

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 633

Human Trafficking

**SPONSOR(S):** Full Appropriations Council on Education & Economic Development, Insurance, Business & Financial Affairs Policy Committee, Burgin and others

**TIED BILLS:**

**IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	13 Y, 0 N, As CS	Marra	Cooper
2)	Full Appropriations Council on Education & Economic Development	15 Y, 0 N, As CS	Massengale	Kramer
3)	General Government Policy Council			
4)				
5)				

### SUMMARY ANALYSIS

Human trafficking, specifically trafficking for the purpose of sex exploitation, is a growing problem, both in Florida and globally. Increasingly, human trafficking victims are being forced to work in massage parlors, providing sexual services under the guise of performing massage therapy.

The Massage Practice Act applies to the regulation and licensing of massage therapists and massage service establishments by the Department of Health (DOH).

To be licensed as a massage therapist, an applicant must:

- Be at least 18 years old;
- Complete board-approved massage school or apprenticeship program; and
- Pass an examination, currently offered in Spanish and English.

To be licensed as a massage establishment, an establishment must:

- Be in compliance with building codes;
- Meet safety and sanitary requirements;
- Maintain a licensed massage therapist onsite anytime a client is receiving massage services; and
- Maintain liability insurance.

Upon receiving an application, DOH inspects the establishment to ensure it meets all regulatory requirements. Once licensed, the DOH inspects the establishment at least annually.

Sexual activity by any person or persons in any massage establishment is prohibited by agency rules. A licensed massage therapist is prohibited from using the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.

The bill provides identification verification requirements for massage therapists and establishments.

The bill also provides criminal penalties for failure to comply with the identification verification requirements or for knowingly using a massage establishment license for lewdness, assignation, or prostitution.

The bill appears to have an insignificant fiscal impact on state government (see Fiscal Analysis).

The bill has an effective date of July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/9/2010

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

### FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Sex Trafficking in Florida**

An estimated 2.4 million people throughout the world are victims of human trafficking at any given time. The United Nations estimates the total market value of illicit human trafficking at \$32 billion. Women and girls account for about 80 percent of the detected victims of human trafficking, and sexual exploitation accounts for about 80 percent of the detected cases of human trafficking.<sup>1</sup>

The United States is a destination country for thousands of men, women, and children trafficked largely from Mexico and East Asia, as well as countries in South Asia, Central America, Africa, and Europe, for the purposes of sexual and labor exploitation.<sup>2</sup> An estimated 18,000 to 20,000 people are trafficked into the United States annually.<sup>3</sup>

The number of instances of trafficking in Florida is difficult to estimate. However, Florida is often cited as one of the top three states (with New York and California) receiving the majority of the women and children trafficked annually into the U.S.<sup>4</sup> Between 2001 and 2005, 14 percent of the human trafficking matters opened by U.S. attorneys were in Florida.<sup>5</sup>

##### *Federal Trafficking Law*

In 2000, Congress enacted the Trafficking Victims Protection Act<sup>6</sup> (TVPA) to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children." The TVPA not only criminalizes human trafficking, but requires that victims, who might otherwise be treated as criminals (because of engagement in prostitution), be treated as victims of crime and be provided health and human services, if they cooperate with prosecutions.

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<sup>1</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, HUMAN TRAFFICKING: THE FACTS 1 (2009), available at [http://www.unodc.org/documents/blueheart/Fact\\_sheet\\_english.pdf](http://www.unodc.org/documents/blueheart/Fact_sheet_english.pdf).

<sup>2</sup> U.S. DEPT. OF STATE, 2009 TRAFFICKING IN PERSONS REPORT 57 (June 2009), available at <http://www.state.gov/g/tip/rls/tiprpt/2009/index.htm>.

<sup>3</sup> U.S. DEPT. OF STATE, 2003 TRAFFICKING IN PERSONS REPORT 7 (June 2003), available at <http://www.state.gov/g/tip/rls/tiprpt/2003>.

<sup>4</sup> See, e.g., RAYMOND, J. G., ET AL., SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS, (2001), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/187774.pdf>; FLORIDA COALITION AGAINST HUMAN TRAFFICKING, <http://www.stophumantrafficking.org/activism.html>, last visited March 5, 2010.

<sup>5</sup> MARK MOTIVANS, TRACEY KYCKELHAHN, AND BJS STATISTICIANS, FEDERAL PROSECUTION OF HUMAN TRAFFICKING, 2001-2005, U.S. Bureau of Justice (2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fpht05.pdf>.

<sup>6</sup> Trafficking Victims Protection Act of 2000, Pub.L. No. 106-386, (2000).

Between Fiscal Years 2001-2008, the FBI's Civil Rights Division and U.S. Attorneys' Offices prosecuted 531 defendants, secured 419 convictions and guilty pleas, and opened 998 new investigations.<sup>7</sup>

### *State Trafficking Law*

Section 787.06, Florida Statutes, defines "human trafficking" as "transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport."

Sex trafficking is defined as knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution.<sup>8</sup>

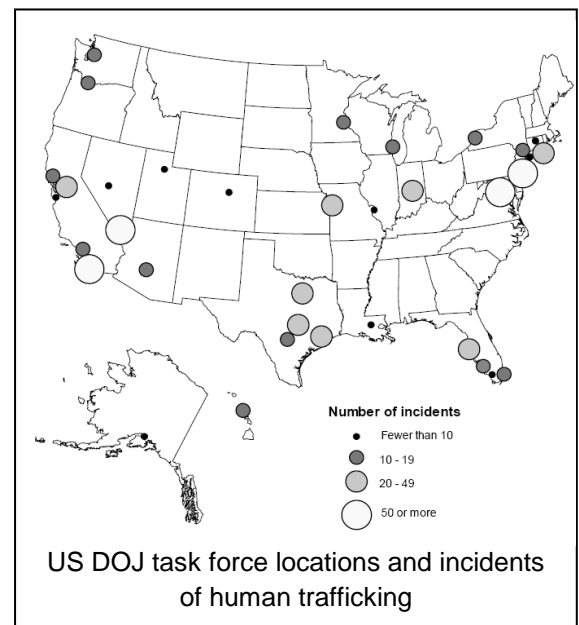
Florida law punishes human trafficking, attempted human trafficking, knowingly benefitting from human trafficking and sex trafficking as second-degree felonies.<sup>9</sup>

However, a person commits a first degree felony if the offense of sex trafficking results in death; is committed against a person who is under the age of 14; or if he or she sells or transfers custody of a minor with knowledge he or she will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking.<sup>10</sup>

### *Increased Enforcement Efforts*

Over the past few years, enforcement efforts have been increased. Currently, the U.S. Justice Department operates task forces in Miami, Homestead, Collier County (Naples), Lee County (Fort Myers), and Tampa-Clearwater. All state law enforcement recruits receive mandatory training in recognizing and investigating human trafficking cases, and an advanced investigators training has been designed by the Florida Regional Community Policing Institute.<sup>11</sup>

Between January 2007 and September 2008, federal task forces throughout the country reported their involvement in 1,018 investigations into claims of sex trafficking.<sup>12</sup> Local or state law enforcement acted as the lead investigating agency in 86 percent of those cases. Of the 1,070 alleged victims, 99 percent were female and 34 percent were undocumented aliens.<sup>13</sup>



<sup>7</sup> ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 42 (June 2009), available at <http://www.justice.gov/ag/annualreports/tr2008/agreporhumantrafficking2008.pdf>.

<sup>8</sup> Section 796.045, F.S.

<sup>9</sup> Sections 787.06 and 796.045, F.S.

<sup>10</sup> Section 796.035, F.S.

<sup>11</sup> FSU CENTER FOR ADVANCEMENT OF HUMAN RIGHTS. DRAFT STRATEGIC PLAN ON HUMAN TRAFFICKING 1 (2009) [hereinafter FSU DRAFT STRATEGIC PLAN], available at <http://www.dcf.state.fl.us/admin/HumanTrafficking/docs/FSUStrategicPlanDraft103009.pdf>.

<sup>12</sup> BUREAU OF JUSTICE STATISTICS, HUMAN TRAFFICKING/TRAFFICKING IN PERSONS, <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=40>, last visited March 5, 2010.

<sup>13</sup> BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2007-08, 3-5, available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti08.pdf>.

## *Despite Enforcement Efforts, Trafficking on the Rise*

There is a growing perception that despite increased efforts and resources, sex trafficking may be on the increase in Florida and elsewhere in the United States. Speaking of both sex trafficking and labor trafficking, one Florida law enforcement investigator noted: “Given the low risk and the tremendous profits generated by human trafficking, it is simply too lucrative a business right now. Both the corporations that profit from trafficking and those actively engaged in the exploitation still have too much to gain—and so little to lose—even as new cases are prosecuted.”<sup>14</sup>

### *Florida Statewide Strategic Plan*

During the 2009 Regular Session, the Legislature created the Florida Statewide Task Force on Human Trafficking within the Department of Children and Family Services. FSU’s Center for Advancement of Human Rights was directed to establish a statewide strategic plan to better investigate trafficking cases, and provide more comprehensive care for trafficking victims. The final version of the Strategic Plan will be available by October 1, 2010.

To date, the center’s research<sup>15</sup> has uncovered the following:

- Florida sex trafficking has become a circuit. Victims appear to be moved frequently, often being brought in from out-of-state to a variety of Florida cities for short periods of time.
- Victims of sex trafficking are being found alongside women who have willingly migrated for sex work, some of whom were recruited to Florida as sex workers, only to be forced into sex slavery upon their arrival.
- Coercion methods are often invisible and include debt servitude, threats against the victim’s family, or threats of deportation.
- Florida police and prosecutors report their investigating of trafficking cases has been almost exclusively reactive.
- State regulatory agencies that include licensing or investigative branches can play a crucial role in countering human trafficking. Licensing and regulatory officials have routine access to sites where trafficking occurs, but where sworn law enforcement officials might require a warrant to search, including massage parlors.

### *Sex Trafficking in Massage Establishments*

The center’s research has shown an increasing amount of sex trafficking occurring in Asian massage parlors throughout Florida,<sup>16</sup> especially in Tampa, Orlando<sup>17</sup> and Miami, and the country.<sup>18</sup>

The center has found that Asian massage parlors are often used to disguise sex trafficking. Traffickers bring girls from Korea, Thailand and China using tourist visas. The girls are then forced to work off the debt of being smuggled in—often an amount reaching tens of thousands of dollars. Trafficking is increasingly tied to organized crime in foreign countries and victims know if they escape, their families will bear their debt. Further decreasing the opportunity for escape, some establishments operate a “Taxi Service,” transporting girls to other massage parlors throughout the country every so often. This makes it more difficult for girls to develop relationships or find resources to help them escape.<sup>19</sup>

<sup>14</sup> FSU DRAFT STRATEGIC PLAN, *supra* note 11, at 2.

<sup>15</sup> *Id.* at 4-11.

<sup>16</sup> See, e.g., Christina Denardo, *Police Shut Down Illegal Delray Beach Massage Parlor; Arrest Two Advertising on Craigslist*, THE PALM BEACH POST, Apr. 29, 2009, available at [http://www.palmbeachpost.com/local\\_news/content/local\\_news/epaper/2009/04/29/0429dbmassage.html](http://www.palmbeachpost.com/local_news/content/local_news/epaper/2009/04/29/0429dbmassage.html) (Owner had been convicted in January 2009 for operating without a license the year before at a location that was shut down in 2007 as an illegal massage parlor); Elliot James, *Two Vero Beach Massage Parlors Involved in Prostitution Arrests*, TCPALM.COM, Dec. 31, 2008, available at <http://www.tcpalm.com/news/2008/dec/31/two-massage-parlors-involved-in-prostitution> (Raid of two massage parlors led to arrest warrants for solicitation of prostitution being issued for 35 men).

<sup>17</sup> See, e.g., *Prostitution Suspected in Raid of Massage Parlor; 4 Women Arrested*, CLICK ORLANDO WKMG, Dec. 10, 2008, available at <http://www.clickorlando.com/print/18247031/detail.html> (Owner also had previous parlor in Winter Park raided the previous year).

<sup>18</sup> See, e.g., Emily Vasquez, *31 Arrested in Human-Trafficking Case*, N.Y. TIMES, Aug. 16, 2006, available at

<http://www.nytimes.com/2006/08/16/nyregion/17ringcnd.html?hp&ex=1155787200&en=674f71cddf5222c5&ei=5094&partner=homepage> (Human trafficking ring spanning the Northeast with at least 20 brothels posed as massage parlors, health spas and acupuncture clinics and approximately 67 victims — all young Korean women).

<sup>19</sup> Telephone interview with Terry Coonan, Executive Director of the Center for the Advancement of Human Rights, Tallahassee, Fla., (Mar. 3, 2010).

Law enforcement cannot enter a massage parlor without the owner's permission or a warrant, which requires probable cause to believe a crime is occurring. The Department of Health, however, inspects licensed massage parlors to ensure regulatory compliance.

## **Current Regulation of Massage Therapists and Establishments**

The Massage Practice Act applies to the regulation and licensing of massage therapists and massage service establishments by the Department of Health (DOH).<sup>20</sup>

To be licensed as a massage therapist, an applicant must:

- Be at least 18 years old;
- Complete board-approved massage school or apprenticeship program; and
- Pass an examination, currently offered in Spanish and English.<sup>21</sup>

Licensed massage therapists may practice in a licensed massage establishment, at a client's residence or office, or at a sports event, convention or trade show. Licensees must report to DOH their mailing address and practice location. Sexual misconduct, defined as a violation of the professional relationship through the use of such relationship to engage or attempt to engage in verbal or physical sexual activity outside the scope of the profession, is prohibited and subjects a licensed massage therapist to disciplinary action.<sup>22</sup>

Section 480.43, Florida Statutes, specifies that a massage establishment license is required at any facility where massage therapy services are offered by a licensed massage therapist and directs the board to adopt application criteria. It also specifies that massage establishment licenses may not be transferred to a new owner, but may be transferred to a new location or business name.

The Board of Massage Therapy rules include insurance requirements, compliance with building codes, and safety and sanitary requirements, and require a licensed massage therapist be onsite anytime a client is receiving massage services.<sup>23</sup> Upon receiving an application, DOH inspects the establishment to ensure it meets the requirements.<sup>24</sup> Once licensed, the DOH inspects the establishment at least annually.<sup>25</sup>

Board rules also provide:

- (1) Sexual activity by any person or persons in any massage establishment is absolutely prohibited.
- (2) No massage establishment owner shall engage in or permit any person or persons to engage in sexual activity in such owner's massage establishment or use such establishment to make arrangements to engage in sexual activity in any other place.
- (3) No licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.<sup>26</sup>

An application for a massage establishment license may be denied for an applicant's conviction of crimes related to the practice of massage, and must be denied for convictions of enumerated crimes within 15 years of application<sup>27</sup> and for past sexual misconduct.<sup>28</sup>

Operation of an unlicensed massage establishment is considered a misdemeanor of the first degree. Currently, upon receiving a complaint that unlicensed activity is occurring, DOH's Medical Quality Insurance inspectors coordinate with local law enforcement. Unlicensed practice of massage therapy is punishable as a third degree felony.<sup>29</sup> The DOH may issue cease and desist notices, enforceable by

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<sup>20</sup> Chapter 480, F.S.

<sup>21</sup> Section 480.041, F.S.

<sup>22</sup> Sections 480.0485, and 480.046, F.S.

<sup>23</sup> Rule 64B7-26.003, F.A.C.

<sup>24</sup> Rule 64B7-26.004, F.A.C.

<sup>25</sup> Rule 64B7-26.005, F.A.C.

<sup>26</sup> Rule 64B7-26.010, F.A.C.

<sup>27</sup> Section 456.0635, F.S.

<sup>28</sup> Section 456.063, F.S.

<sup>29</sup> Section 456.065, F.S.

filing for an injunction or writ of mandamus and seek civil penalties against the unlicensed party in circuit court.<sup>30</sup> The DOH may also impose, by citation, an administrative penalty up to \$5,000. While DOH has investigative authority, it does not have arrest authority or sworn law enforcement personnel.

## **Proposed Changes**

### **Identification Verification Requirements**

The committee substitute requires each person providing or offering massage therapy services for compensation, or on behalf of a massage establishment or for any business, to have in his or her possession a Department of Health issued license in his or her name and one of the following issued in his or her name:

- Current driver's license or state-issued identification,
- Valid U.S. passport,
- Valid I-551 permanent resident card, or
- Valid employment authorization document (EAD Card)

The bill requires that such a person present his or her massage therapist license in his or her name and one of the listed documents issued in his or her name to a law enforcement officer upon request.

The bill also requires the operator of any massage establishment to maintain valid work authorization documents onsite for each employee who is not a U.S. citizen and to present such documents to a requesting law enforcement officer.

### **Lewdness, Assignment or Prostitution**

The committee substitute specifies that it is unlawful to knowingly use a massage establishment license for lewdness, assignation, or prostitution at any massage establishment location or structure, or any part thereof, including any trailer or other conveyance.

### **Criminal Penalties**

The bill provides that a person who violates any provision of the newly created section of statute commits a second degree misdemeanor for a first offense, a first degree misdemeanor for a second offense and a third degree felony for a third offense.

#### **B. SECTION DIRECTORY:**

Section 1 creates s. 480.0535, F.S., relating to identification requirements of massage therapy and massage establishment licensees and criminal uses of a massage establishment license.

Section 2 provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

The bill makes a third violation of one of the newly created offenses a third degree felony. The offense is unranked in the Offense Severity Ranking chart. Although the Criminal Justice Impact

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<sup>30</sup> Section 456.065, F.S.

Conference has not met to consider this bill, generally the conference determines that such bills will have an insignificant prison bed impact on the Department of Corrections.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill grants the Board of Massage Therapy rulemaking authority to disapprove massage schools under certain circumstances, and to govern massage establishments' reporting requirements.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 11, 2010, the Insurance, Business and Financial Affairs Policy Committee met, adopted a strike-all amendment, and passed the bill as a committee substitute. The strike-all differed from the bill as filed in the following areas:

Identification verification requirements

- Requires each person providing or offering massage therapy services to have in his or her possession a Department of Health issued license and one of the following:
  - Current driver's license or state-issued identification,
  - Valid U.S. passport,
  - Valid I-551 permanent resident card, or
  - Valid employment authorization document (EAD Card)

Requires such a person present his or her massage therapist license and one of the listed documents to a law enforcement officer upon request.

- Requires the operator of any massage establishment maintain valid work authorization documents onsite for each employee who is not a U.S. citizen and to present such documents to a requesting law enforcement officer.

#### Criminal penalties

- Provides it is unlawful to knowingly use a massage establishment license for lewdness, assignation, or prostitution. A first violation of an offense in the section is a second degree misdemeanor; a second offense is a first degree misdemeanor; and a third or subsequent offenses is third degree felony.

On April 9, 2010, the Full Council Appropriations Council on Education & Economic Development adopted four amendments that changed the committee substitute:

- Specifies it is massage services for compensation, or on behalf of a massage establishment or for any business, that each person must have in his or her possession the required documents.
- Specifies it is massage services for compensation, or on behalf of a massage establishment or for any business, that each person upon request by a law enforcement officer must present the required documents.
- Specifies that the identification presented must be in the name of the person presenting the identification.
- Prohibits a person from offering or providing massage service for compensation, or on behalf of a massage establishment or for any business, without being in possession of the required identification.

The council reported the bill favorably with a council substitute. The analysis reflects the council substitute.