

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 Health Policy

BILL: SB 1338

INTRODUCER: Senator Martin

SUBJECT: Massage Establishments

DATE: April 2, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van Winkle	Brown	HP	Pre-meeting
2.	_____	_____	AHS	_____
3.	_____	_____	FP	_____

I. Summary:

SB 1338 amends the massage therapy and massage establishment (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 of Health (DOH) with photos under certain circumstances within certain time frames, which then requires the DOH to issue a summary suspension of a ME’s license.

The bill requires MEs to:

- Comply with specific requirements for the contents of signage, and provides exceptions;
- Mandate personnel be fully clothed, with specific clothing prohibitions;
- Keep employee records in English or Spanish, and specifies the information be recorded;
- Display photos of massage therapists (MTs) with his or her license, and provides exceptions;
- Keep specific patient/client records in English or Spanish with specified information to be documented; and
- Keep window signage within specific size specifications, with exceptions;

The bill prohibits MEs from permitting on site:

- Sexual activity;
- Prophylactics; or
- Certain percentages of window light or signage obstruction.

The bill requires that specific information be included with ME advertising and prohibits ads for prostitution services, escort services, or sexual services. The bill prohibits MEs from being used as a shelter, harbor, or sleeping quarters. The bill prohibits MEs operating from midnight to 5:00 a.m. and from providing services between 10:00 p.m. and 5:00 a.m., with exceptions. The bill

adds additional acts that constitute sexual misconduct and creates an additional penalty of summary suspension of license for violations.

The bill specifies what documents are required to be on the premises while MTs are working in MEs and adds additional penalties for violations of summary suspension and notification of federal immigration authorities.

The bill amends the definition of an unlicensed ME for purposes of crimes to include employees or attendants who are licensed MTs and contains a severability clause.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

Massage Establishments

The Board of Massage Therapy (BMT), in conjunction with the Department of Health (DOH), regulates the practice of massage therapy and 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 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.¹

Definitions Relevant to Massage Establishments

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

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.³

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.⁴

¹ Section 480.035, F.S.

² Section 480.033(7), F.S.

³ Section 480.033(8), F.S.

⁴ 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.⁵

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.⁶

Licensure of Massage Establishments

Each ME must obtain a license from the DOH by submitting a DOH form and a fee set by the BMT, along with proof of property damage and bodily injury liability insurance for the proposed ME.⁷ A ME license may not be issued until the ME passes a DOH 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.⁸

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).⁹ If a corporation submits proof of having more than \$250,000 in business assets in Florida, the DOH 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.¹⁰ The DOH must provide all investigative services required in carrying out the provisions of ch. 480, F.S.¹¹

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.¹²

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;
- Comply with all municipal building and zoning requirements;

⁵ Fla. Admin. Code R. 64B7-26.001(2022).

⁶ Section 847.001(2)(d), F.S.

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

⁸ Section 480.043, F.S.

⁹ See 456.0135, F.S. for general background screen details.

¹⁰ Section 480.043(2), F.S.

¹¹ Section 480.039, F.S.

¹² Section 480.043(3), F.S.

- 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.¹³

A massage establishment must provide restrooms facilities that include:¹⁴

- 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.¹⁵

¹³ See ss. 456.0341(3) and 480.043(13), F.S.

¹⁴ Fla. Admin. Code R. 64B7-26.003(2) (2022).

¹⁵ Id.

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

- 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:¹⁷

- 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:¹⁸

- 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.¹⁹

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Section 480.0535, F.S.

A person operating a ME must:

- Immediately present, upon the request of a DOH 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 DOH investigator or law enforcement officer, a valid government ID while in the ME.²⁰

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. 775.084.²¹

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;²²
- A health care clinic;²³
- A hotel, motel, or bed and breakfast inn;²⁴
- A time share property;²⁵

²⁰ Id.

²¹ Id.

²² 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.

²³ 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.

²⁴ 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.

²⁵ 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;²⁶
- A pari-mutuel facility;²⁷
- 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.²⁸

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.²⁹

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.³⁰

III. Effect of Proposed Changes:

SB 1338 creates the following definitions for the massage therapy and ME practice act in ch. 480, F.S.:

- “Advertising media” 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;

²⁶ 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.

²⁷ 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.

²⁸ Section 480.0475, F.S.

²⁹ Id.

³⁰ Section 480.0485, F.S.

- 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 BMT meetings from four members to a majority of the current BMT members present.

SB 1338 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 DOH.

The bill requires code enforcement officers, and permits law enforcement officers, to submit to the DOH an executed affidavit with photos and any other evidence 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 DOH must issue a summary suspension of the ME’s license under ss. 120.60(6) or 456.073(8), F.S.³¹

SB 1338 provides that if a law enforcement officer arrests a MT for any violation of ch. 480, F.S., or determines that a ME continues to operate following the issuance of a summary suspension by the DOH, the officer’s employing law enforcement agency must notify the DOH within five business days after the arrest or determination of unlawful continued operation.

SB 1338 amends s. 480.043, F.S., to add prohibited acts as an amended 480.043(14), F.S. The bill amends s. 480.043(14)(a), F.S., to indicate that sexual activity in a ME is prohibited. A ME owner or employee may not engage in, or allow, any person to engage in sexual activity in the

³¹ 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.

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, 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 DOH 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;

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)(g), 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(14)(h), F.S., to require summary suspension of a ME license as described in ss. 120.60(6) or 456.073(8), F.S., for noncompliance with amended s. 480.043(14), F.S.

SB 1338 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 DOH 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.

SB 1338 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.

SB 1338 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.

SB 1338 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.

SB 1338 amends s. 480.0535, F.S., to require a DOH 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 DOH 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.

SB 1338 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 contains a severability clause.

The bill provides an effective date of 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

IX. Additional Information:

- A. **Committee Substitute – Statement of 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.
