

2001 DRAFTING REQUEST

Bill

Received: 12/07/2001

Received By: kunkemd

Wanted: As time permits

Identical to LRB:

For: Dean Kaufert (608) 266-5719

By/Representing: Ed

This file may be shown to any legislator: NO

Drafter: kunkemd

May Contact:

Addl. Drafters:

Subject: Occupational Reg. - prof lic

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Regulation of massage therapists and bodyworkers

Instructions:

Prepare companion bill to LRB-3246

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For: LA intro

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FE Sent For:

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D-NOTES

2001 SENATE BILL

MONDAY  
12/10  
- companion bill:  
no changes

- 4385/1

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NOT  
RUN

Regen

1 AN ACT *to repeal* 180.1901 (1m) (ag), 440.08 (2) (a) 67q., subchapter XI (title) of  
 2 chapter 440 [precedes 440.98], 440.98 to 440.981, 440.982 (title) and (1) (intro.)  
 3 and (a), 440.982 (1) (c) and (2) and 440.983 to 440.988; **to renumber and**  
 4 **amend** 440.982 (1) (b) and 440.989; **to amend** 15.08 (1m) (b), 50.01 (2), 55.043  
 5 (4) (e), 103.10 (1) (e), 146.40 (1) (d), 146.81 (1) (hp), 146.997 (1) (d) 13., 252.15  
 6 (1) (ar) 1., 448.03 (2) (a), 448.10 (4), 451.02 (1), 895.48 (1m) (intro.) and 908.03  
 7 (6m) (a); and **to create** 15.405 (6r), 180.1901 (1m) (h), 440.08 (2) (a) 46r., 448.21  
 8 (1) (f) and chapter 460 of the statutes; **relating to:** the regulation of massage  
 9 therapists and bodyworkers, creating a massage therapy and bodywork  
 10 examining board, granting rule-making authority and providing a penalty.

**Analysis by the Legislative Reference Bureau**

Current law prohibits a person who is not issued a license of registration from the department of regulation and licensing (DRL) from using a title that represents that he or she is a massage therapist, also called "bodyworker." DRL must promulgate rules establishing requirements and standards for the practice of massage therapy and for the education, training, and competency requirements that

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a person must satisfy before being issued a license of registration. The rules require, among other things an applicant for a license of registration to have completed 500 classroom hours of study in a course of instruction in massage therapy approved by DRL or at a school approved by the educational approval board. In addition, current law requires an applicant for a license of registration to have successfully completed the national certification examination for therapeutic massage and bodywork or a substantially equivalent examination.

This bill replaces the registration requirements of current law with licensure requirements and creates a seven-member massage therapy and bodywork examining board (examining board), attached to DRL, to administer and enforce the requirements. More specifically, the bill does all of the following with respect to the regulation of massage therapists and bodyworkers:

1. Prohibits a person from practicing massage therapy or bodywork or designating or titling himself or herself as a massage therapist or bodyworker unless the person is licensed by DRL.

2. Specifies the education, training, examination and other requirements and qualifications needed for licensure as a massage therapist or bodyworker and allows the examining board to waive any of the requirements if an applicant has substantially equivalent education, training, or other experience. The bill maintains the examination requirement under current law, except that the bill requires DRL to promulgate rules that require an applicant to also pass an examination on state laws and administrative rules governing massage therapy or bodywork. Under current law, DRL is allowed, not required, to promulgate such rules. The bill also allows the examining board to promulgate rules that require a licensed massage therapist or bodyworker to complete at least 12 hours of continuing education every two years and requires 600 hours, instead of 500 hours, of classroom training for license applicants.

3. Requires the examining board to issue licenses to persons who are registered under current law and to issue two-year temporary licenses to certain people who have not yet satisfied all of the bill's requirements for licensure.

4. Requires a massage therapist or bodyworker to obtain the informed consent of a client and to keep confidential any information that is given to the massage therapist or bodyworker in confidence by a client.

5. Prohibits a massage therapist or bodyworker from practicing massage therapy or bodywork at a "sexually oriented business," as defined by rule by the examining board.

6. Requires a massage therapist or bodyworker to make a report to the examining board if he or she is convicted of a felony or misdemeanor, or is found to have committed a violation of state or local law that is punishable by a forfeiture, and the circumstances of the felony, misdemeanor, or violation substantially relate to the practice of massage therapy or bodywork. The bill also requires a massage therapist or bodyworker to make a report to the examining board if he or she has reasonable cause to believe that another massage therapist or bodyworker has committed a crime relating to prostitution or has had sexual contact or intercourse with a client and allows the examining board to investigate the report.

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7. Creates exemptions from the bill's requirements for certain persons, including: a) a massage therapist student who practices, without compensation, under the supervision of an instructor; and b) a person who does not imply that he or she is a massage therapist or bodyworker and who restricts his or her manipulation of soft tissue to hands or feet; uses touch or spoken words to increase awareness of patterns of movements in the human body; or restricts his or her touch to influence energy fields within or around the human body.

Finally, the bill makes other changes, including all of the following:

1. Makes state law regarding the confidentiality of patient health care records applicable to records of a massage therapist or bodyworker about his or her clients.

2. Allows massage therapists or bodyworkers to organize and be shareholders in a health care professional service corporation. Current law allows only certain other health care providers to organize and be members of such a corporation.

3. Exempts, under certain circumstances, massage therapists or bodyworkers from civil liability for rendering voluntary care to participants at certain athletic events and contests. Current law exempts only certain other health care providers from such liability.

4. Expands the exception to the hearsay rule under current law that applies to records of certain health care providers so that it also applies to records of massage therapists or bodyworkers.

5. Expands the applicability of certain requirements under current law pertaining to subpoenas of health care records so that they also apply to records of massage therapists and bodyworkers.

6. Prohibits cities, villages, towns, and counties from regulating the practice of massage therapy and bodywork by persons licensed under the bill. This prohibition is similar to a prohibition under current law regarding persons who are registered.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2           15.08 (1m) (b) The public members of the chiropractic examining board, the  
3           dentistry examining board, the hearing and speech examining board, the massage  
4           therapy and bodywork examining board, the medical examining board, podiatry  
5           examining council, occupational therapy examining council, respiratory care  
6           practitioners examining council and council on physician assistants, the board of

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1 nursing, the nursing home administrator examining board, the veterinary  
2 examining board, the optometry examining board, the pharmacy examining board,  
3 the examining board of social workers, marriage and family therapists and  
4 professional counselors and the psychology examining board shall not be engaged in  
5 any profession or occupation concerned with the delivery of physical or mental health  
6 care.

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

8 **15.405 (6r) MASSAGE THERAPY AND BODYWORK EXAMINING BOARD.** (a) There is  
9 created a massage therapy and bodywork examining board in the department of  
10 regulation and licensing. The examining board shall consist of the following  
11 members appointed for 4-year terms:

12 1. Five massage therapists or bodyworkers who are licensed under ch. 460 and  
13 have engaged in the practice of massage therapy or bodywork for at least 2 years  
14 preceding appointment.

15 2. Two public members.

16 (b) In appointing members under par. (a), the governor shall ensure, to the  
17 maximum extent practicable, that the membership of the board is diverse, based on  
18 all of the following factors:

19 1. Massage or bodywork therapies practiced in this state.

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

22 3. Professional associations with which massage therapists or bodyworkers in  
23 this state are affiliated.

24 4. Practice in urban and rural areas in this state.

25 **SECTION 3.** 50.01 (2) ✓ of the statutes is amended to read:

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1           50.01 (2) "Nurse's assistant" means a person who performs routine patient care  
2 duties delegated by a registered nurse or licensed practical nurse who supervises the  
3 person, for the direct health care of a patient or resident. "Nurse's assistant" does  
4 not mean a person who is licensed, permitted, certified, or registered under ~~subch.~~  
5 ~~XI of ch. 440 or ch. 441, 448, 449, 450, 451, 455 or, 459, or 460~~ or a person whose duties  
6 primarily involve skills that are different than those taught in instructional  
7 programs for nurse's assistants.

8           **SECTION 4.** 55.043 (4) (e) <sup>✓</sup> of the statutes is amended to read:

9           55.043 (4) (e) Refer the case to the department of regulation and licensing if  
10 the misappropriation of property or neglect or abuse involves an individual who is  
11 required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to ~~459~~ 460.

12           **SECTION 5.** 103.10 (1) (e) <sup>✓</sup> of the statutes is amended to read:

13           103.10 (1) (e) "Health care provider" means a person described under s. 146.81  
14 (1), but does not include a person described under s. 146.81 (1) (hp).

15           **SECTION 6.** 146.40 (1) (d) <sup>✓</sup> of the statutes is amended to read:

16           146.40 (1) (d) "Nurse's assistant" means an individual who performs routine  
17 patient care duties delegated by a registered nurse or licensed practical nurse who  
18 supervises the individual, for the direct health care of a patient or resident. "Nurse's  
19 assistant" does not mean an individual who is licensed, permitted, certified, or  
20 registered under ~~subch. XI of ch. 440 or ch. 441, 448, 449, 450, 451, 455 or, 459, or~~  
21 460 or an individual whose duties primarily involve skills that are different than  
22 those taught in instructional and competency evaluation programs for nurse's  
23 assistants certified under sub. (3) or evaluated by competency evaluation programs  
24 for nurse's assistants approved under sub. (3m).

25           **SECTION 7.** 146.81 (1) (hp) <sup>✓</sup> of the statutes is amended to read:



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1           146.81 (1) (hp) A massage therapist or bodyworker issued a license licensed  
2 under ~~subch. XI of ch. 440~~ ch. 460.

3           **SECTION 8.** 146.997 (1) (d) 13. ✓ of the statutes is amended to read:

4           146.997 (1) (d) 13. A massage therapist or bodyworker issued a license of  
5 ~~registration under subch. XI of ch. 440~~ 460.

6           **SECTION 9.** 180.1901 (1m) (ag) ✓ of the statutes is repealed.

7           **SECTION 10.** 180.1901 (1m) (h) ✓ of the statutes is created to read:

8           180.1901 (1m) (h) Massage therapy and bodywork examining board under ch.  
9 460.

10          **SECTION 11.** 252.15 (1) (ar) 1. ✓ of the statutes is amended to read:

11          252.15 (1) (ar) 1. A person or entity that is specified in s. 146.81 (1), but does  
12 not include a massage therapist or bodyworker issued a license of ~~registration~~ under  
13 ~~subch. XI of ch. 440~~ 460.

14          **SECTION 12.** 440.08 (2) (a) 46r. ✓ of the statutes is created to read:

15          440.08 (2) (a) 46r. Massage therapist or bodyworker: July 1 of each  
16 even-numbered year; \$53.

17          **SECTION 13.** 440.08 (2) (a) 67q. ✓ of the statutes, as affected by 2001 Wisconsin  
18 Act 16, is repealed.

19          **SECTION 14.** Subchapter XI (title) of chapter 440 [precedes 440.98] of the  
20 statutes is repealed.

21          **SECTION 15.** 440.98 to 440.981 ✓ of the statutes are repealed.

22          **SECTION 16.** 440.982 (title) and (1) (intro.) and (a) ✓ of the statutes are repealed.

23          **SECTION 17.** 440.982 (1) (b) ✓ of the statutes is renumbered 460.06 and amended  
24 to read:

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1           **460.06 Examinations.** ~~Promulgate rules establishing the education, training~~  
2 ~~or competency requirements that an applicant for a license must satisfy in order to~~  
3 ~~be issued a license of registration under this subchapter. The rules shall require an~~  
4 ~~applicant to complete at least 500 classroom hours of study in a course of instruction~~  
5 ~~in massage therapy or bodywork approved by the department or at a school approved~~  
6 ~~by the educational approval board under s. 45.54. The rules shall also require an The~~  
7 ~~examining board may not grant a license under this chapter unless the applicant~~  
8 ~~whose application is received after March 1, 2000, to successfully complete~~  
9 ~~completes the national certification examination for therapeutic massage and~~  
10 ~~bodywork that is offered by the National Certification Board for Therapeutic~~  
11 ~~Massage and Bodywork or a substantially equivalent examination relating to the~~  
12 ~~practice of massage therapy or bodywork that is approved administered by a~~  
13 ~~program that is accredited by the National Commission of Certifying Agencies of the~~  
14 ~~National Organization for Competency Assurance or that is developed, administered~~  
15 ~~or approved by the department examining board. The examining board shall~~  
16 ~~promulgate rules ~~may that~~ also require an applicant to pass an examination on state~~  
17 ~~laws and administrative rules governing massage therapy or bodywork.~~

18           **SECTION 18.** 440.982 (1) (c) and (2) of the statutes are repealed.

19           **SECTION 19.** 440.983 to 440.988 of the statutes are repealed.

20           **SECTION 20.** 440.989 of the statutes is renumbered 460.17 and amended to  
21 read:

22           **460.17 Local regulation.** A city, village, town, or county, may not enact an  
23 ordinance that regulates the practice of massage therapy or bodywork by a person  
24 who is issued a license of registration by the department examining board under  
25 this subchapter chapter. No provision of any ordinance enacted by a city, village,

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1 town, or county that is in effect before February 1, 1999, and that relates to the  
2 practice of massage therapy or bodywork, may be enforced against a person who  
3 is issued a license of registration by the department examining board under this  
4 subchapter chapter.

5 **SECTION 21.** 448.03 (2) (a) ✓ of the statutes is amended to read:

6 448.03 (2) (a) Any person lawfully practicing within the scope of a license,  
7 permit, registration, certificate or certification granted to practice professional or  
8 practical nursing or nurse-midwifery under ch. 441, to practice chiropractic under  
9 ch. 446, to practice dentistry or dental hygiene under ch. 447, to practice optometry  
10 under ch. 449, to practice acupuncture under ch. 451, to practice massage therapy  
11 or bodywork under ch. 460 or under any other statutory provision, or as otherwise  
12 provided by statute.

13 **SECTION 22.** 448.10 (4) ✓ of the statutes is amended to read:

14 448.10 (4) MASSAGE AND HYDROTHERAPY. Any Notwithstanding s. 460.02, any  
15 person who, on July 11, 1953, was practicing massage and hydrotherapy in this state  
16 under a certificate of registration issued pursuant to s. 147.185, 1951 stats., as it  
17 existed prior to July 11, 1953, or who had applied for a certificate of registration in  
18 massage and hydrotherapy before said date, shall have the right to continue to so  
19 practice under such certificate, and the term “massage and hydrotherapy” shall be  
20 deemed to include the use of galvanic generator, diathermy, infrared ray and  
21 ultraviolet light for massage purposes. Nothing contained in this subsection shall  
22 limit the existing authority of the board to revoke such certificate for cause, and in  
23 addition, the board may require the holder of such certificate to demonstrate by  
24 examination fitness to use the instrumentalities enumerated in this subsection. A  
25 lack of such fitness shall constitute cause for revocation of such certificate. No such

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1 certificate holder shall treat a specific disease except on the advice of a licensed  
2 physician.

3 **SECTION 23.** 448.21 (1) (f) ✓ of the statutes is created to read:

4 448.21 (1) (f) The practice of massage therapy or bodywork within the meaning  
5 of ch. 460.

6 **SECTION 24.** 451.02 (1) ✓ of the statutes is amended to read:

7 451.02 (1) An individual holding a license, permit or certificate under ch. 441,  
8 446, 447, 448 or, 449, or 460 who engages in a practice of acupuncture that is also  
9 included within the scope of his or her license, permit, or certificate.

10 **SECTION 25.** Chapter 460 ✓ of the statutes is created to read:

11 **CHAPTER 460**

12 **MASSAGE THERAPY AND BODYWORK**

13 **EXAMINING BOARD**

14 **460.01 Definitions.** In this chapter:

15 (1) “Adjunctive therapy” includes the use of a device that simulates or enhances  
16 a manual action and the application of heat, cold, water, light, or a topical  
17 preparation.

18 (2) “Examining board” means the massage therapy and bodywork examining  
19 board.

20 (3) “Manual action” includes holding, positioning, rocking, kneading,  
21 compressing, decompressing, gliding, or percussing the soft tissue of the human body  
22 or applying a passive range of motion to the human body.

23 (4) “Massage therapist or bodyworker” means a person who is licensed as a  
24 massage therapist or bodyworker under this chapter.

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1           (5) “Massage therapy or bodywork” means the science and healing art that uses  
2 manual actions to palpate and manipulate the soft tissue of the human body, and  
3 adjunctive therapies, to improve circulation, reduce tension, relieve soft tissue pain,  
4 or increase flexibility, and includes determining whether massage therapy or  
5 bodywork is appropriate or contraindicated, or whether a referral to another health  
6 care practitioner is appropriate. “Massage therapy or bodywork” does not include  
7 making a medical diagnosis.

8           (6) “Physician’s office” has the meaning given in s. 101.123 (1) (dg).

9           (7) “Sexual contact” has the meaning given in s. 939.22 (34).

10          (8) “Sexual intercourse” has the meaning given in s. 948.01 (7) (a).

11          **460.02 License required.** Except as provided in s. 460.03, no person may  
12 practice massage therapy or bodywork for compensation or in the expectation of  
13 compensation, or designate himself or herself as a massage therapist or bodyworker,  
14 or use or assume the title “massage therapist and bodyworker” or “massage  
15 therapist” or “bodyworker,” or append to the person’s name the letters “M.T.,”  
16 “L.M.T.,” “B.W.,” or “L.B.W.,” or use any other title or designation that represents or  
17 may tend to represent the person as a massage therapist or bodyworker, unless the  
18 person is licensed under this chapter.

19          **460.03 Applicability.** A license under this chapter is not required for any of  
20 the following:

21          (1) A person holding a license, permit, registration, or certification granted by  
22 this state or the federal government who engages in a practice of massage therapy  
23 or bodywork within the scope of his or her license, permit, registration, or  
24 certification and who does not imply that he or she is a massage therapist or  
25 bodyworker.

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1           (2) A massage therapy or bodywork student practicing massage therapy or  
2 bodywork, without compensation, within the scope of the student's education or  
3 training, and under the supervision of an instructor.

4           (3) A massage therapist or bodyworker who is licensed to practice massage  
5 therapy or bodywork in another state or country and is providing a consultation to  
6 or demonstration with a massage therapist or bodyworker who is licensed under this  
7 chapter.

8           (4) A person who does any of the following and who does not imply that he or  
9 she is a massage therapist or bodyworker:

10           (a) Restricts his or her manipulation of soft tissue to the hands or feet.

11           (b) Uses touch or spoken words to increase awareness of existing or potential  
12 patterns of movement in the human body.

13           (c) Restricts his or her touch to placing the hands on or above the human body  
14 to influence the energy fields within or around the body.

15           **460.04 Duties of examining board.** (1) The examining board shall assign  
16 a unique license number to each person licensed under this chapter.

17           (2) The examining board shall promulgate rules that establish all of the  
18 following:

19           (a) Standards that govern the professional conduct of massage therapists or  
20 bodyworkers. The standards shall prohibit a massage therapist or bodyworker from  
21 having sexual contact or sexual intercourse with a client.

22           (b) Criteria for approving a school of massage therapy or bodywork from which  
23 graduation is required under s. 460.05 (1) (e) 1. Rules promulgated under this  
24 paragraph shall define the curricula and qualifications of instructors that are  
25 required for approval of a school.

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1 (c) Criteria for approving the courses of instruction required under s. 460.05  
2 (1) (e) 2. and 3. Rules promulgated under this paragraph shall require the course of  
3 instruction required under s. 460.05 (1) (e) 3. to consist of at least 600 classroom  
4 hours.

5 (d) Requirements and procedures for obtaining the informed consent of a client  
6 under s. 460.11 (1) and for making a report required under s. 460.12 (1).

7 (e) A definition of “sexually oriented business” for purposes of s. 460.11 (3).

8 **460.05 Licensure of massage therapists or bodyworkers.** (1) The  
9 examining board shall grant a license as a massage therapist or bodyworker to a  
10 person who satisfies all of the following:

11 (a) The person is 18 years of age or older.

12 (b) The person has graduated from high school or attained high school  
13 graduation equivalency as determined by the department of public instruction under  
14 s. 115.29 (4).

15 (c) The person submits an application for the license to the department on a  
16 form provided by the department.

17 (d) The person pays the fee specified in s. 440.05 (1).

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

20 1. Graduated from a school of massage therapy or bodywork approved under  
21 s. 45.54.

22 2. Completed at least 6 classroom hours in the laws of this state and rules of  
23 the examining board relating to the practice of massage therapy or bodywork in a  
24 course of instruction approved by the examining board.

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1           3. Completed a minimum number of classroom hours, established by the  
2           examining board by rule, in a course of instruction in the principles and techniques  
3           of massage therapy or bodywork that is approved by the examining board.

4           (f) The person passes the examinations under s. 460.06.

5           (2) The examining board may waive a requirement specified in sub. (1) (e) if  
6           a person establishes, to the satisfaction of the examining board, that he or she has  
7           education, training, or other experience that is substantially equivalent to the  
8           requirement.

9           **460.07 Issuance of license; expiration and renewal.** (1) The department  
10          shall issue a certificate of licensure to each person who is licensed under this chapter.  
11          The person shall conspicuously display the certificate in the place of business where  
12          he or she practices massage therapy or bodywork so that the certificate can easily be  
13          seen and read.

14          (2) The renewal dates for licenses granted under this chapter, other than  
15          temporary licenses granted under s. 460.08, are specified under s. 440.08 (2) (a).  
16          Renewal applications shall be submitted to the department on a form provided by the  
17          department and shall include the renewal fee specified in s. 440.08 (2) (a) and, if  
18          applicable, proof of completion of continuing education under s. 460.10.

19          **460.08 Temporary license.** Upon application and payment of the fee  
20          specified in s. 440.05 (6), the examining board may grant a temporary massage  
21          therapist or bodyworker license to a person who satisfies the requirements under s.  
22          460.05 (1) (a) to (e), has submitted an application to take the next available  
23          examinations under s. 460.06, and has not previously failed an examination. A  
24          temporary license granted under this section shall expire on the date on which the  
25          person receives notice that he or she failed one of the examinations or that he or she



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1 has passed both examinations. A temporary license granted under this section may  
2 not be renewed.

3 **460.09 Reciprocal license.** Upon application and payment of the fee  
4 specified in s. 440.05 (2), the examining board shall grant a massage therapist or  
5 bodyworker license to a person who holds a similar license or certificate in another  
6 state or territory of the United States or another country if the examining board  
7 determines that the requirements for receiving the license or certificate in the other  
8 state, territory, or country are substantially equivalent to the requirements under  
9 s. 460.05.

10 **460.10 Continuing education.** The examining board may promulgate rules  
11 establishing requirements and procedures for a massage therapist or bodyworker to  
12 complete continuing education programs or courses of study to qualify for renewal  
13 of his or her license. Any rules promulgated under this section shall require a  
14 massage therapist or bodyworker to complete at least 12 hours of continuing  
15 education programs or courses of study to qualify for renewal. The examining board  
16 may waive all or part of any requirement established in rules promulgated under this  
17 section if it determines that prolonged illness, disability, or other exceptional  
18 circumstances have prevented a massage therapist or bodyworker from completing  
19 the requirement.

20 **460.11 Practice requirements.** (1) A massage therapist or bodyworker may  
21 not practice massage therapy or bodywork on a client unless the massage therapist  
22 or bodyworker 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.

24 (2) A massage therapist or bodyworker shall keep confidential any information  
25 that a client in confidence gives to the massage therapist or bodyworker and any

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1 other information that the massage therapist or bodyworker obtains about a client  
2 in the course of practicing massage therapy or bodywork that a reasonable person  
3 in the client's position would want kept confidential, unless the information is  
4 otherwise required by law to be disclosed or the client specifically authorizes the  
5 disclosure of the information.

6 (3) A massage therapist or bodyworker may not, whether for compensation or  
7 not, practice massage therapy or bodywork for a sexually oriented business, as  
8 defined by the examining board by rule.

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

16 (2) The examining board may use a report made under sub. (1) as the basis for  
17 an investigation under s. 460.15 (1). If, after an investigation, the examining board  
18 has reasonable cause to believe that a massage therapist or bodyworker has  
19 committed a crime, the examining board shall report the belief to the district  
20 attorney for the county in which the crime, in the opinion of the examining board,  
21 occurred.

22 (3) If, after an investigation, the examining board determines that a report  
23 submitted under sub. (1) is without merit, the examining board shall remove the  
24 report from the record of the massage therapist or bodyworker who is the subject of  
25 the report.

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

15           (5) (a) In this subsection, "violation" means a violation of any state or local law  
16 that is punishable by a forfeiture.

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

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1           **460.13 Employment of massage therapists or bodyworkers.** No person  
2 may employ a person to engage in the practice of massage therapy or bodywork  
3 unless the person who is employed is licensed under this chapter or is exempt from  
4 the licensure requirements of this chapter.

5           **460.14 Advertising.** A massage therapist or bodyworker may not advertise  
6 that he or she practices massage therapy or bodywork unless the advertisement  
7 includes his or her license number and a statement that the massage therapist or  
8 bodyworker is a “licensed massage therapist and bodyworker” or “licensed massage  
9 therapist” or “licensed bodyworker.”

10           **460.15 Disciplinary proceedings and actions.** (1) Subject to the rules  
11 promulgated under s. 440.03 (1), the examining board may make investigations and  
12 conduct hearings to determine whether a violation of this chapter or any rule  
13 promulgated under this chapter has occurred.

14           (2) Subject to the rules promulgated under s. 440.03 (1), the examining board  
15 may reprimand a massage therapist or bodyworker or deny, limit, suspend, or revoke  
16 a license under this chapter if it finds that the applicant or licensee has done any of  
17 the following:

18           (a) Made a material misstatement in an application for a license or for renewal  
19 of a license.

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

23           (c) Advertised in a manner that is false, deceptive, or misleading.

24           (d) Advertised, practiced, or attempted to practice under another’s name.

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

3 (f) Intentionally made a false statement in a report submitted under s. 460.12  
4 (1).

5 (g) Engaged in unprofessional conduct in violation of the standards established  
6 in rules promulgated under s. 460.04 (2) (a).

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

11 (i) Committed a crime related to prostitution under ss. 944.30 to 944.34.

12 (j) Violated this chapter or any rule promulgated under this chapter.

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

16 **460.16 Penalties.** (1) Except as provided in sub. (2), any person who violates  
17 this chapter or any rule promulgated under this chapter shall forfeit not more than  
18 \$1,000 for each violation.

19 (2) A person who violates s. 460.02 shall forfeit not more than \$500 for each  
20 violation. Each day of continued violation of s. 460.02 constitutes a separate  
21 violation.

22 **SECTION 26.** 895.48 (1m) (intro.)<sup>✓</sup> of the statutes is amended to read:

23 895.48 (1m) (intro.) Any physician or athletic trainer licensed under ch. 448,  
24 chiropractor licensed under ch. 446, dentist licensed under ch. 447, emergency  
25 medical technician licensed under s. 146.50, first responder certified under s. 146.50

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1 (8), physician assistant licensed under ch. 448, registered nurse licensed under ch.  
2 441, or a massage therapist or bodyworker issued a license of registration under  
3 ~~subch. XI~~ of ch. ~~440~~ 460 who renders voluntary health care to a participant in an  
4 athletic event or contest sponsored by a nonprofit corporation, as defined in s. 46.93  
5 (1m) (c), a private school, as defined in s. 115.001 (3r), a public agency, as defined in  
6 s. 46.93 (1m) (e), or a school, as defined in s. 609.655 (1) (c), is immune from civil  
7 liability for his or her acts or omissions in rendering that care if all of the following  
8 conditions exist:

9 **SECTION 27.** 908.03 (6m) (a) <sup>✓</sup> of the statutes is amended to read:

10 908.03 (6m) (a) *Definition.* In this subsection, “health care provider” means  
11 a massage therapist or bodyworker issued a license of registration under ~~subch. XI~~  
12 of ch. ~~440~~ 460, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447,  
13 a physician assistant licensed under ch. 448, or a health care provider as defined in  
14 s. 655.001 (8).

15 **SECTION 28. Nonstatutory provisions.**

16 (1) INITIAL APPOINTMENTS.

17 (a) Notwithstanding section 15.405 (6r) (a) of the statutes, as created by this  
18 act, the initial members of the massage therapy and bodywork examining board shall  
19 be appointed by the first day of the 3rd month beginning after the effective date of  
20 this paragraph for the following terms:

21 1. Two massage therapist or bodyworker members and one public member, for  
22 terms expiring on July 1, 2003.

23 2. One massage therapist or bodyworker member, for a term expiring on July  
24 1, 2004.

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1           3. One massage therapist or bodyworker member and one public member, for  
2 terms expiring on July 1, 2005.

3           4. One massage therapist or bodyworker member, for a term expiring on July  
4 1, 2006.

5           (b) Notwithstanding section 15.405 (6r) (a) of the statutes, as created by this  
6 act, for the purpose of being appointed and serving as members of the massage  
7 therapy and bodywork examining board, the members need not be licensed under  
8 chapter 460 of the statutes, as created by this act, until the first day of the 15th month  
9 beginning after the effective date of this paragraph.

10          (2) EMERGENCY RULES. The massage therapy and bodywork examining board  
11 may use the procedure under section 227.24 of the statutes to promulgate rules  
12 required under section 460.04 (2) of the statutes, as created by this act.  
13 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the examining  
14 board is not required to provide evidence that promulgating a rule under this  
15 subsection as an emergency rule is necessary for the preservation of public peace,  
16 health, safety, or welfare and is not required to provide a finding of emergency for a  
17 rule promulgated under this subsection.

18          (3) TRANSITIONAL PROVISIONS. Notwithstanding section 460.05 (1) of the  
19 statutes, as created by this act, the massage therapy and body work examining board  
20 shall do each of the following:

21           (a) No later than the first day of the 7th month beginning after the effective date  
22 of this paragraph issue a license as a massage therapist or bodyworker to a person  
23 who holds a valid license of registration as a massage therapist or bodyworker issued  
24 by the department of regulation and licensing under section 440.983, 1999 stats.

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1 (b) Issue a license as a massage therapist or bodyworker to a person who, no  
2 later than the 7th month beginning after the effective date of this paragraph, does  
3 all of the following:

4 1. Submits an application to the examining board on a form approved by the  
5 examining board that describes the person's education and his or her experience in  
6 the practice of massage therapy or bodywork.

7 2. Provides evidence satisfactory to the examining board that he or she satisfies  
8 each of the following:

9 a. Has completed at least 300 classroom hours of instruction in the practice of  
10 massage therapy or bodywork.

11 b. Has in effect malpractice liability insurance coverage in an amount that is  
12 not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one  
13 year.

14 3. Pays the fee specified in section 440.05 (1) of the statutes.

15 (4) A license of registration issued under subsection (3) (a) may be renewed  
16 under section 460.07 (2) of the statutes, as created by this act. A license of  
17 registration issued under subsection (3) (b) is valid until 2 years after that date that  
18 it is issued and may not be renewed.

19 **SECTION 29. Initial applicability.**

20 (1) The treatment of section 146.81 (1) (hp) of the statutes first applies to the  
21 use of billing forms specified in section 632.725 (2) (a) of the statutes on the effective  
22 date of this subsection.

23 (2) The creation of chapter 460 of the statutes first applies to crimes relating  
24 to prostitution that are committed on and sexual contact or sexual intercourse that  
25 occurs on the effective date of this subsection.





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

LRB-4385/1dn

MDK.....

JK

Representative Kaufert:

This bill is identical to Senator Huelsman's LRB-3246/4.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4385/1dn  
MDK:jld:jf

December 7, 2001

Representative Kaufert:

This bill is identical to Senator Huelsman's LRB-3246/4.

Mark D. Kunkel  
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**Barman, Mike**

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**From:** Kunkel, Mark  
**Sent:** Tuesday, January 22, 2002 10:32 AM  
**To:** Barman, Mike  
**Subject:** LRB-4385

Mike:

Can you jacket the above draft for Rep. Kaufert? Thanks.

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Mark D. Kunkel  
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