of examining board.** (intro.) The department examining
6 board shall promulgate rules that establish all of the following:

7 (1) Standards that govern the professional conduct of certificate license holders
8 in practicing massage therapy or bodywork therapy. The standards shall prohibit
9 a certificate license holder from having sexual contact or sexual intercourse with a
10 client.

11 (5) A requirement that an applicant for a certificate license under this chapter
12 submit evidence satisfactory to the department examining board that the applicant
13 has current proficiency in the use of an automated external defibrillator achieved
14 through instruction provided by an individual, organization, or institution of higher
15 education approved under s. 46.03 (38) to provide such instruction.

16 **SECTION 23.** 460.04 (3) of the statutes is repealed.

17 **SECTION 24.** 460.04 (4) of the statutes is repealed.

18 **SECTION 25.** ^{460.04(2)(f)} ~~460.045 (6)~~ of the statutes is created to read:

19 **460.045 (6)** Requirements to be satisfied by a person seeking a temporary
20 license under s. 460.08. The rules promulgated under this subsection shall require
21 the person to be a graduate of a massage therapy or bodywork therapy school and
22 may require the holder of a temporary license to make disclosures to clients and to
23 practice under the supervision of a massage therapist or bodywork therapist licensed
24 under this chapter.

25 **SECTION 26.** ^{460.04(2)(g)} ~~460.045 (7)~~ of the statutes is created to read:

e 460.04 (2)(g)

1 (1) 460.045 (7) A requirement that an applicant for a license under this chapter
2 pass an examination on state laws and administrative rules governing massage
3 therapy ^{g and} of bodywork therapy.

4 SECTION 27. 460.05 (title) of the statutes is amended to read:

5 460.05 (title) **Certification Licensure of massage therapists or**
6 **bodyworkers bodywork therapists.**

7 SECTION 28. 460.05 (1) (intro.) of the statutes is amended to read:

8 460.05 (1) (intro.) The ~~department~~ examining board shall grant a ~~certificate~~
9 license as a massage therapist or ~~bodyworker~~ bodywork therapist to a person who
10 satisfies all of the following:

11 SECTION 29. 460.05 (1) (c) of the statutes is amended to read:

12 460.05 (1) (c) The person submits an application for the ~~certificate~~ license to
13 the ~~department~~ examining board on a form provided by the ~~department~~ examining
14 board.

15 SECTION 30. 460.05 (1) (e) of the statutes is amended to read:

16 460.05 (1) (e) Except as provided in sub. (2), the person submits evidence
17 satisfactory to the ~~department~~ examining board that he or she has done all of the
18 following:

19 1. Graduated from a school of massage therapy or bodywork ^{therapy} approved by the
20 educational approval board under s. 38.50 or completed a training program approved
21 by the ~~department~~ examining board under the rules promulgated under s. 460.04 ^{Plain}

22 460.045 (2)(b). Plain

23 2. Completed at least 6 classroom hours in the laws of this state and rules of
24 the ~~department~~ examining board relating to the practice of massage therapy or

1 bodywork therapy in a course of instruction approved by the department examining
2 board.

3 **SECTION 31.** 460.05 (1) (g) of the statutes is amended to read:

4 460.05 (1) (g) The person submits evidence satisfactory to the department
5 examining board that he or she has in effect malpractice liability insurance coverage
6 in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all
7 occurrences in one year.

8 **SECTION 32.** 460.05 (2) of the statutes is amended to read:

9 460.05 (2) The department examining board may waive a requirement
10 specified in sub. (1) (e) if a person establishes, to the satisfaction of the department
11 examining board, that he or she has education, training, or other experience that is
12 substantially equivalent to the requirement.

13 **SECTION 33.** 460.05 (3) of the statutes is repealed.

14 **SECTION 34.** 460.06 of the statutes is renumbered 460.06 (intro.) and amended
15 to read:

16 **460.06 Examinations.** (intro.) The department examining board may not
17 grant a ~~certificate~~ license under this chapter unless the applicant ~~passes~~ achieves a
18 passing grade on the national certification following examinations:

19 (1) A nationally administered, entry-level competency examination for
20 therapeutic massage and bodywork therapy that is ~~offered by the National~~
21 Certification Board for Therapeutic Massage and Bodywork or an examination
22 relating to the practice of massage therapy or bodywork that is administered by a
23 national board that is accredited by the National Commission for Certifying
24 Agencies meets generally accepted psychometric principles and standards or a

1 substantially equivalent examination approved by the department examining
2 board.

plain

3 (2) The department shall promulgate rules that also require an applicant to
4 pass an examination on state laws and administrative rules governing massage
5 therapy or bodywork therapy under s. 460.04 (7). ~~The examining board shall~~

administered & required s. (1m) e (2)(g)

6 prepare, conduct, and grade the examination required under this subsection.

7 SECTION 35. 460.07 (1) of the statutes is amended to read:

8 460.07 (1) Each person who is certified licensed under this chapter shall
9 conspicuously display the certificate license in the place of business where he or she
10 practices massage therapy or bodywork therapy so that the certificate license can
11 easily be seen and read.

12 SECTION 36. 460.07 (2) (intro.) of the statutes is amended to read:

13 460.07 (2) (intro.) ~~The renewal dates for certificates granted under this chapter~~
14 ~~are specified under s. 440.08 (2) (a).~~ Renewal applications shall be submitted to the
15 department on a form provided by the department on or before the applicable
16 renewal date specified under s. 440.08 (2) (a) and shall include all of the following:

17 SECTION 37. 460.07 (2) (c) of the statutes is amended to read:

18 460.07 (2) (c) Evidence satisfactory to the department examining board that
19 the applicant has in effect malpractice liability insurance coverage in an amount that
20 is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one
21 year.

INSERT 11-22

22 SECTION 38. 460.08 of the statutes is created to read:

23 **460.08 Temporary license.** The examining board may grant a temporary
24 license for a period not to exceed 6 months to an applicant who satisfies the

460.04(2)(f)

1 requirements established in the rules under s. 460.045 (6). A temporary license may
2 not be renewed.

3 SECTION 39. 460.09 of the statutes is amended to read:

4 460.09 Reciprocal certificate. Upon application and payment of the fee
5 specified in s. 440.05 (2), the department examining board shall grant a massage
6 therapist or ~~bodyworker certificate~~ bodywork therapist license to a person who holds
7 a similar ~~certificate~~ license in another state or territory of the United States or
8 another country if the department examining board determines that the
9 requirements for receiving the ~~certificate~~ license in the other state, territory, or
10 country are substantially equivalent to the requirements under s. 460.05.

11 SECTION 40. 460.095 of the statutes is created to read:

12 460.095 Massage therapy and bodywork therapy school and instructor
13 requirements. Massage therapy/schools located in this state shall do all of the
14 following: *or bodywork therapy*

15 (1) Provide and require as a prerequisite to graduation completion of a course
16 of instruction on state laws and regulations applicable to massage therapy and
17 bodywork therapy in preparation for the examination required under s. 460.06 (2).

18 (2) Require the following employees of the schools to satisfy the following
19 requirements:

20 (a) Instructors teaching courses in anatomy, physiology, kinesiology, and
21 pathology shall have any of the following:

22 (b) Instructors teaching courses in theory and the practice of massage therapy
23 or bodywork therapy shall *be licensed under the chapter and* have any of the following:

24 SECTION 41. 460.10 of the statutes is renumbered 460.10 (1) and amended to
25 read:

INSERT 12-18

Insert 12-22

Insert 12-24

1 **460.10 Continuing education.** (1) The ~~department~~ examining board may
2 promulgate rules establishing ~~requirements~~ all of the following:

3 (a) Requirements and procedures for a certificate license holder to complete
4 continuing education programs or courses of study to qualify for renewal of his or her
5 certificate license. The rules promulgated under this paragraph may not require a
6 license holder to complete more than 24 hours of continuing education program or
7 courses of study in order to qualify for renewal of his or her license.

8 (2) The ~~department~~ examining board may waive all or part of any requirement
9 established in rules promulgated under ~~this section~~ sub. (1) (a) if it determines that
10 prolonged illness, disability, or other exceptional circumstances have prevented a
11 certificate license holder from completing the requirement.

12 **SECTION 42.** 460.10 (1) (b) of the statutes is created to read:

13 460.10 (1) (b) Qualifications applicable to providers of continuing education
14 programs and courses required under par. (a).

15 **SECTION 43.** 460.11 of the statutes is amended to read:

16 **460.11 Practice requirements.** (1) A certificate license holder may not
17 practice massage therapy or bodywork therapy on a client unless the certificate
18 license holder first obtains the informed consent of the client and has informed the
19 client that he or she may withdraw the consent at any time.

20 (2) A certificate license holder shall keep confidential any information that a
21 client in confidence gives to the certificate license holder and any other information
22 that the certificate license holder obtains about a client in the course of practicing
23 massage therapy or bodywork therapy that a reasonable person in the client's
24 position would want kept confidential, unless the information is otherwise required

1 by law to be disclosed or the client specifically authorizes the disclosure of the
2 information.

3 (3) A ~~certificate~~ license holder may not, whether for compensation or not,
4 practice massage therapy or bodywork therapy for a sexually oriented business, as
5 defined by the ~~department~~ examining board by rule.

6 SECTION 44. 460.12 (1), (2), (3), (4) and (5) (b) of the statutes are amended to
7 read:

8 **460.12 Duty to make reports.** (1) A ~~certificate~~ license holder shall submit
9 a report to the ~~department~~ examining board if he or she has reasonable cause to
10 believe that another ~~certificate~~ license holder has committed a crime relating to
11 prostitution under ss. 944.30 to 944.34 or has had sexual contact or sexual
12 intercourse with a client. If the report relates to sexual contact or sexual intercourse
13 with a client, the report may not identify the client unless the client has provided
14 written consent for disclosure of this information.

15 (2) The ~~department~~ examining board may use a report made under sub. (1) as
16 the basis for an investigation under s. 460.14 (1). If, after an investigation, the
17 ~~department~~ examining board has reasonable cause to believe that a ~~certificate~~
18 license holder has committed a crime, the ~~department~~ examining board shall report
19 the belief to the district attorney for the county in which the crime, in the opinion of
20 the ~~department~~ examining board, occurred.

21 (3) If, after an investigation, the ~~department~~ examining board determines that
22 a report submitted under sub. (1) is without merit, the ~~department~~ examining board
23 shall remove the report from the record of the ~~certificate~~ license holder who is the
24 subject of the report.

1 (4) All reports and records made from reports under sub. (1) and maintained
 2 by the examining board, the department, district attorneys, and other persons,
 3 officials, and institutions shall be confidential and are exempt from disclosure under
 4 s. 19.35 (1). Information regarding the identity of a client with whom a certificate
 5 license holder is suspected of having sexual contact or sexual intercourse shall not
 6 be disclosed by persons who have received or have access to a report or record unless
 7 disclosure is consented to in writing by the client. The report of information under
 8 sub. (1) and the disclosure of a report or record under this subsection does not violate
 9 any person's responsibility for maintaining the confidentiality of patient health care
 10 records, as defined in s. 146.81.(4) and as required under s. 146.82. Reports and
 11 records may be disclosed only to the examining board, the department, and the
 12 appropriate staff of a district attorney or a law enforcement agency within this state
 13 for purposes of investigation or prosecution.

14 (5) (b) A certificate license holder shall submit a written report to the
 15 ~~department~~ examining board if he or she is convicted of a felony or misdemeanor, or
 16 is found to have committed a violation, in this state or elsewhere, and if the
 17 circumstances of the felony, misdemeanor, or violation substantially relate to the
 18 practice of massage therapy or bodywork therapy. The report shall identify the date,
 19 place, and nature of the conviction or finding and shall be submitted within 30 days
 20 after the entry of the judgment of conviction or the judgment finding that he or she
 21 committed the violation. If the report is submitted by mail, the report is considered
 22 to be submitted on the date that it is mailed.

23

SECTION 45. 460.13 of the statutes is amended to read:

(im) (a) (b)
 Except as provided in s. 460.03 (1) and (2), a

24

460.13 Advertising. A certificate license holder may not advertise that he or
 25 she practices massage therapy or bodywork therapy unless the advertisement

1 includes ~~his or her certificate number and~~ a statement that the certificate license
2 holder is a “certified licensed massage therapist and ~~bodyworker~~ bodywork
3 therapist” or “certified licensed massage therapist” or “~~certified bodyworker~~ licensed
4 bodywork therapist.”

5 **SECTION 46.** 460.14 (1) of the statutes is amended to read:

6 460.14 (1) Subject to the rules promulgated under s. 440.03 (1), the ~~department~~
7 examining board may make investigations and conduct hearings to determine
8 whether a violation of this chapter or any rule promulgated under this chapter has
9 occurred.

10 **SECTION 47.** 460.14 (2) (intro.) of the statutes is amended to read:

11 460.14 (2) (intro.) Subject to the rules promulgated under s. 440.03 (1), the
12 ~~department~~ examining board may reprimand a certificate license holder or deny,
13 limit, suspend, or revoke a certificate license under this chapter if it finds that the
14 applicant or certificate license holder has done any of the following:

15 **SECTION 48.** 460.14 (2) (a) of the statutes is amended to read:

16 460.14 (2) (a) Made a material misstatement in an application for a certificate
17 license or for renewal of a certificate license.

18 **SECTION 49.** 460.14 (2) (b) of the statutes is amended to read:

19 460.14 (2) (b) Subject to ss. 111.321, 111.322, and 111.335, been convicted of an
20 offense the circumstances of which substantially relate to the practice of massage
21 therapy or bodywork therapy.

22 **SECTION 50.** 460.14 (2) (e) of the statutes is amended to read:

23 460.14 (2) (e) Subject to ss. 111.321, 111.322, and 111.34, practiced massage
24 therapy or bodywork therapy while his or her ability to practice was impaired by
25 alcohol or other drugs.

1 SECTION 51. 460.14 (2) (g) of the statutes is amended to read:

2 460.14 (2) (g) Engaged in unprofessional conduct in violation of the standards
3 established in rules promulgated under s. 460.04 (2) (a) 460.045 (1).

4 SECTION 52. 460.14 (2) (h) of the statutes is amended to read:

5 460.14 (2) (h) Engaged in conduct while practicing massage therapy or
6 bodywork therapy that jeopardizes the health, safety, or welfare of a client or that
7 evidences a lack of knowledge of, inability to apply, or the negligent application of,
8 principles or skills of massage therapy or bodywork therapy.

9 SECTION 53. 460.14 (2m) (intro.) of the statutes is amended to read:

10 460.14 (2m) (intro.) Subject to the rules promulgated under s. 440.03 (1), the
11 department examining board shall revoke a certificate license under this chapter if
12 the certificate license holder is convicted of any of the following:

13 SECTION 54. 460.14 (3) of the statutes is amended to read:

14 460.14 (3) The department examining board may restore a certificate license
15 that has been suspended or revoked on such terms and conditions as the department
16 examining board may deem appropriate.

17 SECTION 55. 460.14 (4) of the statutes is repealed.

18 SECTION 56. 460.15 (1) of the statutes is renumbered 460.15 and amended to
19 read:

20 **460.15 Penalties Penalty.** ~~Except as provided in sub. (2), any~~ Any person who
21 violates this chapter or any rule promulgated under this chapter shall forfeit not
22 more than \$1,000 for each violation.

23 SECTION 57. 460.15 (2) of the statutes is repealed.

24 SECTION 58. 460.17 of the statutes is amended to read:

1 **460.17 Local regulation.** A city, village, town, or county may not enact an
2 ordinance that regulates the practice of massage therapy or bodywork therapy by a
3 person who is ~~issued a certificate~~ licensed by the ~~department~~ examining board under
4 this chapter. No provision of any ordinance enacted by a city, village, town, or county
5 that is in effect before February 1, 1999, and that relates to the practice of massage
6 therapy or bodywork therapy, may be enforced against a person who is ~~issued a~~
7 ~~certificate~~ licensed by the ~~department~~ examining board under this chapter.

8 **SECTION 59.** 895.48 (1m) (a) (intro.) and 2. of the statutes are amended to read:

9 895.48 **(1m)** (a) (intro.) Except as provided in par. (b), any physician or athletic
10 trainer licensed under ch. 448, chiropractor licensed under ch. 446, dentist licensed
11 under ch. 447, emergency medical technician licensed under s. 256.15, first
12 responder certified under s. 256.15 (8), physician assistant licensed under ch. 448,
13 registered nurse licensed under ch. 441, or a massage therapist or ~~bodyworker~~ issued
14 ~~a certificate~~ bodywork therapist licensed under ch. 460 who renders voluntary health
15 care to a participant in an athletic event or contest sponsored by a nonprofit
16 corporation, as defined in s. 66.0129 (6) (b), a private school, as defined in s. 115.001
17 (3r), a public agency, as defined in s. 46.856 (1) (b), or a school, as defined in s. 609.655
18 (1) (c), is immune from civil liability for his or her acts or omissions in rendering that
19 care if all of the following conditions exist:

20 2. The physician, athletic trainer, chiropractor, dentist, emergency medical
21 technician, first responder, physician assistant, registered nurse, massage therapist
22 or ~~bodyworker~~ bodywork therapist does not receive compensation for the health care,
23 other than reimbursement for expenses.

24 **SECTION 60.** 908.03 (6m) (a) of the statutes is amended to read:

1 908.03 (6m) (a) *Definition.* In this subsection, “health care provider” means
2 a massage therapist or ~~bodyworker issued a certificate~~ bodywork therapist licensed
3 under ch. 460, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447,
4 a physician assistant licensed under ch. 448, or a health care provider as defined in
5 s. 655.001 (8).

6 **SECTION 61. Nonstatutory provisions.**

7 (1) EXEMPTIONS FROM CERTAIN LICENSURE REQUIREMENTS. Notwithstanding
8 section 460.05 (1) (e) of the statutes, as affected by this act, and section 460.05 (1) (f)
9 of the statutes, the massage therapy and bodywork therapy examining board shall
10 grant a license under section 460.05 of the statutes, as affected by this act, to a person
11 who no later than the first day of the 13th month beginning after the effective date
12 of this paragraph provides sufficient evidence to the massage therapy and bodywork
13 therapy examining board that the person satisfies one of the following requirements:

14 (a) The person was actively engaged in the practice of massage therapy or
15 bodywork therapy by practicing for an average of 10 hours per week for at least 10
16 years.

17 (b) The person passed a nationally administered entry-level competency
18 assessment examination that meets generally accepted psychometric principles and
19 standards.

20 (c) The person was actively engaged in the practice of massage therapy or
21 bodywork therapy by practicing for an average of 10 hours per week for at least 3
22 years and successfully completed a 200-hour licensure program approved by the
23 examining board.

1 (d) At least 180 days before the effective date of this paragraph, the person
2 graduated from a massage therapy or bodywork therapy training program that
3 consisted of at least 600 hours of training.

(END)


Insert
20-4

D-Note

1

INSERT ANALYSIS

This bill makes a number of changes to the regulation of massage therapists and bodyworkers.

Under current law, a person may be certified as a massage therapist or bodyworker by the Department of Regulation and Licensing (department). The department is served in an advisory capacity by a Massage Therapy and Bodywork Council, which reviews and may comment on any rules proposed by the department. The council consists of seven members who are certified as massage therapists or bodyworkers.

This bill changes all uses of the term, "massage therapy or bodywork," to "massage therapy or bodywork therapy," and changes all uses of the term, "bodyworker," to "bodywork therapist." The bill creates a Massage Therapy and Bodywork Therapy Examining Board (board) in the department and transfers rulemaking powers to the board. The bill directs the board to license, not certify, persons who fulfill the requirements for licensure as massage therapists or bodyworker therapists. The bill also permits the board to grant a temporary license to practice massage therapy or bodywork therapy for a period not to exceed six months, and requires the board to establish requirements for temporary licensure by rule.

The bill requires one of the seven members of the board to be a representative of a massage therapy or bodywork therapy school approved by the Educational Approval Board, and one member of the board to be a representative of a massage therapy or bodywork therapy program offered by a technical college in this state. No other members of the board may be affiliated with a massage therapy or bodywork therapy school or program. The bill also requires one member of the board to be a member of the public.

Current law prohibits a person who is not certified by the department from designating him or herself as a massage therapist or bodyworker or using any title that represents that he or she is certified. With one exception noted below, this bill permits persons who are exempt from the licensing requirement to use the terms, "bodywork," "bodyworker," and "bodywork therapy" to identify his or her practice.

The bill also creates two new exemptions from the licensing requirement:

1. A person who manipulates only the soft tissue of the hands, feet, and ears. Persons who fall under this exemption may not represent or imply that their services are massage therapy or bodywork therapy.

2. A person whose practice involves the use of touch or touch and movement to assist and bring body awareness to their clients and who is recognized by a professional organization or credentialing association after that person has demonstrated an adequate level of training and competency.

Under current law, an applicant for certification must have passed an examination offered by the National Certification Board for Therapeutic Massage and Bodywork or an exam administered by the National Commission for Certifying Agencies. This bill requires an applicant for licensure to achieve a passing grade on a nationally administered entry-level competency examination for therapeutic

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massage and bodywork therapy that meets generally accepted psychometric principles and standards or a substantially equivalent examination approved by the board. The bill also requires all applicants for a license to pass an examination on state laws and rules governing massage therapy and bodywork therapy. The bill requires the board to prepare the state exam. The bill requires massage therapy and bodywork therapy schools in Wisconsin to provide and require as a prerequisite to graduation the completion of a course on the state laws and rules and to administer, require as a prerequisite to graduation, and grade the state exam.

Under current law, there are no requirements governing massage therapy or bodywork therapy instructors in Wisconsin. This bill requires instructors teaching courses in anatomy, physiology, kinesiology, and pathology at a school of massage therapy or bodywork therapy to have completed two years of post-secondary education and training and to have professional training and two years of experience in a health-related field. The bill also requires instructors teaching courses in the theory and practice of massage therapy or bodywork therapy at a school of massage therapy or bodywork therapy to be licensed as a massage therapist or bodywork therapist and either two years as a practicing professional or formal education and training as a massage therapy or bodywork therapy instructor.

~~INSERT 6-11~~

SECTION 1. 460.03 (1) of the statutes is renumbered 460.03 (1m) (a) and amended to read:

~~INSERT 6-18~~

SECTION 2. 460.03 (2) of the statutes is renumbered 460.03 (1m) (b) and amended to read:

INSERT 7-18

In this paragraph, "practice" means rolfing structural integration, the rolf method of structural integration, the rolf institute's rolf movement integration, hellerwork, the feldenkrais method, the trager approach, body-mind centering, polarity, polarity therapy, polarity bodywork therapy, and reiki.

INSERT 8-3

SECTION 3. 460.04 (title) of the statutes is amended to read:

460.04 (title) Duties of department examining board.

History: 2001 a. 74; 2007 a. 104.

SECTION 4. 460.04 (1m) of the statutes is created to read:

(e)

1 460.04 (1m) The examining board shall prepare an examination on state laws
2 and administrative rules governing massage therapy or bodywork therapy.

3

SECTION 5. 460.04 (2) (intro) (a) and of the statutes is amended to read:

4 460.04 (2) The department examining board shall promulgate rules that
5 establish all of the following:

6 (a) Standards that govern the professional conduct of certificate license holders
7 in practicing massage therapy or bodywork therapy. The standards shall prohibit
8 a certificate license holder from having sexual contact or sexual intercourse with a
9 client.

10 (e) A requirement that an applicant for a certificate license under this chapter
11 submit evidence satisfactory to the department examining board that the applicant
12 has current proficiency in the use of an automated external defibrillator achieved
13 through instruction provided by an individual, organization, or institution of higher
14 education approved under s. 46.03 (38) to provide such instruction.

History: 2001 a. 74; 2007 a. 104.

15 **INSERT 11-22**

16 SECTION 6. 460.07 (2) (d) of the statutes is amended to read:

17 460.07 (2) (d) Evidence satisfactory to the department examining board that
18 the applicant has current proficiency in the use of an automated external
19 defibrillator achieved through instruction provided by an individual, organization,
20 or institution of higher education approved under s. 46.03 (38) to provide such
21 instruction.

History: 2001 a. 74; 2007 a. 20, 104.

22 **INSERT 12-18**

23 (2) Administer, score, and require as a prerequisite to graduation, the
24 examination required under s. 460.06 (2).

1

INSERT 12-22

2

1. Professional training and 2 years of experience in a health-related field.

3

2. Two years of post-secondary education and training.

4

INSERT 12-24

5

1. Two years experience as a practicing professional.

6

2. Formal education and training as a massage therapy or bodywork therapy

7

instructor.

(1) ← text:ns:effdateA

8

INSERT 20-4

change to action 10 NS:effdate

SECTION 7. Effective date. This act takes effect on the first day of the 7th month beginning after publication.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0273/P1dn

TKK:kjf:ph

Date

Rep. Kaufert:

I have a few follow-up questions on this draft:

1. Is it your intent that the requirements for massage therapy and bodywork therapy schools under proposed s. 460.095 apply to massage therapy or bodywork therapy instruction offered by technical colleges? As drafted, the provisions will *not* apply.

2. The new instructor requirements under proposed s. 460.095 may require a massage therapy or bodywork therapy school to fire persons who do not meet the requirements. Is that okay, or do you want to "grandfather in" persons who currently teach at a school and who don't meet and will not be able to meet the new requirements within 7 months of publication?

3. It is possible that, under the new instructor requirements, massage therapy or bodywork therapy schools will be required to fire instructors who do not meet the requirements and who may be under an employment contract.

4. This draft introduces a number of new, undefined practice methods in proposed s. 460.03 (2m)(b), including polarity, hellerwork, reiki, and the feldenkrais method. Persons who claim that they are practicing one of these methods are not required to be licensed by the board; nor are these persons required to demonstrate that they hold any type of certification or credential to engage in the practice.

a. Will these practices be recognizable or commonly understood by the examining board?

b. In the absence of a certification or credentialing requirement, how will the board determine whether a person practicing without a license is legitimately claiming an exemption under this section?

Please let me know if you wish to address any of these issues or if you have additional questions or changes.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

INSERT D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2587/1dn
MDK:lmk:pg

March 29, 2005

Sen. Zien:

This bill applies to existing contracts that are in effect on the effective date of the bill, and not just to future contracts that are made on or after the effective date. Is that okay?

Because the bill ~~applies~~ ^{may apply} to existing contracts, the bill ~~is~~ ^{may be} subject to an attack that it is an unconstitutional impairment of contract. The federal and Wisconsin Constitutions both provide that the legislature may not pass a law "impairing the obligation of contracts" (article I, section 10, of the U.S. Constitution and article I, section 12, of the Wisconsin Constitution). However, this prohibition is not absolute. The courts have held that a state may impair an existing contract in the exercise of its police powers for the general public welfare. Wisconsin courts would likely use the following analysis to determine whether the legislature may impair an existing contract for the general public welfare:

- a. Does the legislation substantially impair an existing contract?
- b. If the impairment is substantial, is there a significant and legitimate public purpose for the legislation?
- c. Even if there is a significant and legitimate public purpose, is the legislation a reasonable and necessary means of achieving that public purpose?

Although it is not possible to predict how a court would decide a challenge to this bill, I thought that you should at least be aware of this issue.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0273/1dn
TKK:kjf:jf

February 2, 2009

Rep. Kaufert:

I have a few follow-up questions on this draft:

1. Is it your intent that the requirements for massage therapy and bodywork therapy schools under proposed s. 460.095 apply to massage therapy or bodywork therapy instruction offered by technical colleges? As drafted, the provisions will *not* apply.
2. The new instructor requirements under proposed s. 460.095 may require a massage therapy or bodywork therapy school to fire persons who do not meet the requirements. Is that okay, or do you want to “grandfather in” persons who currently teach at a school and who don’t meet and will not be able to meet the new requirements within 7 months of publication?
3. It is possible that, under the new instructor requirements, massage therapy or bodywork therapy schools will be required to fire instructors who do not meet the requirements and who may be under an employment contract.

Because the bill may apply to existing contracts, the bill may be subject to an attack that it is an unconstitutional impairment of contract. The federal and Wisconsin Constitutions both provide that the legislature may not pass a law “impairing the obligation of contracts” (article I, section 10, of the U.S. Constitution and article I, section 12, of the Wisconsin Constitution). However, this prohibition is not absolute. The courts have held that a state may impair an existing contract in the exercise of its police powers for the general public welfare. Wisconsin courts would likely use the following analysis to determine whether the legislature may impair an existing contract for the general public welfare:

- a. Does the legislation substantially impair an existing contract?
- b. If the impairment is substantial, is there a significant and legitimate public purpose for the legislation?
- c. Even if there is a significant and legitimate public purpose, is the legislation a reasonable and necessary means of achieving that public purpose?

Although it is not possible to predict how a court would decide a challenge to this bill, I thought that you should at least be aware of this issue.

4. This draft introduces a number of new, undefined practice methods in proposed s. 460.03 (2m) (b), including polarity, hellerwork, reiki, and the feldenkrais method. Persons who claim that they are practicing one of these methods are not required to be licensed by the board; nor are these persons required to demonstrate that they hold any type of certification or credential to engage in the practice.

a. Will these practices be recognizable or commonly understood by the examining board?

b. In the absence of a certification or credentialing requirement, how will the board determine whether a person practicing without a license is legitimately claiming an exemption under this section?

Please let me know if you wish to address any of these issues or if you have additional questions or changes.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

Kuczenski, Tracy

From: Field, Adam
Sent: Friday, February 13, 2009 10:52 AM
To: Kuczenski, Tracy
Subject: FW: Message Therapy Updated Bill Draft

Hi Tracy,

I am passing this suggestion from our constituent, Betsy Krizenesky, regarding the analysis of LRB 0273.

Thanks,

Adam

Adam R. Field
Office of Rep. Dean Kaufert
55th Assembly District

From: Krizenesky@aol.com [mailto:Krizenesky@aol.com]
Sent: Thursday, February 05, 2009 10:09 PM
To: Field, Adam
Subject: Re: Message Therapy Updated Bill Draft

Dear Adam and Dean,

In the LRB analysis section of **LRB-0273/1dn** it appears that reference to exemptions 460.03 (2m) a. 2. and 3. are missing. Both of those exemptions involve the person demonstrating an adequate level of training and competency to a professional organization or credentialing association.

One additional small correction is that in the very middle of the last paragraph of the analysis (line 5, word 4 should be "or", not "and"

Thank you so very much for passing this on to Attorney Tracy Kuczenski.
Betsy Krizenesky

Dated: February 5, 2009
To: Representative Dean Kaufert
Cc: Tracy Kuczenski, Legislative Attorney, Legislative Reference Bureau
From: American Massage Therapy Association, Wisconsin Chapter (AMTA-WI) via constituent Betsy Krizenesky and Attorney Anthony Driessen.

The AMTA-WI Chapter appreciates the careful attention of Attorney Tracy Kuczenski to your request for the above referenced draft. We are responding to the follow-up questions in her Drafter's Note dated February 2, 2009:

- ✓ 1. It is the intent that the requirements for massage therapy and bodywork therapy schools under

proposed s. 460.095 apply to massage therapy and bodywork therapy instruction offered by **both** private schools and technical colleges. As we read it that is achieved by the language the drafting attorney has already provided.

**No. Only apply to schools, not training programs.*

2. Regarding the new instructor requirements under proposed s. 460.095 **yes, we do** want to grandfather in persons who currently teach at a school but don't meet and will not be able to meet the requirements within 7 months of publication.

★ Make the exemption permanent

3. a., b. c., see 2. above

✓ 4. a. The practice methods in proposed s. 460.03 (2m) (b) are very commonly understood by the members of the profession and thus will be by the examining board.

✓ b. Regarding the board determining whether a person claiming an exemption under 460.03 (3) (2m) (a) is legitimately practicing without a license, the language "is recognized by or meets the established standards" is intentional. It is not the intent to require exempted individuals be certified or credentialed by credentialing agencies or organizations, only require that they would qualify for certification, since those agencies are private and require membership fees. Further information on the well established standards and credentialing methods used by these agencies is available on the following website <http://www.theiasi.org/index.php>

Once again we thank you for your attention to our bill draft, which we hope to be able to introduce to the legislature very soon.

Betsy Krizenesky, WCMT
AMTA-WI Law & Legislation Chair
920-725-0224
Krizenesky@aol.com

Great Deals on Dell Laptops. Starting at \$499.