

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1155

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1155

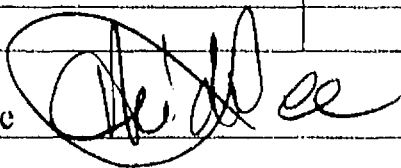
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1155

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Jan. 16, 2001

Tape Number	Side A	Side B	Meter #
2	X	X	A12.19-B28.84
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Chairman Berg: Let's open the hearing on HB 1155.

James Fleming: *Assistant Attorney General* representing the Board of massage.

Basically we would like to expand the board from three members to five. Overall the bill clarifies the definitions you see on page one and two. I think we should clarify the entire act and make it shorter and easier to use if we can. Mostly it's just wording changes such as section three that has a lot of unneeded language that could be substituted with "this does not apply to anyone engaged in a profession for which the license by another board". In section two it prohibits people from engaging in the practice of massage and conducting massage. It needs to be clarified what is okay and what isn't okay. Section four is the main reason for proposing the bill, it would increase from three members to five. The board has no staff and is in charge of inspecting the

members. Three members that are licensed massage therapists would serve three years terms and cycle every year and the two the new members would serve two year terms and cycle every other year. One of those new members could not be a licensed massage therapist. The last member of the board is completely up to the Governors discretion. In section six, there is nothing that states rule making authority so we added some in to view.

Rep Froseth: Is there any requirement about the place of business being licensed?

Fleming: Right now we only regulate the profession, not the place.

Rep Klein: How often is "periodically" inspect?

Fleming: It is not defined but the board is currently working on getting to every year.

Mary LeMay: *Current President of the Massage Board* right now with only three inspectors we are only at two years but would like to increase to every year.

Fleming: Page 6, addresses nonresidents licensing and clears up out dated laws. Sections 43-25-11 and 12 are to be repealed because they are outdated, we'd like to replace them with " any hearing regarding a disciplinary action or denial of license must be held must be held pursuant of to chapter 28-32". The board is still required to hold hearings.

Rep Froelich: Does the board fix their own pay?

Fleming: Yes. The board receives \$50 per day or per portion of a day. This has potential for abuse. The board wanted the rule making authority to figure out based on what they do now without staff to best decide how to allocate that \$50 per portion of day where they may miss an appointment but not spend the whole day on board activities. Want flexibility in how they should be compensated for their time.

Rep Ruby: I would prefer to see a fee cap in place.

Page 3
House Industry, Business and Labor Committee
Bill/Resolution Number HB 1155
Hearing Date Jan 16, 2001

Rep Klein: How many members are presently in the organization?

Fleming: Over 400 now.

Rep Klein: What are the fees and renewals?

Mary LeMay: It is \$50 for a renewal license fee and \$150 to take your state exam set by Board Rule.

Rep Keiser: What is the reserve in your account?

Fleming: Roughly \$20,000.

Rep Klein: Is the board audited annually?

Mary LeMay: Every two years by the State Auditor.

Fleming: Fees are currently set by Administrative Rule. The caps on those fees would be a good approach but it also could cause a problem by having to wait two years every time a need arises.

Chairman Berg: What would you feel is fair for a fee cap?

Fleming: We will get together and look at what we can come up with. Going on, the records of all fees paid and usage of which can be supplied at anytime for a ten dollar fee. We would like to add the authority to bring an injunction to enjoin violations of this chapter. Instead of asking the States Attorney to take their time for a class B misdemeanor, we'd like to give the board the option to go to court on their own and bringing an injunction.

Rep Ruby: Why is the fee for out of state licenses struck out?

Fleming: It was took it out in an effort to take out all dollar values and leave it by rule.

Rep Lemieux: On page 10, line 20 Does this mean we can get an injunction if we don't like somebody for whatever reason?

Fleming: The board has it in there so that they can get into court with standing so if someone is doing something destructive we can get an injunction before someone gets hurt.

Keith Goline: *Director of Sister Roselind School of Massage* **written testimony in favor of bill**

Rep Froelich: What is reflexology?

Goline:

Gayle Hoydon: *Self-employed Licensed Massage Therapist* **written testimony in favor of bill**

Dralinn Koenig: *LMT* **written testimony in favor of bill**

Lisa Van Berkom: *IMS-Bismarck* **written testimony opposed to bill**

Rep Klein: Does this group have access to an annual report as to what was taken in and what was expended and why?

Lisa: No, I have never seen one and I don't feel that's right.

Fleming: The open records law would require the board to give any records that they have that are asked.

Rep Klein: If you are a member of the group you shouldn't have to go through the long process of going through open records. Do you make it available to your members?

Mary LeMay: Yes it can be available to you at anytime.

Rep Kasper: Did you state that you can not operate out of your home?

Lisa: As I understand it, they can basically come into your home at anytime and tell you that you can not operate in your home. They put a lot of extra pressures on to make it uneasy to operate. Other states don't add so much stress to LMS and this is somewhat of a push not to work in this state.

Rep Kasper: Do you perceive that you or other members have been unfairly looked at?

Lisa: I have no evidence of that, but the bill makes me feel like I have to concentrate on everything instead of giving all my attention to my client.

Rep Ruby: Did you have a problem with the way it was written before or do you have a problem with the changes proposed in it now?

Lisa: Mostly just the changes.

Rich Radspinner: *LMT at the YMCA* written testimony opposed to bill

Rep Klein: How do you get onto the board?

Radspinner: The Governor appoints and it's unregulated.

Rep Froese: How many of the 400+ therapists belong to the ND Chapter?

Gail Hoyden: more than 300.

Rep Kasper: Do you receive a newsletter letting you know what's going on, any minutes from the state board?

Radspinner: No., We can call and ask for them but then we have to pay a \$10 fee.

Sharon Doctor: *Part-owner of the Institute of Massage Therapy (IMT)* I would like this bill put into a resolution study until every voice of massage therapists has been heard and knows what is going on here. If you are not a AMT member you have no voice and it is unfair to those that can't afford the membership fees. I feel a five member board is a good idea but I do not believe that LMT's should be a majority.

Rep Lemieux: Using the licensing fees, is it possible to send out a newsletter?

Doctor: Absolutely, that would be wonderful. All we want is to be informed.

Rep Koppang: What are other states doing?

Doctor: There are 19 states that have state testing but different areas have different rules.

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House Industry, Business and Labor Committee

Bill/Resolution Number HIB 1155

Hearing Date Jan 16, 2001

Chairman Berg: Are there anymore questions for Sharon? Is there anyone else who'd like to testify? We'll close the hearing on HIB 1155.

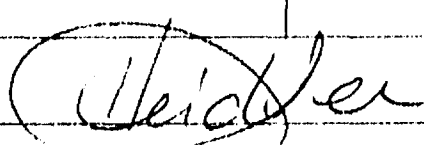
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1155

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Jan 17, 2001

Tape Number	Side A	Side B	Meter #
2	X		15.46-52.80
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pletsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Closed Hearing

Rep Klein: Three areas where addressed. 1: The number and type of members on the board.

2: The amount each board member is to be paid, and 3: The amount of fees.

Rep Ruby: Can we change "and" to "up to" in terms of getting paid?

Chairman Berg: That would be compensating the same for a half day of work as a whole day.

Maybe what we could say could be \$62 per day or prorated for partial days.

Rep Keiser: What about maybe changing the language to say "attendance at meetings"?

Chairman Berg: We have a different twist here since the board members are required to inspect, but also anyone wanting reimbursement from this board is going to have to face their peers.

Rep Klein: We have to allow some leeway for drive time.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1155

Hearing Date Jan 17, 2001

Rep. Koppang: Inspectors should be separated from the board. Who regulates this?

Chairman Berg: The state governs the board by setting rules and regulations and we leave it at

that. We need to clean up the per diem and set the official duties.

We'll go on to another bill for now and maybe come back to this later on.

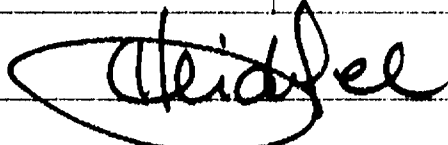
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1155 (C)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb 7, 2001

Tape Number	Side A	Side B	Meter #
2	X		4,6-10,5
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep M. Klein: Supplied final package of amendments.

Rep Ekstrom: I move to accept the amendments.

Rep Froseth: I second.

Rep Lemieux: I move a do pass as amended.

Rep Ekstrom: I second.

13 yea, 0 nay, 2 absent Carrier Rep M. Klein

FISCAL NOTE

Requested by Legislative Council
02/09/2001

Bill/Resolution No.:

Amendment to: HB 1155

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Phil Relsenauer	Agency:	Massage Board
Phone Number:	225-3906	Date Prepared:	02/12/2001

FISCAL NOTE
 Requested by Legislative Council
 12/26/2000

Bill/Resolution No.: HB 1155

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

none

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

none

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

none

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

none

Name:	Phil J. Reisenauer	Agency:	State Board of Massage

Phone Number: 225-3906

Date Prepared: 01/09/2001

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1155

Page 3, line 28, replace "at least one of whom may not be a massage therapist or an" with "who may not be massage therapists or"

Page 3, line 29, replace "member" with "members"

Page 9, line 25, after "duties" insert ", not to exceed a maximum of fifteen dollars per hour ~~and~~ ^{or} total of sixty-two dollars per day,"

Page 10, line 7, remove the overstrike over "of", insert immediately thereafter "one hundred and fifty", remove the overstrike over "dollars", and insert immediately thereafter "or a lesser fee"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1155

Page 3, after line 21, insert:

"4. Health spas and similar businesses to the extent the spa or business is performing superficial applications, including salt glows and contouring."

Page 3, line 28, replace "at least one of whom may not be a massage therapist or an" with "who may not be massage therapists or"

Page 3, line 29, replace "member" with "members"

Page 9, line 23, replace "fixed by" with "of sixty-two dollars per day or prorated for partial days"

Page 9, line 24, remove "the board"

Page 10, line 7, remove the overstrike over "of", insert immediately thereafter "one hundred and fifty", remove the overstrike over "dollars", and insert immediately thereafter "or a lesser fee"

Renumber accordingly

Date: 2-7-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Click here to type Bill/Resolution No. 1153

House Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number ~~15256-0100~~

Action Taken Do Pass as Amended.

Motion Made By Lemieux Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper	✓	
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein	✓	
Rep. Mary Ekstrom	✓		Rep. Myron Koppang	✓	
Rep. Rod Froelich			Rep. Doug Lemieux	✓	
Rep. Glen Froseth	✓		Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe		

Total (Yes) ~~12~~ 13 No 0

Absent ~~2~~ 2

Floor Assignment M. Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1155: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1155 was placed on the Eleventh order on the calendar.

Page 3, after line 21, insert:

"4. A health spa or similar business to the extent the spa or business is performing superficial applications, including salt glows and contouring."

Page 3, line 28, replace "at least one of whom" with "who", replace "a massage therapist" with "massage therapists", and remove "an"

Page 3, line 29, replace "member" with "members"

Page 9, line 23, replace "fixed by" with "of sixty-two dollars per day or prorated for partial days"

Page 9, line 24, remove "the board"

Page 10, line 7, remove the overstrike over "of", after "thirty-five" insert "one hundred fifty", and remove the overstrike over "dollars" and insert immediately thereafter "or a lesser fee"

Renumber accordingly

2001 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1155

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1155

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 21, 2001.

Tape Number	Side A	Side B	Meter #
1	x		0 to 28.9
2	x		3.6 to 7.1
(Feb. 21) 2	x		4.3 to 7.1
(Feb. 28) 1		x	47 to end
Committee Clerk Signature <i>Doris E. Perez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on HB 1155 relating to the practice of massage and the duties of the board of massage.

Jim Fleming, Asst. Attorney General; Counsel, State Board of Massage. Distributed summary of proposed changes in the engrossed bill. Intent : to clarify definitions and statute language, and to increase the number of board members from three to five. Definition of massage relocated.

In pages 2 and, we 3 condensed the list of exemptions. House added amendment on line 22, addressing health spas situation that had unlicensed people doing certain things that might be construed as massages. Page 4 lines 16 and 17 removed, same language as lines 24 and 25 on same page, no change, therefore on the law. Bottom of page 4 specifies board's specific rulemaking authority. Page 6 residence requirement eliminated because subject to legal challenge for discriminating against out of state residents. Lines 12 and 13 removed reference to AMTA standards, the board adopted rules which comply with those standards but wants

flexibility and don't want to be bound by what that association may decide on the future regarding what the standards should be.

Senator Klein: Will any of the board members be affiliated with any of the massage schools, or be massage therapists?

J Fleming: Current members of the board have no school affiliation, the only requirement is that they be massage therapist, the board expansion will add two consumers. This will allow two members of the board to talk with each other without it being an open meeting, more people to spread the work around.

Senator Krebsbach: How will the standards of the board be set?

J Fleming: The standards are already in place, board wants the flexibility to review all proposed standards without being bound by them.

Richard Radspinner, massage therapist, past president board of massage. I think reflexologists should remain exempt; health spas should not be exempted; regarding the penalties for violation, the board wants to take the violator to court a second time after the injured party has done so I don't think that's fair. The committee should consider making changes to this sections.

J Fleming: To clarify Mr. Radspinner's concerns: reflexologists were over struck because the new language will still exempt them. Health spas are exempted as long as they are working with the skin, it is a narrow exemption. The authority to seek an injunction is if the state attorney doesn't have the time or inclination to pursue the case and the victim lacks the means to do so the board wants the option of being able to protect the public.

No additional testimony.

Senator Klein: I like the idea of the expansion of the board. The schools of massage have felt Left out, an amendment should be made to include one representative from the schools in the Board. The other member should be a consumer.

Feb. 21/01 Tape 2-A-4.3 to 7.1 Discussion held regarding proposed board composition and amendment.

February 28/01. Tape 1-B-47 to end. Committee reconvened. All members except **Senator Tollefson** present. Discussion held. Proposed amendment discussed.

J Fleming: I only talked with two of the board members, the other one is out of the country. They oppose the amendment because of the conflict of interests law. Under this law the school representative would have to step aside whenever a school issue came up, this would complicate things for the board.

Senator Mathern: The board is appointed by the governor.

Senator Klein: How many potential members for the board?

J Fleming: If only administrators, 4; if faculty 20.

Senator Espegard: It is unusual that schools have problems with the board, what is going on here?

J Fleming: Personalities and lack of understanding of how government and boards work.

Discussion held. **Senator Klein:** Motion: do pass. **Senator Mathern:** Second.

Roll call vote: 6 yes; 0 no; 1 absent, not voting. Motion carried.

Floor assignment: **Senator Klein.**

Date: Feb 28/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *HB 1155*

Senate Industry, Business and Labor

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Enrolled

Motion Made By Senator Klein Seconded By Sen. Matheson

[illegible]

Total (Yes) 36 No 0

Absent 1

Floor Assignment Senator Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 28, 2001 1:15 p.m.

Module No: SR-34-4455
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1155, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1155 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1155

Keith Gosline

Director
Fargo Campus

1519 1st Avenue S. • Fargo, ND 58103
Phone: 701-297-5993 Fax: 701-297-5994
e-mail: kgosline@sisterrosalind.org

for

11/16/01

2pm Sister Rosalind Room

Board of Massage - Terms Line 2

43-23 - C.2 p. 1 Definitions line 17

43-23 - 18 p. 13 Competency line 44

referring to PMPA

→ Revisions: expanding # of members to 9 vs 5

→ Revisions: Make sure no conflict exists between the
test and competency exam.

→ Revisions: add to or line 9, "the four years or more
immediately."

Good Afternoon Ladies

My name is Gail Harkin. I am a
Licensed Massage Therapist and have
been practicing in North Carolina 9 1/2 years.

I also am President of the North Dakota chapter of the American Massage Therapy Ass

I am here today representing myself
as a LMT of this state.

I am in favor of the revised version of the North Dakota Census Code that was first approved in 1954. I am glad we have it. I find the revised version much easier to read, understand and it gets to the point, I'd like to Thank

The priority for taking the time and concern to clean up this case of 41 years they done a good job. ~~Also, as mass,~~

~~continues to grow quite rapidly in the~~

In our state massage is growing rapidly and I feel that increasing the State Board of Massage to 5 members will benefit us so that they may keep up with their duties as a board in a number of interest. I also think its a good idea that one member is a consumer.

Thank you for your kind and your
consideration in this matter

16 Jan 01

for

Good afternoon Ladies & Gentlemen

I am Stalini Koenig. I have had a license 3 months shy of 7 years of practicing massage

I am 3rd Vice President of Executive Board and have been on the law & legislative committee of the AMTA - ND chapter of massage. I am speaking on myself as a LMT.

This I have been working with this for a couple of years & I myself have studied our Century Code to know it better.

When I first read the Century Code I found it very confusing at times to understand all of it correct & the right form. This was printed in 1959

I am for this Bill # 1155, I feel by what has been used update & explains in an easier & not so confusing code of Rules to understand better.

I appreciate the time our Board has done to improve these Rules they have done a job well done

To bring in 5 members to the Board, I feel it will benefit by them working together with more ideas.

Thank you for your time for listening, & your consideration
I appreciate it!

If House Bill 1155 is passed it will give a 3 member board – appointed by the Governor of ND to protect the citizens of ND against poorly trained massage therapists more power and authority then the Governor and take away the freedom of choice for the citizens of ND to go to a LMT of their choice.

It would also create more government involvement in free enterprise in a right to work state.

House Bill 1155 should not be passed until more then 3 people have a chance to voice their ideas and opinions.

Rich Opposed
DESUNA PIZ. MESSAGE FOR LUNA FA

HB. 1155 LINE 11 MESSAGE ESTABLISHMENTS
CROSS RES WITH ADMIN RULES ~~CHAPT~~ 49-03

SEL 2 of 3 & 4 HAVE BUSINESS
OUT OF BUSINESS AND PUNCH
OUT OF BUSINESS FOR MESSAGE

MESSAGE MESSAGEIST = DESCRIPTION
REFLEXOLOGY HAS OWN BOARD WITH
THIS BOARD ATTEMPT TO TAKE OVER
THEIR BOARD OR IMPOSE THEIR RULES
UPON REFLEXOLOGISTS.

400
See
See

I am a LMT in ND, it is my opinion, if House Bill 1155 is set in motion, a 3 member board will have had the power to determine not only the health, education and welfare but also where, when and how, the professional LMT's of ND can, will and probably forever, practice, get educated, and simply live in ND.

House Bill 1155 should be set aside; perhaps it should be studied. It definitely should be changed but it should be set aside until all LMT's in the state of ND have a vote or at least know what rules are being passed that will govern them.

I also think a new ND State Board of Massage should be elected one that would consist of 5, just members; 2 LMT's, someone in the medical field, someone in the legal field and a citizen of ND.

Life Therapeutic Massage Center
Owner: Desiree Faith Bourgois van-Oosting
1424 W. Century Ave. #104
Bismarck ND 58503
(701)222-4591

Committee Members

I feel that as a Licensed Massage Therapist and a Professional Member of the American Massage Therapy Association, that the laws set forth in House Bill #1155 are in the best interest of all Professional Massage Therapists, practicing in the state.

I graduated from The Desert Institute of The Healing Arts, Tucson Arizona. My school was accredited by the American Massage Therapy Association. I believe that it is in the best interest of the public to have an organization like the **American Massage Therapy Association** to watch over schools and practitioners, that are growing in numbers daily, due the large interest in the field. (regarding 43-25-07)

I believe that all sections and amendments that were written by the Governors Board, Representatives from massage therapy schools, attending massage therapists, and representatives from the Attorney Generals office, were written to protect the best interests of the massage therapists. After having read and considered all amendments and sections, I feel that it is necessary to have regulations such as, HB#1155, in force to protect practicing licensed therapists, and the public. I also believe that the Governors Board is a large role in the ever growing massage industry and compensation is necessary for the large number of issues they will be dealing with, while leaving their own practices.

As a practicing licensed therapist, I favor HB#1155.

Desiree Faith Bourgois-van Oosting
Licensed Massage Therapist.

Prepared by
James C. Fleming
General Counsel
State Board of Massage

Summary of Proposed Changes in
Engrossed House Bill 1155

- Clarify definitions and statute language
- Remove language applying to all persons who "conduct" massage
- Remove exemption for YMCAs
- Add exemption for certain activities at a health spa or similar business
- **Increase board membership to 5 by adding two consumer members**
- Add specific rulemaking authority
- Remove residency requirements
- Remove reference to AMTA
- Change language to allow for delegation of duties to board staff rather than secretary-treasurer
- Authorize board to approve a national exam in lieu of writing its own exam
- Remove recording requirement for licenses
- Remove outdated appeals language and incorporate NDCC ch. 28-32 by reference
- Restrict ten dollar fee for records to requests for copies of certified records
- Authorize board to establish compensation for a partial day and incorporate travel expenses provided for other state entities
- Reciprocity is no longer limited to licensees from states which extend similar privileges to North Dakota licensees
- Authorize injunction to restrain violations of the law

PROPOSED AMENDMENTS TO HB 1155

Page 3, line 30, after the comma insert "one member from a school of massage and one consumer member", after "be" insert "a", replace "therapists" with "therapist", after "or" insert "an", and replace "members" with "member"

Page 3, line 31, remove "consumer"

OFFICE OF ATTORNEY GENERAL
STATE OF NORTH DAKOTA

Wayne Stenehjem
ATTORNEY GENERAL

MEMORANDUM

CAPITOL TOWER

State Capitol
600 E. Boulevard Ave.
Dept. 125
Bismarck, ND 58505-0040
701-328-2210
800-366-6888 (TTY)
FAX 701-328-2226

TO: House Industry, Business, and Labor Committee

FROM: James C. Fleming, Counsel, State Board of Massage *J*

Consumer Protection
and Antitrust Division
701-328-3404
800-472-2600
Toll Free In North Dakota
FAX 701-328-3535

RE: Proposed amendments to House Bill 1155

DATE: January 17, 2001

Gaming Division
701-328-4848
FAX 701-328-3535

Licensing Section
701-328-2329
FAX 701-328-3535

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Natural Resources
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Racing Commission
701-328-4290

Bureau of Criminal
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Fargo Office
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Fargo, ND 58108-2665
701-239-7126
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Attached are the amendments I prepared at the Committee's request to address the addition of two consumer members to the board and caps on the compensation Board members may pay themselves. The amendments include a cap on the reciprocity fee in section 13 of the bill (N.D.C.C. § 43-25-18). However, in preparing an amendment putting a similar cap on all fees charged by the Board, I realized such caps are already included in current law. Therefore, I believe amendments are not necessary; state law already provides for maximum fees which may be charged by the board.

The opponents to House Bill 1155 made a number of unsubstantiated allegations against the Board during the hearing. If any of the committee members are concerned about some of those allegations, I would be happy to address them with the committee member at any time. I can be reached directly at 328-4889.

Representative Klein asked me to review amendments which have been proposed by Keith Gosline, operator of one of the massage schools in Fargo. I have reviewed his proposed amendments. A number are unnecessary given other language in the bill or in current law and some simply do not make sense. However, some of the proposed amendments would remove the need to have an independent, governor-appointed board of massage by subjecting the decisions of the board to review and approval by a "general assembly" of all state massage therapists. Essentially, a board which is currently required to protect the public interest would instead be protecting the interests of current licensees. This would be a dangerous precedent to set for state

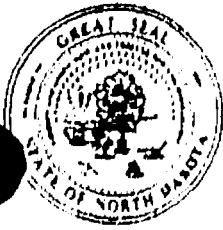
House Industry, Business and Labor Committee
January 17, 2001
Page 2

professional licensing boards, and may require the preparation of a fiscal note.

It is unfortunate that objections and amendments have been proposed by the massage schools at this late date. Enclosed are letters which I sent at the Board's direction to all the massage schools in the state, including the schools operated by Sharon Dockter and Keith Gosline. This letter rebuts the claim that the Board has neglected to communicate with the massage schools.

vk

cc: Representative Matt Klein



OFFICE OF ATTORNEY GENERAL
STATE OF NORTH DAKOTA

Heldi Heitkamp
ATTORNEY GENERAL

December 13, 2000

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Mr. Keith Gosline
Sister Rosalind Geffre's School of Professional Massage
1519 1st Ave S Ste A
Fargo, ND 58103-1501

Dear Mr. Gosline:

Enclosed please find a copy of the State Massage Board's final administrative rules. These rules go into effect on January 1, 2001. Thank you for your participation in the process of developing these rules. Your comments were very valuable and aided the Board in refining its original proposal.

Also enclosed is a copy of the two bills I pre-filed last Friday on behalf of the Board. The Board invites you to review these bills and consider attending the legislative committee hearings on the bills to express your support for the bills. If you intend to attend the hearing on the bills, or if you have questions or concerns about the bills, please contact me.

Sincerely,

James C. Fleming
Assistant Attorney General

vk
Enclosures



OFFICE OF ATTORNEY GENERAL
STATE OF NORTH DAKOTA

Heidi Heltkamp
ATTORNEY GENERAL

December 13, 2000

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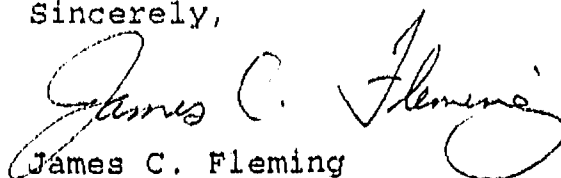
Ms. Sharon Dockter
Institute of Myo-Therapeutic Studies
1003 E Interstate Ave Ste 3
Bismarck, ND 58501-0500

Dear Ms. Dockter:

Enclosed please find a copy of the State Massage Board's final administrative rules. These rules go into effect on January 1, 2001. Thank you for your participation in the process of developing these rules. Your comments were very valuable and aided the Board in refining its original proposal.

Also enclosed is a copy of the two bills I pre-filed last Friday on behalf of the Board. The Board invites you to review these bills and consider attending the legislative committee hearings on the bills to express your support for the bills. If you intend to attend the hearing on the bills, or if you have questions or concerns about the bills, please contact me.

Sincerely,


James C. Fleming
Assistant Attorney General

vk
Enclosures

ARTICLE 49-01

GENERAL ADMINISTRATION

Chapter
49-01-01 Organization of Board
49-01-02 Licensure and Fees

CHAPTER 49-01-01 ORGANIZATION OF BOARD

Section
49-01-01-01 Organization of Board of Massage

49-01-01-01. Organization of board of massage.

1. **History and function.** The 1959 legislative assembly passed the Massage Registration Act, codified as North Dakota Century Code chapter 43-25. This chapter requires the governor to appoint the board of massage. The board, generally speaking, monitors the relationship and interaction between the licenseholder and the public. It is the responsibility of the board to protect the public against poorly trained massage therapists.
2. **Board membership.** The board consists of three members appointed by the governor. Members of the board serve three-year terms, and not more than one term expires each year.
3. **Executive secretary-treasurer.** The executive secretary-treasurer of the board is appointed by the board and is responsible for administration of the board's activities.
4. **Inquiries.** Inquiries regarding the board may be addressed to the executive secretary-treasurer:

Mr. Phil J. Reisenauer
P.O. Box 701
Dickinson, ND 58602-0701

History: Amended effective May 1, 1988; February 1, 1993; January 1, 2001.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1, 43-25-05

**CHAPTER 49-01-02
LICENSURE AND FEES**

Section	
49-01-02-01	Fees
49-01-02-02	License Applications
49-01-02-03	Expired Licenses
49-01-02-04	Grounds for Discipline
49-01-02-05	Continuing Education

49-01-02-01. Fees. The board charges the following fees:

1. To receive a license, one hundred and fifty dollars.
2. To renew an annual license, fifty dollars. This fee must be paid on or before January first of each year.
3. To retake an examination within six months of the initial failure to pass the board's examination, fifty dollars.

History: Effective January 1, 2001.

General Authority: NDCC 43-25-07, 43-25-08, 43-25-09

Law Implemented: NDCC 43-25-07, 43-25-08, 43-25-09

49-01-02-02. License applications. To receive a license as a massage therapist, the applicant must complete an application provided by the board and must include the following additional information:

1. Sufficient proof to the board that the applicant has satisfied the education requirements in article 49-02.
2. A copy of the applicant's high school diploma or proof of equivalent education.
3. A statement from a licensed physician, written in the last year, that the applicant is free of contagious diseases or that the applicant has been trained in taking sufficient precautions to prevent the spread of communicable diseases.

History: Effective January 1, 2001.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-25-07, 43-25-09

49-01-02-03. Expired licenses.

1. A license as a massage therapist is issued on an annual basis. A license expires on January first if the required renewal fee has not been paid on or by that date.
2. Practicing massage after a massage therapist's license has expired constitutes the unauthorized practice of massage. Practicing massage under an expired license is a violation of North Dakota Century Code section 43-25-03 and is grounds for the board to refuse to renew the person's license under subsection 3.
3. A license that has expired may be renewed within one year from the date of expiration upon payment of the required renewal fee. The fee will not be prorated for any period during which the license was expired.
4. An application for renewal of a license more than one year after the license expired will be considered an application for initial licensure.
5. A licenseholder shall notify the board of any change in the licenseholder's name or mailing address, or of any change in the physical address of one of the licenseholder's places of business, within sixty days after the change occurs.

History: Effective January 1, 2001.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-25-03, 43-25-09

49-01-02-04. Grounds for discipline. A licensed massage therapist may be subject to disciplinary action by the board for any of the grounds authorized in North Dakota Century Code chapter 43-25, including:

1. Failure by the licensee to identify himself or herself before beginning the massage and failure to provide sufficient supervision of massage by students; or
2. Commission of one or more acts which indicate the licensee lacks good moral character and is therefore ineligible to be licensed by the board, including:
 - a. Engaging in criminal conduct involving the client as a victim; and
 - b. Initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a current

massage client of the licensee, even if the client attempts to sexualize the relationship.

History: Effective January 1, 2001.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-25-07, 43-25-10

49-01-02-05. Continuing education.

1. To renew a license as a massage therapist, the licenseholder must submit sufficient proof to the board of completion of at least eighteen hours of continuing education within the last year, including the date, time, and location of the instruction.
2. To qualify as continuing education under this section, the instruction must be offered by a qualified instructor and be directly related to the practice of massage therapy. Unless the course of instruction has been approved in advance by the board, the licenseholder must identify the instructor of the course and describe the qualifications of the instructor, the topics covered during the course, and the total hours for which the licenseholder seeks approval.
3. Continuing education by remote means such as telephone, internet, correspondence course, or videotape, will not be approved by the board.

History: Effective January 1, 2001.

General Authority: NDCC 43-25-09

Law Implemented: NDCC 43-25-09

ARTICLE 49-02

EDUCATIONAL REQUIREMENTS FOR LICENSURE

Chapter	
49-02-01	General Education Requirements
49-02-02	Classroom Instruction
49-02-03	Practical Instruction and Supervision of Students

CHAPTER 49-02-01 GENERAL EDUCATION REQUIREMENTS

Section	
49-02-01-01	Hours of Instruction
49-02-01-02	Location of Instruction
49-02-01-03	Eligible Instruction

49-02-01-01. Hours of instruction.

1. To be eligible for a license as a massage therapist, an applicant must present a diploma or credentials issued by one or more schools of massage which indicate a cumulative total of seven hundred and fifty hours of supervised instruction as determined under this article, or a total of five hundred hours for students who were enrolled in a school of massage on or before April 8, 1999.
2. As used in this article, a "clock-hour" or hour of classroom or practical instruction means a sixty-minute block of time consisting of a minimum of fifty minutes of instruction with appropriate breaks.
3. The instruction received by the applicant must cover the elements of massage therapy, technique, and practice which include gliding strokes, kneading, direct pressure, deep friction, superficial warming techniques, percussion, compression (pumping), vibration, jostling, shaking, and rocking.
4. The instruction received by the applicant must include elements of contraindications, benefits of massage, universal precautions, body mechanics, business, history, ethics, legalities of massage, and professional standards regarding draping and modesty.

5. This article does not apply to applicants who were enrolled in a school of massage on the effective date of this article.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

49-02-01-02. Location of instruction. The education requirements in this article may be satisfied by instruction provided at a single school of massage or by attendance at more than one school, as long as the hours of total instruction provided to the student are not redundant and satisfy the other requirements in this article. An applicant shall submit a diploma or other credentials from each school attended.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

49-02-01-03. Eligible instruction. Unless waived by the board for good cause, instruction must be provided within the five years immediately preceding the date of the license application to be counted toward the total hours of instruction.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

**CHAPTER 49-02-02
CLASSROOM INSTRUCTION**

Section	
49-02-02-01	Hours of Classroom Instruction
49-02-02-02	Eligible Classroom Instruction
49-02-02-03	Required Curriculum

49-02-02-01. Hours of classroom instruction. The seven hundred fifty total hours of supervised instruction required under this article must include at least four hundred fifty hours of classroom instruction as determined under this chapter. "Hours of classroom instruction" means actual hours in attendance in class under supervised instruction in the presence of an instructor.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

49-02-02-02. Eligible classroom instruction.

1. Except as otherwise provided in this section or waived by the board for good cause, classroom instruction under this chapter must be provided by a licensed massage therapist at a recognized and approved school of massage and credit may not be given for prior educational instruction.
2. An instructor of anatomy, physiology, and pathology is not required to be a licensed massage therapist but must have earned a recognized postsecondary degree in the field of study in which the instructor is providing instruction.
3. A school of massage may give a student credit for prior educational instruction which was provided by a secondary or vocational institution. To receive credit, the prior instruction must have been provided by a qualified instructor within the five-year period immediately preceding the date of the application for licensure. The maximum credit for prior instruction which may be given under this subsection is provided in subsection 4 of section 49-02-02-03.
4. Correspondence courses are not recognized by the board under this section.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

49-02-02-03. Required curriculum.

1. The supervised classroom instruction received by an applicant must satisfy the following curriculum requirements:
 - a. At least one hundred fifty hours of anatomy.
 - b. At least sixty hours of physiology.
 - c. At least thirty hours of neurology.
 - d. At least thirty hours of pathology.
 - e. At least sixty hours of kinesiology, including origin, insertion, action, and innervation.
 - f. At least, but not more than, ten hours of first aid, hygiene, and CPR. At the time of graduation, the applicant must hold a valid current card certifying the completion of these courses under the instruction of a person who is certified by a nationally recognized organization to provide first aid and CPR instruction.
 - g. At least twenty-five hours of business practices and professional ethics.
2. Each hour of instruction may be applied to only one of the above categories.
3. To be counted under this section, the instruction must reflect current scientific knowledge and standards.
4. The number of classroom hours specified in subdivisions a through g of subsection 1 also is the maximum amount of prior education credits in each subject which may be given under section 49-02-02-02.
5. Hours of instruction for programs which measure their instruction in credit hours per semester or per quarter shall be determined as follows:
 - a. For semester credits, fifteen clock-hours of lecture equals one credit hour and thirty clock-hours of practical instruction (clinical or lab) equals one credit hour.
 - b. For quarter credits, ten clock-hours of lecture equals one credit hour and twenty clock-hours of practical instruction (clinical or lab) equals one credit hour.

History: Effective January 1, 2001.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

CHAPTER 49-02-03
PRACTICAL INSTRUCTION AND SUPERVISION OF STUDENTS

Section	
49-02-03-01	Hours of Practical Instruction
49-02-03-02	Direct Supervision of Students
49-02-03-03	Required Curriculum

49-02-03-01. Hours of practical instruction. The seven hundred fifty total hours of supervised instruction required under this article must include at least three hundred hours of practical instruction. "Hours of practical instruction" means actual hours of providing massage to another person, or receiving massage from a fellow student, under the direct supervision of a licensed massage therapist.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-07

49-02-03-02. Direct supervision of students. As used in this chapter and in North Dakota Century Code chapter 43-25, "direct supervision of a licensed massage therapist" has the following meaning:

1. For a student receiving practical instruction in the classroom setting, the supervising massage therapist must be in the same room as the student at all times during the massage. A massage therapist may supervise up to eight massages at a time (sixteen students) under this subsection.
2. For a student receiving practical instruction through field experience or a student clinic, the supervising massage therapist must be present on the premises at all times during the massage. A massage therapist may supervise up to six massages at a time under this subsection.
3. Notwithstanding any other provision in this section, a supervising massage therapist must exercise an appropriate degree of supervision at all times. Failure to do so is grounds for disciplinary action by the board.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 43-25-07
Law Implemented: NDCC 43-25-04, 43-25-07

49-02-03-03. Required curriculum. Before providing a massage to a member of the public, a student must have completed, or received prior

education credit for, at least two hundred twenty-five hours of classroom instruction and at least one hundred fifty hours of practical instruction in the classroom setting.

History: Effective January 1, 2001.

General Authority: NDCC 28-32-02, 43-25-07

Law Implemented: NDCC 43-25-07

ARTICLE 49-03

MASSAGE ESTABLISHMENTS

Chapter
49-03-01 **Requirements for Massage Establishments**

CHAPTER 49-03-01 **REQUIREMENTS FOR MASSAGE ESTABLISHMENTS**

Section
49-03-01-01 **Sanitation, Location, and Conditions**

49-03-01-01. Sanitation, location, and conditions.

1. The portion of a massage establishment in which a massage is provided, and any waiting room and hallway leading to that area, must be in a clean and sanitary condition at all times. This subsection does not apply when the massage is provided to a person in the person's own home, or when the massage is provided as a public demonstration in a location other than the massage therapist's usual establishment.
2. If the massage establishment is also the residence of the massage therapist providing the massage, the massage may not be provided in a bedroom.
3. Any mirrors or windows in the massage establishment will be located and covered in a manner to maintain the privacy of the person receiving the massage at all times during the massage and while the client is dressing and undressing.
4. A therapist must provide draping and treatment in a way that ensures the personal safety, comfort, and privacy of the client.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 43-25-03
Law Implemented: NDCC 43-25-03