

1 A bill to be entitled

2 An act relating to health care practitioners and
3 massage therapy; amending s. 456.026, F.S.; requiring
4 the Department of Health to report specific data;
5 amending s. 456.074, F.S.; authorizing the Department
6 of Health to immediately suspend the license of
7 certain health care practitioners and massage
8 establishments in certain circumstances; amending s.
9 480.033, F.S.; revising and providing definitions;
10 amending s. 480.035, F.S.; revising quorum
11 requirements for the Board of Massage Therapy;
12 amending s. 480.043, F.S.; revising certain rules the
13 board is required to adopt; revising the timeframe in
14 which establishment owners must report specified
15 information to the department; prohibiting sexual
16 activity and certain devices in massage
17 establishments; specifying prohibited conduct by
18 establishment owners and employees; providing
19 requirements for outside windows and signs in massage
20 establishments; providing exceptions; providing
21 employee dress code requirements; requiring
22 establishments to maintain certain employment records
23 in English or Spanish; requiring that specified
24 information be recorded before an employee may provide
25 services or treatment; requiring massage

26 establishments to conspicuously display a photo and
 27 specified information for each employee; requiring
 28 that such photos and information be displayed before
 29 an employee may provide services or treatment;
 30 providing for such requirements in massage
 31 establishments within public lodging establishments;
 32 requiring massage establishments to maintain customer
 33 and patient records for services and treatment
 34 provided in the massage establishment in English or
 35 Spanish; providing that medical records satisfy
 36 certain requirements; requiring massage establishments
 37 to maintain such records for a specified timeframe;
 38 requiring massage establishments to collect and record
 39 specified information; requiring massage
 40 establishments to confirm the identification of a
 41 customer or patient before providing services or
 42 treatment; amending s. 480.0465, F.S.; revising
 43 advertising requirements for massage therapists and
 44 massage establishments; amending s. 480.0475, F.S.;
 45 prohibiting establishments from sheltering or
 46 harboring, or being used as sleeping quarters for, any
 47 person; amending s. 480.0535, F.S.; requiring
 48 Department of Health investigators to request valid
 49 government identification from all employees while in
 50 a massage establishment; specifying additional

51 documents a person operating a massage establishment
 52 must immediately present, upon request, to department
 53 investigators and law enforcement officers; requiring
 54 the department to notify a federal immigration office
 55 if specified persons fail to provide valid government
 56 identification; amending s. 823.05, F.S.; conforming a
 57 cross-reference; providing an effective date.
 58

59 Be It Enacted by the Legislature of the State of Florida:
 60

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

63 456.026 Annual report concerning finances, administrative
 64 complaints, disciplinary actions, and recommendations.—

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

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

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

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

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

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

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

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

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

84 ~~(i)(9)~~ The status of the development and implementation of
 85 rules providing for disciplinary guidelines pursuant to s.
 86 456.079.

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

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

94 (a) 480.043(12);

95 (b) 480.043(13);

96 (c) 480.043(14) (a) - (f);

97 (d) 480.0465;

98 (e) 480.0475;

99 (f) 480.0485; and

100 (g) 480.0535.

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

104 456.074 Certain health care practitioners; immediate
 105 suspension of license.—

106 (4) The department shall issue an emergency order
 107 suspending the license of a massage therapist and ~~or~~
 108 establishment as those terms are defined in chapter 480 upon
 109 receipt of information that the massage therapist; ~~the~~
 110 designated establishment manager as defined in chapter 480; an
 111 employee of the establishment; a person with an ownership
 112 interest in the establishment; ~~or,~~ or, for a corporation that has
 113 more than \$250,000 of business assets in this state, the owner,
 114 officer, or individual directly involved in the management of
 115 the establishment has been arrested for committing or
 116 attempting, soliciting, or conspiring to commit, or convicted or
 117 found guilty of, or has entered a plea of guilty or nolo
 118 contendere to, regardless of adjudication, a violation of s.
 119 ~~796.07(2)(a) which is reclassified under s. 796.07(7)~~ or a
 120 felony offense under any of the following provisions of state
 121 law or a similar provision in another jurisdiction:

- 122 (a) Section 787.01, relating to kidnapping.
- 123 (b) Section 787.02, relating to false imprisonment.
- 124 (c) Section 787.025, relating to luring or enticing a
 125 child.

- 126 (d) Section 787.06, relating to human trafficking.
- 127 (e) Section 787.07, relating to human smuggling.
- 128 (f) Section 794.011, relating to sexual battery.
- 129 (g) Section 794.08, relating to female genital mutilation.
- 130 (h) Former s. 796.03, relating to procuring a person under
- 131 the age of 18 for prostitution.
- 132 (i) Former s. 796.035, relating to the selling or buying
- 133 of minors into prostitution.
- 134 (j) Section 796.04, relating to forcing, compelling, or
- 135 coercing another to become a prostitute.
- 136 (k) Section 796.05, relating to deriving support from the
- 137 proceeds of prostitution.
- 138 (l) Section 796.07(4)(a)3., relating to a felony of the
- 139 third degree for a third or subsequent violation of s. 796.07,
- 140 relating to prohibiting prostitution and related acts.
- 141 (m) Section 800.04, relating to lewd or lascivious
- 142 offenses committed upon or in the presence of persons less than
- 143 16 years of age.
- 144 (n) Section 825.1025(2)(b), relating to lewd or lascivious
- 145 offenses committed upon or in the presence of an elderly or
- 146 disabled person.
- 147 (o) Section 827.071, relating to sexual performance by a
- 148 child.
- 149 (p) Section 847.0133, relating to the protection of
- 150 minors.

151 (q) Section 847.0135, relating to computer pornography.

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

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

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

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

170 480.033 Definitions.—As used in this act:

171 (1) "Advertising medium" means any newspaper; airwave or
 172 computer transmission; telephone directory listing, other than
 173 an in-column listing consisting only of a name, physical
 174 address, and telephone number; business card; handbill; flyer;
 175 sign, other than a building directory listing all building

176 tenants and their room or suite numbers; or any other form of
 177 written or electronic advertisement.

178 (7)-(6) "Designated establishment manager" means a massage
 179 therapist who holds a clear and active license without
 180 restriction; a health care practitioner licensed under chapter
 181 457; or a physician licensed under chapter 458, chapter 459, or
 182 chapter 460 who is responsible for the operation of a massage
 183 establishment in accordance with the provisions of this chapter,
 184 and who is designated the manager by the rules or practices at
 185 the establishment.

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

195 (15) "Sexual activity" means any direct or indirect
 196 contact by any employee or person, or between any employees or
 197 persons, with the intent to abuse, humiliate, harass, degrade,
 198 or arouse, or gratify the sexual desire of, any employee or
 199 person, or which is likely to cause such abuse, humiliation,
 200 harassment, degradation, or arousal, or sexual gratification:

- 201 (a) With or without the consent of the employee or person.
- 202 (b) With or without verbal or nonverbal communication that
- 203 the sexual activity is undesired.
- 204 (c) With or without the use of any device or object.
- 205 (d) With or without the occurrence of penetration, orgasm,
- 206 or ejaculation.
- 207 (e) Including, but not limited to, intentional contact
- 208 with the genitalia, groin, femoral triangle, anus, buttocks,
- 209 gluteal cleft, breast or nipples, mouth, or tongue.
- 210 (f) Including, but not limited to, the intentional removal
- 211 of any drape without specific written informed consent of the
- 212 patient.

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

215 480.035 Board of Massage Therapy.—

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

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

226 480.043 Massage establishments; requisites; licensure;
 227 inspection; human trafficking awareness training and policies.-

228 (3) The board shall adopt rules governing the operation of
 229 massage establishments and their facilities, employees
 230 ~~personnel~~, safety and sanitary requirements, financial
 231 responsibility, insurance coverage, and the license application
 232 and granting process.

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

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

243 (b) If there is an outside window or windows into the
 244 massage establishment's reception area, the outside window or
 245 windows must allow for at least 35 percent light penetration and
 246 no more than 50 percent of the outside window or windows may be
 247 obstructed with signage, blinds, curtains, or other
 248 obstructions, allowing the public to see the establishment's
 249 reception area. A sign must be posted on the front window of the
 250 establishment that includes the name and license number of the

251 message establishment and the telephone number that has been
 252 provided to the department as part of licensure of the
 253 establishment. This paragraph does not apply to:

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

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

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

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

276 service or treatment to a client or patient.

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

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

301 this paragraph must be collected and recorded before any service
 302 or treatment is provided to a client or patient. The
 303 establishment must confirm the identification of the client or
 304 patient before any service or treatment is provided to the
 305 client or patient.

306 (15)~~(14)~~ Except for the requirements of subsection (13),
 307 this section does not apply to a practitioner ~~physician~~ licensed
 308 under chapter 457 or a physician licensed under~~7~~ chapter 458,
 309 chapter 459, or chapter 460 who employs a licensed massage
 310 therapist to perform massage therapy on the practitioner's or
 311 physician's patients at his or her ~~the physician's~~ place of
 312 practice. This subsection does not restrict investigations by
 313 the department for violations of chapter 456 or this chapter.

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

316 480.0465 Advertisement; prohibitions.—

317 (1) Each massage therapist or massage establishment
 318 licensed under this act shall include the number of the license
 319 in any advertisement of massage therapy services appearing in
 320 any advertising medium, including, but not limited to, a
 321 newspaper, airwave transmission, telephone directory, Internet,
 322 or other advertising medium. Pending licensure of a new massage
 323 establishment under s. 480.043(7), the license number of a
 324 licensed massage therapist who is an owner or principal officer
 325 of the establishment may be used in lieu of the license number

326 ~~for the establishment.~~ The advertisement must also include the
 327 physical address of the massage establishment and the telephone
 328 number that has been provided to the department as part of the
 329 licensing of the establishment. However, the inclusion of the
 330 physical address and telephone number is not required for an
 331 advertisement by a massage establishment whose establishment
 332 owner operates more than five locations in this state.

333 (2) A massage therapist, an establishment owner, an
 334 employee, or any third party directed by the establishment owner
 335 or employee, may not place, publish, or distribute, or cause to
 336 be placed, published, or distributed, any advertisement in any
 337 advertising medium which states prostitution services, escort
 338 services, or sexual services are available.

339 (3) A massage therapist, an establishment owner, an
 340 employee, or any third party directed by the massage therapist,
 341 establishment owner, or employee may not place, publish, or
 342 distribute, or cause to be placed, published, or distributed,
 343 any online advertisement on any website known for advertising
 344 prostitution services, escort services, or sexual services.

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

347 480.0475 Massage establishments; prohibited practices.—

348 (2) A person operating a massage establishment may not use
 349 or permit the establishment to be used as a principal or
 350 temporary domicile, to shelter or harbor, or as sleeping or

351 napping quarters for any person unless the establishment is
 352 zoned for residential use under a local ordinance.

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

355 480.0535 Documents required while working in a massage
 356 establishment; penalties; reporting.—

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

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

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

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

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

375 (e) A valid, unexpired alien registration receipt card

376 (green card); or
 377 (f) A valid, unexpired employment authorization card
 378 issued by the United States Department of Homeland Security.
 379 (2) A person operating a massage establishment must:
 380 (a) Immediately present, upon the request of an
 381 investigator of the department or a law enforcement officer:
 382 1. Valid government identification while in the
 383 establishment.
 384 2. A copy of the documentation specified in paragraph
 385 (1)(a) for each employee and any person performing massage
 386 therapy in the establishment.
 387 3. A copy of the documents required under s.
 388 480.043(14)(d) and (f).
 389 (b) Ensure that each employee and any person performing
 390 massage therapy in the massage establishment is able to
 391 immediately present, upon the request of an investigator of the
 392 department or a law enforcement officer, valid government
 393 identification while in the establishment.
 394 (3) A person who violates any provision of this section
 395 commits:
 396 (a) For a first violation, a misdemeanor of the second
 397 degree, punishable as provided in s. 775.082 or s. 775.083.
 398 (b) For a second violation, a misdemeanor of the first
 399 degree, punishable as provided in s. 775.082 or s. 775.083.
 400 (c) For a third or subsequent violation, a felony of the

401 third degree, punishable as provided in s. 775.082, s. 775.083,
 402 or s. 775.084.

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

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

410 823.05 Places and groups engaged in certain activities
 411 declared a nuisance; abatement and enjoinder.-

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

416 Section 10. This act shall take effect July 1, 2024.