

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Burgin offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 210 and 211, insert:

5 Section 1. Section 480.0465, Florida Statutes, is amended
6 to read:

7 480.0465 License number in advertisement.--Each massage
8 therapist or massage establishment licensed under the provisions
9 of this act shall include the number of the license in any
10 advertisement of massage services appearing in any newspaper,
11 airwave transmission, telephone directory, or other advertising
12 medium. Pending licensure of a new massage establishment
13 pursuant to the provisions of s. 480.043(6), the license number
14 of a licensed massage therapist who is an owner or principal
15 officer of the establishment may be used in lieu of the license
16 number for the establishment.

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17 Section 2. Section 480.067, Florida Statutes, is created
18 to read:

19 480.067 Advertising implying services other than massage
20 or licensed services without a license.--

21 (1) Any direct or indirect publication, dissemination, or
22 display, whether by hire, contract, or otherwise, by any massage
23 therapist, establishment, or board-approved massage school or
24 escort bureau or any owner, manager, or employee of an
25 establishment or board-approved massage school within the scope
26 of this chapter in any newspaper, magazine, or other publication
27 or through any radio, television, telephone, Internet,
28 pictorial, or other advertising medium that explicitly states,
29 or would suggest to a reasonable, prudent person, that any
30 service other than that of massage is provided is prohibited.

31 (2) Any word, phrase, or combination of words used in any
32 advertisement that implies the provision of a service other than
33 that of massage, or that gives the public a basis to believe
34 that sexual stimulation, sexual gratification, or any form of
35 sex service is provided, is prohibited within the intent of this
36 section. Terms and words that may, depending upon the context,
37 be used to convey that sexual stimulation or sexual
38 gratification is offered include, but are not limited to,
39 "actresses," "all our escorts have health certificates," "all
40 our models have health certificates," "bodies beautiful," "girls
41 galore," "call us and make your point," "call us, we come to
42 you," "climax," "couples and swingers," "desires," "direct to
43 your room," "do you want a swinger," "dominance," "double
44 delight," "erotic," "erotic encounters," "exciter," "fantasies,"

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45 "fetishes," "for adults only," "fox hunting," "fulfill," "girls
46 to go," "happy endings," "hard core," "hot," "it's legal in
47 Florida," "love," "maid," "maids," "maid service," "make your
48 point," "massages," "models," "models, girls, or escorts in the
49 privacy of your hotel or motel room," "models, girls, or escorts
50 to act out your fantasies," "no need to leave your hotel," "no
51 need to leave your hotel room," "nude models," "open 24 hours
52 for your desires," "open 24 hours for your pleasure," "outcall,"
53 "rooms provided," "satisfy," "seductive," "sensuous," "sexy,"
54 "showers," "showgirls," "showguys," "so good," "someone to
55 enjoy," "special services," "spend some time with me," "spice,"
56 "spicy," "submit to pleasure," "swingers and couples,"
57 "swinging," "tantalizing," "the pleasure is yours," "the utmost
58 in discretion," "two for one," "warm," "we come direct to you,"
59 "we deliver," "we deliver the goods," "we go out," "we have a
60 model, escort, or girl for your every need," "we respond
61 immediately," "you always win," and "you won't be disappointed."

62 (3) Any photograph, picture, drawing, sketch, pictorial
63 representation, or verbal or written description used in an
64 advertisement of any massage, massage therapist, or board-
65 approved massage school or escort bureau in any medium is
66 prohibited and presumed to advertise the availability or
67 provision of sexual stimulation or sexual gratification or sex
68 services if it shows or depicts a massage therapist, or a
69 representation of a massage therapist, in an unclothed state or
70 attired in clothing that shows:

71 (a) The human male or female genitals, pubic area, or
72 buttocks with less than a fully opaque covering;

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73 (b) Any portion of the female breast below the top of the
74 nipple with less than a fully opaque covering; or

75 (c) Covered male genitals in a discernibly turgid state.

76 (4) (a) A person may not:

77 1. Knowingly sell, lend, give away, distribute, transmit,
78 show, or transmute, or offer to sell, lend, give away,
79 distribute, transmit, show, or transmute, or have in his or her
80 possession, custody, or control with intent to sell, lend, give
81 away, distribute, transmit, show, transmute, or advertise in any
82 manner, the availability of a massage therapist, massage, or
83 board-approved massage school without obtaining a license
84 therefor as provided in this chapter, regardless of whether the
85 actual business of massage as defined in this chapter is
86 performed;

87 2. Knowingly design, copy, draw, photograph, pose for,
88 write, print, publish, or in any manner whatsoever manufacture
89 or prepare any material, matter, article, or thing prohibited
90 pursuant to subsection (1), subsection (2), or subsection (3);

91 3. Knowingly write, print, publish, or utter, or cause to
92 be written, printed, published, or uttered, any advertisement or
93 notice of any kind, giving information, directly or indirectly,
94 stating, or purporting to state, where, how, of whom, or by what
95 means any, or what purports to be any, such material, matter,
96 article, or thing of any such character can be purchased,
97 obtained, or had; or

98 4. In any manner knowingly hire, employ, use, or permit
99 any person to do or assist in doing any act or thing prohibited
100 in subparagraphs 1.-3.

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101 (b) A person who violates any provision of paragraph (a)
102 commits a misdemeanor of the first degree, punishable as
103 provided in s. 775.082 or s. 775.083. A person who, after having
104 been convicted of a violation of this subsection, thereafter
105 violates any of its provisions commits a felony of the third
106 degree, punishable as provided in s. 775.082, s. 775.083, or s.
107 775.084.

108 (c) The knowing possession by any person of three or more
109 identical or similar materials, matters, articles, or things
110 prohibited in paragraph (a) is prima facie evidence of a
111 violation of paragraph (a).

112 (5) A person may not, as a condition of the sale,
113 allocation, consignment, or delivery for resale of any paper,
114 magazine, book, periodical, or publication, require that the
115 purchaser or consignee receive for resale any other article,
116 paper, magazine, book, periodical, or publication reasonably
117 believed by the purchaser or consignee to be obscene, and a
118 person may not deny or threaten to deny or revoke any franchise
119 or impose or threaten to impose any penalty, financial or
120 otherwise, by reason of the failure of any person to accept any
121 such article, paper, magazine, book, periodical, or publication,
122 or by reason of the return thereof. A person who violates this
123 subsection commits a felony of the third degree, punishable as
124 provided in s. 775.082, s. 775.083, or s. 775.084.

125 (6) Each act, thing, or transaction forbidden by this
126 section is punishable as a separate offense.

127 (7) Proof that a defendant knowingly committed any act, or
128 engaged in any conduct, referred to in this section may be made

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129 by showing that, at the time such act was committed, or conduct
130 engaged in, the defendant had actual knowledge of the contents
131 or character of the material, matter, article, advertisement, or
132 thing possessed or otherwise dealt with, by showing facts and
133 circumstances from which it may fairly be inferred that he or
134 she had such knowledge, or by showing that he or she had
135 knowledge of such facts and circumstances as would put a person
136 of ordinary intelligence and caution on inquiry as to such
137 contents or character.

138 (8) There is no right of property in any of the materials,
139 matters, articles, or things possessed or otherwise dealt with
140 in violation of this section. Upon their seizure by any
141 authorized law enforcement officer, such items shall be held by
142 the arresting agency. If such items are no longer required as
143 evidence, the prosecuting officer or any claimant may move the
144 court in writing for the disposition of the items and, after
145 notice and hearing, the court, if it finds the items to have
146 been possessed or otherwise dealt with in violation of this
147 section, shall order the sheriff to destroy such items in the
148 presence of the clerk; otherwise, the court shall order the
149 items returned to the claimant if the claimant shows that he or
150 she is entitled to possession. If destruction is ordered, the
151 sheriff and clerk shall file a certificate of compliance.

152 (9) (a) The circuit court has jurisdiction to enjoin a
153 threatened violation of this section upon complaint filed by the
154 state attorney or attorney for a municipality in the name of the
155 state upon the relation of such state attorney or attorney for a
156 municipality.

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157 (b) After the filing of such a complaint, the judge to
158 whom the complaint is presented may grant an order restraining
159 the person complained of until final hearing or further order of
160 the court. Whenever the relator state attorney or attorney for a
161 municipality requests a judge of such court to set a hearing
162 upon an application for such a restraining order, such judge
163 shall set such hearing for a time within 3 days after the making
164 of such request. No such order shall be made unless such judge
165 is satisfied that sufficient notice of the application therefor
166 has been given to the party restrained of the time when and
167 place where the application for such restraining order is to be
168 made; however, such notice shall be dispensed with when it is
169 manifest to such judge, from the sworn allegations of the
170 complaint or the affidavit of the plaintiff or other competent
171 person, that the apprehended violation will be committed if an
172 immediate remedy is not afforded.

173 (c) The person sought to be enjoined shall be entitled to
174 a trial of the issues within 1 day after joinder of issue, and a
175 decision shall be rendered by the court within 2 days after the
176 conclusion of the trial.

177 (d) In any action brought as provided in this subsection,
178 no bond or undertaking shall be required of the state attorney
179 or the municipality or its attorney before the issuance of a
180 restraining order provided for by paragraph (b), and there shall
181 be no liability on the part of the state or the state attorney
182 or the municipality or its attorney for costs or for damages
183 sustained by reason of such restraining order in any case if a

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184 final decree is rendered in favor of the person sought to be
185 enjoined.

186 (e) Every person who has possession, custody, or control
187 of, or otherwise deals with, any of the materials, matters,
188 articles, or things described in this section, after the service
189 upon him or her of a summons and complaint in an action for
190 injunction brought under this subsection, is chargeable with
191 knowledge of the contents and character thereof.

192 (10) The sheriffs and state attorneys of this state shall
193 vigorously enforce this section within their respective
194 jurisdictions.

195 (11) This section does not apply to the exhibition of
196 motion pictures permitted by s. 847.013.

197 (12) Any store, shop, warehouse, building, vehicle, ship,
198 boat, vessel, aircraft, or any place whatsoever, which is
199 visited by persons for the purpose of unlawfully purchasing or
200 viewing any obscene material or performance as described in this
201 chapter, or which is used for the illegal keeping, selling, or
202 delivering of such obscene materials or performances, shall be
203 deemed a public nuisance. A person may not keep or maintain such
204 public nuisance or aid and abet another in keeping or
205 maintaining such public nuisance.

206 (13) The terms defined in s. 847.001 are applicable to
207 this section.

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

211 Remove lines 2-3 and insert:

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212 An act relating to the regulation of professions; amending
213 s. 480.0465, F.S.; revising provisions relating to
214 advertising by massage therapist and massage establishment
215 licensees; creating s. 480.067, F.S.; prohibiting
216 advertisements that imply services other than licensed
217 massage; prohibiting advertising that gives the public a
218 basis to believe that sexual stimulation, sexual
219 gratification, or any form of sex service is provided;
220 providing examples of terms that may convey that sexual
221 stimulation, sexual gratification, or any form of sex
222 service is offered; prohibiting certain images in
223 advertising; prohibiting certain acts relating to massage
224 therapy and obscene materials; providing penalties;
225 providing for the seizure and destruction of certain
226 obscene materials; providing for the return of such
227 materials under certain circumstances; authorizing
228 injunctive relief for threats of certain violations of the
229 act; providing for enforcement; providing an exemption;
230 declaring certain places at which obscene materials or
231 performances are unlawfully purchased or viewed to be
232 public nuisances; prohibiting a person from maintaining
233 such a public nuisance; providing definitions; amending s.
234 455.213, F.S.;

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