

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 633 Human Trafficking

SPONSOR(S): Burgin and others

TIED BILLS: IDEN./SIM. BILLS: SB 966

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Marra	Cooper
2)	Full Appropriations Council on Education & Economic Development			
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.

Currently, in order 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.

In order 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, both by licensed massage therapists and at massage establishments, is strictly prohibited.

The bill increases regulation of massage therapy in the following ways:

- Requires massage therapy license examinations be given in English only and requires each applicant demonstrate English proficiency as a prerequisite to licensure.
- Adds a requirement to pass a background check as a prerequisite for obtaining a massage establishment license and for renewing such a license.
- Adds reporting requirements for licensed massage establishments to report the license number of each massage therapist it employs and for licensed massage therapists to report the license number of massage establishments where they work. Noncompliance is grounds for discipline.
- Authorizes the Board of Massage Therapy to disapprove massage schools where the majority of the school's graduates have engaged in a pattern of misconduct, defined as at least one conviction of prostitution during a 2-year period, while providing massage services at a massage establishment.

The Department of Health reports it will need 3 FTEs and will incur a significant fiscal impact in implementing the bill's background check requirements.

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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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% of the detected victims of human trafficking, and sexual exploitation accounts for about 80% of the detected cases of human trafficking.¹

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.² An estimated 18,000-20,000 people are trafficked into the United States annually.³

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.⁴ Between 2001 and 2005, 14 percent of the human trafficking matters opened by U.S. attorneys were in Florida.⁵

Federal Trafficking Law

In 2000, Congress enacted the Trafficking Victims Protection Act⁶ (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 victims, who might otherwise

¹ 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.

² 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>.

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

⁴ 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.

⁵ 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>.

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

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.

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.⁷

State Trafficking Law

Section 787.06, F.S., 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.⁸

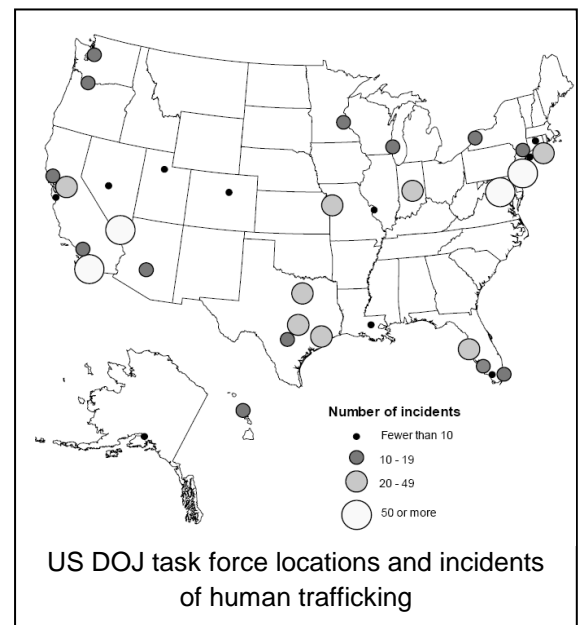
Florida law punishes human trafficking, attempted human trafficking, knowingly benefitting from human trafficking and sex trafficking as second-degree felonies.⁹

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.¹⁰

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.¹¹

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



⁷ 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>.

⁸ Section 796.045, F.S.

⁹ Sections 787.06 and 796.045, F.S.

¹⁰ Section 796.035, F.S.

¹¹ 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>.

¹² 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.

¹³ 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.”¹⁴

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 (Center) 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 research¹⁵ 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,¹⁶ especially in Tampa, Orlando¹⁷ and Miami, and the country.¹⁸

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

¹⁴ FSU DRAFT STRATEGIC PLAN, *supra* note 11, at 2.

¹⁵ *Id.* at 4-11.

¹⁶ 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 (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).

¹⁷ 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).

¹⁸ 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).

“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.¹⁹

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).²⁰

In order 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.²¹

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 strictly prohibited.²²

Section 480.43, F.S., provides 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 provides 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’s 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.²³ Sexual activity is strictly prohibited.²⁴ Upon receiving an application, DOH inspects the establishment to ensure it meets the requirements.²⁵ Once licensed, the DOH inspects the establishment at least annually.²⁶

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 application²⁷ and for past sexual misconduct.²⁸

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.²⁹ The DOH may issue cease and desist notices, enforceable by filing for an injunction or writ of mandamus and seek civil penalties against the unlicensed party in

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

²⁰ Chapter 480, F.S.

²¹ Section 480.041, F.S.

²² Section 480.0485, F.S.

²³ Rule 64B7-26.003, F.A.C.

²⁴ Rule 64B7-26.010, F.A.C.

²⁵ Rule 64B7-26.004, F.A.C.

²⁶ Rule 64B7-26.005, F.A.C.

²⁷ Section 456.0635, F.S.

²⁸ Section 456.063, F.S.

²⁹ Section 456.065, F.S.

circuit court.³⁰ 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

The bill provides Legislative intent, including a finding that perpetrators of human smuggling are shielding their crime behind counterfeit or valid state professional or occupational licenses, and the intent to provide law enforcement agencies and the DOH with the means to combat human trafficking committed under the guise of massage services.

The bill also amends Legislative findings concerning human trafficking to include a finding that “massage therapy and work within a specialty salon, cosmetology salon or spa” may be a form of forced labor through human trafficking.

The bill increases the prerequisites to obtaining a massage establishment license to include:

- Applicants not already holding state health care licenses must submit fingerprints to DOH for a background check, paid for by the applicant.
- Background checks exposing a conviction of one of the bill’s enumerated sexual, violent or drug trafficking offenses may be denied. The bill provides a definition of ‘conviction’ consistent with current law.

The bill specifically requires operators of cosmetology salons, public lodging establishments and health studios providing massage services to obtain a massage establishment license.

The bill requires licensed massage establishments to report to the board the license number of each massage therapist it employs.

The bill authorizes the Board of Massage Therapy to adopt rules providing for the disapproval of board-approved massage schools where the majority of the school’s graduates have engaged in a pattern of misconduct, defined as at least one conviction of prostitution during a 2-year period, while providing massage services at a massage establishment.

The bill requires massage therapy license examinations be given in English only and requires each applicant demonstrate English proficiency as a prerequisite to licensure.

The bill adds to the grounds for license denial or disciplinary action against a licensed massage therapist the failure to report to the board the license number of any massage establishment in which they practice.

The bill adds to the grounds for license denial or disciplinary action against a licensed massage establishment the establishment’s employment of an unlicensed person to provide massage services and the establishment’s failure to report to the board the license number of any massage therapist in its employ.

B. SECTION DIRECTORY:

Section 1 provides legislative findings and intent.

Section 2 creates s. 480.054, F.S., requiring criminal history checks for massage establishment license applicants.

Section 3 amends s. 477.025, F.S., to require cosmetology salons offering massage services obtain a massage establishment license.

Section 4 amends s. 480.033, F.S., to define the term "convicted" or "conviction"

³⁰ Section 456.065, F.S.

Section 5 amends s. 480.035, F.S., to provide the Board of Massage Therapy with rule-making authority.

Section 6 amends s. 480.042, F.S., to require massage therapist licensing examinations to be conducted in English

Section 7 amends s. 480.043, F.S., to require certain reports from massage establishments and massage therapists.

Section 8 amends s. 480.046, F.S., to provide new grounds for discipline for a massage therapist or massage establishment licensee.

Section 9 amends s. 501.015, F.S., to require health studios offering massage services obtain a massage establishment license.

Section 10 amends s. 509.241, F.S., to require public lodging establishments offering massage services obtain a massage establishment license.

Section 11 amends s. 787.06, F.S., concerning legislative findings relating to human trafficking.

Section 12 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill would allow the Department of Health to collect fees to cover the cost of processing initial background checks. The bill does not include the same provision as to background checks necessitated by a license's renewal.

	1 st Year	2 nd Year	3 rd Year	4 th Year
Background Check Fee (Initial)	\$453,979	\$450,102	\$450,102	\$450,102
Total	\$453,979	\$450,102	\$450,102	\$450,102

2. Expenditures:

The Department of Health reports it will require 3 FTEs and increased expenditures to implement the bill's requirements for background checks and to handle an expected increase in complaints and subsequent investigations.

	1 st Year	2 nd Year	3 rd Year	4 th Year
3 FTEs (Operations Analyst II)	\$157,856	\$146,225	\$146,225	\$146,225
Contracted Services				
Background Check Processing (Initial)	\$401,360	\$401,360	\$401,360	\$401,360
Background Check Processing (Renewal)	-	\$802,720	-	\$802,720
Background Check-Employment	\$12,024	\$12,024	\$12,024	\$12,024
Total	\$571,239	\$1,362,328	\$559,608	\$1,362,328

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Massage therapists and massage establishments would experience increased costs for licensure to cover initial background checks.

D. FISCAL COMMENTS:

The Department of Health reports it would require 3 FTEs to implement the requirements of the bill. While DOH's costs associated with initial background checks would be covered by applicants, the DOH would experience some expenditures for background checks associated with license renewals.

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:

The Department of Health provided the following:

The Board of Massage Therapy supports the intent of this bill, but not the language as currently written. They have stated the following concerns:

- No budget authority has been provided.
- The exams have been limited to only English.
- The reporting requirements would place an undue burden on licensees and delay the licensure process.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES