

CHAPTER 2024-148

Committee Substitute for Committee Substitute for House Bill No. 197

An act relating to health care practitioners and massage therapy; amending s. 456.026, F.S.; requiring the Department of Health to report specified data; amending s. 456.074, F.S.; authorizing the department to immediately suspend the license of certain health care practitioners and massage establishments in certain circumstances; amending s. 480.033, F.S.; revising and providing definitions; amending s. 480.035, F.S.; revising quorum requirements for the Board of Massage Therapy; amending s. 480.043, F.S.; revising certain rules the board is required to adopt; revising the timeframe in which establishment owners must report specified information to the department; prohibiting sexual activity and certain devices in massage establishments; specifying prohibited conduct by establishment owners and employees; providing requirements for outside windows and signs in massage establishments; providing exceptions; providing employee dress code requirements; requiring establishments to maintain certain employment records in English or Spanish; requiring that specified information be recorded before an employee may provide services or treatment; requiring massage establishments to conspicuously display a photo and specified information for each employee; requiring that such photos and information be displayed before an employee may provide services or treatment; providing for such requirements in massage establishments within public lodging establishments; requiring massage establishments to maintain customer and patient records for services and treatment provided in the massage establishment in English or Spanish; providing that medical records satisfy certain requirements; requiring massage establishments to maintain such records for a specified timeframe; requiring massage establishments to collect and record specified information; requiring massage establishments to confirm the identification of a customer or patient before providing services or treatment; amending s. 480.0465, F.S.; revising advertising requirements for massage therapists and massage establishments; amending s. 480.0475, F.S.; prohibiting establishments from sheltering or harboring, or being used as sleeping quarters for, any person; amending s. 480.0535, F.S.; requiring Department of Health investigators to request valid government identification from all employees while in a massage establishment; specifying additional documents a person operating a massage establishment must immediately present, upon request, to department investigators and law enforcement officers; requiring the department to notify a federal immigration office if specified persons fail to provide valid government identification; amending s. 823.05, F.S.; conforming a cross-reference; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 456.026, Florida Statutes, is amended to read:

456.026 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.—

(1) The department is directed to prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives by November 1 of each year. In addition to finances and any other information the Legislature may require, the report shall include statistics and relevant information, profession by profession, detailing:

(a)(1) The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.

(b)(2) The number of complaints received and investigated.

(c)(3) The number of findings of probable cause made.

(d)(4) The number of findings of no probable cause made.

(e)(5) The number of administrative complaints filed.

(f)(6) The disposition of all administrative complaints.

(g)(7) A description of disciplinary actions taken.

(h)(8) A description of any effort by the department to reduce or otherwise close any investigation or disciplinary proceeding not before the Division of Administrative Hearings under chapter 120 or otherwise not completed within 1 year after the initial filing of a complaint under this chapter.

(i)(9) The status of the development and implementation of rules providing for disciplinary guidelines pursuant to s. 456.079.

(j)(10) Such recommendations for administrative and statutory changes necessary to facilitate efficient and cost-effective operation of the department and the various boards.

(2) The report shall separately categorize all complaints, investigations, probable cause, and disciplinary actions against a massage therapist or massage establishment licensed under chapter 480 related to a violation of:

(a) Section 480.043(12).

(b) Section 480.043(13).

(c) Section 480.043(14)(a)-(f).

(d) Section 480.0465.

(e) Section 480.0475.

(f) Section 480.0485.

(g) Section 480.0535.

Section 2. Subsection (4) of section 456.074, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

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

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

- (a) Section 787.01, relating to kidnapping.
- (b) Section 787.02, relating to false imprisonment.
- (c) Section 787.025, relating to luring or enticing a child.
- (d) Section 787.06, relating to human trafficking.
- (e) Section 787.07, relating to human smuggling.
- (f) Section 794.011, relating to sexual battery.
- (g) Section 794.08, relating to female genital mutilation.
- (h) Former s. 796.03, relating to procuring a person under the age of 18 for prostitution.
- (i) Former s. 796.035, relating to the selling or buying of minors into prostitution.
- (j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.
- (k) Section 796.05, relating to deriving support from the proceeds of prostitution.

(l) Section 796.07(4)(a)3., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.

(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.

(o) Section 827.071, relating to sexual performance by a child.

(p) Section 847.0133, relating to the protection of minors.

(q) Section 847.0135, relating to computer pornography.

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

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

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

Section 3. Subsections (1) through (6) of section 480.033, Florida Statutes, are renumbered as subsections (2) through (7), respectively, subsections (7) through (12), are renumbered as subsections (9) through (14), respectively, present subsection (6) is amended, and new subsections (1), (8), and (15) are added to that section, to read:

480.033 Definitions.—As used in this act:

(1) “Advertising medium” means 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.

(7)(6) “Designated establishment manager” means a massage therapist who holds a clear and active license without restriction; a health care practitioner licensed under chapter 457; or a physician licensed under chapter 458, chapter 459, or chapter 460, who is responsible for the operation of a massage establishment in accordance with the provisions of this chapter, and who is designated the manager by the rules or practices at the establishment.

(8) “Employee” means any person, including, but not limited to, independent contractors or lessees of a massage establishment, whose duties involve any aspect or capacity of the massage establishment, including, but not limited to, preparing meals and cleaning regardless of whether such person is compensated for the performance of such duties. The term does not include a person who is exclusively engaged in the repair or maintenance of the massage establishment or the delivery of goods to the establishment.

(15) “Sexual activity” means 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:

(a) With or without the consent of the employee or person.

(b) With or without verbal or nonverbal communication that the sexual activity is undesired.

(c) With or without the use of any device or object.

(d) With or without the occurrence of penetration, orgasm, or ejaculation.

(e) Including, but not limited to, intentional contact with the genitalia, groin, femoral triangle, anus, buttocks, gluteal cleft, breast or nipples, mouth, or tongue.

(f) Including, but not limited to, the intentional removal of any drape without specific written informed consent of the patient.

Section 4. Subsection (5) of section 480.035, Florida Statutes, is amended to read:

480.035 Board of Massage Therapy.—

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

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

480.043 Massage establishments; requisites; licensure; inspection; human trafficking awareness training and policies.—

(3) The board shall adopt rules governing the operation of massage establishments and their facilities, employees personnel, safety and

sanitary requirements, financial responsibility, insurance coverage, and the license application and granting process.

(14) In order to provide the department and law enforcement agencies the means to more effectively identify persons engaging in human trafficking at massage establishments, the following apply:

(a) Sexual activity in a massage establishment is prohibited. An establishment owner or employee may not engage in or allow any person to engage in sexual activity in the establishment or use the establishment to make arrangements to engage in sexual activity in another location. Used or unused condoms are prohibited in a massage establishment.

(b) If there is an outside window or windows into the massage establishment's reception area, the outside window or windows must allow for at least 35 percent light penetration and no more than 50 percent of the outside window or windows may be obstructed with signage, blinds, curtains, or other obstructions, allowing the public to see the establishment's reception area. A sign must be posted 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 department as part of licensure of the establishment. This paragraph does not apply to:

1. A massage establishment within a public lodging establishment as defined in s. 509.013(4).

2. A massage establishment located within a county or municipality that has an ordinance that prescribes requirements related to business window light penetration or signage limitations if compliance with this paragraph would result in noncompliance with such ordinance.

(c) All employees within the massage establishment must be fully clothed and such clothing must be fully opaque and made of nontransparent material that does not expose the employee's genitalia. This requirement does not apply to an employee, excluding a massage therapist, of a public lodging establishment, as defined in s. 509.013(4), that is licensed as a clothing-optional establishment and chartered with the American Association for Nude Recreation.

(d) A massage establishment must maintain a complete set of legible records in English or Spanish, which must include each employee's start date of employment, full legal name, date of birth, home address, telephone number, and employment position and a copy of the employee's government identification required under s. 480.0535. All information required under this paragraph must be recorded before the employee may provide any service or treatment to a client or patient.

(e) A massage establishment must conspicuously display a 2 inch by 2 inch photo for each employee, which, for massage therapists, must be attached to the massage therapist's license. Such display must also include

the employee's full legal name and employment position. All information required under this paragraph must be displayed before the employee may provide any service or treatment to a client or patient. A massage establishment within a public lodging establishment as defined in s. 509.013(4) 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.

(f) A massage establishment must maintain a complete set of legible records in English or Spanish, which must include the date, time, and type of service or treatment provided; the full legal name of the employee who provided the service or treatment; and the full legal name, home address, and telephone number of the client or patient. Medical records may satisfy this requirement if the records include the specified information. A copy of the client's or patient's photo identification may be used to provide the full legal name and home address of the client or patient. Records required under this paragraph must be maintained for at least 1 year after a service or treatment is provided. All information required under this paragraph must be collected and recorded before any service or treatment is provided to a client or patient. The establishment must confirm the identification of the client or patient before any service or treatment is provided to the client or patient.

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

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

480.0465 Advertisement; prohibitions.—

(1) Each massage therapist or massage establishment licensed under this act shall include the number of the license in any advertisement of massage therapy services appearing in any advertising medium, including, but not limited to, a newspaper, airwave transmission, telephone directory, Internet, or other advertising medium. The advertisement must also include the physical address of the massage establishment and the telephone number that has been provided to the department as part of the licensing of the establishment. However, the inclusion of the physical address and telephone number is not required for an advertisement by a massage establishment whose establishment owner operates more than five locations in this state.

(2) A massage therapist, an establishment owner, an employee, or any third party directed by the establishment owner or employee, may not place, publish, or distribute, or cause to be placed, published, or distributed, any

advertisement in any advertising medium which states prostitution services, escort services, or sexual services are available.

(3) A massage therapist, an establishment owner, an employee, or any third party directed by the massage therapist, establishment owner, or employee may not place, publish, or distribute, or cause to be placed, published, or distributed, any online advertisement on any website known for advertising prostitution services, escort services, or sexual services. Pending licensure of a new massage establishment under s. 480.043(7), the license number of a licensed massage therapist who is an owner or principal officer of the establishment may be used in lieu of the license number for the establishment.

Section 7. Subsection (2) of section 480.0475, Florida Statutes, is amended to read:

480.0475 Massage establishments; prohibited practices.—

(2) A person operating a massage establishment may not use or permit the establishment to be used as a principal or temporary domicile for, to shelter or harbor, or as sleeping or napping quarters for any person unless the establishment is zoned for residential use under a local ordinance.

Section 8. Section 480.0535, Florida Statutes, is amended to read:

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

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

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

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

(c) A valid, unexpired United States passport;

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

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

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

(2) A person operating a massage establishment must:

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

- 1. Valid government identification while in the establishment.
- 2. A copy of the documentation specified in paragraph (1)(a) for each employee and any person performing massage therapy in the establishment.
- 3. A copy of the documents required under s. 480.043(14)(d) and (f).

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

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

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

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

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

(4) The department shall notify a federal immigration office if a person operating a massage establishment, an employee, or any person performing massage therapy in a massage establishment fails to provide valid government identification as required under this section.

Section 9. Subsection (3) of section 823.05, Florida Statutes, is amended to read:

823.05 Places and groups engaged in certain activities declared a nuisance; abatement and enjoinder.—

(3) A massage establishment as defined in s. 480.033 which operates in violation of ~~s. 480.043(14)(a) or (f)~~, s. 480.0475, or s. 480.0535(2) is declared a nuisance and may be abated or enjoined as provided in ss. 60.05 and 60.06.

Section 10. For the 2024-2025 fiscal year, eight full-time equivalent positions, with associated salary rate of 593,954, are authorized and the sums of \$925,080 in recurring and \$108,952 in nonrecurring funds from the Medical Quality Assurance Trust Fund are appropriated to the Department of Health for the purpose of implementing this act.

Section 11. This act shall take effect July 1, 2024.

Approved by the Governor May 6, 2024.

Filed in Office Secretary of State May 6, 2024.