

1 A bill to be entitled
2 An act relating to health care practitioners and
3 massage therapy; amending s. 456.026, F.S.; requiring
4 the Department of Health to report specified data;
5 amending s. 456.074, F.S.; authorizing the department
6 to immediately suspend the license of certain health
7 care practitioners and massage establishments in
8 certain circumstances; amending s. 480.033, F.S.;
9 revising and providing definitions; amending s.
10 480.035, F.S.; revising quorum requirements for the
11 Board of Massage Therapy; amending s. 480.043, F.S.;
12 revising certain rules the board is required to adopt;
13 revising the timeframe in which establishment owners
14 must report specified information to the department;
15 prohibiting sexual activity and certain devices in
16 massage establishments; specifying prohibited conduct
17 by establishment owners and employees; providing
18 requirements for outside windows and signs in massage
19 establishments; providing exceptions; providing
20 employee dress code requirements; requiring
21 establishments to maintain certain employment records
22 in English or Spanish; requiring that specified
23 information be recorded before an employee may provide
24 services or treatment; requiring massage
25 establishments to conspicuously display a photo and

26 | specified information for each employee; requiring
 27 | that such photos and information be displayed before
 28 | an employee may provide services or treatment;
 29 | providing for such requirements in massage
 30 | establishments within public lodging establishments;
 31 | requiring massage establishments to maintain customer
 32 | and patient records for services and treatment
 33 | provided in the massage establishment in English or
 34 | Spanish; providing that medical records satisfy
 35 | certain requirements; requiring massage establishments
 36 | to maintain such records for a specified timeframe;
 37 | requiring massage establishments to collect and record
 38 | specified information; requiring massage
 39 | establishments to confirm the identification of a
 40 | customer or patient before providing services or
 41 | treatment; amending s. 480.0465, F.S.; revising
 42 | advertising requirements for massage therapists and
 43 | massage establishments; amending s. 480.0475, F.S.;
 44 | prohibiting establishments from sheltering or
 45 | harboring, or being used as sleeping quarters for, any
 46 | person; amending s. 480.0535, F.S.; requiring
 47 | Department of Health investigators to request valid
 48 | government identification from all employees while in
 49 | a massage establishment; specifying additional
 50 | documents a person operating a massage establishment

51 must immediately present, upon request, to department
 52 investigators and law enforcement officers; requiring
 53 the department to notify a federal immigration office
 54 if specified persons fail to provide valid government
 55 identification; amending s. 823.05, F.S.; conforming a
 56 cross-reference; providing an effective date.

57

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

59

60 Section 1. Section 456.026, Florida Statutes, is amended
 61 to read:

62 456.026 Annual report concerning finances, administrative
 63 complaints, disciplinary actions, and recommendations.—

64 (1) The department is directed to prepare and submit a
 65 report to the President of the Senate and the Speaker of the
 66 House of Representatives by November 1 of each year. In addition
 67 to finances and any other information the Legislature may
 68 require, the report shall include statistics and relevant
 69 information, profession by profession, detailing:

70 (a)~~(1)~~ The revenues, expenditures, and cash balances for
 71 the prior year, and a review of the adequacy of existing fees.

72 (b)~~(2)~~ The number of complaints received and investigated.

73 (c)~~(3)~~ The number of findings of probable cause made.

74 (d)~~(4)~~ The number of findings of no probable cause made.

75 (e)~~(5)~~ The number of administrative complaints filed.

76 ~~(f)(6)~~ The disposition of all administrative complaints.

77 ~~(g)(7)~~ A description of disciplinary actions taken.

78 ~~(h)(8)~~ A description of any effort by the department to
 79 reduce or otherwise close any investigation or disciplinary
 80 proceeding not before the Division of Administrative Hearings
 81 under chapter 120 or otherwise not completed within 1 year after
 82 the initial filing of a complaint under this chapter.

83 ~~(i)(9)~~ The status of the development and implementation of
 84 rules providing for disciplinary guidelines pursuant to s.
 85 456.079.

86 ~~(j)(10)~~ Such recommendations for administrative and
 87 statutory changes necessary to facilitate efficient and cost-
 88 effective operation of the department and the various boards.

89 (2) The report shall separately categorize all complaints,
 90 investigations, probable cause, and disciplinary actions against
 91 a massage therapist or massage establishment licensed under
 92 chapter 480 related to a violation of:

93 (a) Section 480.043(12).

94 (b) Section 480.043(13).

95 (c) Section 480.043(14)(a) - (f).

96 (d) Section 480.0465.

97 (e) Section 480.0475.

98 (f) Section 480.0485.

99 (g) Section 480.0535.

100 Section 2. Subsection (4) of section 456.074, Florida

101 Statutes, is amended, and subsection (7) is added to that
 102 section, to read:
 103 456.074 Certain health care practitioners; immediate
 104 suspension of license.—
 105 (4) The department shall issue an emergency order
 106 suspending the license of a massage therapist and ~~or~~
 107 establishment as those terms are defined in chapter 480 upon
 108 receipt of information that the massage therapist; the
 109 designated establishment manager as defined in chapter 480; an
 110 employee of the establishment; a person with an ownership
 111 interest in the establishment; or, for a corporation that has
 112 more than \$250,000 of business assets in this state, the owner,
 113 officer, or individual directly involved in the management of
 114 the establishment has been arrested for committing or
 115 attempting, soliciting, or conspiring to commit, or convicted or
 116 found guilty of, or has entered a plea of guilty or nolo
 117 contendere to, regardless of adjudication, a violation of s.
 118 796.07 ~~s. 796.07(2)(a) which is reclassified under s. 796.07(7)~~
 119 or a felony offense under any of the following provisions of
 120 state law or a similar provision in another jurisdiction:
 121 (a) Section 787.01, relating to kidnapping.
 122 (b) Section 787.02, relating to false imprisonment.
 123 (c) Section 787.025, relating to luring or enticing a
 124 child.
 125 (d) Section 787.06, relating to human trafficking.

- 126 (e) Section 787.07, relating to human smuggling.
- 127 (f) Section 794.011, relating to sexual battery.
- 128 (g) Section 794.08, relating to female genital mutilation.
- 129 (h) Former s. 796.03, relating to procuring a person under
- 130 the age of 18 for prostitution.
- 131 (i) Former s. 796.035, relating to the selling or buying
- 132 of minors into prostitution.
- 133 (j) Section 796.04, relating to forcing, compelling, or
- 134 coercing another to become a prostitute.
- 135 (k) Section 796.05, relating to deriving support from the
- 136 proceeds of prostitution.
- 137 (l) Section 796.07(4)(a)3., relating to a felony of the
- 138 third degree for a third or subsequent violation of s. 796.07,
- 139 relating to prohibiting prostitution and related acts.
- 140 (m) Section 800.04, relating to lewd or lascivious
- 141 offenses committed upon or in the presence of persons less than
- 142 16 years of age.
- 143 (n) Section 825.1025(2)(b), relating to lewd or lascivious
- 144 offenses committed upon or in the presence of an elderly or
- 145 disabled person.
- 146 (o) Section 827.071, relating to sexual performance by a
- 147 child.
- 148 (p) Section 847.0133, relating to the protection of
- 149 minors.
- 150 (q) Section 847.0135, relating to computer pornography.

151 (r) Section 847.0138, relating to the transmission of
 152 material harmful to minors to a minor by electronic device or
 153 equipment.

154 (s) Section 847.0145, relating to the selling or buying of
 155 minors.

156 (7) The department shall issue an emergency order
 157 suspending the license of any licensee upon a finding of the
 158 State Surgeon General that probable cause exists to believe that
 159 the licensee has committed sexual misconduct as defined and
 160 prohibited in s. 456.063(1), or the applicable practice act, and
 161 that such violation constitutes an immediate danger to the
 162 public.

163 Section 3. Subsections (1) through (6) of section 480.033,
 164 Florida Statutes, are renumbered as subsections (2) through (7),
 165 respectively, subsections (7) through (12), are renumbered as
 166 subsections (9) through (14), respectively, present subsection
 167 (6) is amended, and new subsections (1), (8), and (15) are added
 168 to that section, to read:

169 480.033 Definitions.—As used in this act:

170 (1) "Advertising medium" means any newspaper; airwave or
 171 computer transmission; telephone directory listing, other than
 172 an in-column listing consisting only of a name, physical
 173 address, and telephone number; business card; handbill; flyer;
 174 sign, other than a building directory listing all building
 175 tenants and their room or suite numbers; or any other form of

176 written or electronic advertisement.

177 (7)~~(6)~~ "Designated establishment manager" means a massage
178 therapist who holds a clear and active license without
179 restriction; a health care practitioner licensed under chapter
180 457; or a physician licensed under chapter 458, chapter 459, or
181 chapter 460, who is responsible for the operation of a massage
182 establishment in accordance with the provisions of this chapter,
183 and who is designated the manager by the rules or practices at
184 the establishment.

185 (8) "Employee" means any person, including, but not
186 limited to, independent contractors or lessees of a massage
187 establishment, whose duties involve any aspect or capacity of
188 the massage establishment, including, but not limited to,
189 preparing meals and cleaning regardless of whether such person
190 is compensated for the performance of such duties. The term does
191 not include a person who is exclusively engaged in the repair or
192 maintenance of the massage establishment or the delivery of
193 goods to the establishment.

194 (15) "Sexual activity" means any direct or indirect
195 contact by any employee or person, or between any employees or
196 persons, with the intent to abuse, humiliate, harass, degrade,
197 or arouse, or gratify the sexual desire of, any employee or
198 person, or which is likely to cause such abuse, humiliation,
199 harassment, degradation, or arousal, or sexual gratification:

200 (a) With or without the consent of the employee or person.

201 (b) With or without verbal or nonverbal communication that
 202 the sexual activity is undesired.

203 (c) With or without the use of any device or object.

204 (d) With or without the occurrence of penetration, orgasm,
 205 or ejaculation.

206 (e) Including, but not limited to, intentional contact
 207 with the genitalia, groin, femoral triangle, anus, buttocks,
 208 gluteal cleft, breast or nipples, mouth, or tongue.

209 (f) Including, but not limited to, the intentional removal
 210 of any drape without specific written informed consent of the
 211 patient.

212 Section 4. Subsection (5) of section 480.035, Florida
 213 Statutes, is amended to read:

214 480.035 Board of Massage Therapy.—

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

221 Section 5. Subsection (14) of section 480.043, Florida
 222 Statutes, is renumbered as subsection (15), subsection (3) and
 223 present subsection (14) are amended, and a new subsection (14)
 224 is added to that section, to read:

225 480.043 Massage establishments; requisites; licensure;

226 inspection; human trafficking awareness training and policies.—

227 (3) The board shall adopt rules governing the operation of
228 massage establishments and their facilities, employees
229 ~~personnel~~, safety and sanitary requirements, financial
230 responsibility, insurance coverage, and the license application
231 and granting process.

232 (14) In order to provide the department and law
233 enforcement agencies the means to more effectively identify
234 persons engaging in human trafficking at massage establishments,
235 the following apply:

236 (a) Sexual activity in a massage establishment is
237 prohibited. An establishment owner or employee may not engage in
238 or allow any person to engage in sexual activity in the
239 establishment or use the establishment to make arrangements to
240 engage in sexual activity in another location. Used or unused
241 condoms are prohibited in a massage establishment.

242 (b) If there is an outside window or windows into the
243 massage establishment's reception area, the outside window or
244 windows must allow for at least 35 percent light penetration and
245 no more than 50 percent of the outside window or windows may be
246 obstructed with signage, blinds, curtains, or other
247 obstructions, allowing the public to see the establishment's
248 reception area. A sign must be posted on the front window of the
249 establishment that includes the name and license number of the
250 massage establishment and the telephone number that has been

251 provided to the department as part of licensure of the
252 establishment. This paragraph does not apply to:

253 1. A massage establishment within a public lodging
254 establishment as defined in s. 509.013(4).

255 2. A massage establishment located within a county or
256 municipality that has an ordinance that prescribes requirements
257 related to business window light penetration or signage
258 limitations if compliance with this paragraph would result in
259 noncompliance with such ordinance.

260 (c) All employees within the massage establishment must be
261 fully clothed and such clothing must be fully opaque and made of
262 nontransparent material that does not expose the employee's
263 genitalia. This requirement does not apply to an employee,
264 excluding a massage therapist, of a public lodging
265 establishment, as defined in s. 509.013(4), that is licensed as
266 a clothing-optional establishment and chartered with the
267 American Association for Nude Recreation.

268 (d) A massage establishment must maintain a complete set
269 of legible records in English or Spanish, which must include
270 each employee's start date of employment, full legal name, date
271 of birth, home address, telephone number, and employment
272 position and a copy of the employee's government identification
273 required under s. 480.0535. All information required under this
274 paragraph must be recorded before the employee may provide any
275 service or treatment to a client or patient.

276 (e) A massage establishment must conspicuously display a 2
277 inch by 2 inch photo for each employee, which, for massage
278 therapists, must be attached to the massage therapist's license.
279 Such display must also include the employee's full legal name
280 and employment position. All information required under this
281 paragraph must be displayed before the employee may provide any
282 service or treatment to a client or patient. A massage
283 establishment within a public lodging establishment as defined
284 in s. 509.013(4) may satisfy this requirement by displaying the
285 photos and required information in an employee break room or
286 other room that is used by employees, but is not used by clients
287 or patients.

288 (f) A massage establishment must maintain a complete set
289 of legible records in English or Spanish, which must include the
290 date, time, and type of service or treatment provided; the full
291 legal name of the employee who provided the service or
292 treatment; and the full legal name, home address, and telephone
293 number of the client or patient. Medical records may satisfy
294 this requirement if the records include the specified
295 information. A copy of the client's or patient's photo
296 identification may be used to provide the full legal name and
297 home address of the client or patient. Records required under
298 this paragraph must be maintained for at least 1 year after a
299 service or treatment is provided. All information required under
300 this paragraph must be collected and recorded before any service

301 or treatment is provided to a client or patient. The
 302 establishment must confirm the identification of the client or
 303 patient before any service or treatment is provided to the
 304 client or patient.

305 (15)~~(14)~~ Except for the requirements of subsection (13),
 306 this section does not apply to a practitioner ~~physician~~ licensed
 307 under chapter 457 or a physician licensed under~~7~~ chapter 458,
 308 chapter 459, or chapter 460 who employs a licensed massage
 309 therapist to perform massage therapy on the practitioner's or
 310 physician's patients at her or his ~~the physician's~~ place of
 311 practice. This subsection does not restrict investigations by
 312 the department for violations of chapter 456 or this chapter.

313 Section 6. Section 480.0465, Florida Statutes, is amended
 314 to read:

315 480.0465 Advertisement; prohibitions.-

316 (1) Each massage therapist or massage establishment
 317 licensed under this act shall include the number of the license
 318 in any advertisement of massage therapy services appearing in
 319 any advertising medium, including, but not limited to, a
 320 newspaper, airwave transmission, telephone directory, Internet,
 321 or other advertising medium. The advertisement must also include
 322 the physical address of the massage establishment and the
 323 telephone number that has been provided to the department as
 324 part of the licensing of the establishment. However, the
 325 inclusion of the physical address and telephone number is not

326 required for an advertisement by a massage establishment whose
 327 establishment owner operates more than five locations in this
 328 state.

329 (2) A massage therapist, an establishment owner, an
 330 employee, or any third party directed by the establishment owner
 331 or employee, may not place, publish, or distribute, or cause to
 332 be placed, published, or distributed, any advertisement in any
 333 advertising medium which states prostitution services, escort
 334 services, or sexual services are available.

335 (3) A massage therapist, an establishment owner, an
 336 employee, or any third party directed by the massage therapist,
 337 establishment owner, or employee may not place, publish, or
 338 distribute, or cause to be placed, published, or distributed,
 339 any online advertisement on any website known for advertising
 340 prostitution services, escort services, or sexual services.

341 ~~Pending licensure of a new massage establishment under s.~~
 342 ~~480.043(7), the license number of a licensed massage therapist~~
 343 ~~who is an owner or principal officer of the establishment may be~~
 344 ~~used in lieu of the license number for the establishment.~~

345 Section 7. Subsection (2) of section 480.0475, Florida
 346 Statutes, is amended to read:

347 480.0475 Massage establishments; prohibited practices.—

348 (2) A person operating a massage establishment may not use
 349 or permit the establishment to be used as a principal or
 350 temporary domicile for, to shelter or harbor, or as sleeping or

351 napping quarters for any person unless the establishment is
 352 zoned for residential use under a local ordinance.

353 Section 8. Section 480.0535, Florida Statutes, is amended
 354 to read:

355 480.0535 Documents required while working in a massage
 356 establishment; penalties; reporting.—

357 (1) In order to provide the department and law enforcement
 358 agencies the means to more effectively identify, investigate,
 359 and arrest persons engaging in human trafficking, an employee ~~a~~
 360 ~~person employed by a massage establishment~~ and any person
 361 performing massage therapy in a massage establishment therein
 362 must immediately present, upon the request of an investigator of
 363 the department or a law enforcement officer, valid government
 364 identification while in the establishment. An investigator of
 365 the department must request valid government identification from
 366 all employees while in the establishment. A valid government
 367 identification for the purposes of this section is:

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

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

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

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

375 (e) A valid, unexpired alien registration receipt card

376 (green card); or

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

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

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

382 1. Valid government identification while in the
383 establishment.

384 2. A copy of the documentation specified in paragraph
385 (1)(a) for each employee and any person performing massage
386 therapy in the establishment.

387 3. A copy of the documents required under s.
388 480.043(14)(d) and (f).

389 (b) Ensure that each employee and any person performing
390 massage therapy in the massage establishment is able to
391 immediately present, upon the request of an investigator of the
392 department or a law enforcement officer, valid government
393 identification while in the establishment.

394 (3) A person who violates ~~any provision of~~ this section
395 commits:

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

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

400 (c) For a third or subsequent violation, a felony of the

401 third degree, punishable as provided in s. 775.082, s. 775.083,
 402 or s. 775.084.

403 (4) The department shall notify a federal immigration
 404 office if a person operating a massage establishment, an
 405 employee, or any person performing massage therapy in a massage
 406 establishment fails to provide valid government identification
 407 as required under this section.

408 Section 9. Subsection (3) of section 823.05, Florida
 409 Statutes, is amended to read:

410 823.05 Places and groups engaged in certain activities
 411 declared a nuisance; abatement and enjoinder.-

412 (3) A massage establishment as defined in s. 480.033 which
 413 operates in violation of s. 480.043(14)(a) or (f), s. 480.0475,
 414 or s. 480.0535(2) is declared a nuisance and may be abated or
 415 enjoined as provided in ss. 60.05 and 60.06.

416 Section 10. This act shall take effect July 1, 2024.