

**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 Health Policy

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BILL: SB 896

INTRODUCER: Senator Martin

SUBJECT: Health Care Practitioners and Massage Therapy

DATE: January 29, 2024

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	<b>Favorable</b>
2.	_____	_____	AHS	_____
3.	_____	_____	FP	_____

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**I. Summary:**

SB 896 expands the Surgeon General’s authority to issue mandatory ESOs to any health care practitioner generally or to the designated establishment manager (DEM) or an employee of a massage establishment directly involved in the management of the establishment upon:

- A massage therapist, massage establishment, DEM, or establishment employee being arrested for committing or attempting, soliciting, or conspiring to commit prostitution or any of the listed felonies; or
- A finding by the Surgeon General that probable cause exists to believe that any licensee has committed sexual misconduct under s. 456.063(1), F.S., or the applicable practice act, and that the violation constitutes an immediate danger to the public.

SB 896 defines the following terms for the practice of massage therapy and massage establishments: advertising medium, employee; and sexual activity.

The bill amends the definition of DEM to include an acupuncturist, medical physician, osteopathic physician, and chiropractor as additional health care practitioners who may serve as a DEM.

SB 896 authorizes the DOH and law enforcement to investigate massage establishments for new required and prohibited acts to assist in identifying persons who may be engaging in human trafficking.

The bill:

- Authorizes law enforcement to seek an abatement or injunction against a massage establishment as a nuisance when the establishment is found to have permitted sexual activity on the premises or to has failed to maintain a complete set of client medical records;

- Requires a massage establishment to confirm the identity of a client before any services or treatments are provided;
- Requires a massage establishment to maintain a complete set of legible employee records, with specific contents provided in the bill, and that such records for an employee must be created before the employee may provide any service or treatment to a client at the establishment;
- Exempts acupuncturists, medical and osteopathic physicians, and chiropractors who employ a massage therapist to perform massage therapy on their patients at their practice, from the requirements of s. 480.043, F.S., except for the requirement to implement a procedure for reporting suspected human trafficking;
- Requires any advertisement by a massage therapist or massage establishment to include the physical address of the establishment that was provided to the DOH on the licensure application and exempts establishments with more than five locations;
- Prohibits massage therapists, massage establishments, and employees of massage establishments from advertising anywhere that expressly or implicitly advertises prostitution, escort, or other sexual services;
- Prohibits a massage establishment, unless zoned residential under a local ordinance, from being used by any person as:
  - A principle or temporary domicile;
  - A shelter or a harbor; or
  - As sleeping or napping quarters;
- Requires DOH investigators to request all massage establishment employees to present a valid government identification at the time of inspection;
- Requires the DOH to notify a federal immigration office if a massage establishment employee is unable to produce a valid government identification;
- Changes the BMT quorum requirements from four members to a majority of the members of the BMT; and
- Expands the DOH’s reporting requirements for more specific information regarding massage therapists and establishments.

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

## II. Present Situation:

### Massage Therapy Practice

Chapter 480, F.S., is the “Massage Therapy Practice Act” and governs the practice of massage therapy in Florida. A massage therapist is a health care practitioner licensed under ch. 480, F.S. The Board of Massage Therapy (BMT) is within the DOH and regulates the practice of massage therapy.<sup>1</sup> As of June 30, 2023, there were 55,409 total licensed massage therapists and establishments.<sup>2</sup>

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

<sup>2</sup> Department of Health, House Bill 197 2024 Agency Legislative Bill Analysis (Oct. 24, 2023) (On file with the Senate Committee on Health Policy).

Massage therapy is the manipulation of the soft tissues of the human body with the hands, feet, arms, or elbow, whether or not the manipulation is aided by hydrotherapy, and includes colonic irrigation, thermal therapy, the use of any electrical or mechanical device, or the application of chemical or herbal preparations to the human body.<sup>3</sup>

According to the DOH, in Fiscal Year 2022-2023, in Florida there were 191 BMT-approved licensed massage therapy schools, 34,515 in-state, active licensed massage therapists, and 8,966 massage establishments with active licenses.<sup>4</sup>

### ***Massage Therapy Licensure***

An individual seeking licensure as a massage therapist in Florida must:<sup>5</sup>

- Submit an application and the appropriate licensing fee;
- Be at least 18 years of age or have a high school diploma or high school equivalency diploma;
- Submit to background screening and be found to not have been convicted or found guilty of, or to have pled nolo contendere to, a specific list of crimes; and
- Meet specific education and training requirements, as discussed below.

### ***Massage Therapy Education and Training Requirements***

Individuals may meet their education and training requirements to earn their Florida massage therapy license in one of three manners:

- Attend a BMT-approved massage school and pass a BMT-approved examination.<sup>6</sup>
- Complete a BMT-approved massage apprenticeship program by July 1, 2023, and pass a BMT-approved examination.<sup>7</sup> This option is only available to those who had a massage apprentice license before July 1, 2020.<sup>8</sup>
- Obtain a license by endorsement, if the applicant is currently licensed in another state and meets additional requirements.<sup>9</sup>

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<sup>3</sup> Section 480.033, F.S.

<sup>4</sup> Florida Department of Health, Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2022-2023*, pgs. 27 and 31, available at <https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html> (last visited Jan. 28 2024).

<sup>5</sup> Section 480.041, F.S. See also, Fla. Admin. Code R. 64B7-25, (2023).

<sup>6</sup> Fla. Admin. Code R. 64B7-25.001, (2023). See also, Florida Board of Massage Therapy, Requirements for all Applicants, *Additional Requirements for Examination Applicants*, available at <https://floridasmassagetherapy.gov/licensing/licensed-massage-therapist-lmt/> (last visited Jan, 28, 2024).

<sup>7</sup> Fla. Admin. Code R. 64B7-29.003, (2023). During the apprenticeship, the sponsor is required to file quarterly reports and the apprentice must complete the following courses of study: 300 hours of physiology, 300 hours of anatomy, 20 hours of theory and history of massage, 50 hours of theory and practice of hydro-therapy, 25 hours of statutes and rules of massage practice, 50 hours of introduction to allied modalities, 700 hours of practical massage, and three hours of BMP-approved HIV/AIDS instruction.

<sup>8</sup> See ss. 480.033(5) and 480.041(8), F.S., (2020). The DOH will no longer issued massage apprentice licenses after June 30, 2020; and it is unclear if there are any apprentices left who have yet to take and pass a BMT approved examination.

<sup>9</sup> Section 480.041(5)(c), F.S.

### ***Massage Therapy Schools***

The BMT requires applicants for licensure to practice massage therapy to complete at least 500 classroom hours at a rate of no more than six hours per day and no more than 30 classroom hours per calendar week.<sup>10</sup> Classroom education must include:<sup>11</sup>

- 150 hours of anatomy and physiology;
- 100 hours of basic massage theory and history;
- 125 hours of clinical practicum;
- 76 hours of allied modalities;
- 15 hours of business;
- 15 hours of theory and practice of hydrotherapy;
- 10 hours of Florida laws and rules;
- 4 hours of professional ethics;
- 3 hours of HIV/AIDS education; and
- 2 hours on reducing medical errors.

### ***Massage Therapy Licensure by Endorsement***

An individual who holds an active license in another state that has licensing requirements that are equivalent to, or that exceed, Florida's licensing requirements, is eligible to receive a Florida massage therapy license by endorsement if he or she has also completed 10 hours of coursework on Florida laws and rules as part of a BMT-approved education program or with an approved continuing education (CE) provider.<sup>12</sup>

### ***Massage Establishment Licensure***

A massage establishment is the premises wherein a massage therapist practices massage therapy.<sup>13</sup> A massage establishment must be licensed by the BMT and adhere to rules set by the BMT regarding facilities, personnel, safety and sanitation requirements, financial responsibility, and insurance coverage.<sup>14</sup> Massage establishments must be licensed in order to operate legally.<sup>15</sup>

The BMT requires the following to be met before a massage establishment license may be issued:<sup>16</sup>

- A completed application and appropriate licensing fee;<sup>17</sup>
- A DOH inspection;<sup>18</sup> and

<sup>10</sup> Fla. Admin. Code R. 64B7-32.003, (2023).

<sup>11</sup> *Id.*

<sup>12</sup> Fla. Admin. Code R. 64B7-25.004, (2023). Florida-approved Massage Therapy programs are required to have 10 hours of Florida laws and rules as a part of their curriculum. Graduates from out of state programs must show that they have met the same course requirements as students who attend Florida schools.

<sup>13</sup> Section 480.033(7), F.S.

<sup>14</sup> Section 480.043, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Fla. Admin. Code R. 64B7-26.002, (2023).

<sup>17</sup> See Board of Massage Therapy, *Application for Massage Establishment License*, available at <https://floridasmassagetherapy.gov/applications/app-bus-original-mt.pdf> (last visited Jan. 28, 2024).

<sup>18</sup> 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 chs. 456 and 480, F.S., and related rules. See Fla. Admin. Code R. 64B7-26.002, (2023).

- Proof of property damage and bodily injury liability insurance coverage.<sup>19</sup>

The application includes background screening of the establishment owner and requires the identification of a designated establishment manager (DEM).<sup>20</sup> 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.<sup>21</sup>

Massage establishment licenses may not be transferred from a licensee to another individual or entity.<sup>22</sup> Board approval is required for a massage establishment to move locations or change names.<sup>23</sup>

A proposed massage establishment may be denied a license for failing to meet the standards adopted by the BMT, or if the owner or DEM has been convicted of, or plead guilty to, or plead nolo contendere to, a felony or misdemeanor relating to any of the following offenses:<sup>24</sup>

- Prostitution;<sup>25</sup>
- Kidnapping;<sup>26</sup>
- False imprisonment;<sup>27</sup>
- Luring or enticing a child;<sup>28</sup>
- Human trafficking or smuggling;<sup>29</sup>
- Sexual battery;<sup>30</sup>
- Female genital mutilation;<sup>31</sup>
- Lewd or lascivious offenses in the presence of a minor, elderly, or disabled person;<sup>32</sup> or
- Obscene or sexual acts involving a minor.<sup>33</sup>

The DOH may investigate the proposed massage establishment based on the application contents.<sup>34</sup> If DOH determines that the proposed massage establishment fails to meet the standards adopted by the BMT, the DOH 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.<sup>35</sup>

<sup>19</sup> Fla. Admin. Code R. 64B7-26.002, (2023).

<sup>20</sup> *Supra*, note 17.

<sup>21</sup> Section 480.033(6), F.S.

<sup>22</sup> Section 480.043(9), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 480.043, F.S.

<sup>25</sup> Chapter 796, F.S.

<sup>26</sup> Section 787.01, F.S.

<sup>27</sup> Section 787.02, F.S.

<sup>28</sup> Section 787.025, F.S.

<sup>29</sup> Sections 787.06 and 787.07, F.S.

<sup>30</sup> Section 794.011, F.S.

<sup>31</sup> Section 794.08, F.S.

<sup>32</sup> Sections 800.004 and 825.1025(2)(b), F.S.

<sup>33</sup> Section 827.071 and ch. 847 F.S.

<sup>34</sup> Section 480.043(5), F.S.

<sup>35</sup> Section 480.043(6), F.S.

### ***Professional Discipline of Massage Therapists and Massage Establishments***

It is the responsibility of the BMT to discipline its licensees regulated under ch. 480, F.S., for any acts that violate ss. 480.041, 480.043, 480.0485, 480.046, and s. 456.072, F.S., or in the Florida Administrative Code Rules in ch. 64B7. In doing so, it must issue an order imposing appropriate penalties on the massage therapist or massage establishment within the ranges recommended in the disciplinary guidelines of ss. 456.072(2) and 480.046, F.S., and Florida Administrative Code Rules, ch. 64B7, after consideration of the listed aggravating and mitigating factors. Discipline may include any combination of the following:

- Letter of concern or guidance.
- Reprimand.
- Conditional license.
- Probation.
- Suspension of license.
- Revocation of license.
- Fines.

During Fiscal Year 2022-2023, 229 administrative complaints (A/C) were filed related to massage therapists and massage establishments.<sup>36</sup> Of those, 70 were related to sexual misconduct.<sup>37</sup>

### ***DOH Emergency Action Orders***

The DOH is authorized under s. 456.074, F.S., to immediately suspend the license of any health care practitioner who has plead guilty, or nolo contendere to, or has been convicted of, any of the following offenses:

- Felony Medicare or Medicaid fraud under ch. 409, F.S.;
- Felony fraud under ch. 817, F.S.;
- Felony drug offenses under ch. 893, F.S., and equivalent charges under federal law;
- Misdemeanors or felonies under federal law relating to the Medicaid program;
- Felonies under s. 784.086, F.S., relating to reproductive battery; and
- Felonies under ch. 782, F.S., relating to homicide.

The DOH may only issue an ESO, an emergency restriction order (ERO), or an order limiting a practitioner's license if the procedure leading to the order was fair under the circumstances and meets the following criteria:<sup>38</sup>

- The procedure provided at least the same procedural protection as is given by other statutes, the State Constitution, or the U.S. Constitution;
- The DOH took only the action necessary to protect the public health, safety and welfare under the emergency procedure; and
- The DOH stated, in writing, with particularity, at the time of or prior to the emergency action, the specific facts and reasons for finding that the practitioner or regulated facility

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<sup>36</sup> Department of Health, House Bill 197 2024 Agency Legislative Bill Analysis (Oct. 24, 2023) (On file with the Senate Committee on Health Policy).

<sup>37</sup> *Id.*

<sup>38</sup> Section 120.60(6), F.S.

presented an *immediate danger to the public health, safety, or welfare* and its reasons for concluding that the procedure used was fair under the circumstances.

The State Surgeon General, or his or her designee, may issue the emergency action and is required to conduct a proceeding for the purposes of making finding that a health care practitioner or regulated facility presents an immediate danger to the public health or safety, and that the least restrictive means of protecting the public welfare is an action against the health care practitioner's or facility's license.<sup>39</sup>

### ***Emergency Actions Specific to Massage Therapist and Massage Establishment License***

The DOH under s. 456.074(4), F.S., is required to issue an ESO of the license of a massage therapist or massage establishment when a therapist, or a person with any ownership interest in a massage establishment, has been convicted, or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, prostitution or related acts under s. 796.07, F.S., or a felony under any of the following or similar provisions in another jurisdiction:<sup>40</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. 796.04, 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 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; and
- Section 847.0145, F.S., relating to the selling or buying of minors.

Without a conviction or the entry of a guilty or nolo contendere plea by the licensee, the DOH cannot issue an ESO.

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<sup>39</sup> Sections 456.073(8) and 120.60(6), F.S.

<sup>40</sup> Section 456.074(4), F.S.

The DOH is required to annually report to the Legislature the total number of A/Cs and a description of disciplinary actions taken against health care professionals and establishments licensed and regulated by the DOH.<sup>41</sup> 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.

Massage establishments are also required to maintain a DEM on file with DOH as a condition of their licensure. The DOH is authorized to issue an ESO to an establishment that fails to identify a new DEM within ten days of terminating the previous DEM.<sup>42</sup>

### **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.<sup>43</sup> 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 abuse, mental health concerns, and involvement in the child welfare system.<sup>44</sup>

Victims of human trafficking are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.<sup>45</sup> It is estimated that at any given time in 2021, there were approximately 27.6 million people engaging in forced labor.<sup>46</sup> In 2021, the National Human Trafficking Hotline<sup>47</sup> (hotline) identified 16,710 trafficking victims in the U.S., of which 1,253 were in Florida.<sup>48</sup> 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 six percent of reported victims in 2021 were associated with illicit massage, health, and beauty services.<sup>49</sup>

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<sup>41</sup> Section 456.026, F.S. See 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/MQAAAnnualReport2022-2023.pdf> (last visited Jan. 28, 2024).

<sup>42</sup> Section 480.043(12), F.S.

<sup>43</sup> Section 787.06, F.S.

<sup>44</sup> U.S. Department of Health and Human Services, Administration of Children and Families, National Human Trafficking Hotline. *Human Trafficking: What Human Trafficking is, and isn't*. available at <https://humantraffickinghotline.org/en/human-trafficking> (last visited Jan. 28, 2024).

<sup>45</sup> *Id.*

<sup>46</sup> International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Sep. 2022) available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipec/documents/publication/wcms\\_854733.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf) (last visited Jan. 23, 2024).

<sup>47</sup> 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 Jan. 28, 2024).

<sup>48</sup> U.S. Department of Health and Human Services, Administration of Children and Families, National Human Trafficking Hotline, *National Statistics (2021)*. available at <https://humantraffickinghotline.org/en/statistics> (last visited Jan. 28, 2024).

<sup>49</sup> U.S. Department of Health and Human Services, Administration of Children and Families, National Human Trafficking Hotline, *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 Jan. 28, 2024).



### ***Illicit Massage Businesses***

An illicit massage business (IMB) is an establishment that puts on the façade of a legitimate massage business in order to facilitate commercial sex services. As of 2023, *The Network*, a private I.R.S. 502(c)(3) non-profit, working to counter IMBs, estimated there were more than 13,000 IMBs operating in all 50 states. As a whole, this illicit industry generates over \$5 billion per year in revenue.<sup>50</sup> IMBs are considered one of the top venues for sex trafficking involving adults and represented the largest group of citizen calls to the hotline in 2019.<sup>51</sup>

### ***Law Enforcement Response to IMBs***

Florida has implemented several law enforcement and regulatory measures in an effort to stop the operation of IMBs without interfering with legitimate massage establishments.

Traditional tactics such as sting operations, undercover work, and reactive investigations are still relied on heavily for addressing human trafficking and IMBs, though these tactics for controlling crime have proven largely ineffective in reducing the presence of IMBs and their impact on victims of human trafficking. These tactics have been ineffective in holding traffickers accountable and decreasing the risk of victimization as the sting and undercover methods and massage therapy create unique issues for law enforcement.<sup>52</sup>

Law enforcement has also attempted to prosecute IMBs as a public nuisance and sought injunctive relief.<sup>53</sup> When such a nuisance exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county where the nuisance allegedly exists, may bring a nuisance abatement action to enjoin the nuisance, the person maintaining it, and the owner or agent of the premises where the nuisance is located.<sup>54</sup> Such actions may result in a permanent injunction requiring the establishment to cease operations or abate any such nuisance. Massage establishments may also be declared a public nuisance if they are operating outside of legal hours, serving as a person's principal domicile,<sup>55</sup> or are unable to provide the required identification and licensure documents upon the request of a law enforcement officer or DOH investigator.<sup>56</sup>

### ***Administrative Response to IMBs***

Florida has implemented several regulatory measures in an effort to combat the operation of IMBs. These regulations include:

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<sup>50</sup> The Network, *What is the Illicit Massage Industry?*, available at <https://www.thenetworkteam.org/research/what-is-the-illicit-massage-industry> (last visited Jan. 28, 2023). The Network is an intelligence driven I.R.S. 501(c)(3) non-profit counter human traffic organization based in northern Virginia that works with partners across the U.S. with diverse strengths.

<sup>51</sup> de Vries, I. (2020). Crime, place, and networks in the age of the internet: The case of online-promoted illicit massage businesses. Northeastern University. Available at <https://repository.library.northeastern.edu/files/neu:m046sd37z/fulltext.pdf> (last visited Jan. 28, 2024).

<sup>52</sup> Vries, I. de, & Farrell, A. (2022). *Explaining the Use of Traditional Law Enforcement Responses to Human Trafficking Concerns in Illicit Massage Businesses*. Justice Quarterly, available at <https://www.tandfonline.com/doi/epdf/10.1080/07418825.2022.2051587?needAccess=true> (last visited Jan. 26, 2024).

<sup>53</sup> Section 823.05, F.S.

<sup>54</sup> Section 60.05, F.S.

<sup>55</sup> See s. 480.0475, F.S.

<sup>56</sup> See s. 480.0535, F.S.

- Massage establishments are not authorized to operate between 12:00 a.m. and 5:00 a.m.;<sup>57</sup>
- Sexual misconduct<sup>58</sup> is explicitly prohibited in massage establishments;<sup>59</sup>
- Advertisements must include the license number of the individual massage therapist or establishment being advertised;<sup>60</sup>
- Persons employed in a massage establishment must be able to produce a government-issued identification upon request of a DOH inspector or law enforcement investigator;<sup>61</sup> and
- Massage establishments are required to have a procedure for reporting suspected human trafficking and conspicuously post a sign with the relevant procedures.<sup>62</sup>

### III. Effect of Proposed Changes:

SB 896 expands the Surgeon General’s authority to issue mandatory ESOs to any health care practitioner generally and to the DEM or an employee of a massage establishment directly involved in the management of the establishment upon:

- A massage therapist, massage establishment, DEM, or establishment employee being arrested for committing or attempting, soliciting, or conspiring to commit prostitution or any of the listed felonies; or
- A finding by the Surgeon General that probable cause exists to believe that any licensee has committed sexual misconduct under s. 456.063(1), F.S., or the applicable practice act, and that the violation constitutes an immediate danger to the public.

SB 896 amends s. 480.033, F.S., to define the following terms for the practice of massage therapy and massage establishments:

- “Advertising medium,” which includes:
  - 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
  - Any other form of written or electronic advertisement.
- “Employee,” which includes any person, or independent contractor or lessee of the massage establishment, whose duties include any aspect of the massage establishment, including, cooking and cleaning, with or without compensated. The term does not include persons exclusively engaged in the repair or maintenance of the massage establishment or in the delivery of goods to the establishment.
- “Sexual activity” according to parameters provided in the bill.

<sup>57</sup> Section 480.0475, F.S.

<sup>58</sup> Fla. Admin. Code R. 64B7-26.010, (2023), specifies that the statutory prohibition of sexual misconduct extends to sexual activity occurring within any massage establishment.

<sup>59</sup> Section 480.0485, F.S.

<sup>60</sup> Section 480.0465, F.S.

<sup>61</sup> Section 480.0535, F.S.

<sup>62</sup> Section 480.043, F.S.

The bill amends the definition of DEM in s. 480.033, F.S., to include an acupuncturist, medical or osteopathic physician, or chiropractor, who holds a clear and active licenses without restrictions as additional persons who may act as a DEM.

The bill amends s. 480.035, F.S., to change the BMT quorum requirements from four members to a majority of members.

SB 896 amends s. 480.043, F.S., to authorize the DOH and law enforcement to investigate for the following new prohibited acts to assist in identifying persons who may be engaging in human trafficking at massage establishments:

- Sexual activity in a massage establishment;
- Used or unused condoms in a massage establishment;
- Failure of the outside windows in the massage establishment's reception area to allow for at least 35 percent light penetration or more than 50 percent of the outside windows obstructed by signage, blinds, curtains, or other obstructions;
- Failure to post a sign on the front window of the establishment that includes the name and license number of the massage establishment and the telephone number that has been provided to the DOH as part of the licensure application, with an exception for a massage establishment:
  - Within a public lodging establishment; or
  - Located within a county or municipality that has an ordinance that prescribes requirements related to business window light penetration or signage limitations if compliance would result in noncompliance with such ordinance;
- Failure of all employees at the massage establishment being fully clothed and the clothing being fully opaque and made of nontransparent material that does not expose the employee's genitalia, with an exception for employees of a public lodging establishment which is licensed as a clothing-optional establishment and chartered with the American Association for Nude Recreation;
- A massage establishment's failure to maintain a complete set of legible employee employment records in English or Spanish, which must include employees':
  - Start date;
  - Full legal name;
  - Date of birth;
  - Home address;
  - Telephone number;
  - Employment position; and
  - A copy of the employee's government identification.
- A massage establishment's failure to conspicuously display a two-inch by two-inch photo for each employee, which, for massage therapists, must be attached to the massage therapist's license and include the employee's full legal name and employment position. A massage establishment 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 clients or patients;

- A massage establishment's failure to maintain a complete set of legible patient or client medical records in English or Spanish which must be maintained for one year after the last date of service or treatment, and include:
  - The date and time of the service or treatment;
  - The 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 client or patient.
- An establishment's failure to confirm the identification of a client or patient before any service or treatment is provided.

Except for the requirement that a massage establishment implement a procedure for reporting suspected human trafficking to the National Human Trafficking Hotline or to a local law enforcement agency and post in a conspicuous place in the establishment, s. 480.043, F.S., acupuncturists, physician licensed ch. 458 or 459, F.S., and chiropractors who employ a massage therapist to perform massage therapy on their patients at their practice are exempt from requirements of s. 480.043, F.S.

The bill amends s. 823.05, F.S., to declare that a massage establishment found to have permitted sexual activity on the premises, or to have failed to maintain a complete set of client or patient medical records, in violation of s. 480.14(a) or (f), F.S., is a nuisance and law enforcement may abate and enjoin the establishment under ss. 60.05 and 60.06, F.S.

SB 896 amends s. 480.0465, F.S., to require that any advertisements by massage therapist or massage establishment must include the physical address of the establishment that was provided to the DOH. Massage establishments with more than five locations are exempt from this requirement. Massage therapists, massage establishments, and employees of massage establishments are prohibited under the bill 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 licenses to advertise using the license number of a massage therapist.

SB 896 amends s. 480.0475, F.S., to prohibit the use of a massage establishment, unless zoned residential under a local ordinance, by any person as:

- A principle or temporary domicile;
- A shelter or a harbor; or
- Sleeping or napping quarters.

The bill amends s. 480.0535, F.S., to require DOH investigators to request demonstration of a valid government identification from all employees, in addition to massage therapists, in a massage establishment at the time of inspection. If an employee is unable to provide a valid form of government identification, the bill requires the DOH to notify a federal immigration office.

SB 896 expands the DOH's reporting requirements under 456.026, F.S., regarding massage therapists and establishments. Current law requires the DOH to report the number of complaints, investigations, and disciplinary actions taken for all the DOH regulated professions, but the basis of the cause of action is not required to be reported. SB 896 requires the DOH to separately

categorize complaints, investigations, and disciplinary actions against massage therapists and establishments where the following specific statutory violations are being alleged:

- No DSM;
- No procedure for reporting suspected human trafficking to the hotline or to a local law enforcement agency;
- Sexual activity in a massage establishment;
- Window violation;
- Clothing violation;
- Employment records violation;
- License display violation; and
- Medical records violation.
- Advertising violation;
- Domicile, shelter, harbor, sleeping or napping violation;
- Sexual misconduct violation; and
- Document violation.

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

#### **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:

The DOH advises that it will experience a significant increase in workload associated with additional complaints, investigations, and prosecution cases under the bill. The licensure pool for massage therapists and establishments is not expected to increase, yet the increase in workload cannot be absorbed with current resources and is anticipated to be substantial due to the provisions of this bill, according to the DOH.<sup>63</sup>

Based on Fiscal Year 2022-2023 data, the DOH believes it will require:<sup>64</sup>

- 46 full-time equivalent positions (FTE) for investigation;
- 23 FTE for legally sufficient cases; and
- 41 FTE for unlicensed activity investigations related to massage therapists and establishments.

The DOH estimates that the bill will result in an additional 1,869 complaints, 500 cases, and 48 unlicensed activity investigations per year. In addition, the bill requires mandatory ESOs for massage therapy and massage establishment licenses in violation of numerous statutes, which the DOH indicates will increase Prosecution Services Unit workloads and will require eight other FTE positions.

The DOH expects the bill to create a non-recurring increase in workload associated with updating the Licensing and Enforcement Information Database System (LEIDS), Iron Data Mobile (IDM) inspection software, Online Service Portal (Versa Online), artificial intelligence virtual agent (ELI) for voice and web, License Verification Search Site, board order tracking and monitoring systems, board websites, and data exchange services. Updates to fully integrate the bill are estimated to take three months. This reflects a minimum of 464 of initial non-recurring contracted hours at a rate of \$120/hr. for a total cost of \$55,680 (\$120/hr. x 464) and annual recurring system maintenance costs of \$5,100. Total estimated increase in workload and cost is \$60,780 in Contracted Services.<sup>65</sup>

The DOH's total estimated annual cost is \$1,034,032 in the following categories:<sup>66</sup>

- Salary - \$846,102/Recurring
- Expense - \$71,000/Recurring + \$53,272/Non-Recurring
- Human Resources - \$2,878/Recurring
- Contracted Services - \$5,100/Recurring \$55,680/Non-Recurring

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<sup>63</sup> Department of Health, House Bill 197 2024 Agency Legislative Bill Analysis (Oct. 24, 2023) (On file with the Senate Committee on Health Policy).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 456.026, 456.074, 480.033, 480.035, 480.043, 480.0465, 480.0475, 480.0535, and 823.05.

**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.