

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 615 Massage Establishments

**SPONSOR(S):** Health Care Appropriations Subcommittee, Healthcare Regulation Subcommittee, Lopez, V.

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee	17 Y, 0 N, As CS	Osborne	McElroy
2) Health Care Appropriations Subcommittee	13 Y, 0 N, As CS	Aderibigbe	Clark
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Massage therapy is the manipulation of the soft tissues of the human body with the hand, foot, knee, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation or thermal therapy, or any electrical or mechanical device, or the application of a chemical or herbal preparation to the human body. The Board of Massage Therapy (Board), within the Department of Health (DOH), regulates massage practice, including massage therapists and massage establishments.

DOH is required to annually inspect massage establishments for compliance with statutory requirements. Under current law, DOH is authorized to issue an emergency suspension, restriction, or limitation of a license if limited, specified criteria are met.

Human trafficking is a form of modern-day slavery involving the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. Illicit Massage Businesses (IMBs) are licensed or unlicensed massage establishments that purport to operate as legal businesses, but where sexual services are illegally bought and sold. IMBs are considered one of the primary venues for sex trafficking involving adults and comprised the largest group of citizen calls to the National Human Trafficking Hotline in 2019.

Florida has implemented several regulatory measures in statute in an effort to obstruct the operation of IMBs without interfering with legitimate massage establishments.

CS/CS/HB 615 expands DOH's authority to issue emergency orders suspending the license of a massage therapist or establishment. The bill authorizes law enforcement and code enforcement officers to perform inspections and investigations regarding whether a massage establishment is compliant with certain statutory requirements. The bill requires DOH to issue an emergency suspension of a massage therapist or establishment's license under specified circumstances.

The bill expressly prohibits any sexual activity within a massage establishment. The bill prohibits advertisement by a massage therapist or establishment from being posted in any medium or website that advertises prostitution, escort, or other sexual services. The bill outlines requirements for the operation of massage establishments.

The bill appropriates \$837,992 in recurring funds and \$38,712 in nonrecurring funds from the Medical Quality Assurance Trust Fund to the DOH, to address additional workload. The bill has no fiscal impact on local government.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### **Massage Therapy**

Massage practice is the manipulation of the soft tissues of the human body with the hand, foot, knee, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation or thermal therapy, or any electrical or mechanical device, or the application of a chemical or herbal preparation to the human body.<sup>1</sup> Massage is therapeutic and a massage therapist must know anatomy and physiology and understand the relationship between the structure and function of the tissues being treated and the total function of the body.<sup>2</sup>

Chapter 480, entitled the “Massage Practice Act”, governs the practice of massage therapy in Florida. The Board of Massage Therapy (Board), within the Department of Health (DOH), regulates massage practice, including massage therapists and massage establishments.<sup>3</sup> The Board is responsible for establishing rules governing the licensure and practice of massage therapists and massage establishments. This includes approving massage therapy schools<sup>4</sup>, licensure exams<sup>5</sup>, and establishing training requirements for massage therapy apprentices<sup>6</sup>, as well as setting minimum standards for and periodic inspections of massage establishments.<sup>7</sup> The Board has disciplinary authority over massage therapist and establishment licenses.<sup>8</sup> DOH is responsible for providing investigative services to ensure compliance with regulations.<sup>9</sup>

##### Massage Therapist Licensure

A massage therapist is a person who administers massage for compensation.<sup>10</sup> As of March 22, 2023, there are 39,183 actively licensed massage therapists in Florida.<sup>11</sup>

To qualify for licensure as a massage therapist, an applicant must:<sup>12</sup>

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a Board-approved massage school;
- Undergo background screening; and
- Pass an examination.<sup>13</sup>

A massage therapist is required to renew his or her license every two years and must complete 24 hours of continuing education for each renewal period.<sup>14</sup>

##### Massage Establishment Licensure

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<sup>1</sup> S. 480.033(3), F.S.

<sup>2</sup> S. 480.032, F.S.

<sup>3</sup> S. 480.035, F.S.

<sup>4</sup> S. 480.033(3), F.S.

<sup>5</sup> S. 480.041(1)(c), F.S.

<sup>6</sup> S. 480.041(5), F.S.

<sup>7</sup> Ss. 480.043(3) and (10), F.S.

<sup>8</sup> S. 480.046, F.S.

<sup>9</sup> S. 480.039, F.S.

<sup>10</sup> S. 480.033(4), F.S.

<sup>11</sup> Department of Health, FLHealthSource.gov, Public Data Portal (search by Board/Council “Board of Massage Therapy”, then by Profession “massage therapist”, then by license status “practicing statuses only”), available at <https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders>, (last visited March 22, 2023).

<sup>12</sup> S. 480.041(1), F.S.

<sup>13</sup> See rule 64B7-25.001, F.A.C., for Board approved examinations.

<sup>14</sup> S. 480.0415, F.S., and rule 64B7-28.009, F.A.C.

A massage establishment is the premises wherein a massage therapist practices massage therapy.<sup>15</sup> A massage establishment must be licensed by the Board and adhere to rules set by the Board regarding facilities, personnel, safety and sanitation requirements, financial responsibility, and insurance coverage.<sup>16</sup> Massage establishments must be licensed in order to operate legally.<sup>17</sup>

The Board requires the following be met for a license to be issued for a massage establishment:<sup>18</sup>

- Submit a completed application;<sup>19</sup>
- Pass an inspection by DOH;<sup>20</sup> and
- Submit proof of property damage and bodily injury liability insurance coverage.

The application includes background screening of the establishment owner and identification of the designated massage establishment manager (DEM).<sup>21</sup> A DEM is a massage therapist who holds a clear and active license without restriction, is responsible for the operation of a massage establishment, and is designated the manager by the rules or practices at the establishment.<sup>22</sup>

Massage establishment licenses may not be transferred from a licensee to another individual or entity.<sup>23</sup> Board approval is required for an establishment to move locations or change names.<sup>24</sup>

### *Denial of Massage Establishment Licensure*

A proposed massage establishment may be denied licensure for failing to meet the standards adopted by the Board, or if the owner or DEM has been convicted of or plead guilty or nolo contendere for a felony or misdemeanor relating to any of the following offenses:<sup>25</sup> prostitution,<sup>26</sup> kidnapping,<sup>27</sup> false imprisonment,<sup>28</sup> luring or enticing a child,<sup>29</sup> human trafficking or smuggling,<sup>30</sup> sexual battery,<sup>31</sup> female genital mutilation,<sup>32</sup> lewd or lascivious offenses in the presence of a minor, elderly, or disabled person,<sup>33</sup> or obscene or sexual acts involving a minor.<sup>34</sup>

DOH may investigate the proposed massage establishment based on the application contents;<sup>35</sup> if DOH determines that the proposed establishment would fail to meet the standards adopted by the Board, DOH must deny the application for licensure and provide the denial in writing with a list of reasons for the denial. The establishment may correct the recorded deficiencies and reapply for licensure.<sup>36</sup>

## **Human Trafficking**

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<sup>15</sup> S. 480.033(7), F.S.

<sup>16</sup> S. 480.043, F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Rule 64B7-26.002, F.A.C.

<sup>19</sup> Board of Massage Therapy, *Application for Massage Establishment License*, available at <https://floridasmassagetherapy.gov/applications/app-bus-original-mt.pdf> (last viewed March 23, 2023).

<sup>20</sup> The inspection must demonstrate that the proposed massage establishment is to be used for "massage" as defined in Section 480.033(3), F.S. and that the proposed massage establishment is in compliance with Chapters 456 and 480, F.S., and related rules. See rule 64B7-26.002, F.A.C.

<sup>21</sup> *Supra*, note 19.

<sup>22</sup> S. 480.033(6), F.S.

<sup>23</sup> S. 480.043(9), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> S. 480.043, F.S.

<sup>26</sup> Ch. 796, F.S.

<sup>27</sup> S. 787.01, FS.

<sup>28</sup> S. 787.02, F.S.

<sup>29</sup> S. 787.025, F.S.

<sup>30</sup> Ss. 787.06 and 787.07, F.S.

<sup>31</sup> S. 794.011, F.S.

<sup>32</sup> S. 794.08, F.S.

<sup>33</sup> Ss. 800.004 and 825.1025(2)(b), F.S.

<sup>34</sup> S. 827.071 and Ch. 847 F.S.

<sup>35</sup> S. 480.043(5), F.S.

<sup>36</sup> S. 480.043(6), F.S.

Human trafficking is a form of modern-day slavery involving the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person.<sup>37</sup> Human trafficking can affect individuals of any age, gender, or nationality; however, some people are more vulnerable than others. Significant risk factors include recent migration or relocation, substance use, mental health concerns, and involvement in the child welfare system.<sup>38</sup>

Victims are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.<sup>39</sup> It is estimated that at any given time in 2021, there were approximately 27.6 million people engaging in forced labor.<sup>40</sup> In 2021, the National Human Trafficking Hotline<sup>41</sup> identified 16,710 trafficking victims in the US, of which 1,253 were in Florida;<sup>42</sup> however, these figures do not reflect the true scope and scale of the issue which cannot be easily quantified due to the underground nature of the issue. An analysis of data collected by the Hotline showed that approximately 6% of reported victims in 2021 were associated with illicit massage, health, and beauty services.<sup>43</sup>

### Illicit Massage Businesses

Illicit Massage Businesses (IMBs) are licensed or unlicensed massage establishments that purport to operate as legal businesses, but where sexual services are illegally bought and sold.<sup>44</sup> IMBs are considered one of the top venues for sex trafficking involving adults and comprised the largest group of citizen calls to the National Human Trafficking Hotline in 2019.<sup>45</sup> In 2018, a study estimated that there were approximately 9,000 IMBs operating in the US;<sup>46</sup> it is expected that this number has risen in the years since.<sup>47</sup> The Collier County Sheriff's Office estimates that there are currently 40 IMBs operating in Collier County.<sup>48</sup>

IMBs are successful in part due to their ability to operate in plain sight. They are often located in strip malls and present themselves publicly as legitimate massage establishments. Markers of an IMB include: opaque or covered windows, locked front doors with a buzzer to enter, listed prices significantly lower than the market value, serves exclusively or primarily male clientele, employees appear to be living on site, and advertising on commercial sex websites.<sup>49</sup>

The majority of people trafficked through IMBs are Chinese or South Korean women who have recently arrived in the US. They are typically 35-55 years of age, have no more than a high school level education, and speak little to no English.<sup>50</sup>

### *Police Response to IMBs*

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<sup>37</sup> S. 787.06, F.S.

<sup>38</sup> National Human Trafficking Hotline. *Human Trafficking: What Human Trafficking is, and isn't*, available at <https://humantraffickinghotline.org/en/human-trafficking> (last visited March 23, 2023).

<sup>39</sup> *Id.*

<sup>40</sup> International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Sep. 2022), available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipec/documents/publication/wcms\\_854733.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf) (last viewed March 23, 2023).

<sup>41</sup> The National Human Trafficking Hotline is a free service to connect victims and survivors of sex and labor trafficking with services and supports to find help and safety. The Hotline also receives tips about potential situations of sex and labor trafficking and facilitates reporting that information to the appropriate authorities. See also, National Human Trafficking Hotline, *About Us*, available at <https://humantraffickinghotline.org/en/about-us> (last visited March 23, 2023).

<sup>42</sup> National Human Trafficking Hotline, *National Statistics (2021)*, available at <https://humantraffickinghotline.org/en/statistics> (last visited March 23, 2023).

<sup>43</sup> Polaris, *Analysis of 2021 Data from the National Human Trafficking Hotline*, available at <https://polarisproject.org/wp-content/uploads/2020/07/Polaris-Analysis-of-2021-Data-from-the-National-Human-Trafficking-Hotline.pdf> (last viewed March 23, 2023).

<sup>44</sup> Chin, J. & Takahashi, L. (2022). *Sex for Sale: Illicit Massage Parlors*. 3<sup>rd</sup> Edition. Routledge. ISBN: 9781003228639

<sup>45</sup> de Vries, I. (2020). *Crime, place, and networks in the age of the internet: The case of online-promoted illicit massage businesses*. Northeastern University.

<sup>46</sup> Polaris, *Human Trafficking in Illicit Massage Businesses* (2018), available at <https://massagetherapy.nv.gov/uploadedFiles/massagetherapy.nv.gov/content/Resources/FullReportHumanTraffickinginIllicitMassageBusinesses.pdf> (last visited March 23, 2023).

<sup>47</sup> Det. Sgt. Wade Williams, Collier County Sheriff's Office, *Illicit Massage Businesses Presentation*, (on file with the Healthcare Regulation Subcommittee).

<sup>48</sup> *Id.*

<sup>49</sup> *Supra*, note 46.

<sup>50</sup> *Supra*, note 46.

Traditional police techniques for controlling crime have proven to be largely ineffective in reducing the presence of IMBs and their impact on victims of human trafficking. Traditional tactics such as sting operations, undercover work, and reactive investigations are still relied on heavily for addressing human trafficking and IMBs; however, these approaches have been shown to be ineffective in holding traffickers accountable and decreasing the risk of victimization.<sup>51</sup>

Police response to human trafficking has been criticized for not being victim-oriented; few victims of human trafficking are identified by police as they often do not self-identify as victims, fear retribution from their exploiter, and mistrust the authorities.<sup>52</sup> Obtaining a conviction for human trafficking related crimes relies heavily on victim testimony which has proven difficult to obtain in IMB-related cases.<sup>53</sup> As a result very few police actions have resulted in prosecutions for human trafficking, thus signaling very little accountability for traffickers.<sup>54</sup>

### *Regulatory Response to IMBs*

Florida has implemented several regulatory measures in an effort to obstruct the operation of IMBs without interfering with legitimate massage establishments. These regulations include:

- Massage establishments are not authorized to operate between 12am and 5am;<sup>55</sup>
- Sexual misconduct<sup>56</sup> is explicitly prohibited in massage establishments;<sup>57</sup>
- Advertisements must include the license number of the individual massage therapist or establishment being advertised;<sup>58</sup>
- Persons employed in a massage establishment must be able to produce government identification upon request by a DOH or law enforcement investigator;<sup>59</sup> and
- Massage establishments are required to have a set procedure for reporting suspected human trafficking and conspicuously post a sign with the relevant procedures.<sup>60</sup>

### **Discipline of Massage Therapists and Establishments**

The Board has disciplinary authority over massage therapists and establishment licenses.<sup>61</sup> The purpose of imposing fines and penalties is to protect the public by assuring compliance with an agency's rules.<sup>62</sup> DOH is required to inspect licensed massage establishments on an annual or more frequent basis. Such inspections include, but are not limited to, whether the establishment is in compliance with the requirements for facilities operation, personnel, safety, sanitary requirements, and existing insurance coverage.<sup>63</sup>

Section 456.073, F.S. outlines the process for disciplinary proceedings for professionals licensed under DOH. Disciplinary proceedings begin when a complaint is filed. DOH investigates complaints for legal sufficiency,<sup>64</sup> and if DOH determines a complaint to be legally sufficient all investigative findings are submitted to a panel to be assessed for probable cause.<sup>65</sup> Upon making a finding of probable cause,

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<sup>51</sup> Vries, I. de, & Farrell, A. (2022). *Explaining the Use of Traditional Law Enforcement Responses to Human Trafficking Concerns in Illicit Massage Businesses*. *Justice Quarterly*, 1-26. doi:10.1080/07418825.2022.2051587

<sup>52</sup> Farrell, A., et al., (2019). *Failing victims? Challenges of the police response to human trafficking*. *Criminology & Public Policy*, 18: 649–673, available at <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9133.12456> (last visited March 24, 2023).

<sup>53</sup> *Supra*, note 51.

<sup>54</sup> *Supra*, note 52.

<sup>55</sup> S. 480.0475, F.S.

<sup>56</sup> Rule 64B7-26.010, F.A.C. specifies that the statutory prohibition of sexual misconduct extends to sexual activity occurring within, or in the operation of, any massage establishment.

<sup>57</sup> S. 480.0485, F.S.

<sup>58</sup> S. 480.0465, F.S.

<sup>59</sup> S. 480.0535, F.S.

<sup>60</sup> S. 480.043, F.S.

<sup>61</sup> S. 480.046, F.S.

<sup>62</sup> S. 120.695, F.S.

<sup>63</sup> Rule 64B7-26.004, F.A.C.

<sup>64</sup> S. 456.073(1), F.S.; a complaint is legally sufficient if it contains ultimate facts that show that a violation of Ch. 456, F.S., of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred.

<sup>65</sup> S. 456.073(4), F.S.

DOH is required to file a formal complaint, and may choose to prosecute the complaint pursuant to Chapter 120, F.S.<sup>66</sup>

The case may be referred to the Board for a hearing, or to the Division of Administrative Hearings to be heard before an administrative law judge if there are any disputed issues of material fact.<sup>67</sup> A judge may submit a recommended order,<sup>68</sup> but the final determination of whether or not a licensee has violated the laws and rules regulating the profession is a conclusion to be determined by the Board.<sup>69</sup> The Board considers the findings of fact and conclusions of law contained in the formal complaint, reviews the investigative materials, and determines the appropriate penalty for the violation.

The Board has established disciplinary guidelines specifying the range of penalties based upon the severity and repetition of specific offenses.<sup>70</sup> The board is provided some discretion to deviate from disciplinary guidelines based on mitigating or aggravating circumstances.<sup>71</sup> Dependent upon the severity of the massage therapist or establishment's infraction, the Board may impose any of the following pursuant to the Board's disciplinary guidelines: letter of concern, reprimand, fines, license with conditions, probation, suspension, revocation and/or fines.<sup>72</sup>

During calendar year 2022, 237 Administrative Complaints were filed related to massage therapists and massage establishments.<sup>73</sup> Of those, 81 were related to sexual misconduct.<sup>74</sup>

### Emergency/Summary Suspensions

Under current law, DOH is authorized to issue an emergency suspension, restriction, or limitation of a license if the following criteria are met:<sup>75</sup>

- The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
- The agency takes only that action necessary to protect the public interest under the emergency procedure; and
- The agency states in writing at the time of, or prior to, its specific action the specific facts and reasons for finding an *immediate danger to the public health, safety, or welfare* and its reasons for concluding that the procedure used is fair under the circumstances.

The State Surgeon General, or their designee, is required to conduct any proceedings for the purposes of a summary (emergency) suspension or restriction of a health care practitioner or facility license.<sup>76</sup>

DOH is required to immediately suspend the license of any health care practitioner, including massage therapists, who has plead guilty or nolo contendere to or has been convicted of the following offenses:

- Felony Medicare or Medicaid fraud under chapter 409, Florida Statutes;
- Felony fraud under chapter 817, Florida Statutes;
- Felony drug offenses under chapter 893, Florida Statutes, and equivalent charges under federal law;
- Misdemeanors or felonies under federal law relating to the Medicaid program;
- Felonies under section 784.086, Florida Statutes, relating to reproductive battery; and
- Felonies under chapter 782, Florida Statutes, relating to homicide.

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<sup>66</sup> *Id.*

<sup>67</sup> S. 456.073(5), F.S.

<sup>68</sup> *See* s. 120.52, F.S.

<sup>69</sup> *Supra*, note 67

<sup>70</sup> *See* s. 456.079, F.S.

<sup>71</sup> *Id.*

<sup>72</sup> Rule 64B7-30, F.A.C

<sup>73</sup> Department of Health, Agency Bill Analysis for House Bill 615 (2023), p. 3, (on file with the Healthcare Regulation Subcommittee).

<sup>74</sup> *Id.*

<sup>75</sup> S. 120.60(6), F.S.

<sup>76</sup> S. 456.073(8), F.S.

The DOH is given authority pursuant to section 456.074(3), F. S., to immediately suspend the license of any health care practitioner who tests positive for any drug on any government or private-sector preemployment or employer-order confirmed drug test, provided that the health care practitioner does not have a lawful prescription for the drug

### Summary Suspension of Massage Therapist and Massage Establishment Licenses

In addition to the list of offenses listed above which apply to all DOH-licensed health care practitioners, DOH is required to suspend the license of a massage therapist or establishment when a therapist, or a person with any ownership interest in a massage establishment has pled guilty or nolo contendere to, or has been convicted of any offense related to prostitution or related acts under section 796.07, Florida Statutes, or a felony under:<sup>77</sup>

- Section 787.01, Florida Statutes, relating to kidnapping;
- Section 787.02, Florida Statutes, relating to false imprisonment;
- Section 787.025, Florida Statutes, relating to luring or enticing a child;
- Section 787.06, Florida Statutes, relating to human trafficking;
- Section 787.07, Florida Statutes, relating to human smuggling;
- Section 794.011, Florida Statutes, relating to sexual battery;
- Section 794.08, Florida Statutes, relating to female genital mutilation;
- Former section 796.03, Florida Statutes, relating to procuring a person under the age of 18 for prostitution;
- Former section 796.04, Florida Statutes, relating to forcing, compelling, or coercing another to become a prostitute;
- Section 796.05, Florida Statutes, relating to deriving support from the proceeds of prostitution;
- Section 796.07(4)(a)3, Florida Statutes, relating to a felony of the third degree for a third or subsequent violation of section 796.07, Florida Statutes, relating to prohibiting prostitution and related acts;
- Section 800.04, Florida Statutes, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 825.1025(2)(b), Florida Statutes, relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- Section 827.071, Florida Statutes, relating to sexual performance by a child;
- Section 847.0133, Florida Statutes relating to the protection of minors;
- Section 847.0135, Florida Statutes, relating to computer pornography;
- Section 847.0138, Florida Statutes, relating to the transmission of material harmful to minors to a minor by electronic device or equipment; and
- Section 847.0145, Florida Statutes, relating to the selling or buying of minors.

Under current law, DOH cannot issue a summary suspension absent a conviction or the entry of a guilty or nolo contendere plea by the licensee.

Between January 1, 2020, and December 31, 2022:<sup>78</sup>

- 13 massage establishment licenses were revoked related to sexual misconduct
- 23 massage establishment licenses were revoked for aiding and abetting unlicensed massage therapists

Massage establishments are also required to maintain a designated establishment manager (DEM) on file with DOH as a condition of their licensure. DOH is authorized to issue a summary suspension to an establishment who fails to identify a new DEM within 10 days of terminating the previous DEM.<sup>79</sup>

### **Effect of the Bill**

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<sup>77</sup> S. 456.074(4), F.S.

<sup>78</sup> *Supra*, note 73.

<sup>79</sup> S. 480.043(12), F.S.

## Investigations and Enforcement

CS/CS/HB 615 expands DOH's authority to issue emergency orders suspending the license of a massage therapist or establishment to include in response to offenses committed by the designated establishment manager and other employees of the massage establishment.

The bill also authorizes DOH to issue an emergency suspension in response to information that a qualifying individual has been arrested for committing or attempting, soliciting, or conspiring to commit one of the offenses listed in s. 465.074, F.S.

The bill directs DOH to issue an emergency order suspending the license of any licensee upon a finding of the State Surgeon General that probable cause exists to believe that the licensee has committed sexual misconduct as defined and prohibited in s. 456.063(1), F.S., or the applicable practice act, and that such violation constitutes an immediate danger to the public.

The bill authorizes law enforcement and code enforcement officers to perform inspections and investigations regarding whether a massage establishment is compliant with certain statutory requirements. The bill requires that an executed affidavit including evidence of certain violations be provided to DOH within five business days of the inspection under certain circumstances. DOH is required to issue an emergency suspension of the massage establishment's license within 20 days of receiving the executed affidavit with evidence of specified violations. DOH is required to conduct an inspection within 30 days of receiving the executed affidavit.

The bill requires law enforcement agencies to notify DOH of the continued operation of an establishment following the issuance of an emergency suspension or the arrest of a massage therapist under certain circumstances.

The bill requires DOH investigators to request valid government identification from all employees in the establishment at the time of inspection. DOH is required to notify a federal immigration office if any employee of a massage establishment is unable to provide a valid form of government identification.

## Requirements of Massage Therapists and Establishments

CS/CS/HB 615 expressly prohibits any sexual activity in a massage establishment, as opposed to specifically sexual *misconduct*, and prohibits using the establishment to arrange for sexual activity in another location. The meaning of sexual misconduct is expanded to include requiring a patient to be nude or the intentional removal of any drape without the written informed consent of the patient. Massage establishment employees are required to be fully clothed when within the establishment.

The bill requires massage establishments to:

- Cover no more than 50 percent of any outside windows into the reception area;
- Ensure that outside windows into the reception area allow for at least 35 percent light penetration;
- Post signage outside of the establishment including the establishment's name, license number, and telephone number as provided to DOH;
- Maintain specified employee records in English or Spanish;
- Conspicuously display 2-inch by 2-inch photos of all employees with licensure information;
- Maintain complete records of each service provided, with the full name, address, and telephone number of the patient for at least one year after the provision of the service;
- Operate exclusively between the hours of 5am and midnight; and
- Conduct all patient services between the hours of 5am and 10pm.

The bill provides exemptions from certain requirements for massage establishments located within or on the premises of the following facilities:



- A public lodging establishment as defined in s. 509.013(4), F.S.
- A hotel, motel, or bed and breakfast as defined in s. 509.242, F.S.
- A timeshare property as defined in s. 721.05, F.S.
- A public airport as defined in s. 330.27, F.S.
- A pari-mutuel facility as defined in s. 550.002, F.S.
- A health care facility as defined in s. 408.07, F.S.
- A health care clinic as defined in s. 400.9905(4), F.S.

Health care practitioners and physicians licensed by DOH who employ a licensed massage therapist to perform massage therapy on his or her patients in his or her place of practice are also exempt from certain requirements of massage establishments.

The bill requires all advertisements for a massage therapist or establishment to include the physical address of the establishment and the telephone number as provided to DOH. Massage establishments with more than five locations are exempt from this requirement. Massage therapists, establishments, and employees of massage establishments are prohibited from advertising in any medium or website that expressly or implicitly advertises prostitution, escort, or other sexual services.

The bill authorizes licensed physicians and chiropractors to serve as designated establishment managers at massage establishments. The bill also increases the number of Board of Massage Therapy members that constitutes a quorum from four to the majority of the members of the Board.

The bill provides an effective date of July 1, 2023.

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 456.074, F.S., relating to certain health care practitioners; immediate suspension of license.
- Section 2:** Amends s. 480.033, F.S., relating to definitions.
- Section 3:** Amends s. 480.035, F.S., relating to the Board of Massage Therapy.
- Section 4:** Amends s. 480.039, F.S., relating to investigative services; reporting.
- Section 5:** Amends s. 480.043, F.S., relating to massage establishments; requisites; licensure; inspection; human trafficking awareness training and policies.
- Section 6:** Amends s. 480.0465, F.S., relating to advertisement.
- Section 7:** Amends s. 480.0475, F.S., relating to massage establishments; prohibited practices.
- Section 8:** Amends s. 480.0485, F.S., relating to sexual misconduct in the practice of massage therapy.
- Section 9:** Amends s. 480.0535, F.S., relating to documents required while working in a massage establishment.
- Section 10:** Amends s. 847.001, F.S., relating to definitions.
- Section 11:** Provides an appropriation to implement the bill.
- Section 12:** Provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

DOH will experience a significant increase in workload associated with additional complaints, investigations, and prosecution cases resulting from the provisions of this bill. The bill appropriates eight full-time employees and \$837,992 in recurring funds and \$38,712 in nonrecurring funds from the Medical Quality Assurance Trust Fund to address this additional workload.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Massage therapy establishments may experience a negative fiscal impact as a result of the requirements of the CS/CS/HB 615.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The Board has the rulemaking authority necessary to adopt the rules pursuant to this bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 12, 2023, the Health Care Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment appropriates 8.0 full-time equivalent positions and the associated salary rate and budget to the Department of Health for the implementation of this bill.

This analysis is drafted to the committee substitute as passed by the Health Care Appropriations Subcommittee.