

By the Committee on Health Policy; and Senator Martin

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1 A bill to be entitled
2 An act relating to massage establishments; amending s.
3 456.074, F.S.; authorizing the Department of Health to
4 immediately suspend the license of massage therapists
5 and massage establishments if the massage therapist or
6 certain individuals connected to the massage
7 establishment are arrested for, convicted or found
8 guilty of, or enter criminal pleas to specified
9 violations; amending s. 480.033, F.S.; providing and
10 revising definitions; amending s. 480.035, F.S.;
11 revising quorum requirements for the Board of Massage
12 Therapy; amending s. 480.039, F.S.; authorizing
13 specified enforcement officers to perform inspections
14 and investigations of massage establishments for
15 specified purposes; requiring code enforcement
16 officers, and authorizing law enforcement officers, to
17 submit affidavits with specified photos and other
18 evidence and documentation to the department within a
19 specified timeframe; requiring certain law enforcement
20 agencies to notify the department within a specified
21 timeframe after discovering certain violations by a
22 massage therapist or massage establishment; requiring
23 the department to inspect a massage establishment
24 within a specified timeframe for specified violations
25 and to initiate disciplinary proceedings if violations
26 are discovered; amending s. 480.043, F.S.; revising
27 certain rules the board is required to adopt;
28 prohibiting sexual activity and certain devices in
29 massage establishments; specifying prohibited conduct

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30 by massage establishment owners and employees;
31 providing requirements for outside windows and signs
32 in massage establishments; providing exceptions;
33 providing employee dress code requirements; requiring
34 establishments to maintain certain employment records
35 in English or Spanish; requiring that specified
36 information be recorded before an employee may provide
37 services or treatment; requiring massage
38 establishments to conspicuously display a photo and
39 specified information for each employee; requiring
40 that such photos and information be displayed before
41 an employee may provide services or treatment;
42 providing for such requirements in massage
43 establishments within public lodging establishments;
44 requiring massage establishments to maintain customer
45 and patient records for services and treatment
46 provided in the massage establishment in English or
47 Spanish; providing that medical records satisfy this
48 requirement if they contain specified information;
49 requiring massage establishments to maintain such
50 records for a specified timeframe; requiring massage
51 establishments to collect and record specified
52 information and confirm the identification of a
53 customer or patient before providing services or
54 treatment; amending s. 480.0465, F.S.; revising
55 advertising requirements for massage therapists and
56 massage establishments; amending s. 480.0475, F.S.;
57 revising hours during which a massage establishment
58 may operate; requiring that all customer and patient

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59 services and treatment be performed within specified
60 hours; prohibiting establishments from sheltering or
61 harboring, or being used as sleeping quarters for, any
62 person; providing criminal penalties; amending s.
63 480.0485, F.S.; specifying additional conduct that
64 constitutes sexual misconduct in the practice of
65 massage therapy; amending s. 480.0535, F.S.; requiring
66 department investigators to request valid government
67 identification from all employees while in a massage
68 establishment; specifying additional documents a
69 person operating a massage establishment must
70 immediately present, upon request, to department
71 investigators and law enforcement officers; requiring
72 the department to notify a federal immigration office
73 if specified persons fail to provide valid government
74 identification; amending s. 847.001, F.S.; revising
75 the definitions of the terms "adult entertainment
76 establishment" and "unlicensed massage establishment"
77 for purposes of certain criminal conduct; providing an
78 effective date.

79

80 Be It Enacted by the Legislature of the State of Florida:

81

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

85 456.074 Certain health care practitioners; immediate
86 suspension of license.—

87 (4) The department shall issue an emergency order

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88 suspending the license of a massage therapist and ~~or~~
89 establishment as those terms are defined in chapter 480 upon
90 receipt of information that the massage therapist, the
91 designated establishment manager as defined in chapter 480, an
92 employee of the establishment, a person with an ownership
93 interest in the establishment, or, for a corporation that has
94 more than \$250,000 of business assets in this state, the owner,
95 officer, or individual directly involved in the management of
96 the establishment has been arrested for committing or
97 attempting, soliciting, or conspiring to commit, or convicted or
98 found guilty of, or has entered a plea of guilty or nolo
99 contendere to, regardless of adjudication, a violation of s.
100 796.07 ~~s. 796.07(2)(a) which is reclassified under s. 796.07(7)~~
101 or a felony offense under any of the following provisions of
102 state law or a similar provision in another jurisdiction:
103 (a) Section 787.01, relating to kidnapping.
104 (b) Section 787.02, relating to false imprisonment.
105 (c) Section 787.025, relating to luring or enticing a
106 child.
107 (d) Section 787.06, relating to human trafficking.
108 (e) Section 787.07, relating to human smuggling.
109 (f) Section 794.011, relating to sexual battery.
110 (g) Section 794.08, relating to female genital mutilation.
111 (h) Former s. 796.03, relating to procuring a person under
112 the age of 18 for prostitution.
113 (i) Former s. 796.035, relating to the selling or buying of
114 minors into prostitution.
115 (j) Section 796.04, relating to forcing, compelling, or
116 coercing another to become a prostitute.

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

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

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

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

128 (o) Section 827.071, relating to sexual performance by a
129 child.

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

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

132 (r) Section 847.0138, relating to the transmission of
133 material harmful to minors to a minor by electronic device or
134 equipment.

135 (s) Section 847.0145, relating to the selling or buying of
136 minors.

137 (7) The department shall issue an emergency order
138 suspending the license of any licensee upon a finding of the
139 State Surgeon General that probable cause exists to believe that
140 the licensee has committed sexual misconduct as defined and
141 prohibited in s. 456.063(1), or the applicable practice act, and
142 that such violation constitutes an immediate danger to the
143 public.

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

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146 redesignated as subsections (2) through (7) and (9) through
147 (14), respectively, new subsections (1) and (8) and subsection
148 (15) are added to that section, and present subsection (6) of
149 that section is amended, to read:

150 480.033 Definitions.—As used in this act:

151 (1) "Advertising medium" means any newspaper; airwave or
152 computer transmission; telephone directory listing, other than
153 an in-column listing consisting only of a name, physical
154 address, and telephone number; business card; handbill; flyer;
155 sign, other than a building directory listing all building
156 tenants and their room or suite numbers; or other form of
157 written or electronic advertisement.

158 (7)~~(6)~~ "Designated establishment manager" means a massage
159 therapist, a health care practitioner licensed under chapter
160 457, or a physician licensed under chapter 458, chapter 459, or
161 chapter 460 who holds a clear and active license without
162 restriction, who is responsible for the operation of a massage
163 establishment in accordance with the provisions of this chapter,
164 and who is designated the manager by the rules or practices at
165 the establishment.

166 (8) "Employee" means any person, including independent
167 contractors or lessees of the massage establishment, whose
168 duties involve any aspect of the massage establishment
169 regardless of whether such person is compensated for the
170 performance of such duties. The term does not include a person
171 exclusively engaged in the repair or maintenance of the massage
172 establishment or the delivery of goods to the massage
173 establishment. This definition applies to chapter 480 only.

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

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175 by any employee or person, or between any employees or persons,
176 with the intent to abuse, humiliate, harass, degrade, or arouse,
177 or gratify the sexual desire of, any employee or person, or
178 which is likely to cause such abuse, humiliation, harassment,
179 degradation, or arousal, or sexual gratification:

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

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

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

184 (d) With or without the occurrence of penetration, orgasm,
185 or ejaculation;

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

189 (f) Including, but not limited to, the intentional removal
190 of any drape without written specific informed consent of the
191 patient.

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

194 480.035 Board of Massage Therapy.—

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

201 Section 4. Section 480.039, Florida Statutes, is amended to
202 read:

203 480.039 Investigative services; reporting.—

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204 (1) The department shall provide all investigative services
205 required in carrying out ~~the provisions of~~ this act. A code
206 enforcement officer may perform inspections regarding a massage
207 establishment's compliance with s. 480.043(14) (a), (b), and (c),
208 and a law enforcement officer may perform inspections and
209 investigations regarding a massage establishment's compliance
210 with ss. 480.043(12) and (14) (a)-(f), 480.0465(3), 480.0475(1)
211 and (2), and 480.0535. Code enforcement officers shall, and law
212 enforcement officers may, submit to the department an executed
213 affidavit with photos and any other evidence or documentation
214 obtained during the inspection or investigation within 5
215 business days after the inspection or investigation that finds
216 there is a violation of s. 480.043(12) or (14) (a), (b), (c),
217 (d), (e), or (f), s. 480.0465(3), s. 480.0475(1) or (2), or s.
218 480.0535. For violations of s. 480.043(14) (a) or (f), s.
219 480.0465(3), s. 480.0475(2), or s. 480.0535, within 20 business
220 days after receipt of such executed affidavit, the department
221 shall issue an emergency order suspending the license of the
222 massage establishment. For violations of s. 480.043(12) or
223 (14) (b), (c), (d), or (e) or s. 480.0475(1), within 30 business
224 days after receipt of an executed affidavit, the department
225 shall inspect the massage establishment to ensure the massage
226 establishment's compliance with this chapter, and, if the
227 massage establishment is not in compliance with this chapter,
228 the department shall initiate a disciplinary proceeding.
229 (2) If a law enforcement officer arrests a massage
230 therapist for any violation of this chapter or determines that a
231 massage establishment continues to operate following the
232 issuance of an emergency suspension or restriction by the

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

236 Section 5. Present subsection (14) of section 480.043,
237 Florida Statutes, is redesignated as subsection (15) and
238 amended, a new subsection (14) is added to that section, and
239 subsection (3) of that section is amended, to read:

240 480.043 Massage establishments; requisites; licensure;
241 inspection; human trafficking awareness training and policies;
242 prohibited acts.-

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

247 (14) (a) Sexual activity in any massage establishment is
248 prohibited. An establishment owner or employee may not engage in
249 or allow any person to engage in sexual activity in the massage
250 establishment or use the establishment to make arrangements to
251 engage in sexual activity in another location. Prophylactic
252 devices are prohibited in a massage establishment.

253 (b) If there is an outside window or windows into the
254 massage establishment's reception area, the outside window or
255 windows must allow for at least 35 percent light penetration,
256 and no more than 50 percent of the outside window or windows may
257 be obstructed with signage, blinds, curtains, or other
258 obstructions, thus allowing the public to see the massage
259 establishment's reception area. A sign must be posted on the
260 front window of the massage establishment and include the name
261 of the massage establishment, its license number, and the

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262 telephone number that has been provided to the department as
263 part of the licensing of the massage establishment. This
264 paragraph does not apply to a massage establishment within a
265 public lodging establishment as defined in s. 509.013(4). This
266 paragraph does not apply to a massage establishment located
267 within a county or municipality that has an ordinance that
268 prescribes requirements related to business window light
269 penetration or signage limitations if compliance with this
270 paragraph would result in noncompliance with such ordinance.

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

275 (d) A massage establishment must maintain a complete set of
276 legible records in English or Spanish, which must include each
277 employee's start date of employment, full legal name, date of
278 birth, home address, telephone number, and employment position
279 and a copy of the employee's government identification required
280 under s. 480.0535. All information required under this paragraph
281 must be recorded before the employee may provide any service or
282 treatment to a customer or patient.

283 (e) A massage establishment must conspicuously display a 2-
284 inch by 2-inch photo for each employee, which, for massage
285 therapists, must be attached to the massage therapist's license.
286 Such display must also include the employee's full legal name
287 and employment position. All information required under this
288 paragraph must be displayed before the employee may provide any
289 service or treatment to a customer or patient. A massage
290 establishment within a public lodging establishment as defined

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

295 (f) A massage establishment must maintain a complete set of
296 legible records in English or Spanish, which must include the
297 date, time, and type of service or treatment provided; the full
298 legal name of the employee who provided the service or
299 treatment; and the full legal name, home address, and telephone
300 number of the customer or patient. Medical records may satisfy
301 this requirement if the records include the specified
302 information. A copy of the customer's or patient's photo
303 identification may be used to provide the full legal name and
304 home address of the customer or patient. Records required under
305 this paragraph must be maintained for at least 1 year after the
306 provision of the service or treatment. All information required
307 under this paragraph must be collected and recorded before the
308 provision of any service or treatment to a customer or patient.
309 The massage establishment must confirm the identification of the
310 customer or patient before the provision of any service or
311 treatment to the customer or patient.

312 (15) ~~(14)~~ Except for the requirements of subsection (13),
313 this section does not apply to a practitioner ~~physician~~ licensed
314 under chapter 457 or a physician licensed under, chapter 458,
315 chapter 459, or chapter 460 who employs a licensed massage
316 therapist to perform massage therapy on the practitioner's or
317 physician's patients at his or her ~~the physician's~~ place of
318 practice. This subsection does not restrict investigations by
319 the department for violations of chapter 456 or this chapter.

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320 Section 6. Section 480.0465, Florida Statutes, is amended
321 to read:

322 480.0465 Advertisement; prohibitions.-

323 (1) Each message therapist or message establishment
324 licensed under this act shall include the number of the license
325 in any advertisement of massage therapy services appearing in
326 any advertising medium, including a newspaper, airwave
327 transmission, telephone directory, Internet, or other
328 advertising medium. Pending licensure of a new massage
329 establishment under s. 480.043(7), the license number of a
330 licensed massage therapist who is an owner or principal officer
331 of the establishment may be used in lieu of the license number
332 for the establishment. The advertisement must also include the
333 physical address of the massage establishment and the telephone
334 number that has been provided to the department as part of the
335 licensing of the massage establishment. However, the inclusion
336 of the physical address and telephone number is not required for
337 an advertisement by a massage establishment whose establishment
338 owner operates more than five locations in this state.

339 (2) An establishment owner or employee may not place,
340 publish, or distribute, or cause to be placed, published, or
341 distributed, any advertisement in any advertising medium which
342 states prostitution services, escort services, or sexual
343 services are available.

344 (3) A massage therapist or a massage establishment or its
345 employees may not place, publish, or distribute, or cause to be
346 placed, published, or distributed, any online advertisement on
347 any website known for advertising prostitution services, escort
348 services, or sexual services.

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349 Section 7. Section 480.0475, Florida Statutes, is amended
350 to read:

351 480.0475 Massage establishments; prohibited practices;
352 penalties.—

353 (1) A massage establishment may only be operated ~~person may~~
354 ~~not operate a massage establishment~~ between the hours of 5 a.m.
355 and midnight and all customer and patient services and treatment
356 must be performed between the hours of 5 a.m. and 10 p.m. This
357 subsection does not apply to a massage establishment:

358 (a) Located on the premises of a health care facility as
359 defined in s. 408.07; a health care clinic as defined in s.
360 400.9905(4); a hotel, motel, or bed and breakfast inn, as those
361 terms are defined in s. 509.242; a timeshare property as defined
362 in s. 721.05; a public airport as defined in s. 330.27; or a
363 pari-mutuel facility as defined in s. 550.002;

364 (b) In which every massage performed between the hours of
365 10 p.m. ~~midnight~~ and 5 a.m. is performed by a massage therapist
366 acting under the prescription of a physician or physician
367 assistant licensed under chapter 458, an osteopathic physician
368 or physician assistant licensed under chapter 459, a
369 chiropractic physician licensed under chapter 460, a podiatric
370 physician licensed under chapter 461, an advanced practice
371 registered nurse licensed under part I of chapter 464, or a
372 dentist licensed under chapter 466; or

373 (c) Operating during a special event if the county or
374 municipality in which the establishment operates has approved
375 such operation during the special event.

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

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378 for, to shelter or harbor, or as sleeping quarters for any
379 person unless the establishment is zoned for residential use
380 under a local ordinance.

381 (3) A person violating ~~the provisions of~~ this section
382 commits a misdemeanor of the first degree, punishable as
383 provided in s. 775.082 or s. 775.083. A second or subsequent
384 violation of this section is a felony of the third degree,
385 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

386 Section 8. Section 480.0485, Florida Statutes, is amended
387 to read:

388 480.0485 Sexual misconduct in the practice of massage
389 therapy.—The massage therapist-patient relationship is founded
390 on mutual trust. Sexual misconduct in the practice of massage
391 therapy means violation of the massage therapist-patient
392 relationship through which the massage therapist uses that
393 relationship to induce or attempt to induce the patient to
394 engage, or to engage or attempt to engage the patient, in sexual
395 activity outside the scope of practice or the scope of generally
396 accepted examination or treatment of the patient. Sexual
397 misconduct in the practice of massage therapy includes requiring
398 patient nudity as part of any massage service or any other
399 service in the massage establishment or the intentional removal
400 of any drape without the written specific informed consent of
401 the patient. Sexual misconduct in the practice of massage
402 therapy is prohibited.

403 Section 9. Section 480.0535, Florida Statutes, is amended
404 to read:

405 480.0535 Documents required while working in a massage
406 establishment; penalties; reporting requirement.—

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407 (1) In order to provide the department and law enforcement
408 agencies the means to more effectively identify, investigate,
409 and arrest persons engaging in human trafficking, an employee a
410 ~~person employed by a massage establishment~~ and any person
411 performing massage therapy in a massage establishment therein
412 must immediately present, upon the request of an investigator of
413 the department or a law enforcement officer, valid government
414 identification while in the establishment. An investigator of
415 the department must request valid government identification from
416 all employees while in the establishment. A valid government
417 identification for the purposes of this section is:

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

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

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

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

425 (e) A valid, unexpired alien registration receipt card
426 (green card); or

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

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

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

432 1. Valid government identification while in the
433 establishment.

434 2. A copy of the documentation specified in paragraph

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

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436 therapy in the establishment.

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

439 (b) Ensure that each employee and any person performing
440 massage therapy in the massage establishment is able to
441 immediately present, upon the request of an investigator of the
442 department or a law enforcement officer, valid government
443 identification while in the establishment.

444 (3) A person who violates ~~any provision of~~ this section
445 commits:

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

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

450 (c) For a third or subsequent violation, a felony of the
451 third degree, punishable as provided in s. 775.082, s. 775.083,
452 or s. 775.084.

453 (4) The department shall notify a federal immigration
454 office if a person operating a massage establishment, an
455 employee, or any person performing massage therapy in a massage
456 establishment fails to provide a valid government identification
457 as required under this section.

458 Section 10. Paragraph (d) of subsection (2) of section
459 847.001, Florida Statutes, is amended to read:

460 847.001 Definitions.—As used in this chapter, the term:

461 (2) "Adult entertainment establishment" means the following
462 terms as defined:

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

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465 itself out as offering, selling, or providing, massages that
466 include bathing, physical massage, rubbing, kneading, anointing,
467 stroking, manipulating, or other tactile stimulation of the
468 human body by either male or female employees or attendants,
469 including employees or attendants who are massage therapists
470 licensed under s. 480.041, by hand or by any electrical or
471 mechanical device, on or off the premises. The term "unlicensed
472 massage establishment" does not include an establishment
473 licensed under s. 480.043 which routinely provides medical
474 services by state-licensed health care practitioners and massage
475 therapists licensed under s. 480.041.

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