

**2001 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB749)**

Received: 02/07/2002

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Tom Fonfara**

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: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Regulation of massage therapists and bodyworkers

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**Instructions:**

See Attached

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**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>
/?	kunkemd 02/08/2002	gilfokm 02/08/2002		_____			
/1	kunkemd 02/11/2002	csicilia 02/11/2002	rschluet 02/11/2002	_____	lrb_docadmin 02/11/2002		
/2	kunkemd	gilfokm	rschluet	_____	lrb_docadmin	lrb_docadmin	

<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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/3			rschluet	_____	lrb_docadmin	lrb_docadmin	
			02/26/2002	_____	02/26/2002	02/26/2002	

FE Sent For:

<END>

02-27-2002  
("13")

see attached  
memo

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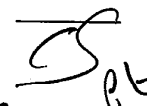
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**Instructions:**

See Attached

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<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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/1	kunkemd 02/11/2002	csicilia 02/11/2002	rschluet 02/11/2002	_____	lrb_docadmin 02/11/2002		
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			02/11/2002 _____		02/11/2002	02/11/2002	

FE Sent For:

**<END>**

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Assembly Substitute Amendment (ASA-AB749)

Received: 02/07/2002

Received By: kunkemd

Wanted: As time permits

Identical to I.R.B:

For: Gregg Underheim (608) 266-2254

By/Representing: Tom Fonfara

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Drafter: kunkemd

May Contact:

Addl. Drafters:

Subject: Occupational Reg. - prof lic

Extra Copies:

Submit via email: YES

Requester's email: Rep.Underheim@legis.state.wi.us

Carbon copy (CC:) to:

PA:  
DO NOT  
SUBMIT "1"  
-MDF

Pre Topic:

No specific pre topic given

Topic:

Regulation of massage therapists and bodyworkers

Instructions:

See Attached

Drafting History:

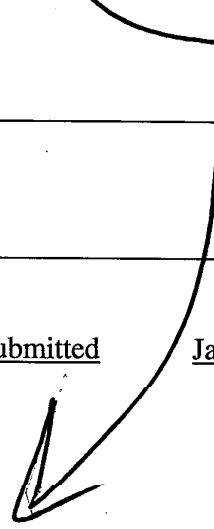
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FE Sent For:

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01

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*[Signature]*  
CMH  
*[Signature]*  
<END>  
2-11-2



Kunkel, Mark

AB 749 / SB - Robson

From: ANGEL C. ZELLMER [AZ2@quarles.com]  
 Sent: Thursday, January 24, 2002 3:27 PM  
 To: Mark.Kunkel@legis.state.wi.us  
 Cc: krzenesky@aol.com; Sandra.Lonergan@legis.state.wi.us; TOM J. FONFARA  
 Subject: Preparation of a Sub amendment to the massage therapy licensing bill

Substitute  
 a rednet  
 - practice protection  
 - certification  
 - trap door

Mark:

Assembly Health Committee Chairperson Gregg Underheim has authorized us to have prepared a Substitute Amendment to the recently introduced massage therapy licensing legislation. He would like the sub amendment as soon as possible, as a mid-February public hearing is planned on it. Rep Underheim would like to have the Sub Amendment available for Committee members to review beforehand, and then vote on after the February 12th hearing.

The revisions to the original bill that are needed in the Sub Amendment are:

1. No change regarding the education and other credentialing requirements of the original bill as to current students in massage therapy schools, or as to subsequent new graduates of those schools.
2. With regard to existing massage therapists currently practicing massage therapy in Wisconsin who do not meet the provisions of the new law, the sub amendment should afford them a 2 year period within which to apply to be "grandfathered" under the new credentialing (titling and licensing) requirements. These existing and active Wisconsin massage therapists, in order to benefit from the grandfather provision, will submit to the Educational Approval Board (EAB- recall they regulate the massage therapy schools in Wisconsin now) information re their education, training and experience regarding massage therapy. The EAB will review the info/portfolio submitted and make a determination regarding the adequacy of the items submitted. Upon the individual massage therapist's submission having been found to be adequate, EAB will advise the Dept of Reg and Lic and the Massage Therapy Board, and the individual will (shall, no discretion involved) be issued a license by the agency.
3. In addition, Rep Underheim wants the sub amendment to authorize the EAB (again, not the Massage Therapy Board or the Dept of Reg and Lic) to grant a waiver from the new licensing requirements for individuals who have been in the active practice of massage therapy in Wisconsin, and who miss that 2 year grandfathering interval, to swear/attest to the EAB that:
  - they are in active practice of massage therapy in Wisconsin, and have been so since within 2 years of the new law going into effect; and
  - that they only recently learned of the requirements of the new law.
 Then those "Rip Van Winkle" people go through the same adequacy review process at outlined at item #2 above.
4. The massage therapy schools regulated by EAB would like the sub amendment to rewrite section 460.04(1)(b) such that the Examining Board would not have the authority or responsibility to approve EAB-regulated massage therapy schools. Therefore section 460.04(1)(b) should be rewritten to provide:
 

(b) Standards and competencies of the 600 classroom-hour program for schools under ss 460.05(1)(e)1. which are consistent with those of the Commission on Massage Therapy Accreditation or the Accreditation Commission on Acupuncture and Oriental Medicine.

[Note: Those massage therapy schools not within the EAB's oversight should be subject to Examining Board oversight and approval, with the standards applicable not less than those the EAB applies. That way all new students get the same basic education.]
5. At page 7 line 13, the revised technical language re NOCA accreditation that we previously discussed should be inserted.
6. At page 11 line 2, the phrase "without compensation" should be

- practicing & not registered  
 - substantially comparable

deleted. The EAB has recent survey results that confirm that instructor-supervised massage therapy provided by students are not profit-making activities by schools, and it is appropriate for compensation to occur, in order to offset some of the expenses involved.

7. At page 14 lines 10-14 regarding continuing education, with the licensing cycle at Reg and Lic 2 year intervals, the possible rule making re continuing education should reference 24 hours every 2 years rather than 12 each year, perhaps.

8. As you may know, some legislators prefer not to use the term "license" with regard to newly-regulated groups such as massage therapists. We see in a recent Reg and Lic Revisor's bill, the generic term "credentialed" is used. Do you think that term should be used in this Sub Amendment?

Thank you for your important assistance with the preparation of the Sub Amendment!

Tony Driessen

*certificate*

Quarles & Brady LLP

for the AMTA-Wisc Chapter

414/277-5759

ahd@quarles.com

**Kunkel, Mark**

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**From:** ANGEL C. ZELLMER [AZ2@quarles.com]  
**Sent:** Friday, January 25, 2002 9:12 AM  
**To:** Mark.Kunkel@legis.state.wi.us  
**Subject:** Fwd: Re: Preparation of a Sub amendment to the massage therapy licensing bill



Re: Preparation of  
a Sub amend...

Mark:

Per the attached e-mail, my client points out that I should have been clearer to you when describing how existing Wisconsin registered massage therapists are to be addressed. The 500 hours of current law remains applicable to them and the new 600 hour provision (page 12 line 3) to occur by rulemaking should not apply to currently registered massage therapists.

My apology for this initial lack of clarity on my part!

Tony Driessen  
414/277-5759  
ahd@quarles.com

- ~~edit~~

- registered → cert fee

- non-registered → EAB

ASA to AB 749

↓  
- Underline

SSA to Robson

↓  
~~for Alan~~  
requester Robson

- David Austin



## Kunkel, Mark

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**From:** TOM J. FONFARA [TF2@quarles.com]  
**Sent:** Tuesday, February 05, 2002 8:46 AM  
**To:** Mark.Kunkel@legis.state.wi.us  
**Subject:** RE: Preparation of a Sub amendment to the massage therapy licensing bill

Good Morning Mark!

Here is a simplified version of what will work:

"Have successfully passed an examination administered by a national board which is accredited by the National Commission for Certifying Agencies (NCCA) or a substantially equivalent examination approved by the board."

Since NCCA is the examination arm of the National Organization of Competency Assurance (NOCA), we do not need to also reference in the statutes NOCA, as NCCA is inherently NOCA-related.

The provision re "substantially equivalent examination" is intended to provide the Wisconsin Massage Therapy Board some flexibility re alternative examinations.

If you have any questions for us, please contact me.

Thanks for your work on this!

Thomas J. Fonfara  
Quarles & Brady, LLP  
608.283.2623  
608.251.9166 (fax)  
tf2@quarles.com

>>> "Kunkel, Mark" <Mark.Kunkel@legis.state.wi.us> 02/01/02 02:24PM >>>  
Tony:

Regarding the following point in your recent email:

"5. At page 7 line 13, the revised technical language re NOCA accreditation that we previously discussed should be inserted."

Can you resend that language? I recall several emails going back and forth on this, but don't recall final instructions.

Thanks,

Mark Kunkel  
Legislative Attorney

## Kunkel, Mark

---

**From:** TOM J. FONFARA [TF2@quarles.com]  
**Sent:** Tuesday, February 05, 2002 12:26 PM  
**To:** Mark.Kunkel@legis.state.wi.us  
**Subject:** Fwd: RE: Preparation of a Sub amendment to the massage therapy licensing bill



RE: Preparation of  
a Sub amend...

Mark,

One slight correction from what I sent you earlier today.

In the paragraph beginning with "Since", my email should have read:

Since NCCA is the accrediting arm (not the examining arm).

Sorry for the confusion!

Thomas J. Fonfara  
Quarles & Brady, LLP  
608.283.2623  
608.251.9166 (fax)  
tf2@quarles.com

## Kunkel, Mark

---

**From:** TOM J. FONFARA [TF2@quarles.com]  
**Sent:** Friday, February 08, 2002 9:52 AM  
**To:** Mark.Kunkel@legis.state.wi.us  
**Cc:** Krizenesky@aol.com; sshnoveto@earthlink.net; ANTHONY H. DRIESSEN  
**Subject:** Massage Therapy - Additional Revision

Hi Mark,

We have a couple other revisions to be included in the massage therapy substitute amendment (AB-749 and SB-413).

Page 9. Line 15. Delete lines 15-17 relative to adjunctive therapy.

Page 10. Lines 2 and 3. Delete "and adjunctive therapies,"

Page 10. Line 7. Add "or chiropractic" after the word medical.

I believe that is it for now.

Thank you!

Thomas J. Fonfara  
Quarles & Brady, LLP  
608.283.2623  
608.251.9166 (fax)  
tf2@quarles.com

## **Consumer Benefits Gained by Licensing All Providers of Massage Therapy and Bodywork**

By upgrading the current registration law to mandatory licensing of all persons practicing massage therapy or bodywork in Wisconsin, the public and other referring healthcare professionals will be assured that all practitioners will:

**1) Carry the minimum amount of professional liability insurance.**

Current law requires \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

**2) Have achieved a minimum standard of education, particularly concerning pathology and contraindications for massage.**

This is increasingly important, as the percentage of Americans that seek massage therapy at least once per year has doubled over the past five years. (Opinion Research Corporation International, Princeton, NJ survey conducted July 26-29, 2001) As consumer demographics broaden, so does the range of conditions that therapists encounter and must be trained to recognize to avoid doing harm. Ruth Werner, author, comments:

"What shape might that harm take? It might be as simple as over treating a tight muscle so that a client is sore for longer than strictly necessary. Or it might be as complex and dangerous as dislodging a fragment of a silent deep vein thrombosis, thus opening the door to a life-threatening pulmonary embolism. The high incidence of cardiovascular disease in our country has tremendous implications for massage. Atherosclerotic plaques often accumulate in the carotid arteries: a location highly vulnerable to disruption, which could subsequently lead to a cerebrovascular accident (CVA).

Rising statistics for Type 2 diabetes should raise concerns about circulatory impairment and numbness in the lower extremities.

The close physical contact involved with massage provides a potent environment for the spreading of contagious diseases: a threat every massage therapist should be trained to prevent." Ruth Werner, author of *A Massage Therapist's Guide to Pathology*, Lippincott Williams & Wilkins, Baltimore, Maryland, 1998.

**3) Have one clearly understood and advertised credential.**

An October, 2001 tally of 11 of the largest Wisconsin phone directory yellow pages in the category of massage therapist reveals the following confusing array of titles: State Registered, State Licensed, State Licensed and Certified, Wisconsin Registered Massage Therapist, Certified Massage Therapist, Massage Therapist, Registered Massage Therapist, Nationally Certified Therapist, Eastern Massage Practitioner, WRMT, RMT, CMT, LMT, CLMT, MT. Unfortunately there is also the category of Massage-Personal, a euphemism for illicit services.

**Two thirds of the listings have no indication of the credentials** of those claiming to offer massage therapy.

**4) Have one central place to address complaints regarding massage therapists and bodyworkers.**

Currently consumers must contact

- a) the Wisconsin Department of Regulation and Licensing regarding practitioners that are state registered and
- b) local licensing authorities about practitioners that have avoided getting a Wisconsin license of registration.

Betsy Krizeneksy, WRMT  
AMTA-WI Chapter Law and Legislation Chair  
920-725-0224  
Krizeneksy@aol.com

Array of Credentials  
in Wisconsin 2000-2002 Yellow Page Directories  
Confusing Consumers Seeking Massage Therapists and Bodyworkers

Directory	WRMT, Wisconsin Registered Massage Therapist, State Registered	LMT, Licensed Massage Therapist, State Licensed	RMT, Registered Massage Therapist	CMT, Certified Massage Therapist	MT, Massage Therapist	NCTMB, Nationally Certified	Eastern Massage Practitioner	NO STATED CREDENT- IALS	Massage Personal
Eau Claire	1	2	2		1		2	16	
Fox Cities	8	3		3		2		25	
Green Bay		1	5	5		1		27	2
Kenosha	3	1		2		1		13	1
La Crosse	3	4	3	2				21	
Madison	6	2	10	10		3		61	4
Millwaukee	4	12	7	28		1		91	6
Racine	1	1	1	3				8	1
Rhinelande	2	2	1	1				1	
Waukesha	1	2	1	6				33	
Wausau	2	5	1	3	1			4	

\*Tally done October, 2001 by Betsy Krizenesky, WRMT, 920-725-0224, Krizenesky@aol.com

## **A Short Glossary of Massage and Bodywork Techniques Available to Wisconsin Consumers**

*Bodywork is a generic term used by national certification boards and others to refer to a variety of modalities that employ manual manipulation of the body's soft tissues.*

**Swedish Massage**, also known as the Western or classical style of massage, is a scientific system of manipulations on the muscles and connective tissue, or the soft tissues, of the body for the purpose of relaxation, rehabilitation or health maintenance. It is probably the most popular and familiar massage system being practiced today and has served as a foundation for many of the massage techniques which have developed over recent years.

**Myofascial Release** is a mild and gentle hands-on form of stretching that evaluates and treats the fascial system. This system concentrates on treating the fascia, a tough connective tissue, which spreads throughout the body in a three-dimensional network from head to toe, without interruption.

**Rolfing** is a unique system of bodywork designed to change the way people relate to gravity by systematically lengthening and repositioning the body's entire connective tissue matrix in a highly-detailed, 10-session series causing deep changes in the body, which are physical as well as emotional.

**Ortho-Bionomy** is a gentle, noninvasive, reeducation process, which seeks self-correction and balance by accentuating the existing physical condition. The concept of self-healing and the innate wisdom of the body is fundamental to Ortho-Bionomy. By placing the body in its preferred position, the position which is most comfortable, and moving it the way it wants to go, the body's healing reflexes are initiated, relaxing muscles and freeing the body of its stresses and tensions.

**Polarity Therapy** is a health system based on the concept of the human energy bio-field. The basic premise is that there is an electromagnetic energetic pattern that precedes human structure and function. During a polarity session, the client lies on a massage table, dressed in loose-fitting clothing. The manipulations of polarity are gentle and are designed to encourage the client to relax. The practitioner places both hands on two designated body areas, creating a polarity.

All non-italicized material taken from *The Encyclopedia of Bodywork From Acupresure to Zone Therapy*, Elaine Stillerman, LMT, Facts on File, Inc., New York, 1996.

# **Wisconsin Massage Therapy Regulation and Licensing Legislation**

October 2001

## **Common Questions**

### **What does the proposal do?**

The legislation proposes to license and regulate massage therapists who practice in the State of Wisconsin.

This legislation is an updating of current Wisconsin law. It also conforms with the majority of laws governing massage therapy and bodywork across the United States.

Today, 30 states and the District of Columbia regulate the massage profession and 23 of those license massage therapists. This Wisconsin proposal will facilitate reciprocity among the states. It will also provide an accepted standard of care for massage therapy, especially for mobile consumers.

### **Who will benefit from the legislation?**

Passage of the legislation will benefit:

- **Consumers** - who will be assured that all massage therapists in Wisconsin meet appropriate standards of education and training.
- **Local Municipal and Law Enforcement Officials** - who will be able to distinguish clearly between legitimate massage therapists and those who operate illicit "massage parlors."
- **Professional Massage Therapists** - who will meet statewide standards and comply with accepted regulatory and licensing requirements. Reciprocity between Wisconsin and other states would be an important result in a larger number of states. It is now lacking for many Wisconsin massage therapists.

### **What about chiropractors and physical therapists?**

The legislation expressly exempts from the licensing requirements any other profession currently licensed by the State of Wisconsin where the scope of practice includes skills associated with massage therapy. This includes chiropractors and physical therapists.

**Are there standards for schools that teach massage therapy?**

The present massage therapy registration statutes in Wisconsin contain provisions recommended by the Educational Approval Board and the Department of Regulation and Licensing to ensure necessary educational oversight of schools that teach massage therapy.

**Would massage therapists "diagnose" healthcare conditions?**

No, the legislation expressly excludes "diagnosis" from the scope of practice. Instead, the focus is on the principles of massage therapy and bodywork and the application of manual actions to the soft tissues of the human body.

**Will the legislation have any effect on insurance coverage for massage therapy?**

No. The legislation contains no provisions concerning insurance coverage. Current law applies: The health care plan and the contracting payor continue to decide in the private marketplace whether to cover massage therapy.

**What does the term "bodywork" mean?**

"Bodywork" is a generic term used by national certification boards and others to refer to a variety of modalities that employ manual manipulation of the body's soft tissues. Rolfing, myofascial release, orthobionomy, and polarity therapy are some of the bodywork modalities available to consumers in Wisconsin.

**What about continuing education?**

The Board is authorized, by administrative rule and with related legislative oversight, to establish a requirement for continuing education. If the Board does so, a minimum of 12 hours every two years would be required.



**What would happen to people currently providing massage therapy?**

Individuals who have already been issued a renewable license of registration as a massage therapist or bodyworker would be immediately eligible for licensing under the proposed legislation.

1) Persons who hold the title of Wisconsin Registered Massage Therapist or Bodyworker on the effective date will automatically be granted the title Licensed Massage Therapist or Bodyworker.

2) Persons who do not hold the title of Wisconsin Registered Massage Therapist or Bodyworker on the effective date will be required to meet the following provisional requirements within six months:

- Submit an application to the Department of Regulation and Licensing describing his or her education in massage therapy or bodywork.
- Provide evidence of having earned at least 300 hours of instruction in massage therapy or bodywork.
- Have malpractice liability insurance coverage - \$1 million per occurrence and \$1 million for all occurrences in one year.
- Pay the required fee.

Persons meeting the provisional requirements will receive a two year non-renewable license and subsequently fulfill the current educational and exam requirements for a license:

- Satisfactorily complete a 600 hour course of instruction in massage therapy or bodywork,
- Pass the National Certification Examination for Therapeutic Massage and Bodywork or its equivalent, and
- Pass an examination on state laws and administrative rules governing massage therapy or bodywork.

### **What harm will result if we don't pass the bill?**

- A vote **for** this legislation recognizes that ethical providers of massage therapy contribute to the health and well-being of many Wisconsin citizens. Furthermore, additional protections of the public's health and safety are provided.
- A vote **for** this bill is a commitment to public decency and to a clear distinction between legitimate massage therapists and "massage parlors."
- A vote **against** this proposal means:
  - Continuing to frustrate city officials and law enforcement officials by perpetuating the confusion among well-trained, legitimate massage therapists;
  - Untrained or inadequately trained persons legally doing massage by avoiding the protected titles; and
  - Persons engaged in illicit sexuality in the guise of massage.

### **Conclusion**

This proposal to license and regulate all professional massage therapists in Wisconsin is well thought out. It follows national regulatory trends that provide additional consumer protections and is the result of 4 years of experience under existing Wisconsin laws.

The bill merits early consideration and passage by the Wisconsin Legislature.

Alan Weld, WRMT  
President, AMTA-WI Chapter  
alanw@mailbag.com  
(608)231-9797

cc: Tony Driessen, Lobbyist, Quarles & Brady  
Tom Fonfara, Lobbyist, Quarles & Brady

## **Major Features of the Proposed 2001 Massage Therapy and Bodywork Bill**

*A free copy of LRB-3246/4 is available by calling the  
Wisconsin Legislative Hotline at (608)266-9960 or (800)362-9472*

### **1) License Required**

Under current law, anyone may practice massage therapy and bodywork for compensation. Only those persons who use the protected titles "Massage Therapist" and "Bodyworker" are required to get a license of registration from the State of Wisconsin. The proposed bill requires that ALL persons who practice massage therapy and bodywork for compensation be licensed as massage therapists and bodyworkers by the State unless they have massage therapy or bodywork in their scope of practice.

### **2) Exempt Professions**

In addition to those professions whose scope of practice includes massage therapy, such as physical therapy and chiropractic, the following groups of practitioners would be exempt from the licensing law for massage therapists and bodyworkers:

- a) Reflexologists whose "manipulation of soft tissues" is confined "to the hands or feet."
- b) Somatic educators who use "touch and spoken words to increase awareness of existing or potential patterns of movement in the human body."
- c) Energy workers who limit their touch "to placing the palms of the hands on or above the human body to influence energy fields within or around the human body."

### **3) Status of Current License of Registration Holders**

Persons who have a valid license as Wisconsin Registered Massage Therapist or Bodyworker on the effective date of this law would be granted the title of Licensed Massage Therapist or Bodyworker.

### **4) Scope of Practice Description**

*The italicized text is an addition to what is in place under current law. In the proposed legislation "Massage therapy or bodywork" means the science and healing art that uses manual actions to palpate and manipulate the soft tissue of the human body, and adjunctive therapies, to improve circulation, reduce tension, relieve soft tissue pain, or increase flexibility, and includes determining whether massage therapy or bodywork is appropriate or contraindicated, or whether a referral to another health care practitioner is appropriate. "Massage therapy or bodywork" does not include making a medical diagnosis.*

### **5) Status of Non-Licensed Persons Engaged in Massage Therapy or Bodywork**

Persons who currently practice massage therapy or bodywork but who do not have a state license on the law's effective date would be eligible to apply for a non-renewable, provisional license to practice. The two most important requirements for this would be:

- (a) to provide evidence of having received at least 300 hours of instruction in massage therapy or bodywork
- (b) to have malpractice liability insurance - \$1 million per occurrence and \$1 million for occurrences in one year.

These persons would have up to one year from the law's date of enactment to apply for a provisional license. This non-renewable license would give them up to two additional years to meet current educational requirements.

#### **6) Educational Requirements for Regular Licenses**

These non-renewable provisional licenses would be good for two years. During that time fulfillment of the current educational requirements for a regular license would be required:

- (a) satisfactorily complete a 600 hour course of instruction in massage therapy or bodywork,
- (b) pass the National Certification Examination for Therapeutic Massage and Bodywork or its equivalent,
- (c) pass an examination on Wisconsin laws and administrative rules governing massage therapy and bodywork.

#### **7) Status of Unlicensed Persons**

Persons not holding a State of Wisconsin license but practicing massage therapy or bodywork for compensation would be acting illegally and be subject to prosecution.

#### **8) A Massage Therapy and Bodywork Board**

Currently there is a Massage Therapists and Bodyworkers Advisory Committee to the Wisconsin Department of Regulation and Licensing, which is purely advisory. The bill provides for a regulatory board made up of representative members of the profession and public members, all of whom would be appointed by the governor with the consent of the senate.

#### **9) Local Regulation Provision**

As per current law state licensed massage therapists or bodyworkers would be exempt from restrictive city, village, town or county ordinances intended to regulate prostitution. The bill continues to draw a clear line between the offices of massage therapists or bodyworkers as healthcare providers and the so-called "massage parlors." Local authorities would still have jurisdiction over the location of businesses and offices.

**If you have questions regarding this bill, please feel free to contact either of the following AMTA-WI Chapter Law & Legislation Committee members:**

Betsy Krizenesky, WRMT  
111 E. North Water St.  
Neenah, WI 54956  
(920)725-0224  
Krizenesky@aol.com

Vlad Thomas, WRMT  
910 W. Walworth Ave.  
Whitewater, WI 53190  
(262)473-1083  
vladbarb@idcnet.com

D-note

2001 - 2002 LEGISLATURE

LRB #8851  
MDK(wlj&cs:jf)

ASA to

MONDAY  
2/11  
AM

2001 ASSEMBLY BILL 749

kg  
↑  
S0319/1  
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January 28, 2002 - Introduced by Representatives KAUFERT, URBAN, KRAWCZYK, BIES, NASS, PLALE, OWENS, RYBA, VRAKAS, JESKEWITZ, ZIEGELBAUER, J. LEHMAN, TURNER, LADWIG, WASSERMAN, OTT, HINES and SYKORA, cosponsored by Senators ROBSON, HUELSMAN, BURKE, ROESSLER, HARSDFOR, ELLIS, DARLING, WIRCH, GEORGE, PLACHE, A. LASEE and SCHULTZ. Referred to Committee on Health.

Sen. Cat.

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

↑ making an appropriation,

**ASSEMBLY BILL 749**

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.

**ASSEMBLY BILL 749**

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:*

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

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

Does not conflict w/ En-AB-206.  
Comment: Revisor can merge. (KS)

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~~ <sup>✓ certified</sup> 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:

INSERT 4-24 ✓



**ASSEMBLY BILL 749**

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) 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) 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) 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) of the statutes is amended to read:

1 146.81 (1) (hp) A massage therapist or bodyworker issued a ~~license~~ <sup>certified</sup> ✓  
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~~ <sup>certificate</sup> ✓  
5 registration ~~under subch. XI~~ of ch. ~~440~~ 460. <sup>stroke</sup> ✓

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 <sup>certificate</sup> ✓  
12 not include a massage therapist or bodyworker issued a ~~license of registration~~ <sup>stroke</sup> ✓  
13 under ~~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:

ASSEMBLY BILL 749

national board

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~~ certificate ~~under this chapter unless the applicant~~  
8       ~~whose application is received after March 1, 2000, to successfully complete~~ passes  
9       ~~the~~ 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~~ an ~~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.~~

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

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

SECTION 20. 440.989 of the statutes is renumbered 460.17 and amended to 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,

a substantially  
equivalent  
examination

certificate

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~~ <sup>write</sup> by the department examining board under this  
4 subchapter chapter. certificate

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

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.

certified

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~~ <sup>in order</sup> 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. ~~or chiropractic~~

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~~ <sup>Certificate</sup> ~~required.~~ <sup>BF</sup> 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~~ <sup>certified</sup> under this chapter. ~~under this chapter.~~ <sup>certificate</sup>

19 **460.03 Applicability.** A ~~license~~ <sup>certificate</sup> 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.

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~~ <sup>authorized</sup> 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~~ <sup>certified</sup> 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~~ <sup>certificate</sup> number to each person ~~licensed~~ <sup>certified</sup> 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.~~ INSERT 11-25

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. INSERT 12-4

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~~ <sup>Certification</sup> of massage therapists or bodyworkers. (1) The  
9 examining board shall grant a ~~license~~ <sup>certificate</sup> 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~~ <sup>certificate</sup> 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 <sup>by the educational approval board</sup> or by the examining board under the rules  
22 2. Completed at least 6 classroom hours in the laws of this state and rules of <sup>promulgated under s. 460.04</sup>  
(2)  
(b) ✓

23 the examining board relating to the practice of massage therapy or bodywork in a  
24 course of instruction approved by the examining board.



ASSEMBLY BILL 749

INSERT 13-8

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** ~~License~~ <sup>Display</sup> of ~~license~~ <sup>certificate</sup>; expiration and renewal. (1) The department

10 shall issue a certificate ~~license~~ <sup>cert. fee</sup> to each person who is ~~licensed~~ <sup>certified</sup> 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~~ <sup>certificates</sup> 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~~ <sup>certificate</sup>. 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~~ <sup>certificate</sup> 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

1 has passed both examinations. A temporary ~~license~~ <sup>certificate</sup> granted under this section may  
2 not be renewed.

3 **460.09 Reciprocal** ~~license~~ <sup>certificate</sup>. 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~~ <sup>certificate</sup> to a person who holds a similar ~~license~~ <sup>license or certificate</sup> 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~~ <sup>license or certificate</sup> 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~~ <sup>certificate</sup>. Any rules promulgated under this section shall require a  
14 massage therapist or bodyworker to complete at least ~~12~~ <sup>24</sup> hours of continuing  
15 education programs or courses of study <sup>every 2 years</sup> 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

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.

**ASSEMBLY BILL 749**

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.

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~~<sup>certified</sup> under this chapter or is exempt from  
4 the ~~license~~<sup>certification</sup> 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~~<sup>certificate</sup> number and a statement that the massage therapist or  
8 bodyworker is a "~~licensed~~<sup>certified</sup> massage therapist and bodyworker" or "~~licensed~~<sup>certified</sup> massage  
9 therapist" or "~~licensed~~<sup>certified</sup> 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~~<sup>certificate</sup> under this chapter if it finds that the applicant or ~~license~~<sup>certificate holder</sup> has done any of  
17 the following:

18       (a) Made a material misstatement in an application for a ~~license~~<sup>certificate</sup> 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.

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~~ <sup>certificate</sup> 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.) 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

**ASSEMBLY BILL 749**

**SECTION 26**

*certificate*

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~~ <sup>*certificate*</sup> 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:

SECTION 27. 908.03 (6m) (a) of the statutes is amended to read:

9 908.03 (6m) (a) *Definition.* In this subsection, "health care provider" means  
 10 a massage therapist or bodyworker issued a ~~license of registration~~ <sup>*certificate*</sup> under subch. XI  
 11 of ch. ~~440~~ 460, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447,  
 12 a physician assistant licensed under ch. 448, or a health care provider as defined in  
 13 s. 655.001 (8).  
 14 *INSERT 19-15*

**SECTION 28. Nonstatutory provisions.**

*auto ref. "KA"*  
(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~~ *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.

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 ~~the~~ <sup>massage</sup>  
7 ~~therapy and bodywork~~ <sup>certified</sup> 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 <sup># ← auto. ref. "KC"</sup> (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. REGISTRANTS ← (C) (3)

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

21 <sup>25</sup> ~~1. No later than the first day of the 15th month beginning after the effective date~~  
22 <sup>subsection</sup> of this ~~paragraph~~ <sup>certificate</sup> 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.



ASSEMBLY BILL 749

INSEPT  
21-1

1 (b) Issue a ~~license~~<sup>certificate</sup> as a massage therapist or bodyworker to a person who, no  
 2 later than the ~~7th~~<sup>25th</sup> 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.

SECTION 29. Initial applicability.

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

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

**ASSEMBLY BILL 749**

**SECTION 29**

1 (3) The treatment of section 895.48 (1m) (intro.) ~~and (b)~~ of the statutes first  
2 applies to care rendered on the effective date of this subsection.

3 **SECTION 30. Effective dates.** This act takes effect on the first day of the 7th  
4 month beginning after publication, except as follows:

5 (1) The treatment of section 15.405 (6r) of the statutes and SECTION 28 (1) and  
6 (2) of this act take effect on the day after publication.

7 (END)

a.r.  
a.r.

and (3)  
auto ref "KC"

a.r.

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0319/lins  
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INSERT 4-24: ✓

SECTION 1. 20.485 (5) (h) of the statutes is created to read:

20.485 (5) (h) *Certification of massage therapists and bodyworkers.* Ninety percent of all moneys received under s. 460.05 (3) (c) and 2001 Wisconsin Act (this act), section 28 (5) for making determinations regarding applications for massage therapists and bodyworkers certificates.

auto ref. "KA" auto ref. "KB" INSERT 11-25: ✓

The criteria shall be consistent with the criteria of the educational approval board in approving schools under s. 45.54.

INSERT 12-4: ✓

The rules shall also require the criteria for approving a course of instruction under s. 460.05 (1) (e) 3. to be consistent with the criteria of the Commission on Massage Therapy Accreditation or the Accreditation Commission on Acupuncture and Oriental Medicine.

INSERT 13-8: ✓

(3) After the first day of the 25th month beginning after the effective date of this subsection ... [revisor inserts date], the examining board shall grant a certificate as a massage therapist or bodyworker to a person if the educational approval board notifies the examining board that the educational approval board has determined all of the following:

That  
(a) The person submitted an application to the educational approval board on a form provided by the educational approval board that describes the person's education, training, and experience in the practice of massage therapy or bodywork

1 and includes evidence satisfactory to the educational approval board of all of the  
2 following:

3 1. That the person is 18 years of age or older.

4 2. That the person graduated from high school or attained high school  
5 graduation equivalency as determined by the department of public instruction under  
6 ~~section 115.29 (4) of the statutes.~~ <sup>5,</sup> *that*

7 3. That, during the 2-year period after the effective date of this subdivision ...  
8 [revisor inserts date], the person was actively engaged in the practice of massage  
9 therapy or bodywork.

10 (b) *That* The person included with the application under par. (a) <sup>✓</sup> an attestation that  
11 the person only recently became aware of the requirements of this chapter.

12 (c) *That* The person paid the fee specified in s. 440.05 (1) (a) <sup>✓</sup> to the educational  
13 approval board.

14 (d) *That* The person's education, training, and experience in the practice of massage  
15 therapy or bodywork is substantially equivalent to the education required under sub.  
16 (1) (e). <sup>✓</sup>

17 **INSERT 19-15:** <sup>✓</sup>

18 <sup>#</sup> (1) DEFINITIONS. In this <sup>(15)</sup> section:

19 <sup>#</sup> (a) "Examining board" means the massage therapy and bodywork examining  
20 board.

21 <sup>#</sup> (b) "Massage therapy or bodywork" has the meaning given in section 460.01 <sup>(4)</sup> <sup>✓</sup>  
22 of the statutes, as created by this act.

23 <sup>#</sup> *auto ref. "KB"; see ins 4-24* **INSERT 21-1:**

24 <sup>#</sup> (5) TRANSITIONAL PROVISIONS; NONREGISTRANTS. Notwithstanding section 460.05  
25 (1) <sup>✓</sup> of the statutes, as created by this act, the examining board shall issue a certificate

1 as a massage therapist or bodyworker to a person if the educational approval board  
2 notifies the examining board that the educational approval board has determined all  
3 of the following:

4 # That (a) The person submitted, no later than the first day of the 25th month  
5 beginning after the effective date of this paragraph, an application to the educational  
6 approval board on a form provided by the educational approval board that describes  
7 the person's education, training, and experience in the practice of massage therapy  
8 or bodywork and provides evidence satisfactory to the educational approval board of  
9 all of the following:

10 # 1. That the person is 18 years of age or older.  
11 # 2. That the person graduated from high school or attained high school  
12 graduation equivalency as determined by the department of public instruction under  
13 section 115.29 (4) of the statutes.

14 # 3. That, on the effective date of this subdivision, the person was actively  
15 engaged in the practice of massage therapy or bodywork.

16 # (b) (a) That The person paid the fee specified in section 440.05 (1) (a) of the statutes to  
17 the educational approval board.

18 # (c) (a) That The person's education, training, and experience in the practice of massage  
19 therapy or bodywork are substantially equivalent to the education required under  
20 section 460.05 (1) (e) of the statutes, as created by this act.

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

LRBs0319/1dn

MDK:.....

Kmg  
↑

Representative Underheim:

This substitute amendment makes the following changes to AB-749:

1. The name of the credential is changed from "license" to "certificate". Note, however, that only the name is changed and none of the substantive requirements regarding the certificate are changed.

2. References to "adjunctive therapies" are eliminated.

3. Proposed s. 460.04 (2) (b) and (c) are revised. Please review these changes. In retrospect, the distinction between approval of schools and approval of courses of instruction seems confusing. I'm not sure why the distinction is made, or why different criteria should apply.

4. Regarding the examination required for a certificate, see the changes to the proposed amendment of s. 460.06. In short, I changed that provision so that a person must pass one of the following: 1) the national certification examination for therapeutic massage and bodywork that is offered by the National Certification Board for Therapeutic Massage and Bodywork; 2) an examination relating to the practice of massage therapy or bodywork that is administered by a national board that is accredited by the National Commission for Certifying Agencies; or 3) a substantially equivalent examination approved by the examining board. Did I get this right? Note that I used "passes", rather than "successfully completes". This is a minor change, but it makes the language consistent with the last sentence of that provision (i.e., the requirement to pass an examination on state rules).

5. In proposed 460.03 (2), the phrase "without compensation" is deleted.

6. Proposed s. 460.10 is revised to require *at least* 24 hours of continuing education every 2 years for renewal of a certificate. Note that, as drafted, the examining board could require more than 24 hours.

7. The grandfather provisions are changed to apply to 3 classes of people. First, any person who is registered under current law is automatically eligible for a certificate, if he or she applies within 2 years after the effective date of the bill. See SECTION 28 (4) of the bill. Second, a person who is not registered under current law, but who is actively engaged in the practice of massage therapy or bodywork on the effective date

LPS:  
this will likely be "24"; see Kmg or MDK.

AB-749  
this draft the bill

LPS:  
see King or mdk: 29?  
-2-

of the bill may apply to the EAB for a certificate within 2 years after the effective date of the bill. See SECTION (28) (5) of the bill for additional requirements. Third, a person who misses the 2-year deadline may apply to the EAB for a certificate if, among other things, he or she attests that he or she only recently became aware of the bill's requirements. Also, he or she must be actively engaged in the practice of massage therapy or bodywork during the 2-year period after the effective date of the bill. See proposed 460.05 (3). Please review all of these provisions to make sure that they are okay. ↵

8. The substitute amendment requires people who apply to the EAB for a certificate to pay an initial fee to the EAB, not to DRL. The reason is that the EAB, not DRL or the examining board, will be ~~be~~ expending administrative resources in determining whether a certificate should be granted. I'm not sure what the amount of the fee should be because I do not know what the EAB's costs will be. Therefore, I required applicants to pay to the EAB the same fee that they would otherwise have to pay to DRL, i.e., \$53 (which, under s. 440.05 (1) (a), stats., is the initial credential fee when no examination is required). Also, I added an appropriation to the EAB for collection of the fee. Because DRL receives only 90% of the initial fees that it collects under current law, I also provided that the EAB receives only 90% of the initial fees that it collects. Are all of these provisions okay?

Finally, I'm not sure why you want the EAB to play a role in certifying massage therapists and bodyworkers. Under current law, the EAB approves schools, not people who engage in occupations.

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