



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4392/1
KP:emw

2017 BILL

1 **AN ACT** *to renumber and amend* 460.01 (3) and 460.15; *to amend* 460.01 (2m),
2 460.01 (4), 460.02, 460.03 (intro.), 460.03 (2), 460.04 (2) (a), 460.04 (2) (e), 460.04
3 (2) (g), 460.05 (4), 460.06 (intro.), 460.07 (1), 460.095 (4) (intro.), 460.10 (1) (a),
4 460.10 (2), 460.11, 460.12 (1), 460.13, 460.14 (2) (intro.) and 460.17; and *to*
5 **create** 440.08 (2) (a) 46p., 460.01 (1g) (d), 460.01 (1g) (e), 460.01 (4g), 460.01
6 (4r), 460.03 (4), 460.04 (2) (h), 460.04 (2) (i), 460.135 and 460.15 (2) of the
7 statutes; **relating to:** licensure and local regulation of establishments
8 providing massage therapy or bodywork therapy, the scope of practice of
9 massage therapists and bodywork therapists, the unauthorized practice of
10 massage therapy or bodywork therapy, granting rule-making authority, and
11 providing a criminal penalty.

Analysis by the Legislative Reference Bureau

This bill requires an establishment or service providing massage therapy or bodywork therapy to obtain a license granted by the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, unless the establishment or service is owned by or provided at one of the following: 1) a licensed massage therapist or

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bodywork therapist; 2) a person who provides massage therapy or bodywork therapy within the scope of a credential granted to the person by this state or the federal government; or 3) a massage therapy or bodywork therapy school, health care or nursing facility, school or other educational institution, spa, business with an on-site wellness center, or establishment licensed to provide cosmetology, aesthetics, electrology, manicuring, or barbering. Under the bill, the affiliated credentialing board administers the licensure program and promulgates rules establishing the requirements for the massage or bodywork therapy establishment license and the standards for the professional conduct of persons granted a massage or bodywork therapy establishment license. Additionally, a local ordinance, including an ordinance enacted before the bill takes effect, that regulates the activity of a massage therapy or bodywork therapy establishment or service that is licensed or exempt from licensure under the bill may not be enforced against an establishment or service that obtains a license or is exempt from licensure.

The bill also authorizes the practice of massage therapy or bodywork therapy by a massage therapy or bodywork therapy extern or intern under the supervision of a licensed massage therapist or bodywork therapist. The bill requires the affiliated credentialing board to establish standards for that practice.

The bill also provides that the scope of the practice of massage therapy or bodywork therapy, in addition to the activities specified under current law, includes all of the following:

1. The application of kinesiology tape to the skin.
2. The provision of body spa services, as defined by the board by rule, including the application of body wraps and scrubs.
3. Certain kinds of manual action, the majority of which are included under current law, but under the bill, the manual action is performed without high velocity or low amplitude thrusting.

The bill provides that the penalty for the unauthorized practice of massage therapy or bodywork therapy is a fine of up to \$1,000 or imprisonment for up to 90 days or both. The bill also provides that the penalty for intentionally employing a person to engage in the unauthorized practice of massage therapy or bodywork therapy is a fine of up to \$10,000 or imprisonment for up to nine months, or both, for a first violation, and a fine of up to \$10,000 or imprisonment for up to six years, or both, for a subsequent violation within five years.

For further information see the *state* 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.** 440.08 (2) (a) 46p. of the statutes is created to read:
- 2 440.08 (2) (a) 46p. Massage therapy or bodywork therapy establishment:
- 3 March 1 of each odd-numbered year.

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1 **SECTION 2.** 460.01 (1g) (d) of the statutes is created to read:

2 460.01 (**1g**) (d) The application of kinesiology tape to the skin.

3 **SECTION 3.** 460.01 (1g) (e) of the statutes is created to read:

4 460.01 (**1g**) (e) The provision of body spa services, as defined by the affiliated
5 credentialing board by rule, including the application of body wraps and scrubs.

6 **SECTION 4.** 460.01 (2m) of the statutes is amended to read:

7 460.01 (**2m**) “~~License~~ “Individual license holder” means a person granted a
8 license under ~~this chapter~~ s. 460.05.

9 **SECTION 5.** 460.01 (3) of the statutes is renumbered 460.01 (3) (intro.) and
10 amended to read:

11 460.01 (**3**) (intro.) “Manual action” includes ~~holding,~~ any of the following
12 performed without high velocity or low amplitude thrusting:

13 ~~(a) Holding,~~ positioning, ~~stretching,~~ rocking, kneading, compressing,
14 decompressing, gliding, or percussing the soft tissue of the human body ~~or applying.~~

15 ~~(b) Applying~~ a passive range of motion to the human body without joint
16 mobilization or manipulation.

17 **SECTION 6.** 460.01 (4) of the statutes is amended to read:

18 460.01 (**4**) “Massage therapy” or “bodywork therapy” means the science and
19 healing art that uses manual actions and adjunctive therapies to palpate and
20 manipulate the soft tissue of the human body in order to improve circulation, reduce
21 tension, relieve soft tissue pain, or increase flexibility. “Massage therapy” or
22 “bodywork therapy” includes determining whether manual actions and adjunctive
23 therapies, including instruction on the self-application outside of the treatment
24 setting of manual actions and adjunctive therapies, are appropriate or
25 contraindicated, or whether a referral to another health care practitioner is

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1 appropriate. "Massage therapy" or "bodywork therapy" does not include making a
2 medical, physical therapy, or chiropractic diagnosis.

3 **SECTION 7.** 460.01 (4g) of the statutes is created to read:

4 460.01 (4g) "Massage therapy or bodywork therapy establishment" means a
5 fixed location where massage therapy or bodywork therapy is regularly performed.

6 **SECTION 8.** 460.01 (4r) of the statutes is created to read:

7 460.01 (4r) "Out-call massage service" means a service that provides massage
8 therapy or bodywork therapy not at a massage therapy or bodywork therapy
9 establishment but at another location designated by a client or the service.

10 **SECTION 9.** 460.02 of the statutes is amended to read:

11 **460.02 License required.** Except as provided in s. 460.03, no person may
12 provide massage therapy or bodywork therapy, designate himself or herself as a
13 massage therapist or bodywork therapist or masseur or masseuse, or use or assume
14 the title "massage therapist and bodywork therapist" or "massage therapist" or
15 "bodywork therapist" or "masseur" or "masseuse" or any title that includes "massage
16 therapist," "bodywork therapist," or "bodyworker," or append to the person's name
17 the letters "M.T.," "R.M.T.," "L.M.T.," "C.M.T.," "B.T.," "B.W.," "L.B.W.," "R.B.W.," or
18 "C.B.W.," or use any other title or designation that represents or may tend to
19 represent that he or she is licensed under this chapter an individual license holder,
20 unless the person is licensed under this chapter an individual license holder.

21 **SECTION 10.** 460.03 (intro.) of the statutes is amended to read:

22 **460.03 Applicability.** (intro.) A license under ~~this chapter~~ s. 460.05 is not
23 required for any of the following:

24 **SECTION 11.** 460.03 (2) of the statutes is amended to read:

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1 460.03 (2) A person who is authorized to practice massage therapy or bodywork
2 therapy in another state or country and is providing a consultation to or
3 demonstration with ~~a~~ an individual license holder. A person who is exempt from
4 licensure under this subsection may use the terms “bodywork,” “bodyworker,” and
5 “bodywork therapy” to identify his or her practice.

6 **SECTION 12.** 460.03 (4) of the statutes is created to read:

7 460.03 (4) A massage therapy or bodywork therapy extern or massage therapy
8 or bodywork therapy intern who practices massage therapy or bodywork therapy
9 under the supervision of a massage therapist or bodywork therapist licensed under
10 s. 460.05 and subject to conditions established by the affiliated credentialing board
11 by rule under s. 460.04 (2) (h).

12 **SECTION 13.** 460.04 (2) (a) of the statutes is amended to read:

13 460.04 (2) (a) Standards that govern the professional conduct of individual
14 license holders in practicing massage therapy or bodywork therapy. The standards
15 shall prohibit ~~a~~ an individual license holder from having sexual contact or sexual
16 intercourse with a client.

17 **SECTION 14.** 460.04 (2) (e) of the statutes is amended to read:

18 460.04 (2) (e) A requirement that an applicant for a license under ~~this chapter~~
19 s. 460.05, 460.08, or 460.09 submit evidence satisfactory to the affiliated
20 credentialing board that the applicant has current proficiency in the use of an
21 automated external defibrillator achieved through instruction provided by an
22 individual, organization, or institution of higher education approved under s. 46.03
23 (38) to provide such instruction.

24 **SECTION 15.** 460.04 (2) (g) of the statutes is amended to read:

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1 460.04 (2) (g) A requirement that an applicant for a license under ~~this chapter~~
2 s. 460.05, 460.08, or 460.09 pass an examination on state laws and administrative
3 rules governing massage therapy and bodywork therapy.

4 **SECTION 16.** 460.04 (2) (h) of the statutes is created to read:

5 460.04 (2) (h) Conditions for the practice under s. 460.03 (4) of massage therapy
6 or bodywork therapy externs and massage therapy or bodywork therapy interns.
7 The rules promulgated under this paragraph shall define “massage therapy or
8 bodywork therapy extern” and “massage therapy or bodywork therapy intern.”

9 **SECTION 17.** 460.04 (2) (i) of the statutes is created to read:

10 460.04 (2) (i) Standards governing the professional conduct of a person granted
11 a massage therapy or bodywork therapy establishment license under s. 460.135 (3)
12 in operating a massage therapy or bodywork therapy establishment or out-call
13 massage service.

14 **SECTION 18.** 460.05 (4) of the statutes is amended to read:

15 460.05 (4) The affiliated credentialing board may assign a unique license
16 number to each person licensed under ~~this chapter~~ section.

17 **SECTION 19.** 460.06 (intro.) of the statutes is amended to read:

18 **460.06 Examinations.** (intro.) The affiliated credentialing board may not
19 grant a license under ~~this chapter~~ s. 460.05 unless the applicant achieves a passing
20 grade on the following examinations:

21 **SECTION 20.** 460.07 (1) of the statutes is amended to read:

22 460.07 (1) Each person who is licensed under ~~this chapter~~ s. 460.05 shall
23 conspicuously display the license in the place of business where he or she practices
24 massage therapy or bodywork therapy so that the license can easily be seen and read.

25 **SECTION 21.** 460.095 (4) (intro.) of the statutes is amended to read:

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1 460.095 (4) (intro.) Ensure that each instructor hired by the school or training
2 program on or after December 1, 2010, to teach courses in theory and the practice of
3 massage therapy or bodywork therapy is licensed under ~~this chapter s. 460.05~~ and
4 has at least one of the following:

5 **SECTION 22.** 460.10 (1) (a) of the statutes is amended to read:

6 460.10 (1) (a) Requirements and procedures for ~~a~~ an individual license holder
7 to complete continuing education programs or courses of study to qualify for renewal
8 of his or her license. The rules promulgated under this paragraph may not require
9 ~~a~~ an individual license holder to complete more than 24 hours of continuing
10 education programs or courses of study in order to qualify for renewal of his or her
11 license.

12 **SECTION 23.** 460.10 (2) of the statutes is amended to read:

13 460.10 (2) The affiliated credentialing board may waive all or part of any
14 requirement established in rules promulgated under sub. (1) (a) if it determines that
15 prolonged illness, disability, or other exceptional circumstances have prevented ~~a~~
16 an individual license holder from completing the requirement.

17 **SECTION 24.** 460.11 of the statutes is amended to read:

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

22 **(2)** ~~A~~ An individual license holder shall keep confidential any information that
23 a client in confidence gives to the individual license holder and any other information
24 that the individual license holder obtains about a client in the course of practicing
25 massage therapy or bodywork therapy that a reasonable person in the client's

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1 position would want kept confidential, unless the information is otherwise required
2 by law to be disclosed or the client specifically authorizes the disclosure of the
3 information.

4 (3) ~~A~~ An individual license holder may not, whether for compensation or not,
5 practice massage therapy or bodywork therapy for a sexually oriented business, as
6 defined by the affiliated credentialing board by rule.

7 **SECTION 25.** 460.12 (1) of the statutes is amended to read:

8 460.12 (1) ~~A~~ An individual license holder or person granted a license under
9 s. 460.135 (3) shall submit a report to the affiliated credentialing board if he or she
10 has reasonable cause to believe that another individual license holder or person
11 granted a license under s. 460.135 (3) has committed a crime relating to prostitution
12 under ss. 944.30 to 944.34 or has had sexual contact or sexual intercourse with a
13 client. If the report relates to sexual contact or sexual intercourse with a client, the
14 report may not identify the client unless the client has provided written consent for
15 disclosure of this information.

16 **SECTION 26.** 460.13 of the statutes is amended to read:

17 **460.13 Advertising.** Except as provided in s. 460.03 (1) and (2), ~~a~~ an
18 individual license holder may not advertise that he or she practices massage therapy
19 or bodywork therapy unless the advertisement includes a statement that the
20 individual license holder is a “licensed massage therapist and bodywork therapist”
21 or “licensed massage therapist” or “licensed bodywork therapist.”

22 **SECTION 27.** 460.135 of the statutes is created to read:

23 **460.135 Establishment license. (1)** (a) Except as provided under sub. (2),
24 no person may provide massage therapy or bodywork therapy in a massage therapy

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1 or bodywork therapy establishment unless the establishment is licensed under sub.
2 (3).

3 (b) Except as provided under sub. (2), no person may provide massage therapy
4 or bodywork therapy outside of a massage therapy or bodywork therapy
5 establishment unless the massage therapy or bodywork therapy is provided for an
6 out-call massage service that is licensed under sub. (3).

7 (c) Except as provided under sub. (2), no person may operate an out-call
8 massage service or massage therapy or bodywork therapy establishment at which
9 massage therapy or bodywork therapy is provided unless the out-call massage
10 service or massage therapy or bodywork therapy establishment is licensed under
11 sub. (3).

12 **(2)** No license under sub. (3) is required in order to provide massage therapy
13 or bodywork therapy in a massage therapy or bodywork therapy establishment or for
14 an out-call massage service for any of the following:

15 (a) A business majority owned by a person holding a license under s. 460.05 or
16 who may practice massage therapy or bodywork therapy under s. 460.03 (1).

17 (b) A massage therapy or bodywork therapy school satisfying the requirements
18 under s. 460.095, health care or nursing facility, school or other educational
19 institution, spa, business with an on-site wellness center, establishment licensed to
20 provide cosmetology, aesthetics, electrology, or manicuring under s. 454.08, or
21 barbering establishment licensed under s. 454.25.

22 **(3)** The affiliated credentialing board shall grant a massage therapy or
23 bodywork therapy establishment license to any person who pays the initial
24 credential fee determined by the department under s. 440.03 (9) (a) and who satisfies
25 the requirements established by the affiliated credentialing board by rule, including

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1 proof of ownership of the business that operates the establishment or out-call
2 massage service. Notwithstanding ss. 440.03 (9) (a) and 440.05, the department
3 shall establish a significantly lower initial credential fee for a massage therapy or
4 bodywork therapy establishment or out-call massage service if the establishment or
5 service is owned by a person who owns one or more other licensed massage therapy
6 or bodywork therapy establishments or licensed out-call massage services. A change
7 of ownership of a licensed establishment or licensed out-call massage service shall
8 be reported to the affiliated credentialing board by the new owner within 5 days after
9 the change of ownership.

10 (4) The affiliated credentialing board shall issue a certificate to the owner of
11 a licensed massage therapy or bodywork therapy establishment or licensed out-call
12 massage service, certifying that the establishment or out-call massage service is
13 licensed by the affiliated credentialing board. The owner of a licensed massage
14 therapy or bodywork therapy establishment shall post the certificate in a
15 conspicuous place in the establishment. A person providing massage therapy or
16 bodywork therapy for a licensed out-call massage service shall bring the certificate,
17 or a copy, to the location where massage therapy or bodywork therapy is provided.

18 (5) The renewal date for a massage therapy or bodywork therapy
19 establishment license is specified under s. 440.08 (2) (a), and the renewal fee for a
20 massage therapy or bodywork therapy establishment license is determined by the
21 department under s. 440.03 (9) (a). Notwithstanding ss. 440.03 (9) (a) and 440.05,
22 the department shall establish a significantly lower renewal fee for a massage
23 therapy or bodywork therapy establishment or out-call massage service that is
24 owned by a person who owns one or more other licensed massage therapy or
25 bodywork therapy establishments or licensed out-call massage services.

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1 **SECTION 28.** 460.14 (2) (intro.) of the statutes is amended to read:

2 460.14 (2) (intro.) Subject to the rules promulgated under s. 440.03 (1), the
3 affiliated credentialing board may reprimand ~~a~~ an individual license holder or deny,
4 limit, suspend, or revoke a license under this chapter if it finds that the applicant ~~or,~~
5 individual license holder, or person granted a license under s. 460.135 has done any
6 of the following:

7 **SECTION 29.** 460.15 of the statutes is renumbered 460.15 (1) and amended to
8 read:

9 460.15 (1) Any ~~Except as provided in sub. (2), any~~ person who violates this
10 chapter or any rule promulgated under this chapter shall forfeit not more than
11 \$1,000 for each violation.

12 **SECTION 30.** 460.15 (2) of the statutes is created to read:

13 460.15 (2) (a) Whoever violates s. 460.02 may be fined not more than \$1,000
14 or imprisoned for not more than 90 days or both.

15 (b) 1. Whoever intentionally, as defined in s. 939.23 (3), employs for the purpose
16 of providing massage therapy or bodywork therapy a person who violates s. 460.02
17 may be fined not more than \$10,000 or imprisoned for not more than 9 months, or
18 both, for the first violation.

19 2. Whoever violates subd. 1. is guilty of a Class H felony for a subsequent
20 violation within 5 years.

21 **SECTION 31.** 460.17 of the statutes is amended to read:

22 **460.17 Local regulation.** A city, village, town, or county may not enact an
23 ordinance that regulates the practice of massage therapy or bodywork therapy by a
24 person who is licensed by the affiliated credentialing board under this chapter or that
25 regulates activity conducted within the scope of an establishment license under s.

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1 460.135 (3). No provision of any ordinance enacted by a city, village, town, or county
2 that is in effect before February 1, 1999, and that relates to the practice of massage
3 therapy or bodywork therapy or activity conducted within the scope of an
4 establishment license under s. 460.135 (3), may be enforced against a person who is
5 licensed by the affiliated credentialing board under this chapter.

6 **SECTION 32. Effective dates.** This act takes effect on March 1, 2019, except
7 as follows:

8 (1) The treatment of sections 460.01 (1g) (d) and (e), (3), and (4), 460.03 (2) and
9 (4), and 460.04 (2) (a) and (h) of the statutes, the renumbering and amendment of
10 section 460.15 of the statutes, and the creation of section 460.15 (2) of the statutes
11 take effect on the day after publication.

12 **(END)**