

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 477 Human Trafficking
SPONSOR(S): Burgin
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
2) Business & Consumer Affairs Subcommittee			
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Human trafficking, specifically trafficking for the purpose of sexual 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.

Chapter 480, F.S., the Massage Practice Act, regulates the practice of massage. To be licensed as a massage therapist, an applicant must be at least 18 years old, complete an approved massage school, and pass a state examination. 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.

Licensed massage therapists are prohibited by statute and by Department of Health (DOH) rules from using the therapist-client relationship to engage in, or make arrangements to engage in, sexual activity with a client.

HB 477 creates s. 480.0535, F.S., entitled "Documents required while offering or providing massage services." It requires persons providing or offering massage services to have in his or her possession, and to present to a requesting law enforcement officer, a DOH-issued wallet-size identification license card or wall license card and one of the following documents specifically issued to such person:

- A current driver's license or state-issued identification card;
- A valid U.S. passport;
- A valid I-551 permanent resident card; or
- A valid employment authorization document (EAD Card).

The bill also specifies that a person, firm, or corporation operating a massage establishment:

- Is required to maintain a valid work authorization document onsite for each employee who is not a U.S. citizen and to present such documents to a requesting law enforcement officer.
- Is prohibited from knowingly using a massage establishment license for the purpose of lewdness, assignation, or prostitution at a massage establishment location.

The bill provides criminal penalties for violations of s. 480.0535, F.S.

On March 2, 2011, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections. The bill may also have an impact on local jails.

The bill has an effective date of October 1, 2011.

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

STORAGE NAME: h0477a.CRJS

DATE: 3/15/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Human Trafficking – Generally

Human trafficking is a form of modern-day slavery. Victims of human trafficking, which consist of young children, teenagers, men and women, are subjected to force, fraud, or coercion, for the purpose of sexual exploitation or forced labor. After drug dealing, trafficking of humans is tied with arms dealing as the second largest criminal industry in the world, and is the fastest growing.¹

Many victims of human trafficking are forced to work in prostitution or the sex entertainment industry. But trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.²

Traffickers use various techniques to instill fear in victims and to keep them enslaved. While some traffickers keep their victims under lock and key, others use less obvious techniques including:

- Debt bondage - financial obligations, honor-bound to satisfy debt.
- Isolation from the public - limiting contact with outsiders and making sure that any contact is monitored or superficial in nature.
- Isolation from family members and members of their ethnic and religious community.
- Confiscation of passports, visas and/or identification documents.
- Use or threat of violence toward victims and/or families of victims.
- The threat of shaming victims by exposing circumstances to family.
- Telling victims they will be imprisoned for immigration violations if they contact authorities.
- Control of the victims' money, e.g., holding their money for "safe-keeping."³

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.⁴ An estimated 18,000 to 20,000 people are trafficked into the United States annually.⁵ While the number of instances of trafficking in Florida is difficult to estimate, 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.⁶

Federal Human Trafficking Law

Prior to 2000, no comprehensive Federal law existed to protect victims of trafficking or to prosecute their traffickers. In October 2000, the Trafficking Victims Protection Act of 2000 (TVPA)⁷ made human trafficking a Federal crime. It was enacted to prevent human trafficking overseas, to protect victims and help them rebuild their lives in the United States, and to prosecute traffickers of humans under Federal penalties.⁸ 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.⁹

¹ U.S. Department of Health and Human Services, Administration for Children & Families, *About Human Trafficking*, <http://www.acf.hhs.gov/trafficking/about/index.html> (last accessed March 10, 2011).

² *Id.*

³ *Id.*

⁴ U.S. Department of State, *Trafficking in Persons Report (June 2010)*, <http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm> (last accessed March 10, 2011).

⁵ U.S. Department of State, *Trafficking in Persons Report (June, 2003)*, <http://www.state.gov/g/tip/rls/tiprpt/2003> (last accessed March 11, 2011).

⁶ National Organization for Women, *Human Trafficking*, <http://www.fnw.org/trafficking.html> (last accessed March 12, 2011).

⁷ Pub.L. No. 106-386 (2000).

⁸ U.S. Department of Health and Human Services, Administration for Children & Families, *About Human Trafficking*, <http://www.acf.hhs.gov/trafficking/about/index.html> (last accessed March 10, 2011).

⁹ Pub.L. No. 106-386 (2000).

Florida Human Trafficking Law

Florida law provides that a person commits human trafficking¹⁰ if they knowingly:

- Engage, or attempt to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
- Benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.¹¹

A person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution commits sex trafficking.¹² Both human trafficking and sex trafficking are 2nd degree felonies.¹³

Sex Trafficking in Massage Establishments

In 2009, the Florida Legislature created the Florida Statewide Task Force on Human Trafficking for the purpose of examining the problem of human trafficking and recommending strategies and actions for reducing or eliminating human trafficking in Florida.¹⁴ The legislation required Florida State University's Center for Advancement of Human Rights (CAHR) to submit a statewide strategic plan and plan of implementation.¹⁵

In studying human trafficking in Florida, CAHR found that massage establishments are often used to disguise sex trafficking. Women working at these establishments are trafficked into Florida from Korea, Vietnam, Thailand, and China using tourist visas, and are then forced to "work off" their debt of being smuggled into the state.¹⁶ The debts are typically \$50,000 to \$100,000.¹⁷ Officials in Florida have discovered a very pronounced pattern of "moving targets" with some massage establishments operating a "taxi service" that transports women to other massage establishments throughout the country as often as every 7 to 14 days.¹⁸ Many of these establishments also open and close frequently to avoid having to hold trafficked women in a single location.¹⁹

Current Regulation of Massage Therapists and Massage Establishments

Chapter 480, F.S., entitled the Massage Practice Act, regulates the practice of massage.²⁰ The Board of Massage Therapy (Board) within the Department of Health (DOH) issues licenses to practice massage and to operate massage establishments^{21, 22}. To be licensed as a massage therapist,²³ an applicant must:

¹⁰ Section 787.06(2), F.S., defines "human trafficking" as "transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport."

¹¹ Section 787.06(3), F.S.

¹² Section 796.045, F.S.

¹³ Sections 787.06(3) and 796.045, F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S. In certain instances, sex trafficking is punishable as a 1st degree felony.

¹⁴ Ch. 2009-95, L.O.F.

¹⁵ *Id.*

¹⁶ 2011 Florida Senate Bill Analysis of CS/SB 246 (on file with Criminal Justice Subcommittee staff).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 480.033, F.S., defines the term "massage" as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

²¹ Section 480.033, F.S., defines the term "establishment" as a site or premises, or portion thereof, wherein a massage therapist practices massage.

²² Sections 480.041 and 480.043, F.S.

²³ Section 480.033, F.S., defines the term "massage therapist" as a person licensed as required by ch. 480, F.S., who administers massage for compensation.

- Be at least 18 years old;
- Complete board-approved massage school²⁴ or apprenticeship program; and
- Pass an examination, currently offered in Spanish and English.²⁵

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.²⁶

Section 480.43, F.S., 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 license application criteria. Board rules require such establishments to have insurance, comply with building codes, comply with safety and sanitary requirements, and have a licensed massage therapist onsite anytime a client is receiving massage services.²⁷ Upon receiving a license application, DOH inspects the establishment to ensure it meets the requirements,²⁸ and once licensed, inspects the establishment at least annually.²⁹

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.³⁰ Board rules also provide:

- Sexual activity by any person or persons in any massage establishment is absolutely prohibited.
- 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.
- 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.³¹

An application for a massage therapist license or a massage establishment license may be denied if the applicant engaged in sexual misconduct.³² Operation of an unlicensed massage establishment is considered a 1st degree misdemeanor,³³ while the unlicensed practice of massage therapy is punishable as a 3rd degree felony^{34 35}.

Currently, upon receiving a complaint that unlicensed activity is occurring, DOH's Medical Quality Insurance inspectors coordinate with local law enforcement to investigate the complaint. 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 circuit court.³⁶ The DOH may also impose, by citation, an administrative penalty up to \$5,000.³⁷ While DOH has investigative authority, it does not have arrest authority or sworn law enforcement personnel.

²⁴ Section 480.033, F.S., defines the term "board-approved massage school" as a facility which meets minimum standards for training and curriculum as determined by rule of the board and which is licensed by the Department of Education pursuant to chapter 1005 or the equivalent licensing authority of another state or is within the public school system of this state.

²⁵ Section 480.041, F.S.

²⁶ Section 480.046(1), F.S.

²⁷ Rule 64B7-26.003, F.A.C.

²⁸ Rule 64B7-26.004, F.A.C.

²⁹ Rule 64B7-26.005, F.A.C.

³⁰ Section 480.046 and 480.0485, F.S.

³¹ Rule 64B7-26.010, F.A.C.

³² Section 480.046(2) and (3), F.S.

³³ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

³⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

³⁵ Section 456.065, F.S.

³⁶ *Id.*

³⁷ *Id.*

Effect of the Bill

HB 477 creates s. 480.0535, F.S., entitled "Documents required while offering or providing massage services."

Documents Required for Massage Therapists

The bill requires each person providing or offering massage services for compensation or on behalf of a massage establishment or any business, to have in his or her possession a DOH-issued wallet-size identification license card or wall license card and one of the following documents specifically issued to such person:

- A current driver's license or state-issued identification card;
- A valid U.S. passport;
- A valid I-551 permanent resident card; or
- A valid employment authorization document (EAD Card).

The bill also requires that such persons present his or her massage therapist license issued in his or her name and one of the above-listed documents to a law enforcement officer upon request. The bill specifies that it is unlawful to provide or offer to provide massage services without the above-described documents.

The bill states that the above requirements are necessary to provide law enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking or prostitution by the fraudulent or valid use of a license to practice massage therapy or operate a massage establishment.

Documents Required for Massage Establishments

The bill requires a person, firm, or corporation operating a massage establishment to maintain a valid work authorization document onsite for each employee who is not a U.S. citizen and to present such documents to a requesting law enforcement officer. Valid work authorization documents include a valid I-551 permanent resident card or a valid employment authorization document. The bill specifies that it is unlawful to operate a massage establishment without maintaining such documents onsite.

Lewdness, Assignment, or Prostitution Prohibited

The bill also prohibits a person, firm, or corporation operating a massage establishment from knowingly using a massage establishment license for the purpose of lewdness, assignment, 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 of the above provisions commits a 2nd degree misdemeanor³⁸ for a first offense and a 1st degree misdemeanor for a second offense. Third and subsequent violations are punishable as a 3rd degree felony ranked in Level 5 of the offense severity ranking chart of the Criminal Punishment Code.³⁹

B. SECTION DIRECTORY:

Section 1. Creates s. 480.0535, F.S., relating to documents required while offering or providing massage services.

Section 2. The bill is effective October 1, 2011.

³⁸ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

³⁹ Section 921.0022(3)(e), F.S. The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill makes third and subsequent violations of s. 480.0535, F.S., a 3rd degree felony ranked in Level 5 of the offense severity ranking chart of the Criminal Punishment Code. On March 2, 2011, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill creates 1st and 2nd degree misdemeanor offenses which could impact local jails.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Subsection (3) of s. 480.0535, F.S., (lines 68-79) appears to re-state the prohibitions in subsection (1).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES