



535992

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2023	.	
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	.	
	.	

The Committee on Health Policy (Martin) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) of section 456.074, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

456.074 Certain health care practitioners; immediate suspension of license.—

(4) The department shall issue an emergency order



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11 suspending the license of a massage therapist and ~~or~~
12 establishment as those terms are defined in chapter 480 upon
13 receipt of information that the massage therapist, the
14 designated establishment manager as defined in chapter 480, an
15 employee of the establishment, a person with an ownership
16 interest in the establishment, or, for a corporation that has
17 more than \$250,000 of business assets in this state, the owner,
18 officer, or individual directly involved in the management of
19 the establishment has been arrested for committing or
20 attempting, soliciting, or conspiring to commit, or convicted or
21 found guilty of, or has entered a plea of guilty or nolo
22 contendere to, regardless of adjudication, a violation of s.
23 796.07 ~~s. 796.07(2)(a) which is reclassified under s. 796.07(7)~~
24 or a felony offense under any of the following provisions of
25 state law or a similar provision in another jurisdiction:
26 (a) Section 787.01, relating to kidnapping.
27 (b) Section 787.02, relating to false imprisonment.
28 (c) Section 787.025, relating to luring or enticing a
29 child.
30 (d) Section 787.06, relating to human trafficking.
31 (e) Section 787.07, relating to human smuggling.
32 (f) Section 794.011, relating to sexual battery.
33 (g) Section 794.08, relating to female genital mutilation.
34 (h) Former s. 796.03, relating to procuring a person under
35 the age of 18 for prostitution.
36 (i) Former s. 796.035, relating to the selling or buying of
37 minors into prostitution.
38 (j) Section 796.04, relating to forcing, compelling, or
39 coercing another to become a prostitute.



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40 (k) Section 796.05, relating to deriving support from the
41 proceeds of prostitution.

42 (l) Section 796.07(4)(a)3., relating to a felony of the
43 third degree for a third or subsequent violation of s. 796.07,
44 relating to prohibiting prostitution and related acts.

45 (m) Section 800.04, relating to lewd or lascivious offenses
46 committed upon or in the presence of persons less than 16 years
47 of age.

48 (n) Section 825.1025(2)(b), relating to lewd or lascivious
49 offenses committed upon or in the presence of an elderly or
50 disabled person.

51 (o) Section 827.071, relating to sexual performance by a
52 child.

53 (p) Section 847.0133, relating to the protection of minors.

54 (q) Section 847.0135, relating to computer pornography.

55 (r) Section 847.0138, relating to the transmission of
56 material harmful to minors to a minor by electronic device or
57 equipment.

58 (s) Section 847.0145, relating to the selling or buying of
59 minors.

60 (7) The department shall issue an emergency order
61 suspending the license of any licensee upon a finding of the
62 State Surgeon General that probable cause exists to believe that
63 the licensee has committed sexual misconduct as defined and
64 prohibited in s. 456.063(1), or the applicable practice act, and
65 that such violation constitutes an immediate danger to the
66 public.

67 Section 2. Present subsections (1) through (6) and (7)
68 through (12) of section 480.033, Florida Statutes, are



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69 redesignated as subsections (2) through (7) and (9) through
70 (14), respectively, new subsections (1) and (8) and subsection
71 (15) are added to that section, and present subsection (6) of
72 that section is amended, to read:

73 480.033 Definitions.—As used in this act:

74 (1) "Advertising medium" means any newspaper; airwave or
75 computer transmission; telephone directory listing, other than
76 an in-column listing consisting only of a name, physical
77 address, and telephone number; business card; handbill; flyer;
78 sign, other than a building directory listing all building
79 tenants and their room or suite numbers; or other form of
80 written or electronic advertisement.

81 (7) ~~(6)~~ "Designated establishment manager" means a massage
82 therapist, a health care practitioner licensed under chapter
83 457, or a physician licensed under chapter 458, chapter 459, or
84 chapter 460 who holds a clear and active license without
85 restriction, who is responsible for the operation of a massage
86 establishment in accordance with the provisions of this chapter,
87 and who is designated the manager by the rules or practices at
88 the establishment.

89 (8) "Employee" means any person, including independent
90 contractors or lessees of the massage establishment, whose
91 duties involve any aspect of the massage establishment
92 regardless of whether such person is compensated for the
93 performance of such duties. The term does not include a person
94 exclusively engaged in the repair or maintenance of the massage
95 establishment or the delivery of goods to the massage
96 establishment. This definition applies to chapter 480 only.

97 (15) "Sexual activity" means any direct or indirect contact



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98 by any employee or person, or between any employees or persons,
99 with the intent to abuse, humiliate, harass, degrade, or arouse,
100 or gratify the sexual desire of, any employee or person, or
101 which is likely to cause such abuse, humiliation, harassment,
102 degradation, or arousal, or sexual gratification:

103 (a) With or without the consent of the employee or person;

104 (b) With or without verbal or nonverbal communication that
105 the sexual activity is undesired;

106 (c) With or without the use of any device or object;

107 (d) With or without the occurrence of penetration, orgasm,
108 or ejaculation;

109 (e) Including, but not limited to, intentional contact with
110 the genitalia, groin, femoral triangle, anus, buttocks, gluteal
111 cleft, breast or nipples, mouth, or tongue; and

112 (f) Including, but not limited to, the intentional removal
113 of any drape without written specific informed consent of the
114 patient.

115 Section 3. Subsection (5) of section 480.035, Florida
116 Statutes, is amended to read:

117 480.035 Board of Massage Therapy.—

118 (5) The board shall hold such meetings during the year as
119 it may determine to be necessary, one of which shall be the
120 annual meeting. The chair of the board shall have the authority
121 to call other meetings at her or his discretion. A quorum of the
122 board shall consist of not less than a majority of the current
123 membership of the board ~~four members~~.

124 Section 4. Section 480.039, Florida Statutes, is amended to
125 read:

126 480.039 Investigative services; reporting.—



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127 (1) The department shall provide all investigative services
128 required in carrying out ~~the provisions of~~ this act. A code
129 enforcement officer may perform inspections regarding a massage
130 establishment's compliance with s. 480.043(14) (a), (b), and (c),
131 and a law enforcement officer may perform inspections and
132 investigations regarding a massage establishment's compliance
133 with ss. 480.043(12) and (14) (a)-(f), 480.0465(3), 480.0475(1)
134 and (2), and 480.0535. Code enforcement officers shall, and law
135 enforcement officers may, submit to the department an executed
136 affidavit with photos and any other evidence or documentation
137 obtained during the inspection or investigation within 5
138 business days after the inspection or investigation that finds
139 there is a violation of s. 480.043(12) or (14) (a), (b), (c),
140 (d), (e), or (f), s. 480.0465(3), s. 480.0475(1) or (2), or s.
141 480.0535. For violations of s. 480.043(14) (a) or (f), s.
142 480.0465(3), s. 480.0475(2), or s. 480.0535, within 20 business
143 days after receipt of such executed affidavit, the department
144 shall issue an emergency order suspending the license of the
145 massage establishment. For violations of s. 480.043(12) or
146 (14) (b), (c), (d), or (e) or s. 480.0475(1), within 30 business
147 days after receipt of an executed affidavit, the department
148 shall inspect the massage establishment to ensure the massage
149 establishment's compliance with this chapter, and, if the
150 massage establishment is not in compliance with this chapter,
151 the department shall initiate a disciplinary proceeding.

152 (2) If a law enforcement officer arrests a massage
153 therapist for any violation of this chapter or determines that a
154 massage establishment continues to operate following the
155 issuance of an emergency suspension or restriction by the



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156 department, the officer's employing law enforcement agency shall
157 notify the department within 5 business days after the arrest or
158 determination of unlawful continued operation.

159 Section 5. Present subsection (14) of section 480.043,
160 Florida Statutes, is redesignated as subsection (15) and
161 amended, a new subsection (14) is added to that section, and
162 subsection (3) of that section is amended, to read:

163 480.043 Massage establishments; requisites; licensure;
164 inspection; human trafficking awareness training and policies;
165 prohibited acts.-

166 (3) The board shall adopt rules governing the operation of
167 establishments and their facilities, employees ~~personnel~~, safety
168 and sanitary requirements, financial responsibility, insurance
169 coverage, and the license application and granting process.

170 (14) (a) Sexual activity in any massage establishment is
171 prohibited. An establishment owner or employee may not engage in
172 or allow any person to engage in sexual activity in the massage
173 establishment or use the establishment to make arrangements to
174 engage in sexual activity in another location. Prophylactic
175 devices are prohibited in a massage establishment.

176 (b) If there is an outside window or windows into the
177 massage establishment's reception area, the outside window or
178 windows must allow for at least 35 percent light penetration,
179 and no more than 50 percent of the outside window or windows may
180 be obstructed with signage, blinds, curtains, or other
181 obstructions, thus allowing the public to see the massage
182 establishment's reception area. A sign must be posted on the
183 front window of the massage establishment and include the name
184 of the massage establishment, its license number, and the



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185 telephone number that has been provided to the department as
186 part of the licensing of the massage establishment. This
187 paragraph does not apply to a massage establishment within a
188 public lodging establishment as defined in s. 509.013(4). This
189 paragraph does not apply to a massage establishment located
190 within a county or municipality that has an ordinance that
191 prescribes requirements related to business window light
192 penetration or signage limitations if compliance with this
193 paragraph would result in noncompliance with such ordinance.

194 (c) All employees within the massage establishment must be
195 fully clothed and such clothing must be fully opaque and made of
196 nontransparent material that does not expose the employee's
197 genitalia, undergarments, or lingerie.

198 (d) A massage establishment must maintain a complete set of
199 legible records in English or Spanish, which must include each
200 employee's start date of employment, full legal name, date of
201 birth, home address, telephone number, and employment position
202 and a copy of the employee's government identification required
203 under s. 480.0535. All information required under this paragraph
204 must be recorded before the employee may provide any service or
205 treatment to a customer or patient.

206 (e) A massage establishment must conspicuously display a 2-
207 inch by 2-inch photo for each employee, which, for massage
208 therapists, must be attached to the massage therapist's license.
209 Such display must also include the employee's full legal name
210 and employment position. All information required under this
211 paragraph must be displayed before the employee may provide any
212 service or treatment to a customer or patient. A massage
213 establishment within a public lodging establishment as defined



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214 in s. 509.013(4) may satisfy this requirement by displaying the
215 photos and required information in an employee break room or
216 other room that is used by employees but is not used by
217 customers or patients.

218 (f) A massage establishment must maintain a complete set of
219 legible records in English or Spanish, which must include the
220 date, time, and type of service or treatment provided; the full
221 legal name of the employee who provided the service or
222 treatment; and the full legal name, home address, and telephone
223 number of the customer or patient. Medical records may satisfy
224 this requirement if the records include the specified
225 information. A copy of the customer's or patient's photo
226 identification may be used to provide the full legal name and
227 home address of the customer or patient. Records required under
228 this paragraph must be maintained for at least 1 year after the
229 provision of the service or treatment. All information required
230 under this paragraph must be collected and recorded before the
231 provision of any service or treatment to a customer or patient.
232 The massage establishment must confirm the identification of the
233 customer or patient before the provision of any service or
234 treatment to the customer or patient.

235 (15)-(14) Except for the requirements of subsection (13),
236 this section does not apply to a practitioner ~~physician~~ licensed
237 under chapter 457 or a physician licensed under~~7~~ chapter 458,
238 chapter 459, or chapter 460 who employs a licensed massage
239 therapist to perform massage therapy on the practitioner's or
240 physician's patients at the his or her ~~physician's~~ place of
241 practice. This subsection does not restrict investigations by
242 the department for violations of chapter 456 or this chapter.



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243 Section 6. Section 480.0465, Florida Statutes, is amended
244 to read:

245 480.0465 Advertisement; prohibitions.—

246 (1) Each message therapist or message establishment
247 licensed under this act shall include the number of the license
248 in any advertisement of massage therapy services appearing in
249 any advertising medium, including a newspaper, airwave
250 transmission, telephone directory, Internet, or other
251 advertising medium. Pending licensure of a new massage
252 establishment under s. 480.043(7), the license number of a
253 licensed massage therapist who is an owner or principal officer
254 of the establishment may be used in lieu of the license number
255 for the establishment. The advertisement must also include the
256 physical address of the massage establishment and the telephone
257 number that has been provided to the department as part of the
258 licensing of the massage establishment. However, the inclusion
259 of the physical address and telephone number is not required for
260 an advertisement by a massage establishment whose establishment
261 owner operates more than five locations in this state.

262 (2) An establishment owner or employee may not place,
263 publish, or distribute, or cause to be placed, published, or
264 distributed, any advertisement in any advertising medium which
265 states prostitution services, escort services, or sexual
266 services are available.

267 (3) A massage therapist or a massage establishment or its
268 employees may not place, publish, or distribute, or cause to be
269 placed, published, or distributed, any online advertisement on
270 any website known for advertising prostitution services, escort
271 services, or sexual services.



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272 Section 7. Section 480.0475, Florida Statutes, is amended
273 to read:

274 480.0475 Massage establishments; prohibited practices;
275 penalties.—

276 (1) A message establishment may only be operated ~~person may~~
277 ~~not operate a message establishment~~ between the hours of 5 a.m.
278 and midnight and all customer and patient services and treatment
279 must be performed between the hours of 5 a.m. and 10 p.m. This
280 subsection does not apply to a massage establishment:

281 (a) Located on the premises of a health care facility as
282 defined in s. 408.07; a health care clinic as defined in s.
283 400.9905(4); a hotel, motel, or bed and breakfast inn, as those
284 terms are defined in s. 509.242; a timeshare property as defined
285 in s. 721.05; a public airport as defined in s. 330.27; or a
286 pari-mutuel facility as defined in s. 550.002;

287 (b) In which every massage performed between the hours of
288 10 p.m. ~~midnight~~ and 5 a.m. is performed by a massage therapist
289 acting under the prescription of a physician or physician
290 assistant licensed under chapter 458, an osteopathic physician
291 or physician assistant licensed under chapter 459, a
292 chiropractic physician licensed under chapter 460, a podiatric
293 physician licensed under chapter 461, an advanced practice
294 registered nurse licensed under part I of chapter 464, or a
295 dentist licensed under chapter 466; or

296 (c) Operating during a special event if the county or
297 municipality in which the establishment operates has approved
298 such operation during the special event.

299 (2) A person operating a massage establishment may not use
300 or permit the establishment to be used as a principal domicile



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301 for, to shelter or harbor, or as sleeping quarters for any
302 person unless the establishment is zoned for residential use
303 under a local ordinance.

304 (3) A person violating ~~the provisions of~~ this section
305 commits a misdemeanor of the first degree, punishable as
306 provided in s. 775.082 or s. 775.083. A second or subsequent
307 violation of this section is a felony of the third degree,
308 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

309 Section 8. Section 480.0485, Florida Statutes, is amended
310 to read:

311 480.0485 Sexual misconduct in the practice of massage
312 therapy.—The massage therapist-patient relationship is founded
313 on mutual trust. Sexual misconduct in the practice of massage
314 therapy means violation of the massage therapist-patient
315 relationship through which the massage therapist uses that
316 relationship to induce or attempt to induce the patient to
317 engage, or to engage or attempt to engage the patient, in sexual
318 activity outside the scope of practice or the scope of generally
319 accepted examination or treatment of the patient. Sexual
320 misconduct in the practice of massage therapy includes requiring
321 patient nudity as part of any massage service or any other
322 service in the massage establishment or the intentional removal
323 of any drape without the written specific informed consent of
324 the patient. Sexual misconduct in the practice of massage
325 therapy is prohibited.

326 Section 9. Section 480.0535, Florida Statutes, is amended
327 to read:

328 480.0535 Documents required while working in a massage
329 establishment; penalties; reporting requirement.—



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330 (1) In order to provide the department and law enforcement
331 agencies the means to more effectively identify, investigate,
332 and arrest persons engaging in human trafficking, an employee a
333 person employed by a massage establishment and any person
334 performing massage therapy in a massage establishment therein
335 must immediately present, upon the request of an investigator of
336 the department or a law enforcement officer, valid government
337 identification while in the establishment. An investigator of
338 the department must request valid government identification from
339 all employees while in the establishment. A valid government
340 identification for the purposes of this section is:

341 (a) A valid, unexpired driver license issued by any state,
342 territory, or district of the United States;

343 (b) A valid, unexpired identification card issued by any
344 state, territory, or district of the United States;

345 (c) A valid, unexpired United States passport;

346 (d) A naturalization certificate issued by the United
347 States Department of Homeland Security;

348 (e) A valid, unexpired alien registration receipt card
349 (green card); or

350 (f) A valid, unexpired employment authorization card issued
351 by the United States Department of Homeland Security.

352 (2) A person operating a massage establishment must:

353 (a) Immediately present, upon the request of an
354 investigator of the department or a law enforcement officer:

355 1. Valid government identification while in the
356 establishment.

357 2. A copy of the documentation specified in paragraph

358 (1) (a) for each employee and any person performing massage



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359 therapy in the establishment.

360 3. A copy of the documents required under s. 480.043(14)(d)
361 and (f).

362 (b) Ensure that each employee and any person performing
363 massage therapy in the massage establishment is able to
364 immediately present, upon the request of an investigator of the
365 department or a law enforcement officer, valid government
366 identification while in the establishment.

367 (3) A person who violates ~~any provision of~~ this section
368 commits:

369 (a) For a first violation, a misdemeanor of the second
370 degree, punishable as provided in s. 775.082 or s. 775.083.

371 (b) For a second violation, a misdemeanor of the first
372 degree, punishable as provided in s. 775.082 or s. 775.083.

373 (c) For a third or subsequent violation, a felony of the
374 third degree, punishable as provided in s. 775.082, s. 775.083,
375 or s. 775.084.

376 (4) The department shall notify a federal immigration
377 office if a person operating a massage establishment, an
378 employee, or any person performing massage therapy in a massage
379 establishment fails to provide a valid government identification
380 as required under this section.

381 Section 10. Paragraph (d) of subsection (2) of section
382 847.001, Florida Statutes, is amended to read:

383 847.001 Definitions.—As used in this chapter, the term:

384 (2) "Adult entertainment establishment" means the following
385 terms as defined:

386 (d) "Unlicensed massage establishment" means any business
387 or enterprise that offers, sells, or provides, or that holds



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388 itself out as offering, selling, or providing, massages that
389 include bathing, physical massage, rubbing, kneading, anointing,
390 stroking, manipulating, or other tactile stimulation of the
391 human body by either male or female employees or attendants,
392 including employees or attendants who are massage therapists
393 licensed under s. 480.041, by hand or by any electrical or
394 mechanical device, on or off the premises. The term "unlicensed
395 massage establishment" does not include an establishment
396 licensed under s. 480.043 which routinely provides medical
397 services by state-licensed health care practitioners and massage
398 therapists licensed under s. 480.041.

399 Section 11. This act shall take effect July 1, 2023.

400

401 ===== T I T L E A M E N D M E N T =====

402 And the title is amended as follows:

403 Delete everything before the enacting clause
404 and insert:

405 A bill to be entitled

406 An act relating to massage establishments; amending s.
407 456.074, F.S.; authorizing the Department of Health to
408 immediately suspend the license of massage therapists
409 and massage establishments if the massage therapist or
410 certain individuals connected to the massage
411 establishment are arrested for, convicted or found
412 guilty of, or enter criminal pleas to specified
413 violations; amending s. 480.033, F.S.; providing and
414 revising definitions; amending s. 480.035, F.S.;;
415 revising quorum requirements for the Board of Massage
416 Therapy; amending s. 480.039, F.S.; authorizing



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417 specified enforcement officers to perform inspections
418 and investigations of massage establishments for
419 specified purposes; requiring code enforcement
420 officers, and authorizing law enforcement officers, to
421 submit affidavits with specified photos and other
422 evidence and documentation to the department within a
423 specified timeframe; requiring certain law enforcement
424 agencies to notify the department within a specified
425 timeframe after discovering certain violations by a
426 massage therapist or massage establishment; requiring
427 the department to inspect a massage establishment
428 within a specified timeframe for specified violations
429 and to initiate disciplinary proceedings if violations
430 are discovered; amending s. 480.043, F.S.; revising
431 certain rules the board is required to adopt;
432 prohibiting sexual activity and certain devices in
433 massage establishments; specifying prohibited conduct
434 by massage establishment owners and employees;
435 providing requirements for outside windows and signs
436 in massage establishments; providing exceptions;
437 providing employee dress code requirements; requiring
438 establishments to maintain certain employment records
439 in English and Spanish; requiring that specified
440 information be recorded before an employee may provide
441 services or treatment; requiring massage
442 establishments to conspicuously display a photo and
443 specified information for each employee; requiring
444 that such photos and information be displayed before
445 an employee may provide services or treatment;



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446 providing for such requirements in massage
447 establishments within public lodging establishments;
448 requiring massage establishments to maintain customer
449 and patient records for services and treatment
450 provided in the massage establishment in English and
451 Spanish; providing that medical records satisfy this
452 requirement if they contain specified information;
453 requiring massage establishments to maintain such
454 records for a specified timeframe; requiring massage
455 establishments to collect and record specified
456 information and confirm the identification of a
457 customer or patient before providing services or
458 treatment; amending s. 480.0465, F.S.; revising
459 advertising requirements for massage therapists and
460 massage establishments; amending s. 480.0475, F.S.;
461 revising hours during which a massage establishment
462 may operate; requiring that all customer and patient
463 services and treatment be performed within specified
464 hours; prohibiting establishments from sheltering or
465 harboring, or being used as sleeping quarters for, any
466 person; providing criminal penalties; amending s.
467 480.0485, F.S.; specifying additional conduct that
468 constitutes sexual misconduct in the practice of
469 massage therapy; amending s. 480.0535, F.S.; requiring
470 department investigators to request valid government
471 identification from all employees while in a massage
472 establishment; specifying additional documents a
473 person operating a massage establishment must
474 immediately present, upon request, to department



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475 | investigators and law enforcement officers; requiring
476 | the department to notify a federal immigration office
477 | if specified persons fail to provide valid government
478 | identification; amending s. 847.001, F.S.; revising
479 | the definitions of the terms "adult entertainment
480 | establishment" and "unlicensed massage establishment"
481 | for purposes of certain criminal conduct; providing an
482 | effective date.