HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 197 Health Care Practitioners and Massage Therapy
SPONSOR(S): Health Care Appropriations Subcommittee and Healthcare Regulation Subcommittee, Lopez, V. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 896

FINAL HOUSE FLOOR ACTION: 118 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 197 passed the House on February 15, 2024, and subsequently passed the Senate on March 5, 2024.

The Board of Massage Therapy (Board), within the Department of Health (DOH), regulates massage therapists and massage establishments. Massage practice is the manipulation of the soft tissues of the human body with the hand, foot, knee, arm, or elbow. DOH is required to annually inspect massage establishments for compliance with statutory requirements. Under current law, DOH must issue an emergency licensure suspension for certain criminal convictions or arrests.

Human trafficking is a form of modern-day slavery involving the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. Illicit Massage Businesses (IMBs) are licensed or unlicensed massage establishments that purport to operate as legal businesses, but where sexual services are illegally bought and sold. IMBs are considered one of the primary venues for sex trafficking involving adults and comprised the largest group of citizen calls to the National Human Trafficking Hotline in 2019. Florida has implemented several statutory measures in an effort to obstruct the operation of IMBs without interfering with legitimate massage establishments.

CS/CS/HB 197 significantly expands the circumstances under which DOH must issue an emergency order suspending the license of a massage therapist or of a massage establishment. The bill requires DOH to issue an emergency suspension of a massage therapist or establishment license if any employee of a massage establishment is arrested for committing or attempting, soliciting, or conspiring to commit certain offenses, including offenses relating to kidnapping, human trafficking, and prostitution.

The bill expressly prohibits any sexual activity within a massage establishment. The bill prohibits advertisement by a massage therapist or establishment from being posted in any medium or website that advertises prostitution, escort, or other sexual services. The bill outlines further requirements for the operation of massage establishments and provides exemptions.

The bill expands the circumstances under which a massage establishment may be declared a public nuisance to include sexual activity and the failure to maintain required records.

The bill appropriates $925,080 in recurring funds and $108,952 in nonrecurring funds from the Medical Quality Assurance Trust Fund to DOH, and has no fiscal impact on local government.

The bill was approved by the Governor on May 6, 2024, ch. 2024-148, L.O.F., and will become effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Massage Therapy

Massage therapy is the manipulation of the soft tissues of the human body with the hand, foot, knee, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation or thermal therapy, or any electrical or mechanical device, or the application of a chemical or herbal preparation to the human body.[1] Massage is a therapeutic health care practice and a massage therapist must know anatomy and physiology and understand the relationship between the structure and function of the tissues being treated and the total function of the body.[2]

Chapter 480, F.S., the "Massage Practice Act", governs the practice of massage therapy in Florida. The Board of Massage Therapy (Board), within the Department of Health (DOH), regulates massage practice.[3] The Board is responsible for establishing rules governing the licensure and practice of massage therapists and massage establishments. This includes approving massage therapy schools[4], licensure exams[5], establishing training requirements for massage therapy apprentices[6], as well as setting minimum standards for and conducting periodic inspections of massage establishments.[7] DOH is responsible for providing investigative services to ensure compliance with regulations,[8] while the Board has disciplinary authority over massage therapist and establishment licenses.[9]

Massage Therapist Licensure

A massage therapist is a person who administers massage for compensation.[10] There are approximately 36,178 massage therapists licensed to practice in Florida.[11]

To qualify for licensure as a massage therapist, an applicant must:[12]

- Be at least 18 years of age or hold a high school diploma or graduate equivalency diploma;
- Complete a course of study at a Board-approved massage school;
- Undergo background screening; and
- Pass a Board-approved examination.[13]

A massage therapist is required to renew his or her license every two years and must complete 24 hours of continuing education for each renewal period.[14]

Massage Establishment Licensure

[1] S. 480.033(3), F.S.
[2] S. 480.032, F.S.
[3] S. 480.035, F.S.
[4] S. 480.033(3), F.S.
[5] S. 480.041(1)(c), F.S.
[6] S. 480.041(5), F.S.
[7] Ss. 480.043(3) and (10), F.S.
[8] S. 480.039, F.S.
[9] S. 480.046, F.S.
[10] S. 480.033(4), F.S.
[11] Department of Health, FLHealthSource.gov, Public Data Portal (search by Board/Council "Board of Massage Therapy", then by Profession "massage therapist", then by license status "practicing statuses only"). Available at https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders, (last visited March 14, 2024).
[12] S. 480.041(1), F.S.
[13] *See* rule 64B7-25.001, F.A.C. for Board approved examinations.
[14] S. 480.0415, F.S., and rule 64B7-28.009, F.A.C.

A massage establishment is the premises wherein a massage therapist practices massage therapy and must be licensed by the Board in order to operate legally.[15] A massage establishment must adhere to rules set by the Board regarding facilities, personnel, safety and sanitation requirements, financial responsibility, and insurance coverage.[16] There are approximately 8,966 licensed massage establishments in Florida.[17]

To qualify for a massage establishment license, an applicant must:[18]

- Submit a completed application to the Board;[19]
- Pass an inspection by DOH;[20] and
- Submit proof of property damage and bodily injury liability insurance coverage.

The application includes background screening of the establishment owner and identification of the designated establishment manager (DEM).[21] Under current law, a DEM must be a licensed massage therapist who holds a clear and active license without restriction. The DEM is responsible for the operation of a massage establishment, and must be designated the manager by the rules or practices at the establishment.[22]

Massage establishment licenses may not be transferred from a licensee to another individual or entity.[23] Board approval is required for an establishment to move locations or change names.[24]

Denial of Massage Establishment Licensure

A proposed massage establishment may be denied licensure for failing to meet the standards adopted by the Board, or if the owner or DEM has been convicted of or plead guilty or nolo contendere for a felony or misdemeanor relating to any of the following offenses:[25] prostitution,[26] kidnapping,[27] false imprisonment,[28] luring or enticing a child,[29] human trafficking or smuggling,[30] sexual battery,[31] female genital mutilation,[32] lewd or lascivious offenses in the presence of a minor, elderly, or disabled person,[33] or obscene or sexual acts involving a minor.[34]

DOH may investigate the proposed massage establishment based on the application contents.[35] If DOH determines that the proposed establishment would fail to meet the standards adopted by the

[15] Ss. 480.033(7) and 480.043, F.S.
[16] S. 480.043, F.S.
[17] Department of Health, *Agency Bill Analysis for House Bill 197* (2024). On file with the Health and Human Services Committee.
[18] Rule 64B7-26.002, F.A.C.
[19] *See also*, Board of Massage Therapy, *Application for Massage Establishment License*. Available at https://floridasmassagetherapy.gov/applications/app-bus-original-mt.pdf (last visited March 14, 2024).
[20] The inspection must demonstrate that the proposed massage establishment is to be used for "massage" as defined in Section 480.033(3), F.S. and that the proposed massage establishment is in compliance with Chapters 456 and 480, F.S. and related rules. *See* rule 64B7-26.002, F.A.C.
[21] *Supra*, note 19.
[22] S. 480.033(6), F.S.
[23] S. 480.043(9), F.S.
[24] *Id.*
[25] S. 480.043, F.S.
[26] Ch. 796, F.S.
[27] S. 787.01, FS.
[28] S. 787.02, F.S.
[29] S. 787.025, F.S.
[30] Ss. 787.06 and 787.07, F.S.
[31] S. 794.011, F.S.
[32] S. 794.08, F.S.
[33] Ss. 800.004 and 825.1025(2)(b), F.S.
[34] S. 827.071 and Ch. 847 F.S.
[35] S. 480.043(5), F.S.

Board, it must deny the application for licensure and provide the denial in writing with a list of reasons for the denial. The establishment may correct the recorded deficiencies and reapply for licensure.[36]

Human Trafficking

Human trafficking is a form of modern-day slavery involving the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person.[37] Human trafficking can affect individuals of any age, gender, or nationality; however, some people are more vulnerable than others. Significant risk factors include recent migration or relocation, substance use, mental health concerns, and involvement in the child welfare system.[38]

Victims of human trafficking are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.[39] It is estimated that at any given time in 2021, there were approximately 27.6 million people engaging in forced labor globally.[40] In 2021, the National Human Trafficking Hotline[41] identified 16,710 trafficking victims in the US, of which 1,253 were in Florida;[42] however, these figures do not reflect the true scope and scale of the issue which cannot be easily quantified due to the underground nature of the issue. An analysis of data collected by the Hotline showed that approximately 6 percent of reported victims in 2021 were associated with illicit massage, health, and beauty services.[43]

Illicit Massage Businesses

Illicit Massage Businesses (IMBs) are licensed or unlicensed[44] massage establishments that purport to operate as legitimate businesses, but where sexual services are illegally bought and sold.[45] IMBs are considered one of the top venues for sex trafficking involving adults and comprised the largest group of citizen calls to the National Human Trafficking Hotline in 2019.[46] In 2018, a study estimated that there were approximately 9,000 IMBs operating in the US;[47] it is expected that this number has risen in the years since.[48]

IMBs are successful in part due to their ability to operate in plain sight. They are often located in strip malls and present themselves publicly as legitimate massage establishments. Markers of an IMB include: opaque or covered windows, locked front doors with a buzzer to enter, listed prices

---

[36] S. 480.043(6), F.S.
[37] S. 787.06, F.S.
[38] National Human Trafficking Hotline. *Human Trafficking: What Human Trafficking is, and isn't*. Available at https://humantraffickinghotline.org/en/human-trafficking (last visited March 14, 2024).
[39] *Id.*
[40] International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (2022). Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf (last visited March 14, 2024).
[41] The National Human Trafficking Hotline is a free service to connect victims and survivors of sex and labor trafficking with services and supports to find help and safety. The Hotline also receives tips about potential situations of sex and labor trafficking and facilitates reporting that information to the appropriate authorities. *See also*, National Human Trafficking Hotline, *About Us*. Available at https://humantraffickinghotline.org/en/about-us (last visited March 14, 2024).
[42] National Human Trafficking Hotline, *National Statistics (2021)*. Available at https://humantraffickinghotline.org/en/statistics (last visited March 14, 2024).
[43] Polaris, *Analysis of 2021 Data from the National Human Trafficking Hotline*. Available at https://polarisproject.org/wp-content/uploads/2020/07/Polaris-Analysis-of-2021-Data-from-the-National-Human-Trafficking-Hotline.pdf (last visited March 14, 2024).
[44] In fiscal year 2022-23, DOH conducted 169 investigations of unlicensed massage establishments. *See,* Department of Health, *Agency Bill Analysis for House Bill 197* (2024), p. 2. On file with the Health and Human Services Committee.
[45] Chin, J. & Takahashi, L. *Sex for Sale: Illicit Massage Parlors* (2022). 3rd Edition. Routledge. ISBN: 9781003228639
[46] de Vries, I. *Crime, place, and networks in the age of the internet: The case of online-promoted illicit massage businesses* (2020). Northeastern University. Available at https://repository.library.northeastern.edu/files/neu:m046sd37z/fulltext.pdf (last visited March 14, 2024).
[47] Polaris, *Human Trafficking in Illicit Massage Businesses* (2018). Available at https://massagetherapy.nv.gov/uploadedFiles/massagetherapy.nv.gov/content/Resources/FullReportHumanTraffickinginIllicitMassageBusinesses.pdf (last visited March 14, 2024).
[48] Det. Sgt. Wade Williams, Collier County Sheriff's Office, *Illicit Massage Businesses Presentation*. On file with the Health and Human Services Committee.

significantly lower than the market value, serves exclusively or primarily male clientele, employees appearing to live on site, and advertising on commercial sex websites.[49]

The majority of people trafficked through IMBs are women of Chinese or South Korean origin who have recently arrived in the US. They are typically 35-55 years of age, have no more than high school level education, and speak little or no English.[50]

Law Enforcement Response to IMBs

Traditional police techniques for controlling crime have proven to be largely ineffective in reducing the presence of IMBs and related human trafficking. Law enforcement relies heavily on traditional tactics such as sting operations, undercover work, and reactive investigations; however, these approaches have been shown to be ineffective in holding traffickers accountable and lead to increased victimization.[51]

Police response to human trafficking has been criticized for not being victim-oriented; few victims of human trafficking are identified by police as they often do not self-identify as victims, fear retribution from their exploiter, and mistrust the authorities.[52] Obtaining a conviction for human trafficking related crimes relies heavily on victim testimony which has proven difficult to obtain in IMB-related cases.[53] As a result very few police actions have resulted in prosecutions for human trafficking, thus signaling very little accountability for traffickers.[54]

Public Nuisance

Under certain circumstances, IMBs may also be identified as a public nuisance and enjoined.[55] Massage establishments may be declared a public nuisance under current law if they are operating outside of legal hours, serving as a person's principal domicile,[56] or are unable to provide the required identification and licensure documents upon the request of a law enforcement officer or DOH investigator.[57] When such a nuisance exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county where the nuisance exists may bring a nuisance abatement action in the name of the state to enjoin the nuisance, the person maintaining it, and the owner or agent of the premises where the nuisance is located.[58] Such actions may result in a permanent injunction requiring the establishment to cease operation or abate any such nuisance.

Regulatory Response to IMBs

Florida has implemented several regulatory measures intended to obstruct the operation of IMBs without interfering with legitimate massage establishments. These regulations include:

- Prohibiting massage establishments from operating between 12am and 5am;[59]

[49] *Supra*, note 47.
[50] *Id.*
[51] Vries, I. de, & Farrell, A. *Explaining the Use of Traditional Law Enforcement Responses to Human Trafficking Concerns in Illicit Massage Businesses*. (2022). Justice Quarterly, 1-26. doi:10.1080/07418825.2022.2051587
[52] Farrell, A., et al., (2019). *Failing victims? Challenges of the police response to human trafficking*. Criminology & Public Policy, 18: 649– 673. Available at https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9133.12456 (last visited March 14, 2024).
[53] *Supra*, note 51.
[54] *Supra*, note 52.
[55] S. 823.05, F.S.
[56] *See*, s. 480.0475, F.S.
[57] *See*, s. 480.0535, F.S.
[58] S. 60.05, F.S.
[59] S. 480.0475, F.S.

- Prohibiting sexual misconduct[60] in massage establishments;[61]
- Requiring advertisements to include the license number of the individual massage therapist or establishment being advertised;[62]
- Requiring persons employed in a massage establishment to produce government identification upon request by a DOH or law enforcement investigator;[63] and
- Requiring massage establishments to have a set procedure for reporting suspected human trafficking and conspicuously post a sign with the relevant procedures.[64]

Discipline of Massage Therapists and Establishments

The Board has disciplinary authority over massage therapists and massage establishment licenses.[65] The purpose of imposing fines and penalties is to protect the public by assuring compliance with an agency's rules.[66] DOH is required to inspect licensed massage establishments on an annual or more frequent basis. Such inspections include, but are not limited to, assessing whether the establishment is in compliance with the requirements for operation, personnel, safety, sanitation, and insurance coverage.[67] In Fiscal Year 2022-23, there were 8,966 licensed massage establishments in Florida, and DOH completed 9,513 inspections.[68]

Section 456.073, F.S., outlines the process for disciplinary proceedings for professionals licensed under DOH, including massage therapists. Disciplinary proceedings begin when a complaint is filed. DOH investigates complaints for legal sufficiency,[69] and if DOH determines a complaint to be legally sufficient, all investigative findings must be submitted to a panel to be assessed for probable cause.[70] Upon making a finding of probable cause, DOH is required to file a formal complaint, and may choose to prosecute the complaint pursuant to Chapter 120, F.S.[71]

The case may be referred to the Board for a hearing, or to the Division of Administrative Hearings to be heard before an administrative law judge if there are any disputed issues of material fact.[72] A judge may submit a recommended order,[73] but the final determination of whether or not a licensee has violated the laws and rules regulating the profession is to be determined by the Board.[74] The Board considers the findings of fact and conclusions of law contained in the formal complaint, reviews the investigative materials, and determines the appropriate penalty for the violation.

The Board has established disciplinary guidelines specifying the range of penalties based upon the severity and repetition of specific offenses;[75] however, the Board retains some discretion to deviate from disciplinary guidelines based on mitigating or aggravating circumstances.[76] Dependent upon the

[60] Rule 64B7-26.010, F.A.C., specifies that the statutory prohibition of sexual misconduct extends to sexual activity occurring within any massage establishment.
[61] S. 480.0485, F.S.
[62] S. 480.0465, F.S.
[63] S. 480.0535, F.S.
[64] S. 480.043, F.S.
[65] S. 480.046, F.S.
[66] S. 120.695, F.S.
[67] Rule 64B7-26.004, F.A.C.
[68] *Supra*, note 17.
[69] S. 456.073(1), F.S.; a complaint is legally sufficient if it contains ultimate facts that show that a violation of Ch. 456, F.S., of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred.
[70] S. 456.073(4), F.S.
[71] *Id.*
[72] S. 456.073(5), F.S.
[73] *See*, s. 120.52, F.S.
[74] *Supra*, note 72.
[75] Rule 64B7-30, F.A.C.
[76] *See,* s. 456.079, F.S.

severity of the massage therapist's or establishment's infraction, the Board may impose a letter of concern, a reprimand, fines, licensure conditions, probation, suspension, or revocation.[77]

Under current law, DOH must annually report to the Legislature the total number of administrative complaints and description of disciplinary actions taken against health care professionals and establishments licensed and regulated by DOH.[78] Such figures are required to be categorized by profession, but not by the cause for the complaint or disciplinary action, such as sexual misconduct or failure to maintain a DEM.

During Fiscal Year 2022-23, 229 administrative complaints were filed related to massage therapists and massage establishments; of those, 70 related to sexual misconduct.[79] In the same year, DOH issued 20 emergency orders against massage establishments, and 23 emergency orders against individual massage therapists.[80]

Emergency Suspensions

DOH may issue an emergency suspension, restriction, or limitation on a license if DOH finds that immediate, serious danger to the public health, safety, or welfare exists. Under current law, DOH's procedure for issuing an emergency suspension must:[81]

- Provide at least the same procedural protection as is given by other statutes, the Florida Constitution, or the United States Constitution;
- Take only that action necessary to protect the public interest; and
- DOH must state in writing at the time of, or prior to, it's specific 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.

There are two types of emergency actions DOH may take: mandatory and discretionary. Mandatory emergency actions are those licensure suspensions that DOH is required to issue by law, typically in response to criminal offenses. Discretionary emergency actions are those actions DOH is authorized to take upon the finding that a licensee poses an immediate, serious danger to the public health, safety, or welfare. All emergency actions are subject to appeal; however, discretionary emergency actions are subject to strict judicial review to ensure the action is necessary and only uses the minimum amount of restriction necessary to protect the public.[82]

Mandatory Emergency Suspensions

A mandatory emergency suspension of a license will result from certain criminal convictions and arrests specified in law. DOH is required to immediately suspend the license of any health care practitioner who has plead guilty or nolo contendere to or has been *convicted* of any offense under:[83]

- Chapter 409, F.S., relating to felony Medicare or Medicaid fraud;
- Chapter 817, F.S., relating to felony fraud;

[77] Rule 64B7-30, F.A.C.
[78] S. 456.026, F.S. *See also*, Department of Health, *Division of Medical Quality Assurance Annual Report and Long-Range Plan* (2023). Available at https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/MQAAnnualReport2022-2023.pdf (last visited March 14, 2024).
[79] *Supra*, note 17.
[80] *Supra*, note 78.
[81] S. 120.60(6), F.S.
[82] *Supra*, note 17.
[83] S. 456.074(1), F.S.

- Chapter 893, F.S., relating to felony drug offenses, and equivalent charges under federal law;
- Section 784.086, F.S., relating to felony reproductive battery;[84]
- Chapter 782, F.S., relating to felony homicide; or
- Misdemeanors or felonies under federal law relating to the Medicaid program.

DOH is also required to issue an emergency suspension of the license of any health care practitioner, including massage therapists, who has been *arrested* for committing or attempting, soliciting, or conspiring to commit any act in this state or similar offenses in another jurisdiction that would constitute a violation of any criminal offense under:[85]

- Section 393.135(2), F.S., relating to sexual misconduct with an individual with a developmental disability;
- Section 394.4593(2), F.S., relating to sexual misconduct with a patient who resides in a receiving or treatment facility or is otherwise in the custody of the Department of Children and Families;
- Section 456.52(5)(b), F.S., relating to prescribing, administering, or performing sex-reassignment prescriptions or procedures for a patient younger than 18 years of age;
- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment;
- Section 787.025(2), F.S., relating to luring or enticing a child;
- Section 787.06(3)(b), (d), (f), or (g), F.S., relating to human trafficking for commercial sexual activity;
- Former s. 787.06(3)(h), F.S., relating to human trafficking of a child under the age of 15 for commercial sexual activity;
- Section 787.07, F.S. relating to human smuggling;
- Section 794.011, F.S., relating to sexual battery, excluding s. 794.011(10), F.S.;
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors;
- 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, F.S., relating to prohibiting prostitution and related acts;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons younger than 16 years of age;
- Section 810.145(8), F.S., relating to video voyeurism of a minor;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 847.011, F.S., relating to prohibited acts in connection with obscene, lewd, and other materials;
- Section 847.012, F.S., relating to materials harmful to minors;
- Section 847.013, F.S., relating to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations;
- Section 847.0133, F.S., relating to the protection of minors from obscene materials;
- Section 847.0135, F.S., relating to computer pornography, prohibited computer usage, or traveling to meet minors, excluding s. 847.0135(6), F.S.;

[84] *See*, s. 786.086(2), F.S.; reproductive battery refers to a criminal act wherein a health care practitioner intentionally transfers into the body of a patient reproductive material of a donor knowing that the patient has not consented to the use of reproductive material from that donor.
[85] S. 456.074(5), F.S.

- Section 847.0137, F.S., relating to the transmission of child pornography by electronic device or equipment;
- Section 847.0138, F.S., relating to the transmission of material harmful to minors to a minor by electronic device or equipment;
- Section 847.0145, F.S., relating to the selling or buying of minors;
- Section 856.022, F.S., relating to loitering or prowling in close proximity to children;
- Section 895.03, F.S., relating to racketeering activity, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this subsection or at least one offense listed in this subsection which was committed with sexual intent or motive;
- Section 916.1075(2), F.S., relating to sexual misconduct against a forensic client of a civil or forensic facility for defendants who have a mental illness or an intellectual disability; or
- Section 985.701(1), F.S., relating to sexual misconduct against a juvenile offender.

DOH is required to issue an emergency suspension of the license of a massage therapist or establishment when a therapist, or a person with any ownership interest in a massage establishment has pled guilty or nolo contendere to, or has been *convicted* of any offense related to prostitution or related acts under s. 796.07, F.S., or a felony under:[86]

- 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 section 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- Former 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 section 796.07, F.S., relating to prohibiting prostitution and related acts;
- 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.

Under current law, DOH is not authorized issue an emergency suspension of a massage establishment license in response to an *arrest* for the offenses listed above; DOH must issue an emergency suspension in response to a conviction to the specified offenses, but not arrests.[87]

Massage establishments are also required to maintain a designated establishment manager (DEM) on file with DOH as a condition of their licensure. DOH must issue an emergency suspension to an establishment who fails to identify a new DEM within 10 days of terminating the previous DEM.[88]

[86] S. 456.074(4), F.S.
[87] *Supra*, note 17.
[88] S. 480.043(12), F.S.

Discretionary Emergency Suspensions

Not all cases involving prostitution or sexual misconduct require mandatory emergency suspensions under current law. In instances of a licensee's arrest or conviction for a first or second offense relating to prostitution, DOH is not required to issue an emergency suspension of the individual or establishment's license.[89] For some criminal arrests, DOH must issue an emergency suspension of a massage therapist's license, but not a massage establishment's license. As such, any emergency suspension of a massage establishment's license in response to such an arrest is a discretionary emergency action, rather than mandatory emergency action.[90]

According to DOH, the department's ability to take discretionary emergency action in cases involving prostitution has been limited by the courts. In 2015, the Second District Court of Appeal quashed DOH's emergency order restricting the license of a massage therapist who was arrested for prostitution on two different occasions with two different undercover officers. The Court found that the facts in the emergency order did not demonstrate an immediate danger to the public health, safety, or welfare, so did not meet the standard for an emergency suspension absent a statutory mandate. DOH continues to discipline massage therapists and establishments when there are arrests or convictions for prostitution; however, DOH undertakes such discipline without first suspending the license because of the 2nd DCA decision.[91] Thus, massage therapists and establishments may continue to practice or operate throughout the disciplinary process.

Effect of the Bill

Discipline of Massage Therapists and Establishments

Emergency Licensure Suspensions

The bill significantly broadens the circumstances under which DOH must issue an emergency order suspending the license of a massage therapist or massage establishment.

The bill requires DOH to issue an emergency suspension of the license of a massage therapist *and* massage establishment upon the *arrest* of *any* massage establishment employee for committing or attempting, soliciting, or conspiring to commit any offense related to prostitution or related acts under s. 796.07, F.S., or a felony under:[92]

- 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 section 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- Former 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 section 796.07, F.S., relating to prohibiting prostitution and related acts;
- 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;

[89] *See*, s. 456.074(4)-(5), F.S.
[90] S. 456.074(5), F.S.
[91] *Supra*, note 17.
[92] S. 456.074(4), F.S.

- 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.

This provision broadens the circumstances under which DOH must issue an emergency suspension in three ways. First, it requires DOH to suspend the license of the offending massage therapist *and* the affiliated massage establishment in response to qualifying offenses. Under current law DOH has the discretion to suspend the license of the massage therapist *or* establishment, dependent on the facts of a specific case.

Second, it expands the type of events that constitute grounds for the emergency suspension of a license to include an *arrest*, rather than only a conviction, for committing or attempting, soliciting, or conspiring to commit any of the listed offenses.

Third, it expands the list of persons affiliated with a massage establishment whose actions necessitate an emergency license suspension. The bill requires DOH to issue an emergency suspension upon the arrest or conviction of *any* massage establishment employee for the offenses listed above. The bill specifies that this includes independent contractors or lessees of a massage establishment, whose duties involve any aspect of the massage establishment, including preparing meals and cleaning, regardless of compensation for such duties. This does not apply to a person exclusively engaged in the repair or maintenance of the massage establishment or the delivery of goods to the establishment.

The bill also establishes new grounds for emergency license suspension that broadly applies to health care professionals licensed by DOH in general.[93] The bill requires DOH to issue an emergency order suspending the license of any licensee upon a finding that probable cause exists to believe that the licensee has committed sexual misconduct[94] and that such violation constitutes an immediate danger to the public.

Regulation of Massage Therapists and Establishments

The bill expressly prohibits any sexual *activity* in a massage establishment, as opposed to sexual *misconduct* which is prohibited under current law,[95] and prohibits the use of an establishment to arrange for sexual activity in another location. The bill broadly defines sexual activity to include 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.

[93] This requirement pertains to all licensees issued any permit, registration, certificate, or license, including a provisional license, issued by DOH. This includes professionals licensed under s. 393.17; part III, ch. 401; ch. 457; ch. 458; ch. 459; ch. 460; ch. 461; ch. 463; ch. 464; ch. 465; ch. 466; ch. 467; part I, part III, part IV, part V, part X, part XIII, and part XIV, ch. 468; ch. 478; ch. 480; part II and part III, ch. 483; ch. 484; ch. 486; ch. 490; or ch. 491.
[94] *See,* s. 456.063(1), F.S.; Sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession.
[95] *Id*.

The bill requires all employees of a massage establishment to be fully clothed while in the establishment. The bill exempts the employees of nude resort clubs,[96] except for licensed massage therapists, from this requirement.

The bill also adds requirements for massage establishments related to the physical office and recordkeeping. Under the bill, massage establishments are required to:

- Cover no more than 50 percent of any outside windows into the reception area;
- Ensure that outside windows into the reception area allow for at least 35 percent light penetration;
- Post signage outside of the establishment including the establishment's name, license number, and telephone number as provided to DOH;
- Maintain specified employee records in English or Spanish;
- Conspicuously display 2-inch by 2-inch photos of all employees with licensure information; and
- Maintain complete records in English or Spanish of each service provided, with the full name, address, and telephone number of the patient for at least one year after the provision of the service.

Facilities wherein a licensed acupuncturist, allopathic physician, osteopathic physician, or chiropractic physician employs a massage therapist to perform massage on the practitioner's or physician's patients are exempt from the requirements listed above. The bill also exempts massage establishments within public lodging establishments as defined in s. 509.013(4), F.S.,[97] from the requirements relating to window visibility and signage.

The bill expands the list of practitioners who may serve as the designated establishment manager (DEM) of a massage establishment to include licensed acupuncturists, allopathic physicians, osteopathic physicians, and chiropractic physicians. Current law requires that the DEM be a licensed massage therapist.

The bill requires DOH investigators to request valid government identification from all employees in the establishment at the time of an inspection. If any employee of a massage establishment is unable to provide a valid form of government identification, the bill requires DOH to notify a federal immigration office of such.

The bill requires all advertisements for a massage therapist or establishment to include the physical address and telephone number of the establishment as provided to DOH. Massage establishments with more than five locations are exempt from this requirement. Massage therapists, establishments, and employees of massage establishments are prohibited from advertising in any medium or website that expressly or implicitly advertises prostitution, escort, or other sexual services. The bill deletes the statutory clause allowing new massage establishments with pending licensure to advertise using the license number of a massage therapist.

The bill expands DOH's reporting requirements regarding massage therapists and establishments. Under current law, DOH must report the number of complaints, investigations, and disciplinary actions taken for all professions regulated by DOH, but is not required to report the reason for such complaint, investigation, or disciplinary action. Under the bill, DOH must separately categorize complaints, investigations, and disciplinary actions against massage therapists and establishments by the specific statutory violations being alleged.

---

[96] Specifically, public lodging establishments chartered with the American Association for Nude Recreation as a clothing-optional establishment. *See*, s. 509.013(4), F.S.; Public lodging establishments include transient and non-transient units/dwellings/buildings which are rented to guests at the frequency and length of stay specified in law. *See also,* the American Association for Nude Recreation – Florida Region website for more information. Available at https://aanr-florida.org/ (last visited March 14, 2024).

[97] *See*, s. 509.013(4), F.S.; Public lodging establishments include transient and non-transient units/dwellings/buildings which are rented to guests at the frequency and length of stay specified in law.

The bill changes quorum of Board of Massage Therapy from four members to a majority of the current membership of the Board. Currently, there are two vacancies on the seven-member board, so three of the five current members would constitute a quorum.

Public Nuisance

The bill expands the circumstances under which a massage establishment may be declared a public nuisance. Under the bill, a massage establishment which has violated the prohibition of sexual activity in a massage establishment or failed to maintain records detailing the services provided may be declared a nuisance and abated or enjoined. When such a nuisance exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county where the nuisance exists may bring a nuisance abatement action in the name of the state to enjoin the nuisance, the person maintaining it, and the owner or agent of the premises where the nuisance is located.

The bill provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to DOH, they will experience a significant increase in workload associated with additional complaints, investigations, and prosecution cases resulting from the provisions of the bill. The total annual cost of $1,034,032 consists of the following:[98]

   - Salary - $846,102/Recurring
   - Salary Rate – 593,954 Units of Rate
   - Expense - $71,000/Recurring + $53,272/Non-Recurring
   - Human Resources - $2,878/Recurring
   - Contracted Services - $5,100/Recurring $55,680/Non-Recurring

   The bill appropriates eight additional full-time equivalent positions and $925,080 in recurring funds and $108,952 in nonrecurring funds from the Medical Quality Assurance Trust Fund to the DOH to address this additional workload.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[98] Department of Health, *Agency Bill Analysis for House Bill 197* (2024), p. 11. On file with the Health and Human Services Committee.

Some massage therapy establishments may experience a negative economic impact as a result of operational costs associated with the advertising, signage, record keeping, and facility requirements of the bill.

D. FISCAL COMMENTS:

None.