

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 Committee on Appropriations

BILL: CS/SB 1068

INTRODUCER: Health Policy Committee and Senator Latvala

SUBJECT: Massage Therapy

DATE: April 23, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Brown</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1068 requires applicants for licensure as a massage therapist and certain persons with ownership in or management responsibilities for a massage establishment to submit to background screening. The bill requires the Board of Massage Therapy (board) and the Department of Health (DOH) to deny an application for new or renewal licensure under ch. 480, F.S., if any person who is screened is determined to have been convicted of or entered a plea of guilty or nolo contendere to specified criminal acts. The bill also requires the DOH to suspend the license of a massage therapist or massage establishment if it learns that the massage therapist or person who is subject to background screening for the massage establishment license has been convicted of or entered a plea of guilty or nolo contendere to one of the specified criminal acts. The bill exempts specified physician-owned entities from the massage establishment licensure requirements.

The Florida Department of Law Enforcement (FDLE) anticipates an increase in Operating Trust Fund revenue of approximately \$3 million in Fiscal Year 2014-2015 under the bill and approximately \$283,000 in subsequent years. The FDLE anticipates that additional workload created under the bill can be absorbed within existing FDLE spending authority. The DOH anticipates that additional workload created under the bill can be absorbed within existing DOH spending authority.

II. Present Situation:

Florida Regulation of Massage Therapists and Massage Establishments

Massage therapists and massage establishments in Florida are regulated by the Board of Massage Therapy within the Department of Health (DOH) under the Massage Practice Act (ch. 480, F.S.). A person must be licensed as a massage therapist to practice massage for compensation, unless otherwise specifically exempted under the Massage Practice Act.¹ In order to be licensed as a massage therapist, an applicant must:²

- 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 approved by the board or apprenticeship program; and
- Pass an examination.

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.³ 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 prohibited.⁴

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. Massage establishment licenses may not be transferred to a new owner but may be transferred to a new location, subject to certain conditions. The board's rules address insurance, compliance with building codes, and safety and sanitary requirements,⁵ and require that massage therapy establishments be inspected prior to initial licensure and annually thereafter.⁶

The next biennial renewal date for licenses issued under the Massage Practice Act is August 31, 2015.⁷

The Care Provider Background Screening Clearinghouse

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse (clearinghouse). The clearinghouse establishes a single data source for background screening results of persons required to be screened by law for employment in positions that provide services to children, the elderly, and disabled individuals.⁸ The clearinghouse also allows the results of criminal history checks to be shared among specified state agencies,⁹ thereby reducing duplicative screenings for individuals requiring multiple screenings by multiple agencies.

¹ s. 480.047(1)(a), F.S.; s. 480.034, F.S.

² s. 480.041 and 480.042, F.S.

³ S. 480.046(1)(n), F.S.

⁴ s. 480.0485, F.S.

⁵ Rule 64B7-26.003, F.A.C.

⁶ See Rules 64B7-26.004 and 64B7-26.004, F.A.C.

⁷ Florida Department of Health, Board of Massage Therapy, *Renewal Information* <http://floridasmassagetherapy.gov/renewals/> (last visited March 10, 2014).

⁸ s. 435.12(1), F.S.

⁹ *Id.*

Fingerprints submitted for inclusion in the clearinghouse are sent to the FDLE electronically as a scanned image and retained by the FDLE for five years, subject to further retention on a renewal basis.¹⁰ The FDLE searches the retained prints against incoming Florida arrests and must report the results to the Agency for Health Care Administration (AHCA) for inclusion in the clearinghouse, thus avoiding the need for future state screens and related fees. A digital photograph of the person screened is taken at the time the fingerprints are taken and retained by the FDLE in electronic format as well. This enables accurate identification of the person when he or she changes jobs or is otherwise presented with a situation requiring screening. Retained fingerprints must be resubmitted for a Federal Bureau of Investigation (FBI) national criminal history check every five years until such time as the FBI implements its own retention program. Once the FBI implements its retention program, the need for any future screening by the specified agencies of persons in the clearinghouse will be eliminated.¹¹

The clearinghouse is in the process of being implemented by six designated state agencies. Currently, the clearinghouse is active and being used by the AHCA and the DOH.¹²

Health Practitioner Background Screening

Current law requires physicians, chiropractors, podiatrists, nurses, specified persons in connection with an application for a pharmacy permit, and persons licensed or registered under part XIV of ch. 468, F.S.,¹³ to submit to background screening as a condition of licensure¹⁴ and, in some cases, licensure renewal.¹⁵ The fingerprints of all of these practitioners are currently entered into the clearinghouse.¹⁶ In addition, some health care practitioners may be required to undergo background screening as a condition of employment or volunteer service in a facility or with an organization that provides care to children, the elderly, or persons with disabilities.¹⁷

Massage therapists and the owners or operators of massage establishments do not undergo a criminal background screening prior to licensure. Applicants are required to self-report criminal offenses on their applications,¹⁸ and licensees must self-report subsequent violations to the DOH within 30 days after conviction.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 456.0135, F.S., to add applicants for licensure as massage therapists or persons with specified interests or positions in a massage establishment under ch. 480, F.S., to the list of applicants required to provide electronic fingerprints to the FDLE for an FBI national

¹⁰ s. 435.12(2)(a), F.S.

¹¹ Florida Senate, *CS/CS/SB 320*, 8 (Feb. 28, 2012), available at <http://www.flsenate.gov/Session/Bill/2012/0320/Analyses/2012s0320.bha.PDF> (last visited March 7, 2014).

¹² See Agency for Health Care Administration, *Care Provider Background Screening Clearinghouse* http://ahca.myflorida.com/MCHO/Central_Services/Background_Screening/BGS_results.shtml, (last visited March 8, 2014).

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

¹⁴ See ss. 458.311(1)(g), 459.0055(1)(j), 460.406(2)(f), 461.006(1)(e), 464.008(1)(b), 464.009(4), 465.022

ss. 456.039(4)(a), F.S.

¹⁶ Conversation with Jennifer Wenhold, Florida Department of Health (March 7, 2014).

¹⁷ See, e.g., s. 943.0542, F.S.

¹⁸ Florida Department of Health, *SB 1086 Bill Analysis* (Feb. 18, 2014) (on file with the Senate Health Policy Committee).

¹⁹ s. 456.072(1)(x), F.S.

criminal history check. The bill also requires that all fingerprints submitted to the FDLE must be retained by the FDLE and enrolled in the national retained fingerprint arrest notification program. The DOH is not required to request that the FDLE forward retained prints of an applicant for renewal to the FBI if the fingerprints are already enrolled in the national program. The bill adds a specific requirement for the DOH to submit the fingerprints of all practitioners subject to this section to the clearinghouse.

Section 2 amends s. 456.074, F.S., to require the DOH to issue an emergency order suspending the license of a massage therapist or massage establishment when it learns that the massage therapist or person who is subject to background screening in connection with the massage establishment license has been convicted or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony offense under any of the following Florida laws or similar provision in another jurisdiction:

- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment;
- Section 787.025, F.S., relating to luring or enticing a child;
- Section 787.06, F.S., relating to human trafficking;
- Section 787.07, F.S., relating to human smuggling;
- Section 794.011, F.S., relating to sexual battery;
- Section 794.08, F.S., relating to female genital mutilation;
- Section 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- Section 796.035, F.S., relating to the selling or buying of minors into prostitution;
- Section 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;
- Section 796.05, F.S. relating to deriving support from the proceeds of a prostitute;
- Section 796.07(4)(c), F.S., relating to a felony of the third degree for a third or subsequent violation as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 825.1025(2)(b), F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 847.0133, F.S., relating to the protection of minors;
- Section 847.0135, F.S., relating to computer pornography;
- Section 847.0138, F.S., relating to the transmission of material harmful to minors to a minor by electronic device or equipment; or
- Section 847.0145, F.S., relating to the selling or buying of minors.

Section 3 amends s. 480.041, F.S., to require applicants for licensure or renewal licensure as a massage therapist to submit to background screening. Massage therapists licensed before July 1, 2014, must submit to background screening by January 31, 2015. The board is required to deny an application for licensure under the same circumstances and for the same crimes enumerated in Section 2 of the bill.

Section 4 amends s. 480.043, F.S., to require a person who has an ownership interest in a massage establishment to submit to background screening. If a corporation submits proof, as

determined by DOH rule, of having more than \$250,000 of business assets in Florida, the owner, officer, or individual directly involved in the management of the massage establishment must submit to background screening. The board is required to deny an application for new or renewal licensure if a person with an ownership interest in the massage establishment, or for a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the massage establishment, has been convicted or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony offense under any of the following Florida laws or similar provision in another jurisdiction:

- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment;
- Section 787.025, F.S., relating to luring or enticing a child;
- Section 787.06, F.S., relating to human trafficking;
- Section 787.07, F.S., relating to human smuggling;
- Section 794.011, F.S., relating to sexual battery;
- Section 794.08, F.S., relating to female genital mutilation;
- Section 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- Section 796.035, F.S., relating to the selling or buying of minors into prostitution;
- Section 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;
- Section 796.05, F.S. relating to deriving support from the proceeds of a prostitute;
- Section 796.07(4)(c), F.S., relating to a felony of the third degree for a third or subsequent violation as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 825.1025(2)(b), F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 847.0133, F.S., relating to the protection of minors;
- Section 847.0135, F.S., relating to computer pornography;
- Section 847.0138, F.S., relating to the transmission of material harmful to minors to a minor by electronic device or equipment; or
- Section 847.0145, F.S., relating to the selling or buying of minors;

A person with an ownership interest in, or for a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of a massage establishment licensed before July 1, 2014, must submit to the background screening by January 1, 2015.

The bill exempts an entity wholly owned by one or more physicians licensed under ch. 458, F.S. (allopathic physicians), ch. 459, F.S. (osteopathic physicians), or ch. 460, F.S. (chiropractors), or by such physicians and the spouse, parent, child, or sibling of such physicians from the massage establishment licensure requirements. The term defines “entity wholly owned” as a proprietorship, group practice, partnership, or corporation that provides health care services rendered by licensed physicians and health care practitioners in which the licensed physicians or such physicians and the spouse, parent, child, or sibling of such physicians are the business

owners in all aspects of the business entity, including, but not limited to, being reflected as the business owners on the title or lease of the physical facility, filing taxes as the business owners, being account holders on the entity's bank account, being listed as the principals on all incorporation documents required by this state, and having ultimate authority over all personnel and compensation decisions relating to the entity. This language parallels language used in ch. 627, F.S., relating to personal injury protection insurance requirements.

Section 5 amends s. 480.0465, F.S., to conform a cross-reference.

Section 6 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/SB 1068 requires certain individuals to undergo background screening. The combined cost of a state and national background screening, five-year state fingerprint retention, and FBI enrollment totals \$77.50 per individual.

B. Private Sector Impact:

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. The DOH estimates these numbers at 40,392 and 23,486, respectively. The DOH estimates the annual number of new applicants for massage therapy licenses or massage establishment licenses who will be subject to the requirement at 4,281 and 1,615, respectively. The combined cost of a state and national background screen, five-year state fingerprint retention, and FBI enrollment totals \$77.50. Total private sector impact, therefore, is estimated at \$4, 950,545 in the first year and \$456,940 in subsequent fiscal years.²⁰

²⁰ Florida Department of Law Enforcement, *SB 1086 Bill Analysis* (March 6, 2014) (on file with the Senate Health Policy Committee).

Private physician offices or other physician-owned facilities that provide massage services, in addition to health care services, will no longer incur the cost of complying with the massage establishment licensure requirements.

C. Government Sector Impact:

The state's share of the fees collected (and described above) under the bill by the Florida Department of Law Enforcement (FDLE) is estimated at \$3,066,144 in Fiscal Year 2014-2015 and \$283,008 annually thereafter.²¹ These fees are deposited into the FDLE's Operating Trust Fund.

The FDLE anticipates the additional workload to manage the fingerprint retention processing will require \$59,747 of recurring funds and \$3,773 of nonrecurring funds in Fiscal Year 2014-2015 from the Operating Trust Fund, which can be absorbed under current spending authority.

The DOH anticipates the background screening of current licensees will result in expenses associated with enforcement of \$145,000 that can be absorbed under current spending authority.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.0135, 456.074, 480.041, 480.043, and 480.0465.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 11, 2014:

The CS:

- Expands the duty of the DOH to suspend a license of a person who commits a violation of specified crimes to include the license of a massage establishment;
- Conforms the terminology that describes which representatives of a massage establishment must submit to background screening to make it consistent throughout the bill;

²¹ *Id.*

²² *Supra* note 18.

- Clarifies the obligation of the representative of a corporately-owned massage establishment to submit to background screening by Jan. 1, 2015;
- Specifies the authority of the board and the DOH, respectively, to deny a massage therapist's or massage establishment's application for license renewal based on the results of the background screen;
- Adds three offenses related to prostitution to the list of disqualifying offenses; and
- Exempts physician-owned entities from the massage establishment licensure requirements.

B. Amendments:

None.