

Kunkel, Mark

From: Kunkel, Mark
Sent: Saturday, October 13, 2001 9:58 AM
To: 'krizenesky@aol.com'
Subject: Effective dates

Contacts: Betsy Krizenesky

Betsy:

I was going through my list of things to do from yesterday, and wondered whether I adequately explained the effective date issue to you. So here's another shot. Also, you will see in the last paragraph below that I realize that I need to correct a mistake in the bill.

After the legislature passes the bill, the governor can sign it into law (which means the bill is "enacted") or veto it. If the legislature overrides the governor's veto (not likely to happen when different parties control the 2 houses), then the bill is enacted. So, the date that a bill is enacted is the date that the governor signs it or the date that the legislature overrides a veto.

The secretary of state has to publish a bill within 10 working days (i.e., about 2 weeks) after it's enacted. That's the publication date.

Unless specified otherwise in a bill, a bill goes into effect (i.e., people have to start obeying it) on the day after it's published. Your bill specifies otherwise. With some exceptions, most of your bill goes into effect the first day of the 7th month beginning after the publication date of the bill. I chose the "first day of the 7th month" to make sure that it's about a 6-month delayed effective date. That sounds like it doesn't make sense, but it does. For example, suppose the bill is published on the last day of a month. If you provided that the bill takes effect the first day of the 6th month after publication, you would in effect end up with only a 5 month delayed effective date, because it's the very first day of the 6th month. I hope I explained that adequately, but I'm not sure.

Anyway, some sections of your bill take effect earlier, in that they take effect the day after publication. Those sections relate to creating the new examining board, getting people initially appointed to the examining board, allowing the board to promulgate emergency rules, and getting people licenses under the grandfather provisions. I made these sections take effect early only so that the board could prepare in advance for its duties that will take effect about 6 months later.

And now I've realized that I made a mistake. The grandfather provision should be subject to the same delayed effective date as the rest of the bill. The way it should work is that the bill goes into effect about 6 months after publication, and then about 6 month or so **after** that effective date, people should be allowed to apply for grandfathered licenses. As drafted, the deadline for applying for a grandfathered license is the same date that the bill goes into effect. Sorry about that. I will revise the bill to fix this mistake, together with any other revisions that are necessary.

Please call me if there are other changes that you need,

Mark D. Kunkel
Legislative Attorney
Legislative Reference Bureau
(608) 266-0131

Kunkel, Mark

From: Krizenesky@aol.com
Sent: Saturday, October 13, 2001 12:03 PM
To: Kunkel, Mark
Cc: alanw@mailbag.com; vladbarb@idcnet.com; SSHNOVETO@prodigy.net;
Subject: Re: Effective dates

Dear Mark,

Once again, thank you so much for your excellent work on our bill draft. As I mentioned on your voice mail on Friday Tony Driessen had nothing but praise for the way you were able to transform the wishes of a disparate group into a cohesive, accurate document.

RE: effective dates, I now am clear on the subject and thank you for taking the time to explain it. Tony was short on time when we spoke on Friday and so Vlad and I were unable to ask him.

As for your "mistake", you are referring to your very last sentence, which appears on page 22, line 4. Reading page 20, lines 17-23 there appears to be no mistake. ✓

Just a few notes from our conversation with Tony:

page 2, both the educational approval board and the national certification exam for therapeutic massage and bodywork should be capitalized. ✓

page 7, line 12, thank you so much for catching this in our current law. We would indeed like the text to read "shall", not may and it appears twice. A question that arose was whether any language has to be changed regarding the regular and temporary license holders, referred to on pages 13, line 1 (examinations in the plural), line 20 referring to the applicants for a temporary license. The little tick with the state laws and rules exam is that it is currently set up as a take home and is sent to the applicant with their application, to be submitted with the completed application. ✓

page 11, line 16 and page 18, lines 1 and 2, we would prefer the wording "Standards that govern" rather than code of ethics, since Tony advises us that a "code of ethics" is now determined by the professions themselves rather than something that is legislated. ✓

page 13, lines 16-22, we are thrilled that you thought to include this! The schools have been asking for such a provision and we quite frankly forgot to ask you for it. ✓

page 14, line 1 after United States please add "or another country" and on line 2 add the same after the word territory. This is right off the DORL application under reciprocal license. I have become sensitive to this detail since I have been called on to assist a handful of Russian massage therapists in their application process. I speak fluent Russian and was able to help them assemble all the correctly documented translations of their diplomas. etc.. ✓

○ We have a question on page 20, lines 17-20 regarding how to describe this in plain language in our supporting documents that we left you. As you have it described, holders of valid registration issued under 440.983 do not need to fill out any applications or do anything except wait for their new license to appear in the mail. In other words, they automatically will be granted the title of Licensed Massage Therapist or Bodyworker. Is that correct?

Once again, thank you so very much.
 Betsy

Betsy Krizenesky, WRMT
 AMTA-WI 1st VP, Chair, Law and Legislation Committee
 111 E. North Water St.
 Neenah, WI 54956
 920-725-0224, 725-0843

10/13/2001

Krizenesky@aol.com

Subj: Effective dates

Date: 10/13/2001 10:00:22 AM Central Daylight Time

From: Mark.Kunkel@legis.state.wi.us (Kunkel, Mark)

To: krizenesky@aol.com ('krizenesky@aol.com')

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10/13/2001

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Mark D. Kunkel
Legislative Attorney
Legislative Reference Bureau
(608) 266-0131

Kunkel, Mark

From: Krizenesky@aol.com
Sent: Tuesday, October 16, 2001 12:29 AM
To: Mark.Kunkel@legis.state.wi.us
Cc: SSHNOVETO@prodigy.net; vladbarb@idcnet.com; ahd@quarles.com;
Subject: Massage Therapy Bill

Dear Mark,

Today we were at the DRL and your name came up as a most desirable bill writer, so we are now doubly glad to have you working with us.

In addition, Tony Driessen, our lobbyist, went over the draft this morning with the EAB line by line and once small change came out of their discussion. That would be to eliminate the word "on-premises" from page 10, line 25 under Applicability. ✓

Bill Black, an attorney for the DRL has very valuable experience with fielding questions and complaints and strongly suggested to us that we get really explicit about local regulation and attempt to tighten up the "pre-emption section". (460.17) He says that many city officials are really stretching the current law vis-a-vis not regulating the practice of massage therapy by a state licensed person. They are demanding, for example, that MT's have a certain number of sinks or light bulbs of a certain wattage, etc. Is it possible to include something about equal treatment of all health care professionals? In our original bill we had such a provision but it got knocked out. I can't put my hands on it right now but Vlad Thomas could give you the language. I am leaving early tomorrow morning to go to our national convention so won't be able to get this to you.

Vlad's email is: vladbarb@idcnet.com. In addition, he now has Adobe Acrobat Reader so you don't need to fax him the next draft.

We have a meeting with the DRL's Massage Therapy Advisory Committee next Tuesday, October 23. It would be terrific to have Draft #3 in our hands by then, but if not, we do have a new appreciation of the demands on your time.

Thanks so much for all the hard and conscientious work you have given us on this, Mark!

Sincerely,
Betsy Krizenesky

Betsy Krizenesky, WRMT
AMTA-WI 1st VP and Membership Chair
111 E. North Water St.
Neenah, WI 54956
920-725-0224
Krizenesky@aol.com

10/16/2001

Kunkel, Mark

From: Krizenesky@aol.com
Sent: Friday, October 26, 2001 1:14
To: mark.kunkel@legis.state.wi.us
Subject: Massage Therapy Draft

Dear Mark,

A couple of weeks ago, I sent you three minor changes regarding our draft in two separate emails and am wondering if you have any questions regarding them.

Thanks for all your help with this!

Sincerely,
Betsy

Betsy Krizenesky, WRMT
AMTA-WI 1st VP and Law and Legislation Chair
111 E. North Water St.
Neenah, WI 54956
920-725-0224 or 920-725-0843 (home)
Krizenesky@aol.com

10/26/2001

Friday
11/2
4:30pm,
if possible

D-NOTE
2001 BILL

Ger

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 (DORL) from using a title that represents that he or she is a massage therapist, also called "bodyworker." DORL 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 DØRL 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 DØRL, 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 DØRL.

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. The bill ~~permits~~ ^{INSERT 2A} 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. *also allows*

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.

7. Creates exemptions from the bill's requirements for certain persons, including: a) a massage therapist student who practices, without compensation, under the on-premises 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

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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 ~~also does~~ 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
- 7 nursing, the nursing home administrator examining board, the veterinary
- 8 examining board, the optometry examining board, the pharmacy examining board,

makes other changes, including

INSERT
3A

BILL**SECTION 1**

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

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

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

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

13 2. Two public members.

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

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

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

20 3. Professional associations with which massage therapists or bodyworkers in
21 this state are affiliated.

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

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

24 50.01 (2) "Nurse's assistant" means a person who performs routine patient care
25 duties delegated by a registered nurse or licensed practical nurse who supervises the

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1 person, for the direct health care of a patient or resident. “Nurse’s assistant” does
2 not mean a person who is licensed, permitted, certified, or registered under ~~subch.~~
3 ~~XI of ch. 440 or ch. 441, 448, 449, 450, 451, 455 or, 459, or 460~~ or a person whose duties
4 primarily involve skills that are different than those taught in instructional
5 programs for nurse’s assistants.

6 **SECTION 4.** 55.043 (4) (e) of the statutes is amended to read:

7 55.043 (4) (e) Refer the case to the department of regulation and licensing if
8 the misappropriation of property or neglect or abuse involves an individual who is
9 required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to ~~459~~ 460.

10 **SECTION 5.** 103.10 (1) (e) of the statutes is amended to read:

11 103.10 (1) (e) “Health care provider” means a person described under s. 146.81
12 (1), but does not include a person described under s. 146.81 (1) (hp).

13 **SECTION 6.** 146.40 (1) (d) of the statutes is amended to read:

14 146.40 (1) (d) “Nurse’s assistant” means an individual who performs routine
15 patient care duties delegated by a registered nurse or licensed practical nurse who
16 supervises the individual, for the direct health care of a patient or resident. “Nurse’s
17 assistant” does not mean an individual who is licensed, permitted, certified, or
18 registered under ~~subch. XI of ch. 440 or ch. 441, 448, 449, 450, 451, 455 or, 459, or~~
19 460 or an individual whose duties primarily involve skills that are different than
20 those taught in instructional and competency evaluation programs for nurse’s
21 assistants certified under sub. (3) or evaluated by competency evaluation programs
22 for nurse’s assistants approved under sub. (3m).

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

24 146.81 (1) (hp) A massage therapist or bodyworker ~~issued a license~~ licensed
25 under subch. XI of ch. 440 ch. 460.

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

2 146.997 (1) (d) 13. A massage therapist or bodyworker issued a license of
3 registration under subch. XI of ch. 440 460.

4 SECTION 9. 180.1901 (1m) (ag) of the statutes is repealed.

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

6 180.1901 (1m) (h) Massage therapy and bodywork examining board under ch.
7 460.

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

9 252.15 (1) (ar) 1. A person or entity that is specified in s. 146.81 (1), but does
10 not include a massage therapist or bodyworker issued a license of registration under
11 subch. XI of ch. 440 460.

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

13 440.08 (2) (a) 46r. Massage therapist or bodyworker: July 1 of each
14 even-numbered year; \$53.

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

17 SECTION 14. Subchapter XI (title) of chapter 440 [precedes 440.98] of the
18 statutes is repealed.

19 SECTION 15. 440.98 to 440.981 of the statutes are repealed.

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

21 SECTION 17. 440.982 (1) (b) of the statutes is renumbered 460.06 and amended
22 to read:

23 460.06 Examination. ^{5 (B)} ~~Promulgate rules establishing the education, training~~
24 ~~or competency requirements that an applicant for a license must satisfy in order to~~
25 ~~be issued a license of registration under this subchapter. The rules shall require an~~

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1 applicant to complete at least 500 classroom hours of study in a course of instruction
 2 in massage therapy or bodywork approved by the department or at a school approved
 3 by the educational approval board under s. 45.54. The rules shall also require an The
 4 examining board may not grant a license under this chapter unless the applicant
 5 whose application is received after March 1, 2000, to successfully complete
 6 completes the national certification examination for therapeutic massage and
 7 bodywork that is offered by the National Certification Board for Therapeutic
 8 Massage and Bodywork or a substantially equivalent examination relating to the
 9 practice of massage therapy or bodywork that is approved by the National
 10 Commission of Certifying Agencies of the National Organization for Competency
 11 Assurance or that is developed, administered or approved by the department
 12 examining board. The examining board ~~may~~ ^{shall} promulgate rules may ~~that~~ also require ✓
 13 an applicant to pass an examination on state laws and administrative rules
 14 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:

PLAIN

460.17 ⁽²⁾ ^(B) ~~Local regulation~~. A city, village, town, or county, may not enact an
 ordinance that regulates the practice of massage therapy or bodywork by a person
 who is issued a license of registration by the department examining board under this
 subchapter chapter. No provision of any ordinance enacted by a city, village, town,
 or county that is in effect before February 1, 1999, and that relates to the practice of
 massage therapy or bodywork, may be enforced against a person who is issued a

9 SEC ~~X~~. RN; 440.989 (title); 460.17 (title)

BILL**SECTION 20**

1 license of registration by the department examining board under this subchapter
2 chapter.

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

4 448.03 (2) (a) Any person lawfully practicing within the scope of a license,
5 permit, registration, certificate or certification granted to practice professional or
6 practical nursing or nurse-midwifery under ch. 441, to practice chiropractic under
7 ch. 446, to practice dentistry or dental hygiene under ch. 447, to practice optometry
8 under ch. 449, to practice acupuncture under ch. 451, to practice massage therapy
9 or bodywork under ch. 460 or under any other statutory provision, or as otherwise
10 provided by statute.

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

12 448.10 (4) MASSAGE AND HYDROTHERAPY. Any Notwithstanding s. 460.02, any
13 person who, on July 11, 1953, was practicing massage and hydrotherapy in this state
14 under a certificate of registration issued pursuant to s. 147.185, 1951 stats., as it
15 existed prior to July 11, 1953, or who had applied for a certificate of registration in
16 massage and hydrotherapy before said date, shall have the right to continue to so
17 practice under such certificate, and the term “massage and hydrotherapy” shall be
18 deemed to include the use of galvanic generator, diathermy, infrared ray and
19 ultraviolet light for massage purposes. Nothing contained in this subsection shall
20 limit the existing authority of the board to revoke such certificate for cause, and in
21 addition, the board may require the holder of such certificate to demonstrate by
22 examination fitness to use the instrumentalities enumerated in this subsection. A
23 lack of such fitness shall constitute cause for revocation of such certificate. No such
24 certificate holder shall treat a specific disease except on the advice of a licensed
25 physician.

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1 or increase flexibility, and includes determining whether massage therapy or
2 bodywork is appropriate or contraindicated, or whether a referral to another health
3 care practitioner is appropriate. "Massage therapy or bodywork" does not include
4 making a medical diagnosis.

5 (6) "Physician's office" has the meaning given in s. 101.123 (1) (dg).

6 (7) "Sexual contact" has the meaning given in s. 939.22 (34).

7 (8) "Sexual intercourse" has the meaning given in s. 948.01 (7) (a).

8 **460.02 License required.** Except as provided in s. 460.03, no person may
9 practice massage therapy or bodywork for compensation or in the expectation of
10 compensation, or designate himself or herself as a massage therapist or bodyworker,
11 or use or assume the title "massage therapist and bodyworker" or "massage
12 therapist" or "bodyworker," or append to the person's name the letters "M.T.,"
13 "L.M.T.," "B.W.," or "L.B.W.," or use any other title or designation that represents or
14 may tend to represent the person as a massage therapist or bodyworker, unless the
15 person is licensed under this chapter.

16 **460.03 Applicability.** A license under this chapter is not required for any of
17 the following:

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

23 (2) A massage therapy or bodywork student practicing massage therapy or
24 bodywork, without compensation, within the scope of the student's education or
25 training, and under the ~~on~~ premises supervision of an instructor.

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

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

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

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

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

12 **460.04 Duties of examining board.** (1) The examining board shall assign
13 a unique license number to each person licensed under this chapter.

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

16 (a) ~~A code of ethics~~ ^{Standards} that governs the professional conduct of massage therapists
17 or bodyworkers. The ~~code of ethics~~ ^{standards} shall prohibit a massage therapist or bodyworker
18 from having sexual contact or sexual intercourse with a client.

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

23 (c) Criteria for approving the courses of instruction required under s. 460.05
24 (1) (e) 2. and 3. Rules promulgated under this paragraph shall require the course of

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1 instruction required under s. 460.05 (1) (e) 3. to consist of at least 600 classroom
2 hours.

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

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

6 **460.05 Licensure of massage therapists or bodyworkers.** (1) The
7 examining board shall grant a license as a massage therapist or bodyworker to a
8 person who satisfies all of the following:

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

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

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

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

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

18 1. Graduated from a school of massage therapy or bodywork approved under
19 s. 45.54.

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

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

BILL

The person the 5

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(f) ~~Passes an~~ examination under s. 460.06.

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(2) The examining board may waive a requirement specified in sub. (1) (e) if

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a person establishes, to the satisfaction of the examining board, that he or she has

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education, training, or other experience that is substantially equivalent to the

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requirement.

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460.07 Issuance of license; expiration and renewal. (1) The department

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shall issue a certificate of licensure to each person who is licensed under this chapter.

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The person shall conspicuously display the certificate in the place of business where

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he or she practices massage therapy or bodywork so that the certificate can easily be

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seen and read.

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(2) The renewal dates for licenses granted under this chapter, other than

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temporary licenses granted under s. 460.08, are specified under s. 440.08 (2) (a).

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Renewal applications shall be submitted to the department on a form provided by the

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department and shall include the renewal fee specified in s. 440.08 (2) (a) and, if

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applicable, proof of completion of continuing education under s. 460.10.

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460.08 Temporary license. Upon application and payment of the fee

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specified in s. 440.05 (6), the examining board may grant a temporary massage

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therapist or bodyworker license to a person who satisfies the requirements under s.

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460.05 (1) (a) to (e), has submitted an application to take the next available

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examination under s. 460.06, and has not previously failed ~~an~~ examination. A

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temporary license granted under this section shall expire on the date on which the

22

person receives the results of the examination and may not be renewed. *A temporary license granted under this section*

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460.09 Reciprocal license. Upon application and payment of the fee

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specified in s. 440.05 (2), the examining board shall grant a massage therapist or

25

bodyworker license to a person who holds a similar license or certificate in another

notice that he or she failed one of the examinations or that he or she has passed both examinations.

BILL

or another country

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state or territory of the United States ^{or another country} if the examining board determines that the requirements for receiving the license or certificate in the other state ^{or} territory are substantially equivalent to the requirements under s. 460.05.

or country

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

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460.11 Practice requirements. (1) A massage therapist or bodyworker may not practice massage therapy or bodywork on a client unless the massage therapist or bodyworker first obtains the informed consent of the client and has informed the client that he or she may withdraw the consent at any time.

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

BILL

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

4 **460.12 Duty to make reports.** (1) A massage therapist or bodyworker shall
5 submit a report to the examining board if he or she has reasonable cause to believe
6 that another massage therapist or bodyworker has committed a crime relating to
7 prostitution under ss. 944.30 to 944.34 or has had sexual contact or sexual
8 intercourse with a client. If the report relates to sexual contact or sexual intercourse
9 with a client, the report may not identify the client unless the client has provided
10 written consent for disclosure of this information.

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

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

21 (4) All reports and records made from reports under sub. (1) and maintained
22 by the department, the examining board, district attorneys and other persons,
23 officials, and institutions shall be confidential and are exempt from disclosure under
24 s. 19.35 (1). Information regarding the identity of a client with whom a massage
25 therapist or bodyworker is suspected of having sexual contact or sexual intercourse

BILL

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

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

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

21 **460.13 Employment of massage therapists or bodyworkers.** No person
22 may employ a person to engage in the practice of massage therapy or bodywork
23 unless the person who is employed is licensed under this chapter or is exempt from
24 the licensure requirements of this chapter.

BILL

1 **460.14 Advertising.** A massage therapist or bodyworker may not advertise
2 that he or she practices massage therapy or bodywork unless the advertisement
3 includes his or her license number and a statement that the massage therapist or
4 bodyworker is a “licensed massage therapist and bodyworker” or “licensed massage
5 therapist” or “licensed bodyworker.”

6 **460.15 Disciplinary proceedings and actions.** (1) Subject to the rules
7 promulgated under s. 440.03 (1), the examining board may make investigations and
8 conduct hearings to determine whether a violation of this chapter or any rule
9 promulgated under this chapter has occurred.

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

14 (a) Made a material misstatement in an application for a license or for renewal
15 of a license.

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

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

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

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

23 (f) Intentionally made a false statement in a report submitted under s. 460.12

24 (1).

BILL

SECTION 25

standards

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(g) Engaged in unprofessional or unethical conduct in violation of the code of ethics established in rules promulgated under s. 460.04 (2) (a).

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

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

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

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

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

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

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SECTION 26. 895.48 (1m) (intro.) of the statutes is amended to read:

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895.48 (1m) (intro.) Any physician or athletic trainer licensed under ch. 448, chiropractor licensed under ch. 446, dentist licensed under ch. 447, emergency medical technician licensed under s. 146.50, first responder certified under s. 146.50 (8), physician assistant licensed under ch. 448, registered nurse licensed under ch. 441, or a massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440 460 who renders voluntary health care to a participant in an athletic event or contest sponsored by a nonprofit corporation, as defined in s. 46.93

INSERT 18-17

BILL

1 (1m) (c), a private school, as defined in s. 115.001 (3r), a public agency, as defined in
2 s. 46.93 (1m) (e), or a school, as defined in s. 609.655 (1) (c), is immune from civil
3 liability for his or her acts or omissions in rendering that care if all of the following
4 conditions exist:

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

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

11 **SECTION 28. Nonstatutory provisions.**

12 (1) INITIAL APPOINTMENTS.

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

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

19 2. One massage therapist or bodyworker member, for a term expiring on July
20 1, 2004.

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

23 4. One massage therapist or bodyworker member, for a term expiring on July
24 1, 2006.

BILL**SECTION 28**

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

*create
see auto ref "B"*

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

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

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

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

BILL

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

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

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

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

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

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

SECTION 29. Initial applicability.

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

19 (2) The ~~treatment~~ ^{creation} of chapter 460 of the statutes first applies to crimes relating
20 to prostitution that are committed on and sexual contact or sexual intercourse that
21 occurs on the effective date of this subsection.

22 (3) The treatment of section 895.48 (1m) (intro.) and (b) of the statutes first
23 applies to care rendered on the effective date of this subsection.
24

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INSERT 2A:

, 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.

2

INSERT 3A:

7. Prohibits, under certain circumstances, cities, villages, towns, and counties from enacting or enforcing ordinances that the restrict the location of a massage therapy or bodywork office, or that impose lighting, sanitation, plumbing, or accessibility requirements on such an office. Under the bill, a city, village, town, or county may enact or enforce such an ordinance only if the same restriction or requirement applies to a physician's office.

INSERT 18-17:

~~§ SEC X. CR; 460.17(1) and (3)~~

4

plain

460.17 (1) In this subsection, "massage therapy or bodywork office" means an

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office in which massage therapy or bodywork is practiced by a person licensed under

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this chapter.

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(3) Notwithstanding s. 59.69 (4), 60.61 (2), 60.62 (1), 61.35, 62.23 (7), or sub.

8

(2), a city, village, town, or county may enact a zoning ordinance that restricts the

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location of, or imposes a lighting, sanitation, plumbing, or accessibility requirement

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on, a massage therapy or bodywork office only if the same restriction or requirement

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also applies to a physician's office. No provision of any zoning ordinance enacted by

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a city, village, town, or county that is in effect before the effective date of this

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subsection [revisor inserts date], and that has such a restriction or requirement,

14

may be enforced unless the same restriction or requirement also applies to a

15

physician's office.

§ SEC X. CR; 460.17(1) and (3)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3246/3dn
MDK:.....

Senator Huelsman:

This version of the bill is identical to the previous version, except for the following:

1. I corrected the delayed effective date so that the transitional provisions in the nonstatutory section of the bill have the same delayed effective date as the majority of the bill. Therefore, the deadline for applying for a license under the transitional provisions is about 6 months after the bill's delayed effective date. Under the previous version, the deadline was about 6 months after publication of the bill, not 6 months after the delayed effective date. I think this correction is necessary to give people time to take advantage of the provision.
2. The proposed amendment of s. 460.06, requires, instead of allows, the board to promulgate rules. However, note that the first sentence of that section provides that the board "may not", instead of "shall not". Under our drafting style, we use "may not", instead of "shall not", when we prohibit things.
3. References to "examination" in the singular are changed to refer to "examinations". See proposed s. 460.05 (1) (f) and the additional changes to proposed s. 460.08.
4. References to a "code of ethics" are changed to refer to "standards".
5. People licensed in other countries may qualify for a reciprocal license.
6. Proposed s. 460.03 (2) requires supervision, not on-premises supervision.
7. Proposed s. 460.17 (3) is created. The language regarding location was in 1997 Assembly Bill 461. I added language regarding a lighting, sanitation, plumbing, or accessibility requirement. Is it okay, or should it refer to other requirements? Also, is a physician's office the proper office for purposes of the comparison? Or is another type of health care office more appropriate?

Also note that capitalization throughout the bill is consistent with our drafting style. Therefore, I didn't make the changes that were requested.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3246/3dn
MDK:cjs:kjf

November 2, 2001

Senator Huelsman:

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3. References to "examination" in the singular are changed to refer to "examinations". See proposed s. 460.05 (1) (f) and the additional changes to proposed s. 460.08.
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Also note that capitalization throughout the bill is consistent with our drafting style. Therefore, I didn't make the changes that were requested.

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

Kunkel, Mark

From: Kunkel, Mark
Sent: Thursday, November 08, 2001 8:50
To: 'Krizenesky@aol.com'
Subject: RE: Massage Therapy Draft #3
 Betsey:

I'm confused about the change to page 7, line 19-20. Are you sure there is a mistake? From a FAQ at <http://www.noca.org/faqs.htm>, I find the following statement:

The National Commission for Certifying Agencies (NCCA) is the accreditation body of NOCA.

That statement is in response to the question: *What is the difference between NOCA and NCCA?*

Therefore, I don't think you need to eliminate the reference to NOCA. However, I will replace "is approved by" with "is administered by a program that is accredited by" on page 7, line 18. I will also eliminate "on premises" from the analysis, and make the change regarding the extra "the" in you separate email. ✓

Have you discussed the most current version of the draft with Sen. Huelsman? I understand that she wanted to look at the local control changes that were made. Have you discussed that issue with her? I will hold off on making the above changes until I hear from you or her regarding whether the local control changes are okay. Also get back to me if I don't properly understand the relationship between NOCA and NCCA. ✓

-- Mark

-----Original Message-----

From: Krizenesky@aol.com [mailto:Krizenesky@aol.com]
Sent: Tuesday, November 06, 2001 4:05 PM
To: mark.kunkel@legis.state.wi.us
Cc: alanw@mailbag.com; rem@ticon.net; benerson@merr.com; kaypeterson@wolfmark.com; Gaelyn@aol.com; daseinin@voyager.net; hannafranke@earthlink.net; john_botsford@hotmail.com; cdtmt@centurytel.net; vladbarb@idcnet.com; SSHNOVETO@prodigy.net; ahd@quarles.com
Subject: Massage Therapy Draft #3

Dear Mark,

Thank you so much for tending to our draft last week in such short order!

Four of us combed it over and could only find one small oversight: on page 3, item 7a of the LRB analysis, the phrase "on-premises" should be cut, since it is omitted from the draft 460.03(2), as per our request.

For a few panicky moments we thought we had lost subsection (2) of 460.17 on page 19....but then we found it on page 8, line 4 and are assuming that it was taken out of order for a reason known to draft writers, such as you.

While teleconferencing this morning with our lobbyist and legislative consultant, she pointed out a misrepresentation of the exam description, which has been sitting in the law for two years now. We thought now would be a good time to clear it up! Rather than simply changing one word, it requires a little rearranging, so I will underline that which needs to be eliminated and *italicize* that which needs to be added.

11/08/2001

Page 7, line 1820:

practice of massage therapy or bodywork that is *administered by a program that is accredited* by the National Commission of Certifying Agencies of the National Organization for Competency Assurance

Hope this comes through clearly and thank you again for your speed and thoughtfulness in dealing with us!

Sincerely,
Betsy

Betsy Krizenesky, WRMT
AMTA-WI 1st VP and Law and Legislation Chair
111 East North Water St.
Neenah, WI 54956
920-725-0224 (office) or 920-725-0843 (home)
Krizenesky@aol.com

Kunkel, Mark

From: Krizenesky@aol.com

Sent: Tuesday, November 06, 2001 9:18

To: mark.kunkel@legis.state.wi.us

Subject: One tiny thing in the MT draft #3

In a message dated 11/6/2001 4:10:49 PM Central Standard Time, kaypeterson@wolfmark.com writes:

| Betsy this may be a small thing that you have already pointed out to Mark Kunkle but there is an extra "the" on
| page three item seven "that the restrict!"

11/07/2001

4

By Friday
11/16

SAV

NOTE

2001 SENATE BILL

Stays

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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** 440.989
 4 (title); **to renumber and amend** 440.982 (1) (b) and 440.989; **to amend** 15.08
 5 (1m) (b), 50.01 (2), 55.043 (4) (e), 103.10 (1) (e), 146.40 (1) (d), 146.81 (1) (hp),
 6 146.997 (1) (d) 13., 252.15 (1) (ar) 1., 448.03 (2) (a), 448.10 (4), 451.02 (1), 895.48
 7 (1m) (intro.) and 908.03 (6m) (a); and **to create** 15.405 (6r), 180.1901 (1m) (h),
 8 440.08 (2) (a) 46r., 448.21 (1) (f), chapter 460 and 460.17 (1) and (3) of the
 9 statutes; **relating to:** the regulation of massage therapists and bodyworkers,
 10 creating a massage therapy and bodywork examining board, granting
 11 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

SENATE BILL

massage therapy and for the education, training, and competency requirements that 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

SENATE BILL

crime relating to prostitution or has had sexual contact or intercourse with a client and allows the examining board to investigate the report.

7. Creates exemptions from the bill's requirements for certain persons, including: a) a massage therapist student who practices, without compensation, under the ~~supervision~~ 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.

7. Prohibits, under certain circumstances, cities, villages, towns, and counties from enacting or enforcing ordinances that restrict the location of a massage therapy or bodywork office, or that impose lighting, sanitation, plumbing, or accessibility requirements on such an office. Under the bill, a city, village, town, or county may enact or enforce such an ordinance only if the same restriction or requirement applies to a physician's office.

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:

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

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

13 **15.405 (6r) MASSAGE THERAPY AND BODYWORK EXAMINING BOARD.** (a) There is
14 created a massage therapy and bodywork examining board in the department of
15 regulation and licensing. The examining board shall consist of the following
16 members appointed for 4-year terms:

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

20 2. Two public members.

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

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

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

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

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

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

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

14 **SECTION 4.** 55.043 (4) (e) of the statutes is amended to read:

15 55.043 (4) (e) Refer the case to the department of regulation and licensing if
16 the misappropriation of property or neglect or abuse involves an individual who is
17 required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 459 460.

18 **SECTION 5.** 103.10 (1) (e) of the statutes is amended to read:

19 103.10 (1) (e) "Health care provider" means a person described under s. 146.81
20 (1), but does not include a person described under s. 146.81 (1) (hp).

21 **SECTION 6.** 146.40 (1) (d) of the statutes is amended to read:

22 146.40 (1) (d) "Nurse's assistant" means an individual who performs routine
23 patient care duties delegated by a registered nurse or licensed practical nurse who
24 supervises the individual, for the direct health care of a patient or resident. "Nurse's
25 assistant" does not mean an individual who is licensed, permitted, certified, or

SENATE BILL**SECTION 6**

1 registered under ~~subch. XI of ch. 440 or~~ ch. 441, 448, 449, 450, 451, 455 ~~or~~, 459, or
2 460 or an individual whose duties primarily involve skills that are different than
3 those taught in instructional and competency evaluation programs for nurse's
4 assistants certified under sub. (3) or evaluated by competency evaluation programs
5 for nurse's assistants approved under sub. (3m).

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

7 146.81 (1) (hp) A massage therapist or bodyworker ~~issued a license~~ licensed
8 under subch. XI of ch. 440 ch. 460.

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

10 146.997 (1) (d) 13. A massage therapist or bodyworker issued a license of
11 ~~registration under subch. XI of ch. 440~~ 460.

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

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

14 180.1901 (1m) (h) Massage therapy and bodywork examining board under ch.
15 460.

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

17 252.15 (1) (ar) 1. A person or entity that is specified in s. 146.81 (1), but does
18 not include a massage therapist or bodyworker issued a license ~~of registration~~ under
19 ~~subch. XI of ch. 440~~ 460.

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

21 440.08 (2) (a) 46r. Massage therapist or bodyworker: July 1 of each
22 even-numbered year; \$53.

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

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

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

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

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

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

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

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

administered by a program that is accredited

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1 SECTION 20. 440.989 (title) of the statutes is renumbered 460.17 (title).

2 SECTION 21. 440.989 of the statutes is renumbered 460.17 and amended to

3 read:

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

11 SECTION 22. 448.03 (2) (a) of the statutes is amended to read:

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

19 SECTION 23. 448.10 (4) of the statutes is amended to read:

20 448.10 (4) MASSAGE AND HYDROTHERAPY. Any Notwithstanding s. 460.02, any
21 person who, on July 11, 1953, was practicing massage and hydrotherapy in this state
22 under a certificate of registration issued pursuant to s. 147.185, 1951 stats., as it
23 existed prior to July 11, 1953, or who had applied for a certificate of registration in
24 massage and hydrotherapy before said date, shall have the right to continue to so
25 practice under such certificate, and the term "massage and hydrotherapy" shall be

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1 deemed to include the use of galvanic generator, diathermy, infrared ray and
2 ultraviolet light for massage purposes. Nothing contained in this subsection shall
3 limit the existing authority of the board to revoke such certificate for cause, and in
4 addition, the board may require the holder of such certificate to demonstrate by
5 examination fitness to use the instrumentalities enumerated in this subsection. A
6 lack of such fitness shall constitute cause for revocation of such certificate. No such
7 certificate holder shall treat a specific disease except on the advice of a licensed
8 physician.

9 **SECTION 24.** 448.21 (1) (f) of the statutes is created to read:

10 448.21 (1) (f) The practice of massage therapy or bodywork within the meaning
11 of ch. 460.

12 **SECTION 25.** 451.02 (1) of the statutes is amended to read:

13 451.02 (1) An individual holding a license, permit or certificate under ch. 441,
14 446, 447, 448 ~~or~~, 449, or 460 who engages in a practice of acupuncture that is also
15 included within the scope of his or her license, permit, or certificate.

16 **SECTION 26.** Chapter 460 of the statutes is created to read:

17 **CHAPTER 460**

18 **MASSAGE THERAPY AND BODYWORK**

19 **EXAMINING BOARD**

20 **460.01 Definitions.** In this chapter:

21 (1) "Adjunctive therapy" includes the use of a device that simulates or enhances
22 a manual action and the application of heat, cold, water, light, or a topical
23 preparation.

24 (2) "Examining board" means the massage therapy and bodywork examining
25 board.

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

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

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

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

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

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

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

24 **460.03 Applicability.** A license under this chapter is not required for any of
25 the following:

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

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

9 (3) A massage therapist or bodyworker who is licensed to practice massage
10 therapy or bodywork in another state or country and is providing a consultation to
11 or demonstration with a massage therapist or bodyworker who is licensed under this
12 chapter.

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

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

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

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

20 **460.04 Duties of examining board.** (1) The examining board shall assign
21 a unique license number to each person licensed under this chapter.

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

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

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

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

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

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

15 **460.05 Licensure of massage therapists or bodyworkers.** (1) The
16 examining board shall grant a license as a massage therapist or bodyworker to a
17 person who satisfies all of the following:

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

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

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

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

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

3 1. Graduated from a school of massage therapy or bodywork approved under
4 s. 45.54.

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

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

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

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

16 **460.07 Issuance of license; expiration and renewal.** (1) The department
17 shall issue a certificate of licensure to each person who is licensed under this chapter.
18 The person shall conspicuously display the certificate in the place of business where
19 he or she practices massage therapy or bodywork so that the certificate can easily be
20 seen and read.

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

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1 **460.08 Temporary license.** Upon application and payment of the fee
2 specified in s. 440.05 (6), the examining board may grant a temporary massage
3 therapist or bodyworker license to a person who satisfies the requirements under s.
4 460.05 (1) (a) to (e), has submitted an application to take the next available
5 examinations under s. 460.06, and has not previously failed an examination. A
6 temporary license granted under this section shall expire on the date on which the
7 person receives notice that he or she failed one of the examinations or that he or she
8 has passed both examinations. A temporary license granted under this section may
9 not be renewed.

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

17 **460.10 Continuing education.** The examining board may promulgate rules
18 establishing requirements and procedures for a massage therapist or bodyworker to
19 complete continuing education programs or courses of study to qualify for renewal
20 of his or her license. Any rules promulgated under this section shall require a
21 massage therapist or bodyworker to complete at least 12 hours of continuing
22 education programs or courses of study to qualify for renewal. The examining board
23 may waive all or part of any requirement established in rules promulgated under this
24 section if it determines that prolonged illness, disability, or other exceptional

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1 circumstances have prevented a massage therapist or bodyworker from completing
2 the requirement.

3 **460.11 Practice requirements.** (1) A massage therapist or bodyworker may
4 not practice massage therapy or bodywork on a client unless the massage therapist
5 or bodyworker first obtains the informed consent of the client and has informed the
6 client that he or she may withdraw the consent at any time.

7 (2) A massage therapist or bodyworker shall keep confidential any information
8 that a client in confidence gives to the massage therapist or bodyworker and any
9 other information that the massage therapist or bodyworker obtains about a client
10 in the course of practicing massage therapy or bodywork that a reasonable person
11 in the client's position would want kept confidential, unless the information is
12 otherwise required by law to be disclosed or the client specifically authorizes the
13 disclosure of the information.

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

17 **460.12 Duty to make reports.** (1) A massage therapist or bodyworker shall
18 submit a report to the examining board if he or she has reasonable cause to believe
19 that another massage therapist or bodyworker has committed a crime relating to
20 prostitution under ss. 944.30 to 944.34 or has had sexual contact or sexual
21 intercourse with a client. If the report relates to sexual contact or sexual intercourse
22 with a client, the report may not identify the client unless the client has provided
23 written consent for disclosure of this information.

24 (2) The examining board may use a report made under sub. (1) as the basis for
25 an investigation under s. 460.15 (1). If, after an investigation, the examining board

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1 has reasonable cause to believe that a massage therapist or bodyworker has
2 committed a crime, the examining board shall report the belief to the district
3 attorney for the county in which the crime, in the opinion of the examining board,
4 occurred.

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

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

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

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1 (b) A massage therapist or bodyworker shall submit a written report to the
2 examining board if he or she is convicted of a felony or misdemeanor, or is found to
3 have committed a violation, in this state or elsewhere, and if the circumstances of the
4 felony, misdemeanor, or violation substantially relate to the practice of massage
5 therapy or bodywork. The report shall identify the date, place, and nature of the
6 conviction or finding and shall be submitted within 30 days after the entry of the
7 judgment of conviction or the judgment finding that he or she committed the
8 violation. If the report is submitted by mail, the report is considered to be submitted
9 on the date that it is mailed.

10 **460.13 Employment of massage therapists or bodyworkers.** No person
11 may employ a person to engage in the practice of massage therapy or bodywork
12 unless the person who is employed is licensed under this chapter or is exempt from
13 the licensure requirements of this chapter.

14 **460.14 Advertising.** A massage therapist or bodyworker may not advertise
15 that he or she practices massage therapy or bodywork unless the advertisement
16 includes his or her license number and a statement that the massage therapist or
17 bodyworker is a “licensed massage therapist and bodyworker” or “licensed massage
18 therapist” or “licensed bodyworker.”

19 **460.15 Disciplinary proceedings and actions.** (1) Subject to the rules
20 promulgated under s. 440.03 (1), the examining board may make investigations and
21 conduct hearings to determine whether a violation of this chapter or any rule
22 promulgated under this chapter has occurred.

23 (2) Subject to the rules promulgated under s. 440.03 (1), the examining board
24 may reprimand a massage therapist or bodyworker or deny, limit, suspend, or revoke

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1 a license under this chapter if it finds that the applicant or licensee has done any of
2 the following:

3 (a) Made a material misstatement in an application for a license or for renewal
4 of a license.

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

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

9 (d) Advertised, practiced, or attempted to practice under another's name.

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

12 (f) Intentionally made a false statement in a report submitted under s. 460.12
13 (1).

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

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

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

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

22 (3) The examining board may restore a license that has been suspended or
23 revoked on such terms and conditions as the examining board may deem
24 appropriate.

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1 **460.16 Penalties.** (1) Except as provided in sub. (2), any person who violates
2 this chapter or any rule promulgated under this chapter shall forfeit not more than
3 \$1,000 for each violation.

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

7 **SECTION 27.** 460.17 (1) and (3) of the statutes are created to read:

8 460.17 (1) In this subsection, "massage therapy or bodywork office" means an
9 office in which massage therapy or bodywork is practiced by a person licensed under
10 this chapter.

11 (3) Notwithstanding s. 59.69 (4), 60.61 (2), 60.62 (1), 61.35, 62.23 (7), or sub.
12 (2), a city, village, town, or county may enact a zoning ordinance that restricts the
13 location of, or imposes a lighting, sanitation, plumbing, or accessibility requirement
14 on, a massage therapy or bodywork office only if the same restriction or requirement
15 also applies to a physician's office. No provision of any zoning ordinance enacted by
16 a city, village, town, or county that is in effect before the effective date of this
17 subsection [revisor inserts date], and that has such a restriction or requirement,
18 may be enforced unless the same restriction or requirement also applies to a
19 physician's office.

20 **SECTION 28.** 895.48 (1m) (intro.) of the statutes is amended to read:

21 895.48 (1m) (intro.) Any physician or athletic trainer licensed under ch. 448,
22 chiropractor licensed under ch. 446, dentist licensed under ch. 447, emergency
23 medical technician licensed under s. 146.50, first responder certified under s. 146.50
24 (8), physician assistant licensed under ch. 448, registered nurse licensed under ch.
25 441, or a massage therapist or bodyworker issued a license of registration under

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

7 **SECTION 29.** 908.03 (6m) (a) of the statutes is amended to read:

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

13 **SECTION 30. Nonstatutory provisions.**

14 (1) INITIAL APPOINTMENTS.

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

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

21 2. One massage therapist or bodyworker member, for a term expiring on July
22 1, 2004.

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

SENATE BILL

1 4. One massage therapist or bodyworker member, for a term expiring on July
2 1, 2006.

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

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

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

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

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

SENATE BILL**SECTION 30**

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

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

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

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

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

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

16 **SECTION 31. Initial applicability.**

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

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

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

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

LRB-3246/4dn

MDK:.....

cjs

Senator Huelsman:

This version is identical to the previous version, except that proposed s. 460.17 (3) is eliminated. ✓

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no 9
= In addition, I corrected a mistake in the analysis and made a truly technical change to how the examination is described in ~~the~~ proposed s. 460.06. ✓
~~unreadable~~

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

LRB-3246/4dn
MDK:cjs:pg

November 15, 2001

Senator Huelsman:

This version is identical to the previous version, except that proposed s. 460.17 (3) is eliminated. In addition, I corrected a mistake in the analysis and made a truly technical change to how the examination is described in proposed s. 460.06.

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November 16, 2001

MEMORANDUM

To: Senator Huelsman

From: Mark D. Kunkel, Legislative Attorney

Re: LRB-3246/4 Regulation of massage therapists and bodyworkers

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE *JK*

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0131 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.