

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 584

INTRODUCER: Senators Flores and Lynn

SUBJECT: Massage Therapy

DATE: March 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Pre-meeting
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill authorizes a person who graduates from an accredited massage therapy school and meets certain licensure requirements to obtain a temporary permit from the Massage Therapy Board (board), within the Department of Health (DOH), to practice massage therapy. The temporary permit is valid for 6 months after its issuance by the board, until the applicant fails the massage licensure examination, or until the applicant receives a massage therapist license, whichever occurs first. The bill allows those with a temporary permit to practice massage only under the supervision of a licensed massage therapist, who has an active and unencumbered license.

The bill requires an applicant seeking a temporary permit to practice massage therapy to pay a one-time fee not to exceed \$50.

This bill substantially amends the following sections of the Florida Statutes: 480.041 and 480.044.

II. Present Situation:

Background

The American Massage Therapy Association (AMTA)¹ estimated that in 2010, massage therapy was a \$12-17 billion industry. The AMTA also estimated that there are approximately 280,000 to

¹ AMTA is the largest non-profit, professional association serving more than 56,000 massage therapists, massage students, and massage schools. See AMTA, *2011 Massage Therapy Industry Fact Sheet*, available at: <http://www.amtamassage.org/articles/2/PressRelease/detail/2320> (Last visited on March 4, 2011).

320,000 massage therapists and massage school students in the United States. According to the U.S. Department of Labor in 2010, employment for massage therapists is expected to increase 19 percent from 2008 to 2018, faster than the average for all occupations.²

In May 2008, median hourly wages of massage therapists, including gratuities, were \$16.78. The middle 50 percent earned between \$11.36 and \$25.14. The lowest 10 percent earned less than \$8.01, and the highest 10 percent earned more than \$33.47. Because many therapists work part time, yearly earnings can vary considerably, depending on the therapist's schedule. Generally, massage therapists earn some portion of their income as gratuities. For those who work in a hospital or other clinical setting, however, tipping is not common.³

Currently, 43 states and the District of Columbia regulate massage therapists or provide voluntary state certification.⁴ In states that regulate massage therapy, massage therapists must meet the legal requirements to practice, which may include minimum hours of initial training and passing an exam. In states that do not regulate massage therapy, this task may fall to local municipalities. Most states that license massage therapists require a passing grade on the Massage & Bodywork Licensing Exam (MBLEx) or one of two exams provided by the National Certification Board for Therapeutic Massage & Bodywork.⁵

Florida Regulation of Massage Therapists and Massage Establishments

Massage therapists and massage establishments in Florida are regulated by the board, within the DOH, under the Massage Practice Act, ch. 480, F.S., and Chapter 64B7, Florida Administrative Code. A person must be licensed as a massage therapist to practice massage for compensation, unless otherwise specifically exempted under the Massage Practice Act.⁶ In order to be licensed as a massage therapist, an applicant must:

- Be at least 18 years old or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a board-approved massage school⁷ or apprenticeship program; and
- Pass an examination,⁸ which is currently offered in English and in Spanish.⁹

² U.S. Department of Labor, Bureau of Labor Statistics; *Occupational Outlook Handbook, 2010-11 Edition: Massage Therapists*; available at http://www.bls.gov/oco/ocos295.htm#projections_data (Last visited on March 1, 2011).

³ *Id.*

⁴ AMTA, *2011 Massage Therapy Industry Fact Sheet*, available at:

<http://www.amtamassage.org/articles/2/PressRelease/detail/2320> (Last visited on March 4, 2011). A list of states and a summary of their massage regulations is available at: http://www.massagetherapy.com/_content/careers/MTreg.pdf (Last visited on March 4, 2011). Currently, Alaska, Idaho, Kansas, Minnesota, Oklahoma, Vermont, and Wyoming do not regulate massage therapy.

⁵ AMTA, *2011 Massage Therapy Industry Fact Sheet*, available at:

<http://www.amtamassage.org/articles/2/PressRelease/detail/2320> (Last visited on March 4, 2011).

⁶ Section 480.047(1)(a), F.S. *See also* s. 480.033(4), F.S.

⁷ A list of board-approved massage schools is available at: http://www.doh.state.fl.us/mqa/massage/lst_ma-school.pdf (Last visited on March 4, 2011).

⁸ Section 480.042, F.S.

⁹ Rule 64B7-25.001(3), F.A.C.

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.¹⁰ Sexual misconduct, defined as a violation of the professional relationship through the use of such relationship to engage or attempt to engage in sexual activity outside the scope of the profession, is strictly prohibited.¹¹

A person may be approved by the board to become an apprentice to study massage under the instruction of a licensed massage therapist, if the person meets the qualifications stated in Rule 64B7-29.002, Florida Administrative Code. To qualify for an apprenticeship, the applicant must have secured the sponsorship of a sponsoring massage therapist, complete a DOH application, pay a \$100 fee, and must not be enrolled simultaneously as a student in a board-approved massage school.¹²

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 if the new location is inspected and approved by the board and an application and inspection fee has been paid. A license may be transferred from one business name to another if approved by the board and if an application fee has been paid.

The board's rules include insurance requirements, compliance with building codes, and safety and sanitary requirements, and require a licensed massage therapist to be onsite any time a client is receiving massage services.¹³ Upon receiving an application, the DOH inspects the establishment to ensure it meets the licensure requirements.¹⁴ Once licensed, the DOH inspects the establishment at least annually.¹⁵

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 application¹⁶ and for past sexual misconduct.¹⁷

It is a misdemeanor of the first degree to operate an unlicensed massage establishment.¹⁸ Currently, upon receiving a complaint that unlicensed activity is occurring, the DOH's Medical Quality Assurance inspectors coordinate with local law enforcement. Unlicensed practice of massage therapy is punishable as a third-degree felony.¹⁹ 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.²⁰ The DOH may also impose, by citation, an

¹⁰ Section 480.046(1)(n), F.S.

¹¹ Section 480.0485, F.S. *See also* Rule 64B7-26.010, F.A.C.

¹² *See* rule 64B7-27.005, for the apprentice fee amount.

¹³ Rule 64B7-26.003, F.A.C.

¹⁴ Rule 64B7-26.004, F.A.C.

¹⁵ Rule 64B7-26.005, F.A.C.

¹⁶ Section 456.0635, F.S.

¹⁷ Section 456.063, F.S.

¹⁸ Section 480.047, F.S.

¹⁹ Section 456.065, F.S.

²⁰ *Id.*

administrative penalty up to \$5,000. While the DOH has investigative authority, it does not have arrest authority or sworn law enforcement personnel.

III. Effect of Proposed Changes:

Section 1 amends s. 480.041, F.S., to authorize the board to issue a temporary permit to practice massage therapy to an applicant who graduates from a massage therapy school that is accredited by an accrediting agency recognized by the U.S. Department of Education that specializes in accrediting massage therapy education.

An applicant only qualifies to apply for a temporary permit if he or she is at least 18 years of age or has received a high school diploma or graduate equivalency diploma, has completed a course of study at a board-approved massage school, and has not yet taken the examination required for licensure. An applicant must apply to the DOH in writing upon forms prepared and furnished by the DOH. Applicant's who receive a temporary permit are subject to the provisions in s. 480.046, F.S., which specifies circumstances under which the DOH can deny a license or conduct a disciplinary action.

This section specifically exempts applicants for temporary permits from the:

- Licensure requirements that require a passing grade on an examination administered by the DOH;
- Board's rules that require education, examination, and certification for the practice of colonic irrigation;
- Board's rules relating to licensing procedures for those desiring to be licensed in Florida and who hold an active license in, and have practiced in, another state, territory, or jurisdiction of the U.S. or any foreign national jurisdiction which has licensing standards substantially similar to, equivalent to, or more stringent than the standards in Florida for licensure.

The temporary permit is only valid for 6 months after issuance by the board, until the applicant fails the massage licensure examination, or receives a massage therapist license, whichever occurs first. A person practicing massage therapy under a temporary permit must be supervised by a licensed massage therapist who has a full, active, and unencumbered license.

Section 2 amends s. 480.044, F.S., to require the board to set a fee for temporary permits for providing massage therapy services, which is not to exceed \$50.

Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

Applicants seeking a temporary permit to perform massage therapy services will be required to pay a fee up to \$50.

B. Private Sector Impact:

Businesses offering massage therapy services may be able to offer services to the public for less money if persons with temporary permits, while supervised, are able to provide such services at a reduced rate.

C. Government Sector Impact:

The DOH has estimated that approximately 2,606 applicants would have requested a temporary permit if 75 percent of the 3,475 applicants for massage therapy licensure in fiscal year 2009-10 requested a temporary permit. The DOH has reported that it will not require additional resources to implement the provisions of this bill and will absorb the costs associated with rulemaking responsibilities and the changes that will be needed for the DOH's application forms and database. The estimated revenue the DOH expects to generate from the temporary permit fees is \$130,300.²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOH reports that the bill does not give the DOH sufficient authority to develop the proper forms needed for temporary permit applications. The DOH suggests inserting the following language on line 17 of the bill: "An applicant for a temporary permit shall apply to the department in writing upon forms prepared and furnished by the department in accordance with the board's rules."²²

²¹ Department of Health, *Bill Analysis, Economic Statement, and Fiscal Note for SB 584*, dated February 8, 2011. A copy of this analysis is on file with the Senate Health Regulation Committee.

²² *Id.*

Because the bill authorizes the board to set fees for a temporary permit up to \$50, the DOH will have to promulgate a rule and perform a statement of estimated regulatory costs in order to set a fee. A lengthy rulemaking process could be avoided if the bill simply stated that the fee is to be \$50 per application.²³

The DOH has requested an effective date of January 3, 2012, instead of July 1, 2011, in order to give the DOH time to promulgate the rules necessary to implement the bill, prepare the appropriate application forms, and update the DOH database.²⁴

Lines 26 through 27 of the bill require an applicant seeking a temporary permit to practice massage therapy to have completed a course of study at a board-approved massage school. Lines 23 through 24 require an applicant to meet all of the qualifications for licensure under s. 480.041, F.S. Section 480.041(1)(b), F.S., requires a person to complete a course of study at a board-approved massage school *or* to complete an apprenticeship program that meets standards adopted by the board. Therefore, it is unclear whether a person who has completed an apprenticeship is eligible to apply for a temporary permit.

Lines 25 through 29 of the bill authorize an applicant to *apply* for a temporary permit to practice massage therapy if the applicant has completed a course of study at a board-approved massage school. However, lines 19 through 22 of the bill only authorize the board to *issue* a temporary permit to practice massage therapy if the applicant has graduated from a school that is accredited by an accrediting agency recognized by the U.S. Department of Education for the agency's specialization in accrediting massage therapy education, which is currently not required under law for a school to become a "board-approved massage school." Therefore, the bill only authorizes applicants who have graduated from certain accredited massage schools to obtain a temporary permit.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²³ *Id.*

²⁴ *Id.*