



## LEGAL SERVICES DIVISION

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TO: Members of the Safety and Licensing Committee

FROM: Darrin M. Glad, Assistant City Attorney

DATE: July 16, 2019

RE: Resolution #6-R-19  
Our File No. A17-0939

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This memo is intended to aid the Safety and Licensing Committee by providing some background information relating to the Wisconsin State Statutes regarding “Massage Establishments” in anticipation of committee discussions on Resolution #6-R-19.

Local regulation *appears* to be allowed by statute. Wis. Stat. §460.17 states that a city “may not enact an ordinance that regulates the practice of massage therapy or bodywork therapy by a person who is licensed by the affiliated credentialing board.” From this, there is an implication that cities can enact an ordinance consistent with this mandate, i.e., regulate non-licensed practices. However, Chapter 460 has broad definitions and has carved out broad exceptions to the licensing requirements. From discussions that I have had, some are of the opinion that there is ambiguity in Chapter 460 as to whether cities can enforce their regulations in this area at all. This opinion is also supported by recent proposed legislation. Identical bills, 2019 Senate Bill 133 and 2019 Assembly Bill 143, specifically authorize a city to enact and enforce ordinances prohibiting a person violating the provisions of Chapter 460.

Chapter 460 defines “Massage therapy” or “bodywork therapy” as “the science and healing art that uses manual actions and adjunctive therapies to palpate and manipulate the soft tissue of the human body in order to improve circulation, reduce tension, relieve soft tissue pain, or increase flexibility. ‘Massage therapy’ or ‘bodywork therapy’ includes determining whether manual actions and adjunctive therapies are appropriate or contraindicated, or whether a referral to another health care practitioner is appropriate. ‘Massage therapy’ or ‘bodywork therapy’ does not include making a medical, physical therapy, or chiropractic diagnosis.”

The exceptions to the licensing requirements of Chapter 460 include:

1. A person holding a license, etc. who engages in a practice of massage therapy or bodywork therapy within the scope of their license, etc., but does not imply that he or she is licensed under Ch. 460.
2. A person who is authorized to practice massage therapy or bodywork therapy in another state or country and is providing a consultation to or demonstration with a license holder.
3. A person who is recognized by or meets the established standards of either a professional organization or credentialing association that recognizes a person in a practice after that person

demonstrates an adequate level of training and competency and adherence to ethical standards and does any of the following:

- a. Uses touch, words, and directed movement to deepen a client's awareness of his or her existing patterns of movement and to suggest to the client new patterns of movement.
  - b. Uses touch to affect the energy systems of the human body.
  - c. Uses touch and education to effect change in the structure of the body while engaged in the practice of structural integration.
4. A person who manipulates only the soft tissues of the hands, feet, or ears of the human body. Also, a person who is exempt from licensure under (1) through (3) above may use the terms “bodywork,” “bodyworker,” and “bodywork therapy” to identify his or her practice while a person who is exempt under (4) may not.

While the language of Wis. Stat. §460.17 appears to allow local regulation of this area for unlicensed persons, it is clear that there is, at a minimum, a lack of clarity as to the limits of such local regulation. It may be worthwhile to wait until the Wisconsin legislature acts on the bills that specifically allow local enforcement. A copy of the “Analysis of the Legislative Reference Bureau” for Senate Bill 133 is attached. This analysis is identical to their analysis of Assembly Bill 143.

If you have any questions or concerns, please do not hesitate to contact me.



## 2019 SENATE BILL 133

March 20, 2019 - Introduced by Senators KOOYENGA, FITZGERALD, JACQUE, CRAIG, OLSEN and NASS, cosponsored by Representatives SANFELIPPO, HUTTON, VINING, BALLWEG, BORN, DUCHOW, GUNDRUM, JAGLER, KERKMAN, KITCHENS, KNODL, KUGLITSCH, KULP, KURTZ, MURPHY, MURSAU, NOVAK, OTT, PETERSEN, RODRIGUEZ, ROHRKASTE, SPIROS, STUCK, SUBECK, THIESFELDT, TITTL, VORPAGEL and WICHGERS. Referred to Committee on Public Benefits, Licensing and State-Federal Relations.

1     **AN ACT** *to renumber* 460.17; *to amend* 460.15; and *to create* 460.14 (4) and  
2             460.17 (2) of the statutes; **relating to:** violations of the law relating to the  
3             practice of massage therapy or bodywork therapy and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Under current law, subject to certain exceptions, no person may provide massage therapy or bodywork therapy, designate himself or herself as a massage therapist or bodywork therapist or masseur or masseuse, or use or assume any title or designation that represents the person as a massage therapist or bodywork therapist unless the person is licensed as a massage therapist or bodywork therapist by the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board.

This bill does all of the following with respect to the practice of massage therapy or bodywork therapy:

1. Specifically authorizes a city, village, or town (municipality) to enact and enforce an ordinance prohibiting a person from violating the prohibitions described above unless the person is licensed by the board. The bill authorizes municipalities to impose forfeitures of up to \$1,000 for ordinance violations.

2. Allows the board, in addition to or in lieu of professional discipline or certain other actions that may be taken by the board against a person who violates certain prohibitions relating to massage therapy or bodywork therapy, to assess a forfeiture of not more than \$1,000 for each separate offense.

3. Adjusts the penalty for violating provisions under state law relating to massage therapy and bodywork therapy, including practicing without the required

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license, to a criminal fine of not more than \$1,000 for each violation or imprisonment for not more than 90 days, or both. Under current law, the penalty is a civil forfeiture of up to \$1,000.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

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

1           **SECTION 1.** 460.14 (4) of the statutes is created to read:

2           460.14 (4) The affiliated credentialing board may, in addition to or in lieu of a  
3 reprimand or revocation, limitation, suspension, or denial of a license, assess against  
4 a person who has done anything specified under sub. (2) (a) to (j) a forfeiture of not  
5 more than \$1,000 for each separate offense. Each day of continued violation  
6 constitutes a separate offense.

7           **SECTION 2.** 460.15 of the statutes is amended to read:

8           **460.15 Penalty.** Any person who violates this chapter or any rule promulgated  
9 under this chapter ~~shall forfeit~~ may be fined not more than \$1,000 for each violation  
10 or imprisoned for not more than 90 days, or both.

11           **SECTION 3.** 460.17 of the statutes is renumbered 460.17 (1).

12           **SECTION 4.** 460.17 (2) of the statutes is created to read:

13           460.17 (2) (a) A city, village, or town may enact and enforce an ordinance that  
14 prohibits an individual from violating the prohibitions under s. 460.02 unless the  
15 individual is licensed under this chapter as required under s. 460.02.

16           (b) Law enforcement personnel of a city, village, or town may issue citations for  
17 violations of a local ordinance described in par. (a), and the city, village, or town may

