Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 164 (as enrolled) **PUBLIC ACT 104 of 1995**
Sponsor: Senator Dale L. Shugars
Senate Committee: Economic Development, International Trade and Regulatory Affairs
House Committee: Regulatory Affairs

Date Completed: 7-12-95

RATIONALE

The Occupational Code, enacted in 1980, revised and consolidated into a single uniform code the regulation of 20 professions and occupations in the State. At that time, some people complained that the Code would continue to regulate certain occupations for which they felt no justifiable reason for regulation existed. For example, licenses have never been issued for myomassologists, persons who perform muscle massage, even though Public Act 251 of 1974, which required the examination and licensure of myomassologists, was recodified in the Occupational Code. According to the Department of Commerce, a letter of advice from the Attorney General in 1974 stated that Public Act 251 contained defects sufficient to prohibit taking disciplinary action against myomassology licensees. Reportedly, since 1974, the Department of Licensing and Regulation (now merged into the Department of Commerce), the Auditor General, and the Commission on Professional and Occupational Licensure repeatedly have recommended repeal of the myomassologist regulations.

Another reason some give for repealing the Code's article regulating myomassologists is the effect it has had on local efforts to regulate massage therapists and massage establishments through city ordinances. On May 19, 1995, the Michigan Court of Appeals struck down a City of Ferndale ordinance that required both massage therapists and massage parlors to obtain valid city permits in order to practice their trade (*Gora, et al*. v *City of Ferndale, et al*., Docket No. 148434). The Court citing a previous decision, stated that "…the principle of preemption precludes a municipality from enacting an ordinance where (1) the ordinance is in direct conflict with the state statutory scheme, or (2) the state statutory scheme 'pre-empts the ordinance by occupying the field of regulation of the ordinance, even where there is no direct conflict between the two schemes of regulation' . People v Llewellyn, 401 Mich 314, 322...". Certain guidelines are used In determining whether the State has preempted a field of regulation. For example, according to the Court in *Gora*, the pervasiveness of the State regulatory scheme may indicate an intent to preempt. Further, supplementary local regulation is preempted where the nature of the regulated subject matter calls for a uniform State regulatory scheme. The Court stated that its review of the Occupational Code "...indicates a pervasive and comprehensive scheme to provide statewide licensing and regulation of over 20 various professions... Further, the nature of the subject matter regulated (i.e., the practice of a chosen occupation) involves an important civil liberty and calls for a uniform regulatory scheme." Even though the statute was never implemented, the *Gora* Court ruled that the "dispositive issue in preemption cases" is "whether the Legislature intended to occupy the regulated field".

CONTENT

The bill amended the Occupational Code to repeal Article 17, which regulated the practice of massage or myomassology, i.e., the scientific art of body massage, whether by hand or with a nonpowered mechanical or electrical apparatus, for the purpose of body massage or contouring, and the use of oil rubs, salt glows, hot and cold packs, and baths. The bill also repealed provisions in the State License Fee Act that prescribed examination and license fees for myomassologists.

MCL 339.303a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Since the statute regulating myomassologists has never been implemented and a recent Court of Appeals ruling has barred municipalities from enacting local ordinances on this subject, the practice of myomassology is unregulated. Repealing the statute will enable municipalities to enact ordinances to regulate massage therapists and massage establishments, thus providing for the legitimate profession of myomassology while prohibiting illegal and unlawful massage parlors, which often have been associated with prostitution.

Opposing Argument

Statewide regulation of myomassology provides for uniformity in the education of massage therapists and helps ensure the quality of care that customers receive. Reportedly, at least 20 states have legislation regulating massage therapists, nine or 10 of which use a national certification exam as their state board testing procedure. Rather than repealing the statute, the State should amend it to address the concerns expressed by the Attorney General in 1974, and to incorporate the national certification exam as part of its licensing requirement. Consumers, thus, would be protected from ill-trained, unqualified massage therapists.

Opposing Argument

Giving the authority to regulate massage therapists and massage establishments to local governments could result in legitimate practitioners' being denied permission to practice due to prejudices or misinformation about the practice of massage, or in the establishment of illicit massage parlors in areas outside the boundaries covered by local ordinances. Implementation of a State statute would protect consumers from illegitimate operators, and would protect legitimate practitioners of massage from discriminatory ordinances.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill will not have a fiscal or administrative impact on the Department of Commerce or on local governmental units. There currently are no licensed myomassologists.

Fiscal Analyst: K. Lindquist

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