

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1065 Licensed Massage Therapists

SPONSOR(S): Health Quality Subcommittee; Kerner

TIED BILLS: **IDEN./SIM. BILLS:** SB 1068

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	Guzzo	O'Callaghan
2) Justice Appropriations Subcommittee	12 Y, 0 N	deNagy	Lloyd
3) Health & Human Services Committee	16 Y, 1 N	Guzzo	Calamas

SUMMARY ANALYSIS

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse to create a single program of screening individuals for criminal background checks prior to employment in certain health related service positions.

Chapter 480, F.S., entitled the "Massage Practice Act", governs the practice of massage in Florida. Currently, an applicant for licensure as a massage therapist is not required to undergo a criminal history background screening.

The bill requires applicants for licensure as a massage therapist and individuals with ownership in or management responsibilities for a massage establishment to submit fingerprints for background screening. The bill requires the Board of Massage Therapy to deny applications for initial licensure and licensure renewal of any individual screened and determined to have been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, specified criminal acts.

The bill also requires massage therapists and individuals with ownership in or management responsibilities for a massage establishment who were licensed prior to July 1, 2014, to submit to the background screening requirements by January 31, 2015. The bill authorizes the Department of Health to issue an emergency order suspending the license of a massage therapist, or massage establishment, upon receipt of information that the individual has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, specified criminal acts.

The bill is expected to have a net positive fiscal impact on state government. See FISCAL SECTION.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Massage Therapists and Establishments

Chapter 480, F.S., entitled the “Massage Practice Act” (Act), governs the practice of massage¹ in Florida. A significant portion of the Act is dedicated to regulating massage establishments, which are defined as “a site or premises, or portion thereof, wherein a massage therapist practices massage.”²

Massage establishments may only operate if they have applied for and received a license from the Department of Health (DOH) in accordance with rules adopted by the Board of Massage Therapy (Board).³ The Board’s rules:⁴

- Govern the operation of massage establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, and insurance coverage;
- Require DOH to inspect a proposed massage establishment upon receipt of an application for licensure to ensure that the site is to be utilized for massage; and
- Require DOH to periodically inspect licensed massage establishments at least once a year.

In order to be licensed as a massage therapist, an applicant must:⁵

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a massage school or apprentice program approved by the board; and
- Pass an examination.

In addition to practicing massage therapy in a licensed massage establishment, a massage therapist may practice at a client’s residence or office, at a sports event, or at a convention or trade show.⁶

Background Screening

In 2012, the Legislature passed CS/CS/CS/HB 943, which created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single “program” of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among designated agencies. Designated agencies include the Agency for Health Care Administration (AHCA), DOH, the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, and Vocational Rehabilitation within the Department of Education. Once a person’s screening record is in the Clearinghouse, that person will avoid the need for any future state screens and related fees. Final implementation of the Clearinghouse by the designated state agencies was required by October 1, 2013. The Clearinghouse was initially implemented by AHCA on January 1, 2013.

¹ The term “massage” is defined 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. Section 480.033(3), F.S.

² Section 480.033(7), F.S.

³ Section 480.043(1), F.S.

⁴ See Rules 64B7-26.003, 64B7-26.004, and 64B7-26.005, F.A.C.

⁵ Sections 480.041, and 480.042, F.S.

⁶ Section 480.046(1)(n), F.S.

Florida licensure laws require providers licensed by AHCA to conduct Level 2⁷ criminal background screenings for:⁸

- The licensee;
- Administrators and financial officers;
- Staff of health care providers who offer residential and home care services that provide personal care services or have access to client property, funds or living areas; and
- Any person who is a controlling interest if there is reason to suspect they have committed a disqualifying criminal offense.

Florida licensure laws also require certain health care practitioners licensed by DOH to submit to background screening as a condition of licensure, including, physicians⁹, chiropractors¹⁰, podiatrists¹¹, nurses¹², and persons licensed or registered under part XIV of ch. 468, F.S.¹³ In addition, some health care practitioners may be required to undergo background screening as a condition of employment or to perform volunteer service in a facility that provides care to children, the elderly, or individuals with disabilities.¹⁴

Currently, massage therapists and the owners or operators of massage establishments are not required to undergo a criminal background screening prior to licensure.

Effect of Proposed Changes

The bill amends s. 456.0135, F.S., to add applicants seeking licensure under the Massage Practice Act, ch. 480, F.S., to the list of applicants required to provide electronic fingerprints to FDLE for an FBI national criminal history check. The bill requires all fingerprints submitted to FDLE to be retained by FDLE and enrolled in the national retained print arrest notification program at the FBI, effective when FDLE begins participation in the program. The bill provides that DOH is not required to request FDLE to forward retained prints of an applicant for licensure renewal to the FBI if the fingerprints are already enrolled in the national retained print arrest notification program. The bill also requires all fingerprints submitted to FDLE to be entered into the Clearinghouse.

The bill amends s. 456.074, F.S., to require DOH to issue an emergency order to suspend the license of a massage therapist; massage establishment; person with an ownership interest in the establishment; or, for a corporation that has more than \$250,000 of business assets in Florida, the owner, officer, or individual directly involved in the management of the establishment when DOH learns that the licensee has been convicted or found guilty of a specified felony offense, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, a specified felony offense. Specifically, the bill requires emergency suspension for a criminal offense under sections:

- 787.01, F.S., relating to kidnapping;
- 787.02, F.S., relating to false imprisonment;
- 787.025, F.S., relating to luring or enticing a child;
- 787.06, F.S., relating to human trafficking;
- 787.07, F.S., relating to human smuggling;
- 794.011, F.S., relating to sexual battery;
- 794.08, F.S., relating to female genital mutilation;

⁷ Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of certain specified offenses under s. 435.04(2), F.S.

⁸ Section 408.809, F.S.

⁹ Sections 458.311(1)(g), and 459.0055(1)(j), F.S.

¹⁰ Section 460.406(2)(f), F.S.

¹¹ Section 461.006(1)(e), F.S.

¹² Sections 464.008(1)(b), and 464.009(4), F.S.

¹³ Orthotists, prosthetists, pedorthists, orthotic fitters, orthotic fitter assistants, and orthotist and prosthetist residents.

¹⁴ Section 943.0542, F.S.

- 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- 796.035, F.S., relating to the selling or buying of minors into prostitution;
- 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;
- 796.05, F.S., relating to deriving support from the proceeds of a prostitute;
- 796.07(4)(c), F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, F.S., relating to prohibiting prostitution and related acts;
- 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- 827.071, F.S., relating to sexual performance by a child;
- 847.0133, F.S., relating to the protection of minors;
- 847.0135, F.S., relating to computer pornography;
- 847.0138, F.S., relating to the transmission of harmful materials to a minor by electronic device or equipment; and
- 847.0145, F.S., relating to the selling or buying of minors.

The bill amends s. 480.041, F.S., to require applicants for initial licensure or renewal licensure as a massage therapist to submit to background screening. The bill provides that massage therapists licensed before July 1, 2014, must submit to background screening by January 31, 2015. Further, the bill requires the board to deny applications for licensure if the applicant has been found guilty of, or entered a plea to, any of the criminal offenses enumerated above.

The bill amends s. 480.043, F.S., to require a person who has an ownership interest in a massage establishment to submit to the background screening requirements under s. 456.0135, F.S. If a corporation submits proof of having more than \$250,000 of business assets in Florida, the owner, officer, or individual directly involved in the management of the establishment is required to submit to the background screening requirements. DOH is required to deny the application for a new or renewal license if a person with an ownership interest, or, for a corporation that has more than \$250,000 of business assets in Florida, the owner, officer, or individual directly involved in the management of a massage establishment, has been found guilty of, or entered a plea to, any of the criminal offenses enumerated above.

Finally, the bill amends s. 480.0465, F.S., to conform a cross-reference.

B. SECTION DIRECTORY:

Section 1: Amends s. 456.0135, F.S., relating to general background screening provisions.

Section 2: Amends s. 456.074, F.S., relating to certain health care practitioners; immediate suspension of license.

Section 3: Amends s. 480.041, F.S., relating to massage therapists; qualifications; licensure; endorsement.

Section 4: Amends s. 480.043, F.S., relating to massage establishments; requisites; licensure; inspection.

Section 5: Amends s. 480.0465, F.S., relating to advertisement.

Section 6: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

An estimated 63,878 massage therapists and other individuals involved in overseeing, managing, or owning massage establishments will be submitting fingerprints for background screening in the first year and 5,896 in the recurring years. These individuals will be charged a fee of \$24 for a state

criminal history check and a fee of \$24 for a state retention fee.¹⁵ The estimated total revenue is \$3,066,144 in the first fiscal year and \$283,008 in the recurring fiscal years.¹⁶

2. Expenditures:

FDLE will need to assist with the fingerprint retention processing required by the bill and will need to process the criminal record checks. The estimated costs to FDLE will be \$63,520 in the first fiscal year and \$59,747 in the recurring fiscal years.¹⁷ The projected revenues from the background checks will cover the FDLE costs associated with this bill.

DOH anticipates the background screening of current licensees will result in expenses associated with enforcement actions of approximately \$145,000, as they will need four OPS Investigation Specialists for a period of 6 months and one Senior Attorney for 1 year. However, DOH has indicated that those costs can be absorbed within current budget authority.¹⁸

	Year 1	Year 2	Year 3
Revenues	\$3,066,114	\$283,008	\$283,008
FDLE Expenditures	\$ 63,520	\$ 59,747	\$ 59,747
DOH Expenditures	\$ 145,000	\$145,000	\$145,000
Positive Net Impact	\$2,857,594	\$ 78,261	\$ 78,261

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

All licensed massage therapists and specified persons associated with currently licensed massage establishments will be required to submit to background screening by January 1, 2015. These individuals will be charged a fee of \$24 for a state criminal history check and a fee of \$24 for a state fingerprint retention fee.¹⁹

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

¹⁵ Florida Department of Law Enforcement, HB 1065 Bill Analysis (March 6, 2014) on file with Justice Appropriations Subcommittee.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Florida Department of Health, HB 1065 Bill Analysis (March 3, 2014) on file with the Health Quality Subcommittee.

¹⁹ Florida Department of Law Enforcement, HB 1065 Bill Analysis (March 6, 2014) on file with Justice Appropriations Subcommittee.

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Health Quality Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Requires DOH to suspend a license of a person who commits a violation of specified crimes, including the license of a massage establishment.
- Requires the Board of Massage Therapy to deny applications for therapist licensure renewal in the same manner for initial licensure.
- Requires DOH to deny applications for massage establishment licensure renewal in the same manner for initial licensure.
- Adds three offenses related to prostitution to the list of disqualifying offenses for massage therapists and owners or managers of massage establishments.
- Changes the terminology that describes which representatives of a massage establishment must submit to background screening to make it consistent throughout the bill.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.