

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 246

INTRODUCER: Health Regulation Committee and Senator Joyner and others

SUBJECT: Human Trafficking

DATE: March 10, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Fav/CS
2.	Cellon	Cannon	CJ	Favorable
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill requires operators of massage establishments to maintain valid work authorization documents on the premises for employees who are not U.S. citizens, and present these documents to a law enforcement officer upon request. The bill makes it unlawful for a massage establishment operator to knowingly use a massage establishment for the purpose of lewdness, assignation, or prostitution. Criminal penalties are established for a violation of any of the provisions set forth in the bill.

The effective date of this bill is October 1, 2011.

This bill creates section 480.0535, and substantially amends section 921.0022, of the Florida Statutes.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men and women. Victims of human trafficking are subjected to force, fraud, or coercion, for the purpose of sexual exploitation or forced labor.¹

The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that there are at least 12.3 million adults and children in forced labor, bonded labor, and commercial sexual servitude at any given time.² The Federal Government has estimated that the number of persons trafficked into the United States each year range from 14,500-17,500.³ Additionally, an estimated 200,000 American children are at risk for trafficking into the sex industry each year, according to the U.S. Department of Justice.⁴

After drug dealing, trafficking of humans is tied with arms-dealing as the second largest criminal industry in the world, and is the fastest growing. Many victims of human trafficking are forced to work in prostitution or the sex entertainment industry. However, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.⁵

Traffickers use various techniques to instill fear in victims and to keep them enslaved. Some traffickers keep their victims under lock and key. However, the more frequent practice is to use less obvious techniques including:

- Debt bondage - financial obligations, honor-bound to satisfy debt.
- Isolation from the public - limiting contact with outsiders and making sure that any contact is monitored or superficial in nature.
- Isolation from family members and members of their ethnic and religious community.
- Confiscation of passports, visas or identification documents.
- Use or threat of violence toward victims or families of victims.
- The threat of shaming victims by exposing circumstances to family.
- Telling victims they will be imprisoned or deported for immigration violations if they contact authorities.
- Control of the victims' money, and holding their money for "safe-keeping."⁶

¹ U.S. Department of Health and Human Services, Administration for Children & Families, *About Human Trafficking*, available at <http://www.acf.hhs.gov/trafficking/about/index.html#> (Last visited on January 31, 2011).

² See U.S. Department of State, *The 2009 Trafficking in Persons (TIP) Report*, June 2009, available at <http://www.state.gov/g/tip/rls/tiprpt/2009/> (Last visited on February 1, 2011).

³ Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, available at <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (Last visited on February 1, 2011).

⁴ *Id.* at 3.

⁵ *Supra* fn. 1.

⁶ *Id.*

Federal Trafficking Law

In 2000, Congress enacted the Trafficking Victims Protection Act (TVPA) to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”⁷ The TVPA not only criminalizes human trafficking, but also requires that victims, who might otherwise be treated as criminals (e.g. engagement in prostitution), be treated as victims of crime and be provided with health and human services, if they cooperate with prosecutions.

The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Pub. L. 108-193, reauthorized the TVPA and added responsibilities to the U.S. Government’s anti-trafficking portfolio. In particular, the TVPRA 2003 mandated new information campaigns to combat sex tourism, added refinements to the federal criminal law provisions, and created a new civil action that allows victims to sue their traffickers in federal district court. In addition, the TVPRA 2003 required an annual report from the Attorney General to Congress.⁸

The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), Pub. L. 109-164, reauthorized the TVPA and authorized new anti-trafficking resources, including grant programs to assist state and local law enforcement efforts and expand victim assistance programs to U.S. citizens or resident aliens subjected to trafficking; authorized pilot programs to establish residential rehabilitative facilities for trafficking victims, including one program aimed at juveniles; and provided extraterritorial jurisdiction over trafficking offenses committed overseas by persons employed by or accompanying the federal government.⁹

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, reauthorized the TVPA for 4 years and authorized new measures to combat human trafficking. The TVPRA 2008:

- Created new crimes imposing severe penalties on those who obstruct or attempt to obstruct the investigations and prosecutions of trafficking crimes;
- Changed the standard of proof for the crime of sex trafficking by force, fraud, or coercion by requiring that the government merely prove that the defendant acted in reckless disregard of the fact that such means would be used;
- Broadened the reach of the crime of sex trafficking of minors by eliminating the requirement to show that the defendant knew that the person engaged in commercial sex was a minor in cases where the defendant had a reasonable opportunity to observe the minor;
- Expanded the crime of forced labor by providing that “force” is a means of violating the law; imposed criminal liability on those who, knowingly and with intent to defraud, recruit workers from outside the U.S. for employment within the U.S. by making materially false or fraudulent representations;

⁷ Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, (2000).

⁸ Attorney General’s Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, pg. 2 (July 2010), available at <http://www.justice.gov/ag/annualreports/tr2009/agreporthumantrafficking2009.pdf> (Last visited on February 1, 2011).

⁹ *Id.* at 3.

- Enhanced the penalty for conspiring to commit trafficking-related crimes; and
- Penalized those who knowingly benefit financially from participating in a venture that engaged in trafficking crimes.¹⁰

Between Fiscal Years 2001-2009, the FBI's Civil Rights Division and U.S. Attorneys' Offices, under authority of the TVPA, prosecuted 645 defendants, secured 466 convictions and guilty pleas, and opened 1,187 new investigations.¹¹

Florida Statewide Task Force on Human Trafficking

The Florida Statewide Task Force on Human Trafficking was created in 2009¹² with the express purpose of examining the problem of human trafficking and recommending strategies and actions for reducing or eliminating the unlawful trafficking of men, women, and children into Florida. The Florida State University Center for the Advancement of Human Rights (CAHR) was directed to submit a statewide strategic plan to the task force by November 1, 2009.¹³ The strategic plan was required to address the following five subjects:

- A description of available data on human trafficking in Florida;
- Identification of available victim programs and services;
- Evaluation of public awareness strategies;
- Assessment of current laws; and
- A list of recommendations produced in consultation with governmental and non-governmental organizations.¹⁴

The CAHR's strategic plan is broken up into five goals or objectives to meet the five subjects required to be addressed by the CAHR under ch. 2009-95, Laws of Florida. In summary, the strategic plan provided the following:

- Labor trafficking is the most prevalent type of human trafficking in Florida, while domestic minor sex trafficking is also prevalent and the most under-reported and under-prosecuted human trafficking offense in Florida.
- There is a need to have and maintain an up-to-date resource directory for all persons and organizations that assist victims of trafficking in Florida.
- Public awareness is at the heart of Florida being able to successfully assist victims of human trafficking statewide and public awareness campaigns must have broad support, involve diverse activities, and have an accurate and concise message, while also being culturally sensitive.
- Although Florida has made progress in its human trafficking laws, more training is needed to carry out enforcement of such laws and further reforms should be considered.

¹⁰ *Id.*

¹¹ *Id.* at 48.

¹² See ch. 2009-95, Laws of Florida.

¹³ Florida State University, Center for the Advancement of Human Rights, *Florida Strategic Plan on Human Trafficking*, available at <http://www.dcf.state.fl.us/initiatives/humantrafficking/docs/FSUStrategicPlan2010.pdf> (Last visited on January 31, 2011).

¹⁴ *Id.*

- There is a need for state government training and awareness of human trafficking so that government employees and contractors may learn how they might encounter human trafficking and how they should respond; Florida needs to provide effective and safe services for victims; and law enforcement needs more training for more effective responses and needs to develop and sustain partnerships within communities.¹⁵

The task force was required to propose a plan of implementation of the strategic plan by October 1, 2010.¹⁶

Human Trafficking in Florida

The exact number of persons trafficked in Florida is difficult to determine because little data is available due to the reluctance of victims to report trafficking, the ease with which traffickers can move and operate, and until recently, little historical experience by law enforcement and prosecutors in cases of human trafficking. However, Florida is ranked as one of the top states in the nation for human trafficking cases, with immigrants and non-English speaking persons especially vulnerable.¹⁷

The CAHR has found that Asian massage parlors are often used to disguise sex trafficking. Women are trafficked in from Korea, Vietnam, Thailand or China using tourist visas. The women are then forced to work off their debt of being smuggled in, which is typically \$50,000 to \$100,000.¹⁸ Officials in Florida have discovered a very pronounced pattern of “moving targets” with some massage establishments operating a “taxi service,” transporting women to other massage establishments throughout the country as often as every 7 to 14 days.¹⁹ Massage establishments engaged in trafficking will also often close and re-open frequently to avoid having to hold trafficked women in a single location.²⁰

Currently in Florida, all law enforcement recruits receive mandatory training in recognizing and investigating human trafficking cases. Also, the U.S. Justice Department currently operates human trafficking task forces in Miami, Homestead, Naples, Fort Myers, and Tampa-Clearwater.

Florida Laws on Human Trafficking, Sex Trafficking, and Prostitution

“Human trafficking” is defined under s. 787.06(2)(c), F.S., to mean transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.

Section 787.06(3), F.S., provides that it is a second-degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., (maximum imprisonment of 15 years, maximum fine of \$10,000, or penalties applicable for a habitual offender) for any person to knowingly:

¹⁵ *Id.*

¹⁶ Senate Health Regulation Committee professional staff requested a copy of the implementation plan on January 31, 2011, from a task force member, and is awaiting a response.

¹⁷ Terry S. Coonan, *Human Rights in the Sunshine State: A proposed Florida Law on Human Trafficking*, 31 FLA. ST. U. L. REV. 289 (Winter 2004).

¹⁸ Email received from Terry Coonan, Executive Director of the FSU Center for the Advancement of Human Rights (CAHR), on February 1, 2011. A copy of the email is on file with the Senate Health Regulation Committee.

¹⁹ Terry Coonan, CAHR, *Rationale for the Proposed Revisions*. Document on file with the Committee on Health Regulation staff.

²⁰ *Supra* fn. 13.

- Engage, or attempt to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
- Benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.

“Sex trafficking” is regulated under ch. 796, F.S., relating to prostitution. Section 796.045, F.S., provides that any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second-degree felony. A person commits a first-degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., (maximum imprisonment of 30 years, maximum fine of \$10,000, or penalties applicable for a habitual offender) if the offense of sex trafficking is committed against a person who is under the age of 14 or if such offense results in death.

Section 796.07, F.S., makes it unlawful to, among other things, own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution. A person who commits this offense is guilty of:

- A misdemeanor of the second-degree for the first violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (maximum imprisonment of 60 days or maximum fine of \$500);
- A misdemeanor of the first-degree for the second violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (maximum imprisonment of 1 year or maximum fine of \$1,000); or
- A felony of the third degree for the third or subsequent violation, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., (maximum imprisonment of 5 years, maximum fine of \$5,000, or penalties applicable for a habitual offender).

“Prostitution” is defined under s. 796.07, F.S., to mean the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses. “Lewdness” means any indecent or obscene act and “assignation” means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

Florida Regulation of Massage Therapists and Massage Establishments

Massage therapists and massage establishments in Florida are regulated by the Board of Massage Therapy (board) in the DOH under the Massage Practice Act, ch. 480, F.S., and Chapter 64B7, Florida Administrative Code. A person must be licensed as a massage therapist to practice massage for compensation, unless otherwise specifically exempted under the Massage Practice Act.²¹ In order to be licensed as a massage therapist, an applicant must:

- Be at least 18 years old or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a board-approved massage school or apprenticeship program; and

²¹ Section 480.047(1)(a), F.S. *See also* s. 480.033(4), F.S.

- Pass an examination,²² which is currently offered in English and in Spanish.²³

Licensed massage therapists may practice in a licensed massage establishment, at a client's residence or office, or at a sports event, convention or trade show.²⁴ Sexual misconduct, defined as a violation of the professional relationship through the use of such relationship to engage or attempt to engage in sexual activity outside the scope of the profession, is strictly prohibited.²⁵

A person may be approved by the board to become an apprentice to study massage under the instruction of a licensed massage therapist, if the person meets the qualifications stated in Rule 64B7-29.002, Florida Administrative Code. To qualify for an apprenticeship, the applicant must have secured the sponsorship of a sponsoring massage therapist, complete a DOH application, pay a \$100 fee, and must not be enrolled simultaneously as a student in a board-approved massage school.²⁶

Section 480.43, F.S., provides that a massage establishment license is required at any facility where massage therapy services are offered by a licensed massage therapist and directs the board to adopt application criteria. It also provides that massage establishment licenses may not be transferred to a new owner, but may be transferred to a new location if the new location is inspected and approved by the board and an application and inspection fee has been paid. A license may be transferred from one business name to another if approved by the board and if an application fee has been paid.

The board's rules include insurance requirements, compliance with building codes, and safety and sanitary requirements, and require a licensed massage therapist to be onsite any time a client is receiving massage services.²⁷ Upon receiving an application, the DOH inspects the establishment to ensure it meets the licensure requirements.²⁸ Once licensed, the DOH inspects the establishment at least annually.²⁹

An application for a massage establishment license may be denied for an applicant's conviction of crimes related to the practice of massage, and must be denied for convictions of enumerated crimes within 15 years of application³⁰ and for past sexual misconduct.³¹

It is a misdemeanor of the first degree to operate an unlicensed massage establishment.³² Currently, upon receiving a complaint that unlicensed activity is occurring, the DOH's Medical Quality Assurance inspectors coordinate with local law enforcement. Unlicensed practice of massage therapy is punishable as a third-degree felony.³³ The DOH may issue cease and desist

²² Section 480.042, F.S.

²³ Rule 64B7-25.001(3), F.A.C.

²⁴ Section 480.046(1)(n), F.S.

²⁵ Section 480.0485, F.S. *See also* Rule 64B7-26.010, F.A.C.

²⁶ *See* rule 64B7-27.005, for the apprentice fee amount.

²⁷ Rule 64B7-26.003, F.A.C.

²⁸ Rule 64B7-26.004, F.A.C.

²⁹ Rule 64B7-26.005, F.A.C.

³⁰ Section 456.0635, F.S.

³¹ Section 456.063, F.S.

³² Section 480.047, F.S.

³³ Section 456.065, F.S.

notices, enforceable by filing for an injunction or writ of mandamus and seek civil penalties against the unlicensed party in circuit court.³⁴ The DOH may also impose, by citation, an administrative penalty up to \$5,000. While the DOH has investigative authority, it does not have arrest authority or sworn law enforcement personnel.

I-551 Permanent Residence Card, Employment Authorization Document

The U.S. Citizen and Immigration Service (USCIS) within the Department of Homeland Security (DHS) is the federal department responsible for granting lawful permanent residence.³⁵ A permanent resident is someone who has been granted authorization to live and work in the U.S. on a permanent basis. As proof of that status, a person is granted a Permanent Resident Card or Alien Registration Receipt Card. A Permanent Resident Card is officially called “Form I-551,” and commonly called a “green card.”³⁶

Individuals who are temporarily in the U.S. and eligible³⁷ for employment authorization may file a Form I-765, Application for Employment Authorization, to request an Employment Authorization Document (EAD).³⁸ An EAD card, commonly called a “work permit,” provides its holder the legal right to work in the U.S.

III. Effect of Proposed Changes:

Section 1 creates s. 480.0535, F.S., to require a person, who operates a massage establishment pursuant to s. 480.043, F.S., to maintain valid work authorization documents on the premises for *each* employee who is not a U.S. citizen and to present to a law enforcement officer, upon request, the work authorization documents for each employee who is not a U.S. citizen. Valid work authorization documents include:

- A valid I-551 permanent residence card; or
- A valid government-issued employment authorization document.

The bill prohibits a person operating a massage establishment from knowingly using a massage establishment licensed pursuant to s. 480.043, F.S., including any location, structure, trailer, conveyance or any other part thereof, for the purpose of lewdness, assignation, or prostitution.

The bill provides a cross-reference to s. 796.07, F.S., to define the terms lewdness, assignation, and prostitution.

A person who violates any provisions of the bill commits:

³⁴ *Id.*

³⁵ U.S. Immigration Support, *USCIS*, available at <http://www.usimmigrationsupport.org/uscis.html> (Last visited on February 1, 2011).

³⁶ U.S. Immigration Support, *Form I-551 (Green Card)*, available at: <http://www.usimmigrationsupport.org/form-i-551-greencard.html> (Last visited on February 1, 2011).

³⁷ Employment authorization eligibility is codified in Federal Regulations at 8 C.F.R. §274a.12, available at <http://law.justia.com/us/cfr/title08/8-1.0.1.2.54.2.1.1.html> (Last visited on February 1, 2011).

³⁸ U.S. Citizen and Immigration Service, *I-765, Application for Employment Authorization*, available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=73ddd59cb7a5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD> (Last visited on February 1, 2011).

- A misdemeanor of the second degree for the first violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (maximum imprisonment of 60 days or maximum fine of \$500);
- A misdemeanor of the first-degree for the second violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (maximum imprisonment of 1 year or maximum fine of \$1,000); or
- A felony of the third-degree for the third or subsequent violation, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., (maximum imprisonment of 5 years, maximum fine of \$5,000, or penalties applicable for a habitual offender).

Section 2 amends s. 921.0022, F.S., to rank third and subsequent violations of s. 480.0535, F.S., as level 5 offenses under the Criminal Punishment Code for the purpose of sentencing.

Section 3 provides an effective date of October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Operators or owners of massage establishments may incur nominal administrative costs to comply with the requirements set forth in the bill. The provisions of the bill might prevent or deter human trafficking in massage establishments.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on February 8, 2011:

The CS differs from the bill in that it:

- Removes the requirement that individuals providing or offering to provide massage services for compensation or on behalf of a massage establishment or business possess, and show to law enforcement upon request, license cards issued by the Department of Health and other identifying documentation.
- Clarifies that the employment authorization documents to be maintained by the massage establishment operators are to be “government-issued” employment authorization documents.
- Provides a cross-reference for the definitions of the terms “lewdness,” “assignation,” and “prostitution.”
- Makes a technical correction in the Criminal Punishment Code relating to a description of the offenses provided for in the bill.

B. Amendments:

None.