



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 SENATE BILL 262**

March 24, 1998 – Offered by Representatives OTTE and RILEY.

1 **AN ACT to renumber** 180.1901 (1m) (a); **to amend** 50.01 (2), 103.10 (1) (e), 146.40
2 (1) (d), 146.81 (1) (i) and (j), 252.10 (7), 252.15 (1) (ar) 1., 440.042 (1), 895.48 (1m)
3 (intro.), 895.48 (1m) (b) and 908.03 (6m) (a); and **to create** 146.81 (1) (hp),
4 180.1901 (1m) (ag), 440.08 (2) (a) 67q. and subchapter X of chapter 440
5 [precedes 440.97] of the statutes; **relating to:** registration of massage
6 therapists and bodyworkers, granting rule-making authority and providing a
7 penalty.

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

8 **SECTION 1.** 50.01 (2) of the statutes is amended to read:
9 50.01 (2) “Nurse’s assistant” means a person who performs routine patient care
10 duties delegated by a registered nurse or licensed practical nurse who supervises the
11 person, for the direct health care of a patient or resident. “Nurse’s assistant” does

1 not mean a person who is licensed, permitted, certified or registered under subch. X
2 of ch. 440 or ch. 441, 448, 449, 450, 451, 455 or 459 or a person whose duties primarily
3 involve skills that are different than those taught in instructional programs for
4 nurse's assistants.

5 **SECTION 2.** 103.10 (1) (e) of the statutes is amended to read:

6 103.10 (1) (e) "Health care provider" means a person described under s. 146.81
7 (1), but does not include a person described under s. 146.81 (1) (hp).

8 **SECTION 3.** 146.40 (1) (d) of the statutes is amended to read:

9 146.40 (1) (d) "Nurse's assistant" means an individual who performs routine
10 patient care duties delegated by a registered nurse or licensed practical nurse who
11 supervises the individual, for the direct health care of a patient or resident. "Nurse's
12 assistant" does not mean an individual who is licensed, permitted, certified or
13 registered under subch. X of ch. 440 or ch. 441, 448, 449, 450, 451, 455 or 459 or an
14 individual whose duties primarily involve skills that are different than those taught
15 in instructional and competency evaluation programs for nurse's assistants certified
16 under sub. (3) or evaluated by competency evaluation programs for nurse's
17 assistants approved under sub. (3m).

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

19 146.81 (1) (hp) A massage therapist or bodyworker issued a license of
20 registration under subch. X of ch. 440.

21 **SECTION 5.** 146.81 (1) (i) and (j) of the statutes are amended to read:

22 146.81 (1) (i) A partnership of any providers specified under pars. (a) to ~~(hm)~~
23 (hp).

24 (j) A corporation or limited liability company of any providers specified under
25 pars. (a) to ~~(hm)~~ (hp) that provides health care services.

1 **SECTION 6.** 180.1901 (1m) (a) of the statutes is renumbered 180.1901 (1m) (ar).

2 **SECTION 7.** 180.1901 (1m) (ag) of the statutes is created to read:

3 180.1901 **(1m)** (ag) The department of regulation and licensing under subch.
4 X of ch. 440.

5 **SECTION 8.** 252.10 (7) of the statutes, as affected by 1997 Wisconsin Act 27, is
6 amended to read:

7 252.10 **(7)** Drugs necessary for the treatment of mycobacterium tuberculosis
8 shall be purchased by the department from the appropriation under s. 20.435 (5) (e)
9 and dispensed to patients through the public health dispensaries or through health
10 care providers, as defined in s. 146.81 (1), other than massage therapists or
11 bodyworkers issued a license of registration under subch. X of ch. 440, social workers,
12 marriage and family therapists or professional counselors certified under ch. 457,
13 speech-language pathologists or audiologists licensed under subch. II of ch. 459,
14 speech and language pathologists licensed by the department of public instruction
15 or, on or after July 1, 1995, and no later than June 30, 1999, dietitians certified under
16 subch. IV of ch. 448.

17 **SECTION 9.** 252.15 (1) (ar) 1. of the statutes is amended to read:

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

21 **SECTION 10.** 440.042 (1) of the statutes is amended to read:

22 440.042 **(1)** The secretary may appoint persons or advisory committees to
23 advise the department and the boards, examining boards and affiliated
24 credentialing boards in the department on matters relating to the regulation of
25 credential holders. The secretary shall appoint an advisory committee to advise the

1 department on matters relating to carrying out the duties specified in s. 440.972 and
2 making investigations, conducting hearings and taking disciplinary action under s.
3 440.976. A person or an advisory committee member appointed under this
4 subsection shall serve without compensation, but may be reimbursed for his or her
5 actual and necessary expenses incurred in the performance of his or her duties.

6 **SECTION 11.** 440.08 (2) (a) 67q. of the statutes is created to read:

7 440.08 (2) (a) 67q. Registered massage therapist or bodyworker: March 1 of
8 each odd-numbered year; \$41.

9 **SECTION 12.** Subchapter X of chapter 440 [precedes 440.97] of the statutes is
10 created to read:

11 **CHAPTER 440**

12 **SUBCHAPTER X**

13 **REGISTRY OF MASSAGE THERAPISTS**

14 **AND BODYWORKERS**

15 **440.97 Definitions.** In this subchapter:

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

19 (2) “Manual action” includes holding, positioning, rocking, kneading,
20 compressing, decompressing, gliding or percussing the soft tissue of the human body
21 and applying friction to soft tissue.

22 (3) “Massage therapist or bodyworker” means a person who engages in
23 massage therapy or bodywork.

24 (4) “Massage therapy or bodywork”:

1 (a) Means the science and healing art that uses manual actions to palpate and
2 manipulate the soft tissue of the human body, and adjunctive therapies, to improve
3 circulation, reduce tension, relieve soft tissue pain, or increase flexibility, and
4 includes determining whether massage therapy or bodywork is appropriate or
5 contraindicated, or whether a referral to another health care practitioner is
6 appropriate.

7 (b) Does not include making a medical diagnosis.

8 (5) "Registrant" means a person who is issued a license of registration under
9 this subchapter.

10 **440.9705 Applicability.** This subchapter does not apply to a person holding
11 a license, permit, registration or certification granted by this state or the federal
12 government who engages in the practice of massage therapy or bodywork within the
13 scope of his or her license, permit, registration or certification and who does not use
14 any title or description that implies that he or she is registered under this subchapter
15 or represent himself or herself to be registered under this subchapter.

16 **440.971 Use of title. (1)** No person may use the title "Wisconsin registered
17 massage therapist and bodyworker", "Wisconsin registered massage therapist" or
18 "Wisconsin registered bodyworker", use any title or description that implies that he
19 or she is registered under this subchapter or represent himself or herself to be
20 registered under this subchapter unless the person has been issued a license of
21 registration as a massage therapist or bodyworker under this subchapter.

22 (2) This subchapter does not prohibit a person who is not a registrant from
23 engaging in the practice of massage therapy or bodywork.

24 **440.972 Duties of department. (1)** The department shall do all of the
25 following:

1 (a) Promulgate rules establishing requirements and standards for the practice
2 of massage therapy or bodywork by a registrant, including a code of ethics that
3 governs a registrant's practice of massage therapy or bodywork.

4 (b) Promulgate rules establishing the education, training or competency
5 requirements that a person must satisfy in order to be issued a license of registration
6 under this subchapter. The rules may require a person to pass an examination,
7 administered or approved by the department, to determine fitness to practice
8 massage therapy or bodywork.

9 (c) Establish and update on at least a bimonthly basis a registry of persons who
10 are issued a license of registration under this subchapter. The department shall
11 make the registry available for public inspection and copying and in any other
12 manner that, as determined by the department, facilitates public access to the
13 registry.

14 (2) The department may promulgate rules that establish continuing education
15 requirements that a person must satisfy to be eligible to renew a license of
16 registration that is issued under this subchapter.

17 **440.973 Registration requirements.** The department shall issue a license
18 of registration as a massage therapist or bodyworker to a person who does all of the
19 following:

20 (1) Submits an application for the license to the department on a form provided
21 by the department.

22 (2) Pays the fee specified in s. 440.05 (1).

23 (3) Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory
24 to the department that he or she does not have an arrest or conviction record.

1 (4) Submits evidence satisfactory to the department that he or she satisfies the
2 requirements established in rules promulgated under s. 440.972 (1) (b).

3 (5) Submits evidence satisfactory to the department that he or she has liability
4 insurance in an amount approved by the department that is not less than \$50,000
5 or that he or she qualifies as a self-insurer on such terms and conditions as the
6 department considers appropriate.

7 **440.974 Reciprocal registration.** Upon application and payment of the fee
8 specified in s. 440.05 (2), the department may issue a license of registration as a
9 massage therapist or bodyworker to a person who has been issued a similar license,
10 registration or certificate by another state or territory of the United States or another
11 country if all of the following apply:

12 (1) The person is not currently under investigation for a matter related to his
13 or her practice of massage therapy or bodywork in the other state, territory or
14 country.

15 (2) The person has never been disciplined for a matter related to his or her
16 practice of massage therapy or bodywork in the other state, territory or country.

17 (3) Subject to ss. 111.321, 111.322 and 111.335, the person does not have an
18 arrest or conviction record.

19 (4) The person is not currently a party in pending litigation in which it is
20 alleged that he or she is liable for damages for acts committed in the course of the
21 practice of massage therapy or bodywork.

22 (5) The person has never been found liable for damages for acts committed in
23 the course of the practice of massage therapy or bodywork which evidenced a lack of
24 ability or fitness to practice massage therapy or bodywork.

25 (6) The person submits the evidence specified in s. 440.973 (5).

1 **440.975 Renewal of registration.** The renewal dates for licenses of
2 registration issued under this subchapter are specified in s. 440.08 (2) (a). Renewal
3 applications shall be submitted to the department on a form provided by the
4 department and shall include all of the following:

5 (1) The renewal fee specified in s. 440.08 (2) (a).

6 (2) Evidence satisfactory to the department that the applicant has completed
7 any continuing education requirements specified in rules promulgated under s.
8 440.972 (2).

9 (3) Evidence satisfactory to the department that the applicant has liability
10 insurance in an amount approved by the department that is not less than \$50,000
11 or that he or she qualifies as a self-insurer on such terms and conditions as the
12 department considers appropriate.

13 **440.976 Disciplinary proceedings and actions.** (1) Subject to the rules
14 promulgated under s. 440.03 (1), the department may make investigations and
15 conduct hearings to determine whether a violation of this subchapter or any rule
16 promulgated under this subchapter has occurred.

17 (2) Subject to the rules promulgated under s. 440.03 (1), the department may
18 reprimand a registrant, or may deny, limit, suspend or revoke a license of
19 registration, if an applicant or registrant has done any of the following:

20 (a) Made a material misstatement in an application for a license of registration
21 or for renewal of a license of registration.

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

1 (c) Been adjudicated mentally incompetent by a court of competent jurisdiction,
2 a certified copy of the record of adjudication of incompetency to be conclusive
3 evidence of such incompetency.

4 (d) Advertised in a manner that is false, deceptive or misleading.

5 (e) Advertised, practiced or attempted to practice massage therapy or
6 bodywork under another's name.

7 (f) Subject to ss. 111.321, 111.322 and 111.34, engaged in the practice of
8 massage therapy or bodywork while the person's ability to engage in the practice was
9 impaired by alcohol or other drugs.

10 (g) Violated any standard relating to the practice of massage therapy or
11 bodywork established by the department in the rules promulgated under s. 440.972
12 (1) (a).

13 (h) Engaged in conduct while practicing massage therapy or bodywork which
14 jeopardizes the health, safety or welfare of a client or which evidences a lack of
15 knowledge or ability to apply professional principles or skills.

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

17 (j) Aided another person in violating this subchapter or any rule promulgated
18 under this subchapter.

19 (k) Violated this subchapter or any rule promulgated under this subchapter.

20 **(2m)** In addition to or in lieu of a reprimand or denial, limitation, suspension
21 or revocation of a license of registration under sub. (2), the department may assess
22 against an applicant or registrant a forfeiture of not more than \$1,000 for each
23 violation enumerated under sub. (2).

24 **(3)** In lieu of proceeding under sub. (2), the department may place, in the
25 registry established under s. 440.972 (1) (c), a copy of a complaint received by the

1 department against a registrant, the registrant's response to the complaint and a
2 copy of any records of the department concerning the complaint. The department
3 shall use the following procedure in placing information in the registry under this
4 subsection:

5 (a) No later than 60 days after the date on which the department receives a
6 complaint alleging that a registrant has engaged in conduct that is grounds for
7 discipline under sub. (2), the department shall provide the registrant with a copy of
8 the complaint and place a copy of the complaint and a copy of any records of the
9 department concerning the complaint in the registry.

10 (b) After receiving a copy of the complaint under par. (a), the registrant who is
11 the subject of the complaint, or his or her authorized representative, may place in the
12 registry a statement of reasonable length describing the registrant's view of the
13 correctness or relevance of any of the information contained in the complaint.

14 (c) The department shall remove all complaints against and other information
15 concerning a registrant from the registry if, for a period of 2 years from the date of
16 the most recent complaint filed in the registry, no further complaints have been filed
17 against the registrant.

18 (4) The department may reissue a license of registration to any person whose
19 certificate has been suspended or revoked under sub. (2) if the person satisfies
20 requirements for reissuance established by the department. The department may
21 issue a new license of registration to replace any license revoked, lost, destroyed or
22 mutilated, subject to the rules of the department and the payment of the required fee.

23 **440.977 Change of name.** No registrant may practice massage therapy or
24 bodywork in this state under any other given name or any other surname than that
25 under which the person was originally issued a license of registration if the

1 department, after a hearing, finds that using a title under the changed name
2 operates to unfairly compete with another person who practices massage therapy or
3 bodywork or to mislead the public as to identity or to otherwise result in detriment
4 to the profession of massage therapy or bodywork or to the public. This section does
5 not apply to a change of name resulting from marriage or divorce.

6 **440.978 Penalties. (1)** Except as provided in sub. (2), a person who violates
7 this subchapter or any rule promulgated under this subchapter shall forfeit not more
8 than \$1,000 for each violation.

9 **(2)** A person who violates s. 440.971 (1) or a person presenting or attempting
10 to use as his or her own the license of registration of another, or any person who
11 falsely impersonates any other registrant of like or different name, or any person who
12 attempts to use an expired or revoked license of registration, may be fined not less
13 than \$100 nor more than \$500 or imprisoned for not more than 3 months or both.

14 **SECTION 13.** 895.48 (1m) (intro.) of the statutes is amended to read:

15 895.48 **(1m)** (intro.) Any physician licensed under ch. 448, chiropractor
16 licensed under ch. 446, dentist licensed under ch. 447, emergency medical technician
17 licensed under s. 146.50, physician assistant certified under ch. 448 or, registered
18 nurse licensed under ch. 441 or massage therapist or bodyworker issued a license of
19 registration under subch. X of ch. 440 who renders voluntary health care to a
20 participant in an athletic event or contest sponsored by a nonprofit corporation, as
21 defined in s. 46.93 (1m) (c), a private school, as defined in s. 115.001 (3r), a public
22 agency, as defined in s. 46.93 (1m) (e), or a school, as defined in s. 609.655 (1) (c), is
23 immune from civil liability for his or her acts or omissions in rendering that care if
24 all of the following conditions exist:

25 **SECTION 14.** 895.48 (1m) (b) of the statutes is amended to read:

