

1 A bill to be entitled
2 An act relating to massage establishments; amending s.
3 456.074, F.S.; authorizing the Department of Health to
4 immediately suspend the license of certain health care
5 practitioners and massage establishments in certain
6 circumstances; amending s. 480.033, F.S.; providing
7 and revising definitions; amending s. 480.035, F.S.;
8 revising quorum requirements for the Board of Massage
9 Therapy; amending s. 480.039, F.S.; authorizing
10 specified enforcement officers to perform inspections
11 and investigations of massage establishments for
12 specified purposes; requiring code enforcement
13 officers, and authorizing law enforcement officers, to
14 submit affidavits with specified photos and other
15 evidence or documentation to the department within a
16 specified timeframe; requiring certain law enforcement
17 agencies to notify the department within a specified
18 timeframe after discovering certain violations by a
19 massage therapist or massage establishment; amending
20 s. 480.043, F.S.; requiring the board to adopt certain
21 rules; prohibiting sexual activity and certain devices
22 in massage establishments; specifying prohibited
23 conduct by massage establishment owners and employees;
24 providing requirements for outside windows and signs
25 in massage establishments; providing exceptions;

26 providing employee dress code requirements; requiring
27 establishments to maintain certain employment records
28 in English or Spanish; requiring specified information
29 to be recorded before an employee may provide services
30 or treatment; requiring massage establishments to
31 conspicuously display a photo and specified
32 information for each employee; providing that such
33 photos and information must be displayed before an
34 employee may provide services or treatment; providing
35 that massage establishments within public lodging
36 establishments may satisfy such requirements by
37 specified means; requiring massage establishments to
38 maintain customer and patient records for services and
39 treatment provided in the massage establishment in
40 English or Spanish; providing that medical records
41 satisfy such requirement if they contain specified
42 information; requirement massage establishments to
43 maintain such records for a specified timeframe;
44 requiring massage establishments to collect and record
45 specified information and confirm the identification
46 of a customer or patient before provision of services
47 or treatment; amending s. 480.0465, F.S.; revising
48 advertising requirements for massage therapists and
49 massage establishments; amending s. 480.0475, F.S.;

50 revising hours during which a massage establishment

51 | may operate; requiring all customer and patient
 52 | services and treatment to be performed within
 53 | specified hours; prohibiting establishments from
 54 | sheltering or harboring, or being used as sleeping
 55 | quarters for, any person; providing criminal
 56 | penalties; amending s. 480.0485, F.S.; specifying
 57 | additional conduct that constitute sexual misconduct
 58 | in the practice of massage therapy; amending s.
 59 | 480.0535, F.S.; requiring department investigators to
 60 | request valid government identification from all
 61 | employees while in a massage establishment; specifying
 62 | additional documents a person operating a massage
 63 | establishment must immediately present, upon request,
 64 | to department investigators and law enforcement
 65 | officers; requiring the department to notify a federal
 66 | immigration office if specified persons fail to
 67 | provide valid government identification; amending s.
 68 | 847.001, F.S.; revising the definitions of the terms
 69 | "adult entertainment establishment" and "unlicensed
 70 | massage establishment" for purposes of certain
 71 | criminal conduct; providing an effective date.

72 |
 73 | Be It Enacted by the Legislature of the State of Florida:
 74 |
 75 | Section 1. Subsection (4) of section 456.074, Florida

76 Statutes, is amended, and subsection (7) is added to that
 77 section, to read:

78 456.074 Certain health care practitioners; immediate
 79 suspension of license.—

80 (4) The department shall issue an emergency order
 81 suspending the license of a massage therapist and ~~or~~
 82 establishment as those terms are defined in chapter 480 upon
 83 receipt of information that the massage therapist, the
 84 designated establishment manager as defined in chapter 480, an
 85 employee of the establishment, a person with an ownership
 86 interest in the establishment, or, for a corporation that has
 87 more than \$250,000 of business assets in this state, the owner,
 88 officer, or individual directly involved in the management of
 89 the establishment has been arrested for committing or
 90 attempting, soliciting, or conspiring to commit, or convicted or
 91 found guilty of, or has entered a plea of guilty or nolo
 92 contendere to, regardless of adjudication, a violation of s.
 93 796.07 ~~s. 796.07(2)(a) which is reclassified under s. 796.07(7)~~
 94 or a felony offense under any of the following provisions of
 95 state law or a similar provision in another jurisdiction:

- 96 (a) Section 787.01, relating to kidnapping.
- 97 (b) Section 787.02, relating to false imprisonment.
- 98 (c) Section 787.025, relating to luring or enticing a
 99 child.
- 100 (d) Section 787.06, relating to human trafficking.

- 101 (e) Section 787.07, relating to human smuggling.
- 102 (f) Section 794.011, relating to sexual battery.
- 103 (g) Section 794.08, relating to female genital mutilation.
- 104 (h) Former s. 796.03, relating to procuring a person under
- 105 the age of 18 for prostitution.
- 106 (i) Former s. 796.035, relating to the selling or buying
- 107 of minors into prostitution.
- 108 (j) Section 796.04, relating to forcing, compelling, or
- 109 coercing another to become a prostitute.
- 110 (k) Section 796.05, relating to deriving support from the
- 111 proceeds of prostitution.
- 112 (l) Section 796.07(4)(a)3., relating to a felony of the
- 113 third degree for a third or subsequent violation of s. 796.07,
- 114 relating to prohibiting prostitution and related acts.
- 115 (m) Section 800.04, relating to lewd or lascivious
- 116 offenses committed upon or in the presence of persons less than
- 117 16 years of age.
- 118 (n) Section 825.1025(2)(b), relating to lewd or lascivious
- 119 offenses committed upon or in the presence of an elderly or
- 120 disabled person.
- 121 (o) Section 827.071, relating to sexual performance by a
- 122 child.
- 123 (p) Section 847.0133, relating to the protection of
- 124 minors.
- 125 (q) Section 847.0135, relating to computer pornography.

126 (r) Section 847.0138, relating to the transmission of
 127 material harmful to minors to a minor by electronic device or
 128 equipment.

129 (s) Section 847.0145, relating to the selling or buying of
 130 minors.

131 (7) The department shall issue an emergency order
 132 suspending the license of any licensee upon a finding of the
 133 State Surgeon General that probable cause exists to believe that
 134 the licensee has committed sexual misconduct as defined and
 135 prohibited in s. 456.063(1), or the applicable practice act, and
 136 that such violation constitutes an immediate danger to the
 137 public.

138 Section 2. Subsections (1) through (6) and (7) through
 139 (12) of section 480.033, Florida Statutes, are renumbered as
 140 subsections (2) through (7) and (9) through (14), respectively,
 141 present subsection (6) is amended, and new subsections (1) and
 142 (8) and subsection (15) are added to that section, to read:

143 480.033 Definitions.—As used in this act:

144 (1) "Advertising medium" means any newspaper; airwave or
 145 computer transmission; telephone directory listing other than an
 146 in-column listing consisting only of a name, physical address,
 147 and telephone number; business card; handbill; flyer; sign other
 148 than a building directory listing all building tenants and their
 149 room or suite numbers; or other form of written or electronic
 150 advertisement.

151 ~~(7)-(6)~~ "Designated establishment manager" means a massage
 152 therapist, a health care practitioner licensed under chapter
 153 457, or a physician licensed under chapter 458, chapter 459, or
 154 chapter 460 who holds a clear and active license without
 155 restriction, who is responsible for the operation of a massage
 156 establishment in accordance with the provisions of this chapter,
 157 and who is designated the manager by the rules or practices at
 158 the establishment.

159 (8) For purposes of this chapter only, "employee" means
 160 any person, including an independent contractor or a lessee of
 161 the massage establishment, whose duties involve any aspect of
 162 the massage establishment regardless of whether such person is
 163 compensated for the performance of such duties. The term does
 164 not include a person exclusively engaged in the repair or
 165 maintenance of the massage establishment or the delivery of
 166 goods to the massage establishment.

167 (15) "Sexual activity" means any direct or indirect
 168 contact by any employee or person, or between any employees or
 169 persons, with the intent to abuse, humiliate, harass, degrade,
 170 or arouse, or gratify the sexual desire of, any employee or
 171 person, or which is likely to cause such abuse, humiliation,
 172 harassment, degradation, or arousal, or sexual gratification:

173 (a) With or without the consent of the employee or person;

174 (b) With or without verbal or nonverbal communication that
 175 the sexual activity is undesired;

- 176 (c) With or without the use of any device or object;
 177 (d) With or without the occurrence of penetration, orgasm,
 178 or ejaculation;
 179 (e) Including, but not limited to, intentional contact
 180 with the genitalia, groin, femoral triangle, anus, buttocks,
 181 gluteal cleft, breast or nipples, mouth, or tongue; and
 182 (f) Including, but not limited to, the intentional removal
 183 of any drape without written specific informed consent of the
 184 patient.

185 Section 3. Subsection (5) of section 480.035, Florida
 186 Statutes, is amended to read:

187 480.035 Board of Massage Therapy.—

188 (5) The board shall hold such meetings during the year as
 189 it may determine to be necessary, one of which shall be the
 190 annual meeting. The chair of the board shall have the authority
 191 to call other meetings at her or his discretion. A quorum of the
 192 board shall consist of not less than a majority of the current
 193 membership of the board ~~four members~~.

194 Section 4. Section 480.039, Florida Statutes, is amended
 195 to read:

196 480.039 Investigative services; reporting.—

197 (1) The department shall provide all investigative
 198 services required in carrying out ~~the provisions of this act~~. A
 199 code enforcement officer may perform inspections regarding a
 200 massage establishment's compliance with s. 480.043(14)(a), (b),

201 and (c) and a law enforcement officer may perform inspections
202 and investigations regarding a massage establishment's
203 compliance with ss. 480.043(12) and (14) (a) - (f), 480.0465(3),
204 480.0475(1) and (2), and 480.0535. Code enforcement officers
205 shall, and law enforcement officers may, submit to the
206 department an executed affidavit with photos and any other
207 evidence or documentation obtained during the inspection or
208 investigation within 5 business days after the inspection or
209 investigation that finds there is a violation of s. 480.043(12)
210 or (14) (a), (b), (c), (d), (e), or (f), s. 480.0465(3), s.
211 480.0475(1) or (2), or s. 480.0535. For violations of s.
212 480.043(14) (a) or (f), s. 480.0465(3), s. 480.0475(2), or s.
213 480.0535, within 20 business days after receipt of such executed
214 affidavit, the department shall issue an emergency order
215 suspending the license of the massage establishment. For
216 violations of s. 480.043(12) or (14) (b), (c), (d), or (e) or s.
217 480.0475(1), within 30 business days after receipt of an
218 executed affidavit, the department shall inspect the massage
219 establishment to ensure the massage establishment's compliance
220 with this chapter, and if the massage establishment is not in
221 compliance with this chapter, the department shall initiate a
222 disciplinary proceeding.

223 (2) If a law enforcement officer arrests a massage
224 therapist for any violation of this chapter or determines that a
225 massage establishment continues to operate following the

226 issuance of an emergency suspension or restriction by the
227 department, the officer's employing law enforcement agency shall
228 notify the department within 5 business days after the arrest or
229 determination of unlawful continued operation.

230 Section 5. Subsection (14) of section 480.043, Florida
231 Statutes, is renumbered as subsection (15), subsection (3) and
232 present subsection (14) are amended, and a new subsection (14)
233 is added to that section, to read:

234 480.043 Massage establishments; requisites; licensure;
235 inspection; human trafficking awareness training and policies;
236 prohibited acts.—

237 (3) The board shall adopt rules governing the operation of
238 establishments and their facilities, personnel, employees,
239 safety and sanitary requirements, financial responsibility,
240 insurance coverage, and the license application and granting
241 process.

242 (14) (a) Sexual activity in any massage establishment is
243 prohibited. An establishment owner or employee may not engage in
244 or allow any person to engage in sexual activity in the massage
245 establishment or use the establishment to make arrangements to
246 engage in sexual activity in another location. Prophylactic
247 devices are prohibited in a massage establishment.

248 (b) If there is an outside window or windows into the
249 massage establishment's reception area, the outside window or
250 windows must allow for at least 35 percent light penetration,

251 and no more than 50 percent of the outside window or windows may
252 be obstructed with signage, blinds, curtains, or other
253 obstructions, thus allowing the public to see the massage
254 establishment's reception area. A sign must be posted on the
255 front window of the massage establishment and include the name
256 of the massage establishment, its license number, and the
257 telephone number that has been provided to the department as
258 part of the licensing of the massage establishment. This
259 paragraph does not apply to a massage establishment within a
260 public lodging establishment as defined in s. 509.013(4). This
261 paragraph also does not apply to a massage establishment located
262 within a county or municipality that has an ordinance that
263 prescribes requirements related to business window light
264 penetration or signage limitations if compliance with this
265 paragraph would result in noncompliance with such ordinance.

266 (c) All employees within the massage establishment must be
267 fully clothed and such clothing must be fully opaque and made of
268 nontransparent material that does not expose the employee's
269 genitalia, undergarments, or lingerie.

270 (d) A massage establishment must maintain a complete set
271 of legible records in English or Spanish, which must include
272 each employee's start date of employment, full legal name, date
273 of birth, home address, telephone number, and employment
274 position and a copy of the employee's government identification
275 required under s. 480.0535. All information required under this

276 paragraph must be recorded before the employee may provide any
277 service or treatment to a customer or patient.

278 (e) A message establishment must conspicuously display a
279 2-inch by 2-inch photo for each employee, which, for massage
280 therapists, must be attached to the massage therapist's license.
281 Such display must also include the employee's full legal name
282 and employment position. All information required under this
283 paragraph must be displayed before the employee may provide any
284 service or treatment to a customer or patient. A massage
285 establishment within a public lodging establishment as defined
286 in s. 509.013(4) may satisfy this requirement by displaying the
287 photos and required information in an employee break room or
288 other room that is used by employees but is not used by
289 customers or patients.

290 (f) A message establishment must maintain a complete set
291 of legible records in English or Spanish, which must include the
292 date, time, and type of service or treatment provided; the full
293 legal name of the employee who provided the service or
294 treatment; and the full legal name, home address, and telephone
295 number of the customer or patient. Medical records may satisfy
296 this requirement if the records include the specified
297 information. A copy of the customer's or patient's photo
298 identification may be used to provide the full legal name and
299 home address of the customer or patient. Records required under
300 this paragraph must be maintained for at least 1 year after the

301 provision of the service or treatment. All information required
 302 under this paragraph must be collected and recorded before the
 303 provision of any service or treatment to a customer or patient.
 304 The massage establishment must confirm the identification of the
 305 customer or patient before the provision of any service or
 306 treatment to the customer or patient.

307 (15)-(14) Except for the requirements of subsection (13),
 308 this section does not apply to a health care practitioner
 309 ~~physician~~ licensed under chapter 457 or a physician licensed
 310 under, chapter 458, chapter 459, or chapter 460 who employs a
 311 licensed massage therapist to perform massage therapy on the
 312 practitioner's or physician's patients at his or her the
 313 ~~physician's~~ place of practice. This subsection does not restrict
 314 investigations by the department for violations of chapter 456
 315 or this chapter.

316 Section 6. Section 480.0465, Florida Statutes, is amended
 317 to read:

318 480.0465 Advertisement; prohibitions.—

319 (1) Each massage therapist or massage establishment
 320 licensed under this act shall include the number of the license
 321 in any advertisement of massage therapy services appearing in
 322 any advertising medium, including a newspaper, airwave
 323 transmission, telephone directory, Internet, or other
 324 advertising medium. Pending licensure of a new massage
 325 establishment under s. 480.043(7), the license number of a

326 licensed massage therapist who is an owner or principal officer
327 of the establishment may be used in lieu of the license number
328 for the establishment. The advertisement must also include the
329 physical address of the massage establishment and the telephone
330 number that has been provided to the department as part of the
331 licensing of the massage establishment. However, the inclusion
332 of the physical address and telephone number is not required for
333 an advertisement by a massage establishment whose establishment
334 owner operates more than five locations in this state.

335 (2) An establishment owner or employee may not place,
336 publish, or distribute, or cause to be placed, published, or
337 distributed, any advertisement in any advertising medium that
338 states prostitution services, escort services, or sexual
339 services are available.

340 (3) A massage therapist or a massage establishment or its
341 employees may not place, publish, or distribute, or cause to be
342 placed, published, or distributed, any online advertisement on
343 any website known for advertising prostitution services, escort
344 services, or sexual services.

345 Section 7. Section 480.0475, Florida Statutes, is amended
346 to read:

347 480.0475 Massage establishments; prohibited practices;
348 penalties.—

349 (1) A massage establishment may only be operated ~~person~~
350 ~~may not operate a massage establishment~~ between the hours of 5

351 a.m. and midnight and all customer and patient services and
352 treatment must be performed between the hours of 5 a.m. and 10
353 p.m. This subsection does not apply to a massage establishment:

354 (a) Located on the premises of a health care facility as
355 defined in s. 408.07; a health care clinic as defined in s.
356 400.9905(4); a hotel, motel, or bed and breakfast inn, as those
357 terms are defined in s. 509.242; a timeshare property as defined
358 in s. 721.05; a public airport as defined in s. 330.27; or a
359 pari-mutuel facility as defined in s. 550.002;

360 (b) In which every massage performed between the hours of
361 10 p.m. ~~midnight~~ and 5 a.m. is performed by a massage therapist
362 acting under the prescription of a physician or physician
363 assistant licensed under chapter 458, an osteopathic physician
364 or physician assistant licensed under chapter 459, a
365 chiropractic physician licensed under chapter 460, a podiatric
366 physician licensed under chapter 461, an advanced practice
367 registered nurse licensed under part I of chapter 464, or a
368 dentist licensed under chapter 466; or

369 (c) Operating during a special event if the county or
370 municipality in which the establishment operates has approved
371 such operation during the special event.

372 (2) A person operating a massage establishment may not use
373 or permit the establishment to be used as a principal domicile
374 for, to shelter or harbor, or as sleeping quarters for any
375 person unless the establishment is zoned for residential use

376 | under a local ordinance.

377 | (3) A person violating ~~the provisions of~~ this section
 378 | commits a misdemeanor of the first degree, punishable as
 379 | provided in s. 775.082 or s. 775.083. A second or subsequent
 380 | violation of this section is a felony of the third degree,
 381 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

382 | Section 8. Section 480.0485, Florida Statutes, is amended
 383 | to read:

384 | 480.0485 Sexual misconduct in the practice of massage
 385 | therapy.—The massage therapist-patient relationship is founded
 386 | on mutual trust. Sexual misconduct in the practice of massage
 387 | therapy means violation of the massage therapist-patient
 388 | relationship through which the massage therapist uses that
 389 | relationship to induce or attempt to induce the patient to
 390 | engage, or to engage or attempt to engage the patient, in sexual
 391 | activity outside the scope of practice or the scope of generally
 392 | accepted examination or treatment of the patient. Sexual
 393 | misconduct in the practice of massage therapy includes requiring
 394 | patient nudity as part of any massage service or any other
 395 | service in the massage establishment or the intentional removal
 396 | of any drape without the written specific informed consent of
 397 | the patient. Sexual misconduct in the practice of massage
 398 | therapy is prohibited.

399 | Section 9. Section 480.0535, Florida Statutes, is amended
 400 | to read:

401 480.0535 Documents required while working in a massage
402 establishment; penalties; reporting requirement.—

403 (1) In order to provide the department and law enforcement
404 agencies the means to more effectively identify, investigate,
405 and arrest persons engaging in human trafficking, an employee ~~a~~
406 ~~person employed by a massage establishment~~ and any person
407 performing massage therapy in a massage establishment ~~therein~~
408 must immediately present, upon the request of an investigator of
409 the department or a law enforcement officer, valid government
410 identification while in the establishment. An investigator of
411 the department must request valid government identification from
412 all employees while in the establishment. A valid government
413 identification for the purposes of this section is:

414 (a) A valid, unexpired driver license issued by any state,
415 territory, or district of the United States;

416 (b) A valid, unexpired identification card issued by any
417 state, territory, or district of the United States;

418 (c) A valid, unexpired United States passport;

419 (d) A naturalization certificate issued by the United
420 States Department of Homeland Security;

421 (e) A valid, unexpired alien registration receipt card
422 (green card); or

423 (f) A valid, unexpired employment authorization card
424 issued by the United States Department of Homeland Security.

425 (2) A person operating a massage establishment must:

426 (a) Immediately present, upon the request of an
427 investigator of the department or a law enforcement officer:

428 1. Valid government identification while in the
429 establishment.

430 2. A copy of the documentation specified in paragraph
431 (1)(a) for each employee and any person performing massage
432 therapy in the establishment.

433 3. A copy of the documents required under s.
434 480.043(14)(d) and (f).

435 (b) Ensure that each employee and any person performing
436 massage therapy in the massage establishment is able to
437 immediately present, upon the request of an investigator of the
438 department or a law enforcement officer, valid government
439 identification while in the establishment.

440 (3) A person who violates ~~any provision of~~ this section
441 commits:

442 (a) For a first violation, a misdemeanor of the second
443 degree, punishable as provided in s. 775.082 or s. 775.083.

444 (b) For a second violation, a misdemeanor of the first
445 degree, punishable as provided in s. 775.082 or s. 775.083.

446 (c) For a third or subsequent violation, a felony of the
447 third degree, punishable as provided in s. 775.082, s. 775.083,
448 or s. 775.084.

449 (4) The department shall notify a federal immigration
450 office if a person operating a massage establishment, an

451 employee, or any person performing massage therapy in a massage
452 establishment fails to provide a valid government identification
453 as required under this section.

454 Section 10. Paragraph (d) of subsection (2) of section
455 847.001, Florida Statutes, is amended to read:

456 847.001 Definitions.—As used in this chapter, the term:

457 (2) "Adult entertainment establishment" means the
458 following terms as defined:

459 (d) "Unlicensed massage establishment" means any business
460 or enterprise that offers, sells, or provides, or that holds
461 itself out as offering, selling, or providing, massages that
462 include bathing, physical massage, rubbing, kneading, anointing,
463 stroking, manipulating, or other tactile stimulation of the
464 human body by either male or female employees or attendants,
465 including employees or attendants who are massage therapists
466 licensed under s. 480.041, by hand or by any electrical or
467 mechanical device, on or off the premises. The term "unlicensed
468 massage establishment" does not include an establishment
469 licensed under s. 480.043 which routinely provides medical
470 services by state-licensed health care practitioners and massage
471 therapists licensed under s. 480.041.

472 Section 11. This act shall take effect July 1, 2023.