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CS/HB 1065, Engrossed 1

2014 Legislature

1
2 An act relating to licensed massage therapists;
3 amending s. 456.0135, F.S.; requiring an applicant for
4 licensure under chapter 480, F.S., to submit to
5 certain fingerprinting requirements; requiring
6 fingerprints to be enrolled in the national retained
7 print arrest notification program and the Care
8 Provider Background Screening Clearinghouse; amending
9 s. 456.074, F.S.; requiring the Department of Health
10 to issue an emergency order suspending the license of
11 a massage therapist or establishment for certain
12 offenses; amending s. 480.041, F.S.; requiring an
13 applicant for a massage therapist license to submit to
14 certain background screening requirements; requiring a
15 massage therapist who was issued a license before a
16 specified date to submit to certain background
17 screening requirements by a specified date; requiring
18 the Board of Massage Therapy to deny an application
19 for a new or renewal massage therapy license for
20 certain offenses; amending s. 480.043, F.S.; requiring
21 a person with a specified interest in an establishment
22 to submit to certain background screening
23 requirements; authorizing the department to adopt
24 rules related to corporate assets; requiring the
25 department to deny an application for a new or renewal



ENROLLED

CS/HB 1065, Engrossed 1

2014 Legislature

26 | message establishment license for certain offenses;
27 | requiring a person with a specified interest in a
28 | massage establishment that was issued a license before
29 | a specified date to submit to certain background
30 | screening requirements by a specified date; providing
31 | an exemption for certain licensed physicians;
32 | conforming a cross-reference; amending s. 480.0465,
33 | F.S.; conforming a cross-reference; providing an
34 | effective date.

35 |

36 | Be It Enacted by the Legislature of the State of Florida:

37 |

38 | Section 1. Section 456.0135, Florida Statutes, is amended
39 | to read:

40 | 456.0135 General background screening provisions.—

41 | (1) An application for initial licensure received on or
42 | after January 1, 2013, under chapter 458, chapter 459, chapter
43 | 460, chapter 461, chapter 464, ~~or~~ s. 465.022, or chapter 480
44 | shall include fingerprints pursuant to procedures established by
45 | the department through a vendor approved by the Department of
46 | Law Enforcement and fees imposed for the initial screening and
47 | retention of fingerprints. Fingerprints must be submitted
48 | electronically to the Department of Law Enforcement for state
49 | processing, and the Department of Law Enforcement shall forward
50 | the fingerprints to the Federal Bureau of Investigation for



ENROLLED

CS/HB 1065, Engrossed 1

2014 Legislature

51 national processing. Each board, or the department if there is
52 no board, shall screen the results to determine if an applicant
53 meets licensure requirements. For any subsequent renewal of the
54 applicant's license that requires a national criminal history
55 check, the department shall request the Department of Law
56 Enforcement to forward the retained fingerprints of the
57 applicant to the Federal Bureau of Investigation unless the
58 fingerprints are enrolled in the national retained print arrest
59 notification program.

60 (2) All fingerprints submitted to the Department of Law
61 Enforcement as required under subsection (1) shall be retained
62 by the Department of Law Enforcement as provided under s.
63 943.05(2)(g) and (h) and (3) and enrolled in the national
64 retained print arrest notification program at the Federal Bureau
65 of Investigation when the Department of Law Enforcement begins
66 participation in the program. The department shall notify the
67 Department of Law Enforcement regarding any person whose
68 fingerprints have been retained but who is no longer licensed.

69 (3) The costs of fingerprint processing, including the
70 cost for retaining fingerprints, shall be borne by the applicant
71 subject to the background screening.

72 (4) All fingerprints received under this section shall be
73 entered into the Care Provider Background Screening
74 Clearinghouse as provided in s. 435.12.

75 Section 2. Subsection (5) is added to section 456.074,



ENROLLED

CS/HB 1065, Engrossed 1

2014 Legislature

76 Florida Statutes, to read:

77 456.074 Certain health care practitioners; immediate
78 suspension of license.—

79 (5) The department shall issue an emergency order
80 suspending the license of a massage therapist or establishment
81 as defined in chapter 480 upon receipt of information that the
82 massage therapist, a person with an ownership interest in the
83 establishment, or, for a corporation that has more than \$250,000
84 of business assets in this state, the owner, officer, or
85 individual directly involved in the management of the
86 establishment has been convicted or found guilty of, or has
87 entered a plea of guilty or nolo contendere to, regardless of
88 adjudication, a felony offense under any of the following
89 provisions of state law or a similar provision in another
90 jurisdiction:

91 (a) Section 787.01, relating to kidnapping.

92 (b) Section 787.02, relating to false imprisonment.

93 (c) Section 787.025, relating to luring or enticing a
94 child.

95 (d) Section 787.06, relating to human trafficking.

96 (e) Section 787.07, relating to human smuggling.

97 (f) Section 794.011, relating to sexual battery.

98 (g) Section 794.08, relating to female genital mutilation.

99 (h) Section 796.03, relating to procuring a person under
100 the age of 18 for prostitution.



ENROLLED

CS/HB 1065, Engrossed 1

2014 Legislature

101 (i) Section 796.035, relating to the selling or buying of
102 minors into prostitution.

103 (j) Section 796.04, relating to forcing, compelling, or
104 coercing another to become a prostitute.

105 (k) Section 796.05, relating to deriving support from the
106 proceeds of prostitution.

107 (l) Section 796.07(4)(c), relating to a felony of the
108 third degree for a third or subsequent violation of s. 796.07,
109 relating to prohibiting prostitution and related acts.

110 (m) Section 800.04, relating to lewd or lascivious
111 offenses committed upon or in the presence of persons less than
112 16 years of age.

113 (n) Section 825.1025(2)(b), relating to lewd or lascivious
114 offenses committed upon or in the presence of an elderly or
115 disabled person.

116 (o) Section 827.071, relating to sexual performance by a
117 child.

118 (p) Section 847.0133, relating to the protection of
119 minors.

120 (q) Section 847.0135, relating to computer pornography.

121 (r) Section 847.0138, relating to the transmission of
122 material harmful to minors to a minor by electronic device or
123 equipment.

124 (s) Section 847.0145, relating to the selling or buying of
125 minors.



ENROLLED

CS/HB 1065, Engrossed 1

2014 Legislature

126 Section 3. Subsections (3) and (4) of section 480.041,
127 Florida Statutes, are renumbered as subsections (4) and (5),
128 respectively, and a new subsection (3) and subsections (6) and
129 (7) are added to that section to read:

130 480.041 Massage therapists; qualifications; licensure;
131 endorsement.—

132 (3) An applicant must submit to background screening under
133 s. 456.0135.

134 (6) Massage therapists who were issued a license before
135 July 1, 2014, must submit to the background screening
136 requirements of s. 456.0135 by January 31, 2015.

137 (7) The board shall deny an application for a new or
138 renewal license if an applicant has been convicted or found
139 guilty of, or enters a plea of guilty or nolo contendere to,
140 regardless of adjudication, a felony offense under any of the
141 following provisions of state law or a similar provision in
142 another jurisdiction:

143 (a) Section 787.01, relating to kidnapping.

144 (b) Section 787.02, relating to false imprisonment.

145 (c) Section 787.025, relating to luring or enticing a
146 child.

147 (d) Section 787.06, relating to human trafficking.

148 (e) Section 787.07, relating to human smuggling.

149 (f) Section 794.011, relating to sexual battery.

150 (g) Section 794.08, relating to female genital mutilation.



ENROLLED

CS/HB 1065, Engrossed 1

2014 Legislature

151 (h) Section 796.03, relating to procuring a person under
152 the age of 18 for prostitution.

153 (i) Section 796.035, relating to the selling or buying of
154 minors into prostitution.

155 (j) Section 796.04, relating to forcing, compelling, or
156 coercing another to become a prostitute.

157 (k) Section 796.05, relating to deriving support from the
158 proceeds of prostitution.

159 (l) Section 796.07(4)(c), relating to a felony of the
160 third degree for a third or subsequent violation of s. 796.07,
161 relating to prohibiting prostitution and related acts.

162 (m) Section 800.04, relating to lewd or lascivious
163 offenses committed upon or in the presence of persons less than
164 16 years of age.

165 (n) Section 825.1025(2)(b), relating to lewd or lascivious
166 offenses committed upon or in the presence of an elderly or
167 disabled person.

168 (o) Section 827.071, relating to sexual performance by a
169 child.

170 (p) Section 847.0133, relating to the protection of
171 minors.

172 (q) Section 847.0135, relating to computer pornography.

173 (r) Section 847.0138, relating to the transmission of
174 material harmful to minors to a minor by electronic device or
175 equipment.



ENROLLED

CS/HB 1065, Engrossed 1

2014 Legislature

176 (s) Section 847.0145, relating to the selling or buying of
177 minors.

178 Section 4. Subsections (2) through (6) of section 480.043,
179 Florida Statutes, are renumbered as subsections (3) through (7),
180 respectively, present subsections (7) through (9) are renumbered
181 as subsections (9) through (11), respectively, present
182 subsections (5) and (6) are amended, and new subsections (2),
183 (8), (12), and (13) are added to that section, to read:

184 480.043 Massage establishments; requisites; licensure;
185 inspection.—

186 (2) A person who has an ownership interest in an
187 establishment shall submit to the background screening
188 requirements under s. 456.0135. However, if a corporation
189 submits proof of having more than \$250,000 of business assets in
190 this state, the department shall require the owner, officer, or
191 individual directly involved in the management of the
192 establishment to submit to the background screening requirements
193 of s. 456.0135. The department may adopt rules regarding the
194 type of proof that may be submitted by a corporation.

195 (6)~~(5)~~ If, based upon the application and any necessary
196 investigation, the department determines that the proposed
197 establishment would fail to meet the standards adopted by the
198 board under subsection (3) ~~(2)~~, the department shall deny the
199 application for license. Such denial shall be in writing and
200 shall list the reasons for denial. Upon correction of any



ENROLLED

CS/HB 1065, Engrossed 1

2014 Legislature

201 deficiencies, an applicant previously denied permission to
202 operate a massage establishment may reapply for licensure.

203 (7)~~(6)~~ If, based upon the application and any necessary
204 investigation, the department determines that the proposed
205 massage establishment may reasonably be expected to meet the
206 standards adopted by the department under subsection (3) ~~(2)~~,
207 the department shall grant the license under such restrictions
208 as it shall deem proper as soon as the original licensing fee is
209 paid.

210 (8) The department shall deny an application for a new or
211 renewal license if a person with an ownership interest in the
212 establishment or, for a corporation that has more than \$250,000
213 of business assets in this state, the owner, officer, or
214 individual directly involved in the management of the
215 establishment has been convicted or found guilty of, or entered
216 a plea of guilty or nolo contendere to, regardless of
217 adjudication, a felony offense under any of the following
218 provisions of state law or a similar provision in another
219 jurisdiction:

220 (a) Section 787.01, relating to kidnapping.

221 (b) Section 787.02, relating to false imprisonment.

222 (c) Section 787.025, relating to luring or enticing a
223 child.

224 (d) Section 787.06, relating to human trafficking.

225 (e) Section 787.07, relating to human smuggling.



ENROLLED

CS/HB 1065, Engrossed 1

2014 Legislature

- 226 (f) Section 794.011, relating to sexual battery.
- 227 (g) Section 794.08, relating to female genital mutilation.
- 228 (h) Section 796.03, relating to procuring a person under
229 the age of 18 for prostitution.
- 230 (i) Section 796.035, relating to selling or buying of
231 minors into prostitution.
- 232 (j) Section 796.04, relating to forcing, compelling, or
233 coercing another to become a prostitute.
- 234 (k) Section 796.05, relating to deriving support from the
235 proceeds of prostitution.
- 236 (l) Section 796.07(4)(c), relating to a felony of the
237 third degree for a third or subsequent violation of s. 796.07,
238 relating to prohibiting prostitution and related acts.
- 239 (m) Section 800.04, relating to lewd or lascivious
240 offenses committed upon or in the presence of persons less than
241 16 years of age.
- 242 (n) Section 825.1025(2)(b), relating to lewd or lascivious
243 offenses committed upon or in the presence of an elderly or
244 disabled person.
- 245 (o) Section 827.071, relating to sexual performance by a
246 child.
- 247 (p) Section 847.0133, relating to the protection of
248 minors.
- 249 (q) Section 847.0135, relating to computer pornography.
- 250 (r) Section 847.0138, relating to the transmission of



ENROLLED

CS/HB 1065, Engrossed 1

2014 Legislature

251 material harmful to minors to a minor by electronic device or
252 equipment.

253 (s) Section 847.0145, relating to the selling or buying of
254 minors.

255 (12) A person with an ownership interest in or, for a
256 corporation that has more than \$250,000 of business assets in
257 this state, the owner, officer, or individual directly involved
258 in the management of an establishment that was issued a license
259 before July 1, 2014, shall submit to the background screening
260 requirements of s. 456.0135 before January 31, 2015.

261 (13) This section does not apply to a physician licensed
262 under chapter 458, chapter 459, or chapter 460 who employs a
263 licensed massage therapist to perform massage on the physician's
264 patients at the physician's place of practice. This subsection
265 does not restrict investigations by the department for
266 violations of chapter 456 or this chapter.

267 Section 5. Section 480.0465, Florida Statutes, is amended
268 to read:

269 480.0465 Advertisement.—Each massage therapist or massage
270 establishment licensed under the provisions of this act shall
271 include the number of the license in any advertisement of
272 massage services appearing in a ~~any~~ newspaper, airwave
273 transmission, telephone directory, or other advertising medium.
274 Pending licensure of a new massage establishment pursuant to the
275 provisions of s. 480.043(7) ~~480.043(6)~~, the license number of a



ENROLLED

CS/HB 1065, Engrossed 1

2014 Legislature

276 | licensed massage therapist who is an owner or principal officer
277 | of the establishment may be used in lieu of the license number
278 | for the establishment.

279 | Section 6. This act shall take effect July 1, 2014.