

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** CS/CS/SB 1338

**INTRODUCER:** Appropriations Committee on Health and Human Services; Health Policy Committee; and Senator Martin

**SUBJECT:** Massage Establishments

**DATE:** April 24, 2023

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van Winkle	Brown	HP	<b>Fav/CS</b>
2.	Howard	Money	AHS	<b>Fav/CS</b>
3.	Winkle	Yeatman	FP	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1338 amends section 456.074, Florida Statutes, to authorize the Department of Health (department) to issue an emergency suspension order (ESO) to suspend the license of massage therapists (MTs) and massage establishments (MEs) if the MT or certain individuals connected to the ME are arrested for committing, attempting, soliciting, conspiring, or convicted or found guilty of, or enter criminal pleas to, specified violations in the ME.

The bill amends the massage therapy and ME practice act to redefine the term “designated establishment owner” and to create new definitions for “advertising media,” “employee,” and “sexual activity.” The bill permits code enforcement officers and law enforcement officers to inspect MEs for violations and to submit affidavits to the department with photos and documentation under certain circumstances within certain time frames, which then requires the department to inspect the ME within a certain time frame for specified violations and to initiate disciplinary proceedings if violations are discovered. If a law enforcement officer arrests a MT for violations of chapter 480, Florida Statutes, or finds that a ME is operating in violation of an ESO or an emergency restriction order (RO), the law enforcement agency must notify the department within five business days.

The bill creates new requirements and prohibitions for MEs. The bill amends the definition of an unlicensed ME for purposes of crimes to include employees or attendants who are licensed MTs.

The bill requires the Board of Massage Therapy (BMT) to adopt rules governing the operation of MEs and their facilities, employees, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.

The bill is estimated to have a significant negative fiscal impact on the department requiring eight additional positions and \$876,703 in trust funded budget authority. The bill appropriates eight full-time equivalent positions and the associated salary rate and budget to the Department of Health for the implementation of this bill (See Section V. of this analysis).

The bill takes effect on July 1, 2023.

## **II. Present Situation:**

### **Massage Establishments**

The Board of Massage Therapy (BMT), in conjunction with the Department of Health (department), regulates the practice of massage therapy and Massage Establishments (MEs) pursuant to ch. 480, F.S.

### **Board of Massage Therapy**

The BMT consists of seven members, who are appointed by the Governor, and confirmed by the Senate, for four year terms. Five members of the BMT must be licensed Massage Therapists (MTs) and have been engaged in the practice of MT at least five consecutive years prior to their appointment. Two members must be laypersons. Each BMT member must be a U.S. citizen, a Florida resident for at least five years, and a high school graduate or have a high school equivalency diploma (GED). The BMT must meeting at least once during the year for an annual meeting, and as necessary thereafter. A quorum for the BMT requires at least four BMT members. The BMT has authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of ch. 480, F.S.<sup>1</sup>

### ***Definitions Relevant to Massage Establishments***

A “massage establishment (ME)” is a site or premises, wherein a MT practices massage therapy.<sup>2</sup>

A message “establishment owner” is a person who has an ownership interest in a ME. The term includes an individual who holds a ME license, a general partner of a partnership, an owner or officer of a corporation, and a member of a limited liability company and its subsidiaries who holds a ME license.<sup>3</sup>

A “designated establishment manager” is a MT who holds a clear and active, unrestricted massage therapy license, and who is responsible for the operation of a ME, and designated as the manager of the practices at the ME.<sup>4</sup>

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<sup>1</sup> Section 480.035, F.S.

<sup>2</sup> Section 480.033(7), F.S.

<sup>3</sup> Section 480.033(8), F.S.

<sup>4</sup> Section 480.033(6), F.S.

A massage “ownership entity” is an entity to whom a ME license is issued and may be a sole proprietor, a partnership, a limited liability company, or another entity formed under the law of the jurisdiction in which the entity resides.<sup>5</sup>

For purposes of the crimes of obscenity, under ch. 847, F.S., an “adult entertainment establishment” is, among other things, an “unlicensed massage establishment” which is any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term “unlicensed massage establishment” does not include a ME licensed under s. 480.043, F.S., which routinely provides medical services by licensed health care practitioners and MTs licensed under s. 480.041, F.S.<sup>6</sup>

### ***Licensure of Massage Establishments***

Each ME must obtain a license from the department by submitting a department form and a fee set by the BMT, along with proof of property damage and bodily injury liability insurance for the proposed ME.<sup>7</sup> A ME license may not be issued until the ME passes a department inspection which demonstrates that the proposed ME is to be used for “massage” and that the proposed ME is in compliance with the requirements of chs. 456 and 480, F.S., and the rules of the BMT.<sup>8</sup>

A ME owner must undergo a Federal Bureau of Investigations (FBI) background screening, which includes electronically submitting finger prints to the Florida Department of Law Enforcement (FDLE).<sup>9</sup> If a corporation submits proof of having more than \$250,000 in business assets in Florida, the department must require the ME owner, the designated ME manager, and each individual directly involved in the management of the ME to comply with the background screening requirements.<sup>10</sup> The department must provide all investigative services required in carrying out the provisions of ch. 480, F.S.<sup>11</sup>

### ***Massage Establishment Operations***

The Legislature requires the BMT to adopt rules to govern the operation of MEs and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.<sup>12</sup>

Florida Administrative Code Rule 64B7-26.003(2022), requires each ME to:

- Carry current property damage and bodily injury liability insurance, and a copy of the policy must be kept at the ME;

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<sup>5</sup> Fla. Admin. Code R. 64B7-26.001(2022).

<sup>6</sup> Section 847.001(2)(d), F.S.

<sup>7</sup> Section 480.043(1), F.S.; Fla. Admin. Code R. 64B7-26.002(2022).

<sup>8</sup> Section 480.043, F.S.

<sup>9</sup> See 456.0135, F.S. for general background screen details.

<sup>10</sup> Section 480.043(2), F.S.

<sup>11</sup> Section 480.039, F.S.

<sup>12</sup> Section 480.043(3), F.S.

- Comply with all municipal building and zoning requirements;
- Maintain all equipment used to administer massage therapy treatment in a safe and sanitary condition;
- Conspicuously display the current ME license in the ME in open public view;
- Conspicuously display, in open public view, the license or a photocopy, of each MT practicing in the ME;
- Conspicuously display the required human trafficking signage in compliance with ss. 456.0341(3) and 480.043(13), F.S., which requires a sign at least 11 inches by 15 inches, printed in a clearly legible font and in at least a 32-point type, which substantially states in English and Spanish the following:

“If you or someone you know is being forced to engage in an activity and cannot leave, whether it is prostitution, housework, farm work, factory work, retail work, restaurant work, or any other activity, call the National Human Trafficking Resource Center at 888-373-7888 or text INFO or HELP to 233-733 to access help and services. Victims of slavery and human trafficking are protected under United States and Florida law.”

- Have a procedure for reporting suspected human trafficking to the National Human Trafficking Hotline or to a local law enforcement agency and have a sign posted in a conspicuous place which is accessible to employees with the relevant reporting procedures posted.<sup>13</sup>

A massage establishment must provide restroom facilities that include:<sup>14</sup>

- One functioning toilet and one sink with running water;
- Toilet tissue;
- Soap dispenser with soap or other hand sanitizing agent;
- Sanitary towels for hand drying, or other hand drying device, such as a wall-mounted electric blow dryer; and
- One waste receptacle; or
- A centralized restroom facility within 300 feet of the ME for MTs who reside in buildings that are so equipped.

There are additional requirements for ME with whirlpool baths, sauna, steam cabinet or steam room, (including wet, dry and infrared), which include shower facilities with further specification. Lavatory facilities are required within 20 feet of each treatment room and must include either:

- A sink with running water, soap dispenser with soap, and sanitary towels for hand drying or another hand drying device, such as a wall-mounted electric blow dryer; or
- Hand sanitizer or another chemical germicidal designed to disinfect without the use of running water.<sup>15</sup>

<sup>13</sup> See ss. 456.0341(3) and 480.043(13), F.S.

<sup>14</sup> Fla. Admin. Code R. 64B7-26.003(2) (2022).

<sup>15</sup> Id.

Massage establishment facilities must be kept in good repair, be well-lit and properly ventilated. Each ME must:<sup>16</sup>

- Maintain a fire extinguisher on premises;
- Provide for safe storage and removal of flammable materials;
- Provide for the removal of refuse; and
- Provide pest control.

Massage establishment required equipment and supplies includes:<sup>17</sup>

- Massage table(s) made of, or covered by, a non-porous, non-absorbent material that is free from rips or tears;
- Disinfect;
- Massage table coverings for each patient; and
- Sufficient quantity of sheets, towels, or clean drapes for each patient.

For massage establishments where massage therapists perform colonic irrigation, the ME must:<sup>18</sup>

- Maintain colonic irrigation equipment in safe and sanitary condition; and
- Maintain sterilization equipment if non-disposable colonic attachments are used.

### **Massage Establishment Advertising**

Section 480.0465, F.S., and Florida Administrative Code Rule 64B7-33.001 (2022), require that all MEs advertising in a newspaper, on the airways, in telephone directory listings other than an in a column listing consisting of only a name, address, and telephone number, computer transmission, business card, handbill, flyer, or sign, or other advertising medium, must include:

- The license number of each licensed MT and each licensed ME whose name appears in the advertisement, though the license number of a licensed MT who is an owner or principal officer may be used in lieu of the ME's license number; and
- Pending licensure of a new ME, the license number of a licensed MT who is an owner or principal officer of the ME may be used in lieu of the license number for the ME.

### **Documents Required While Working in a Massage Establishment**

A person employed by a ME, and any person performing massage therapy in an ME, must have with them while in the ME a valid government identification (ID). A valid government ID includes:

- A valid, unexpired U.S. driver license;
- A valid, unexpired U.S. ID card;
- A valid, unexpired U.S. passport;
- A naturalization certificate issued by the U.S. Department of Homeland Security (DHS);
- A valid, unexpired alien registration receipt card (green card); or
- A valid, unexpired employment authorization card issued by the U.S. DHS.<sup>19</sup>

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<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Section 480.0535, F.S.

A person operating a ME must:

- Immediately present, upon the request of a department investigator or a law enforcement officer:
  - A valid government identification while in the ME; and
  - A copy of a U.S. driver's license for each employee and any person performing massage therapy in the ME; and
- Ensure that each employee and any person performing massage therapy in the ME is able to immediately present, upon the request of a department investigator or law enforcement officer, a valid government ID while in the ME.<sup>20</sup>

A person who violates the work documents requirement in s. 480.0535, F.S., commits:

- A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082 or s. 775.083;
- A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082 or s. 775.083; or
- A felony of the third degree for a third or any subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.<sup>21</sup>

### **Prohibited Practices in a Massage Establishment**

A person may not operate a ME between the hours of midnight and 5:00 a.m.; unless the ME is:

- Located on the premises of a health care facility;<sup>22</sup>
- A health care clinic;<sup>23</sup>
- A hotel, motel, or bed and breakfast inn;<sup>24</sup>
- A time share property;<sup>25</sup>

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Section 408.07, F.S., defines a "health care facility" as an ambulatory surgical center, a hospice, a nursing home, a hospital, a diagnostic-imaging center, a freestanding or hospital-based therapy center, a clinical laboratory, a home health agency, a cardiac catheterization laboratory, a medical equipment supplier, an alcohol or chemical dependency treatment center, a physical rehabilitation center, a lithotripsy center, an ambulatory care center, a birth center, or a nursing home component licensed under ch. 400, F.S., within a continuing care facility licensed under ch. 651, F.S.

<sup>23</sup> Section 400.9905(4), F.S., defines "health care clinic" as an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider.

<sup>24</sup> Section 509.242, F.S., defines: 1) a "hotel" as any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry; 2) a "motel" as a public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, off street parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry; or 3) a bed and breakfast inn as a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

<sup>25</sup> Section 721.05(40), F.S., defines a "time share property" as one or more timeshare units subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those timeshare units. Notwithstanding anything to the contrary contained in chs. 718 or 719, F.S., the timeshare instrument for a timeshare condominium or cooperative may designate personal property, contractual rights, affiliation agreements of component sites of vacation clubs, exchange companies, or reservation systems, or any other agreements or personal property, as common elements or limited common elements of the timeshare condominium or cooperative.

- A public airport;<sup>26</sup>
- A pari-mutuel facility;<sup>27</sup>
- The MT is acting under the prescription of an allopathic or osteopathic physician, chiropractic physician, a podiatric physician an advanced practice registered nurse (APRN), physician assistant, or dentist; or
- The ME is operating during a special event if the county or municipality in which the ME operates has approved such operation during the special event.<sup>28</sup>

A person operating a ME may not use or permit the ME to be used as a principal domicile unless the ME is zoned for residential use under a local ordinance.<sup>29</sup>

A person who violates the provisions s. 480.0475, F.S., commits:

- A misdemeanor of the first degree, for a first violation, punishable as provided in s. 775.082 or s. 775.083; or
- A felony of the third degree for a second or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Sexual misconduct in the practice of massage therapy is prohibited.<sup>30</sup>

### **Emergency Suspension Orders and Restrictive Orders**

Emergency Suspension Orders (ESOs) and Emergency Restriction Orders (EROs) are exclusively issued by the department and State Surgeon General. The State Surgeon General can either accept or disregard the preceding investigation based on recommendation made by Prosecution Services Unit attorneys. The emergency action process is applicable to any licensed Florida health care professional who poses an immediate and serious danger to the public health, safety or welfare.<sup>31</sup>

Section 456.074(4), F.S., authorizes the department, State Surgeon General, to issue an ESO suspending the license of a massage therapist or a ME upon receipt of information that the massage therapist, a person with an ownership interest in the ME, or, the owner, officer, or individual of a corporation that has more than \$250,000 of business assets in this state, that is directly involved in the management of the ME that has been convicted or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, to owning, establishing, maintaining, or operating a ME in any place, structure, building, or conveyance for the purpose

<sup>26</sup> Section 330.27, F.S., defines an “airport” as an area of land or water used for, or intended to be used for, landing and takeoff of aircraft, including appurtenant areas, buildings, facilities, or rights-of-way necessary to facilitate such use or intended use; and a “public airport” as an airport, publicly or privately owned, which is open for use by the public.

<sup>27</sup> Section 550.002, F.S., defines “pari-mutuel facility” as the grounds or property of a cardroom, racetrack, fronton, or other facility used by a licensed permit holder.

<sup>28</sup> Section 480.0475, F.S.

<sup>29</sup> Id.

<sup>30</sup> Section 480.0485, F.S.

<sup>31</sup> Department of Health, *A Quick Guide to the MQA Disciplinary Process Discretionary Emergency Orders – 3 Things to Know*, available at <https://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/documents/a-quick-guide-to-the-mqa-disciplinary-process-discretionary-emergency-orders.pdf> (last visited Apr. 4, 2023).

of lewdness, assignation, or prostitution<sup>32</sup> or a felony offense under any of the following provisions or a similar provision in another jurisdiction:<sup>33</sup>

- 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;
- Former s. 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- Former s. 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 prostitution;
- Section 796.07(4)(a)3., F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts;
- Section 800.04, 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, relating to computer pornography;
- Section 847.0138, F.S., relating to the transmission of material harmful to minors to a minor; and
- Section 847.0145, relating to the selling or buying of minors.

### III. Effect of Proposed Changes:

The bill changes the terminology for ch. 480, F.S., violations from a “summary suspension” to an “emergency suspension order” (ESO) or RO to align with ch. 120, F.S.

The bill amends s. 456.074(4), F.S., to add the designated Massage Establishment (ME) manager and an employee of the ME to the persons the Department of Health (department), State Surgeon General, must issue an ESO to suspending his or her license. The bill requires the department, State Surgeon General to enter an ESO on information that a designated massage ME manager, or a ME employee, has been arrested for committing or attempting, soliciting, or conspiring to commit, or being convicted or found guilty or pleading guilty or nolo contendere to any of the listed offenses.

The bill adds to the actions of an owner, officer, or individual directly involved in the management of a ME owned by a corporation that has more than \$250,000 of business assets in this state, that require the department, State Surgeon General, to issue an ESO, “being arrested,

<sup>32</sup> See s. 456.074(7), F.S.

<sup>33</sup> Section 456.074(4), F.S.



committing, or attempting, soliciting, or conspiring to commit,” to being convicted or found guilty of, or has entered a plea of guilty or nolo contendere to a violation of s. 796.07, F.S.

The bill amends s. 847.0145, F.S., relating to the crime of selling or buying of minors, to require the department, State Surgeon General, to issue an ESO suspending the license of any licensee upon a finding by the State Surgeon General that probable cause exists to believe that the licensee has committed sexual misconduct as defined and prohibited in s. 456.063(1), F.S., or the applicable practice act, and that such acts related to the selling or buying of minors constitutes an immediate danger to the public.

The bill creates the following definitions for the massage therapy and ME practice act in ch. 480, F.S.:

- “Advertising medium” is any newspaper; airwave or computer transmission; telephone directory listing, other than an in-column listing consisting only of a name, physical address, and telephone number; business card; handbill; flyer; sign, other than a building directory listing all building tenants and their room or suite numbers; or other form of written or electronic advertisement;
- “Employee” is any person, including independent contractors or lessees of the massage establishment, whose duties involve any aspect of the massage establishment regardless of whether such person is compensated for the performance of such duties. The term does not include a person exclusively engaged in the repair or maintenance of the massage establishment or the delivery of goods to the massage establishment; and
- “Sexual activity” is any direct or indirect contact by any employee or person, or between any employees or persons, with the intent to abuse, humiliate, harass, degrade, or arouse, or gratify the sexual desire of, any employee or person, or which is likely to cause such abuse, humiliation, harassment, degradation, or arousal, or sexual gratification:
  - With or without the consent of the employee or person;
  - With or without verbal or nonverbal communication that the sexual activity is undesired;
  - With or without the use of any device or object;
  - With or without the occurrence of penetration, orgasm, or ejaculation;
  - Including, but not limited to, intentional contact with the genitalia and numerous enumerated body parts; and
  - Including, but not limited to, the intentional removal of any drape without written specific informed consent of the patient.

The bill amends the definition of “designated establishment manager” to add acupuncturists, allopathic, osteopathic, and chiropractic physicians.

The bill redefines a quorum for the Board of Massage Therapy (BMT) meetings from four members to a majority of the current BMT members present.

The bill amends s. 480.039, F.S., to add code enforcement officers to persons who may perform inspections of a ME’s compliance with amended s. 480.043(14)(a), (b), and (c), F.S.; and a law enforcement officer to persons who may perform inspections and investigations regarding a ME’s compliance with amended ss. 480.043(12) and (14)(a)-(f), 480.0465(3), 480.0475(1) and (2), and 480.0535, F.S.; in addition to the department.

The bill requires code enforcement officers, and permits law enforcement officers, to submit to the department an executed affidavit with photos, evidence and documentation obtained during an inspection or investigation within five business days after the inspection or investigation that finds there is a violation of amended ss. 480.043(12) or (14)(a), (b), (c), (d), (e), or (f), 480.0465(3), 480.0475(1) or (2), or 480.0535, F.S. Within 20 business days after receipt of the affidavit, the department must issue an ESO of the ME's license under ss. 120.60(6),<sup>34</sup> 456.073(8) or 456.0734(4), F.S. Within 30 business days of receipt of the executed affidavit, the department must inspect the ME to ensure the ME is in compliance with ch. 480, F.S.; and, if the ME is not in compliance, the department must initiate disciplinary proceedings.

The bill provides that if a law enforcement officer arrests a Massage Therapist (MT) for any violation of ch. 480, F.S., or determines that a ME continues to operate following the issuance of an ESO or RO, the officer's employing law enforcement agency must notify the department within five business days after the arrest or determination of unlawful continued operation.

The bill amends s. 480.043(12), F.S., revising the timeframe, from 10 days to 30 days, in which massage establishment owners must notify the department of the identity of another designated establishment manager after termination of a designated manager.

The bill amends s. 480.043, F.S., to add prohibited acts. Section 480.043(14)(a), F.S., as amended, indicates that sexual activity in a ME is prohibited; and a ME owner or employee may not engage in, or allow, any person to engage in sexual activity in the ME or use the ME to make arrangements to engage in sexual activity in another location. Prophylactic devices are prohibited in a ME.

The bill amends s. 480.043(14)(b), F.S., to require that if there is an outside window or windows into the ME's reception area, the outside window or windows must allow for at least 35 percent light penetration, and no more than 50 percent of the outside window or windows may be obstructed with signage, blinds, curtains or other obstructions, thus allowing the public to see the ME's reception area. A sign must be posted on the front window of the ME and include the name of the ME, its license number, and the telephone number that has been provided to the department as part of the licensing of the ME. This paragraph does not apply to a ME that is:

- Located within a public lodging establishment;
- Located within a county or municipality that has an ordinance that prescribes requirements related to business window light penetration or signage limitations if compliance with this paragraph would result in noncompliance with such ordinance;

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<sup>34</sup> Section 120.60(6), F.S., requires that if an agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if: a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution; b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57, F.S., must also be promptly instituted and acted on. Section 456.073(8), F.S., require that any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6), F.S., must be conducted by the State Surgeon General or his or her designee, as appropriate, who must issue the final summary order.

The bill amends s. 480.043(14)(c), F.S., to require all employees within the ME to be fully clothed, and all clothing must be fully opaque and made of nontransparent material.

The bill amends s. 480.043(14)(d), F.S., to require a ME to maintain a complete set of legible records in English or Spanish, which must include:

- Each employee's start date of employment;
- Full legal name;
- Date of birth;
- Home address;
- Telephone number;
- Employment position; and
- A copy of the employee's government identification required under s. 480.0535, F.S. All information required under this paragraph must be recorded before the employee may provide any service or treatment to a customer or patient.

The bill amends s. 480.043(14)(e), F.S., to require a ME to conspicuously display a 2-inch by 2-inch photo for each employee, which, for MTs, must be attached to the MT's license. Such display must also include the employee's full legal name and employment position. All information required to be displayed must be displayed before the employee may provide any service or treatment to a customer or patient. A ME within a public lodging establishment may satisfy this requirement by displaying the photos and required information in an employee break room or other room that is used by employees but is not used by customers or patients.

The bill amends s. 480.043(14)(f), F.S., to require a ME to maintain a complete set of legible records in English or Spanish, which must include the date, time, and type of service or treatment provided, the full legal name of the employee who provided the service or treatment, and the full legal name, home address, and telephone number of the customer or patient. A copy of the customer's or patient's photo identification may be used to provide the full legal name and home address of the customer or patient. The required records must be maintained for at least one year after the provision of the service or treatment. All required information must be collected and recorded before the provision of any service or treatment to a customer or patient. The ME must confirm the identification of the customer or patient before the provision of any service or treatment to the customer or patient.

The bill amends s. 480.043(14)(3), F.S., to require the BMT to adopt rules governing the operation of MEs and their facilities, personnel, safety and sanitary requirements, financial responsibility, insurance coverage, and license application and granting process.

The bill amends s. 480.043(15), F.S., to exempt acupuncturists, allopathic, osteopathic, and chiropractic physicians from s. 480.043(13), F.S., when they employ licensed MTs to perform massage therapy on the practitioner's patients at his or her place of practice; but the exemption does not restrict the investigations by the department for violations of chs. 456 or 480, F.S.

The bill amends s. 480.0465, F.S., to address advertising media, to add the Internet to the currently listed medium. The bill requires advertisements to include the physical address of the

ME, and the telephone number provided to the department as part of the licensing of the ME. The inclusion of the physical address and telephone number is not required for an advertisement by a ME whose ME owner operates more than five locations in this state.

The bill amends s. 480.0465, F.S., to prohibit a ME owner or employee from placing, publishing, or distributing, or causing to be placed, published, or distributed, any advertisement in any advertising medium that states prostitution services, escort services, or sexual services are available, and prohibits a MT or a ME or its employees from placing, publishing, or distributing, or causing to be placed, published, or distributed, in any online advertisement on any website known for advertising prostitution services, escort services, or sexual services.

The bill amends s. 480.0475, F.S., to prohibit a ME from operating from midnight to 5:00 a.m., and prohibits massage services from being performed after 10:00 p.m. and before 5:00 a.m. The bill prohibits the ME from being used for a shelter, harbor, or as sleeping quarters for any person. The bill amends s. 480.0476, F.S., to add an additional penalty for violations of summary suspension of the ME's license under in ss. 120.60(6) or 456.073(8), F.S.

The bill amends s. 480.0485, F.S., to add that sexual misconduct in the practice of massage therapy includes requiring patient nudity as part of any massage service or any other service in the ME or the intentional removal of any drape without the written specific informed consent of the patient.

The bill amends s. 480.0535, F.S., to require a department investigator to examine the valid government identifications from all employees, client records, and employee records. The bill adds summary suspension under ss. 120.60(6) or 456.073(8), F.S., for failure to provide the required documents under s. 480.0535, F.S., and requires the department to notify a federal immigration office if a person operating a ME, an employee, or any person performing massage therapy in a ME fails to provide a valid government identification as required.

The bill amends s. 847.001, F.S., to add to the definition of an unlicensed MEs, for purposes of crimes, the employees, or attendants who are licensed MTs.

The bill takes effect on July 1, 2023.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

CS/CS/SB 1338 will have a significant negative fiscal impact on the Department of Health (department) requiring eight additional positions and \$876,703 in trust funded budget authority<sup>35</sup> including \$837,991 in recurring funding to ensure cases are opened, investigated, and processed in the required timeframe specified in the bill. The bill appropriates eight full-time equivalent positions with associated salary rate of 544,600 and \$837,991 in recurring funds and \$38,712 in nonrecurring funds from the Department of Health Medical Quality Assurance Trust Fund to the Division of Medical Quality Assurance of the Department of Health for the implementation of this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 456.074, 480.033, 480.035, 480.039, 480.043, 480.0465, 480.0475, 480.0485, 480.0535, and 847.001, F.S.

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<sup>35</sup> Email from the Department of Health to the Senate Appropriations Committee on Health and Human Services, April 3, 2023, on file with the Senate Appropriations Subcommittee on Health and Human Services.

**IX. Additional Information:**

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

**CS/CS by Appropriations Committee on Health and Human Services on April 18, 2023:**

The committee substitute appropriates eight full-time equivalent positions and the associated salary rate and budget to the Department of Health (department) for the implementation of this bill and revises the timeframe, from 10 days to 30 days, in which massage establishment owners must notify the department of the identity of another designated establishment manager after termination of a designated manager.

**CS by Health Policy April 4, 2023:**

The CS:

- Adds to whom the department is required to issue an ESO for a license, the designated ME manager and an employee of the ME, upon receipt of information that they have been arrested for committing or attempting to commit soliciting, conspiring to commit, or been convicted or found guilty or plead guilty or nolo contendere to any of the listed offenses;
- Adds to the list of criminal offenses the department is required to issue an ESO for a license of a massage therapist and ME on a finding of the Surgeon General that probable cause exists to believe the licensee has committed sexual misconduct under ch. 456, F.S., or the licensee's applicable practice act, and that violation constitutes an immediate danger to the public;
- Revises the definition of a designated ME manager to describe an acupuncturist as a health care practitioner, rather than a physician, and makes clear that the definition of employee only applies to ch. 480, F.S.;
- Changes terminology for violations from a "summary suspension" to an ESO to align with ch. 120, F.S.; changes from 20 days to 30 days the time the department has after receiving an affidavit with photos, evidence and documentation of a specific violation from a code enforcement officer or law enforcement officer to perform an inspection; and if the violation persists, to initiate disciplinary proceedings.
- Requires the law enforcement agency who arrests a massage therapist, or finds a ME still operating after an ESO or Restive Order (RO) has issued, not just after summary suspension but also after an RO, to notify the department within five days.
- Add blinds, curtains and other obstructions to signage that is prohibited if it obstructs more than 50 percent of outside windows; and deletes the department rule making authority and summary suspension as a penalty for non-compliance.
- Delete summary suspension for violations of a ME's prohibited acts and for a ME's violation of documents required by person's working in an ME. Deletes the severability clause.

- B. **Amendments:**

None.

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

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