

**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.)

Prepared By: The Professional Staff of the Health Regulation Committee

**BILL:** CS/SB 966

**INTRODUCER:** Health Regulation Committee and Senator Joyner

**SUBJECT:** Human Trafficking/Massage Services

**DATE:** March 19, 2010      **REVISED:** \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Harper  | Wilson         | HR        | Fav/CS |
| 2. |         |                | CJ        |        |
| 3. |         |                | RI        |        |
| 4. |         |                | HA        |        |
| 5. |         |                |           |        |
| 6. |         |                |           |        |

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill requires a person who provides or offers to provide massage services to possess, and present to law enforcement officers upon request, an identification license card or wall license card issued by the Department of Health (DOH) and one of the following documents:

- A current driver’s license;
- An identification card issued by the state of Florida;
- A valid passport issued by the Department of State of the United States;
- A valid I-551 permanent residence card; or
- A valid employment authorization document issued to the person providing or offering to provide the massage services.

The bill requires operators of massage establishments to maintain valid work authorization documents on the premises for employees that are not U.S. citizens, and present the valid work authorization documents to a law enforcement officer upon request. The bill prohibits the use of a massage establishment license for the purpose of lewdness, assignation, or prostitution. Criminal penalties are established for a violation of any of the provisions set forth in the bill.

This bill creates s. 480.054, F.S.

## II. Present Situation:

### **Human Trafficking, Sex Trafficking, and Prostitution**

“Human trafficking” is defined under s. 787.06(2)(c), F.S., to mean transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.

Section 787.06(3), F.S., provides that it is a second-degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., (maximum imprisonment of 15 years, maximum fine of \$10,000, or penalties applicable for a habitual offender) for any person to knowingly:

- Engage, or attempt to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
- Benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.

“Sex trafficking” is regulated under ch. 796, F.S., relating to prostitution. Section 796.045, F.S., provides that any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second degree felony. A person commits a first degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., (maximum imprisonment of 30 years, maximum fine of \$10,000, or penalties applicable for a habitual offender) if the offense of sex trafficking is committed against a person who is under the age of 14 or if such offense results in death.

“Prostitution” is defined under s. 796.07, F.S., to mean the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

### **Florida Statewide Task Force on Human Trafficking**

The Florida Statewide Task Force on Human Trafficking was created in 2009<sup>1</sup> with the express purpose of examining the problem of human trafficking and recommending strategies and actions for reducing or eliminating the unlawful trafficking of men, women, and children into this state. The Florida State University Center for the Advancement of Human Rights (CAHR) was directed to submit a statewide strategic plan to the task force by November 1, 2009.<sup>2</sup> The task force must propose a plan of implementation of the strategic plan by October 1, 2010.

### **Human Trafficking in Florida**

Federal government estimates of persons trafficked into the United States each year range from 14,500-20,000.<sup>3</sup> Additionally, an estimated 200,000 American children are at risk for trafficking into the sex industry each year, according to the United States Department of Justice.<sup>4</sup> The exact

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<sup>1</sup> See ch. 2009-95, Laws of Florida.

<sup>2</sup> Florida State University, Center for the Advancement of Human Rights, Draft Strategic Plan on Human Trafficking, October 7, 2009. Found at: <<http://www.dcf.state.fl.us/initiatives/humantrafficking/docs/FSUStrategicPlanDraft103009.pdf>> (Last visited on March 16, 2010.)

<sup>3</sup> See: U.S. Department of State, Trafficking in Persons Report, June 2009. Available at: <<http://www.state.gov/g/tip/rls/tiprpt/2009/>> (Last visited on March 17, 2010).

<sup>4</sup> Simon, S. *Human Trafficking and Florida Law Enforcement*. Florida Criminal Justice Executive Institute. March 2008. Found at: <<http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx>> (Last visited on March 17, 2010).

number of persons trafficked in Florida is difficult to determine because little data is available due to the reluctance of victims to report trafficking, the ease with which traffickers can move and operate, and until recently, little historical experience by law enforcement and prosecutors in cases of human trafficking. However, Florida is ranked as one of the top states in the nation for human trafficking cases, with immigrants and non-English speaking persons especially vulnerable.

The CAHR has found that Asian massage parlors are often used to disguise sex trafficking. Women are trafficked in from Korea, Vietnam, Thailand or China using tourist visas. The women are then forced to work off their debt of being smuggled in, which is typically \$50,000 to \$100,000.<sup>5</sup> Officials in Florida have discovered a very pronounced pattern of “moving targets” with some massage establishments operating a “taxi service,” transporting women to other massage establishments throughout the country as often as every 7 to 14 days.<sup>6</sup> Massage establishments engaged in trafficking will also often close and re-open frequently to avoid having to hold trafficked women in a single location.<sup>7</sup>

Currently in Florida, all law enforcement recruits receive mandatory training in recognizing and investigating human trafficking cases. Also, the U.S. Justice Department currently operates human trafficking task forces in Miami, Homestead, Naples, Fort Myers, and Tampa-Clearwater.

### **Massage Therapists and Massage Establishments**

Massage therapists and massage establishments in Florida are regulated by the Board of Massage Therapy in the Department of Health (DOH) under the Massage Practice Act, ch. 480, F.S., and Rule 64B7, Florida Administrative Code. In order to be licensed as a massage therapist, an applicant must:

- Be at least 18 years old or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a Board of Massage Therapy-approved massage school or apprenticeship program; and
- Pass an examination,<sup>8</sup> which is currently offered in English and in Spanish.

Licensed massage therapists may practice in a licensed massage establishment, at a client’s residence or office, or at a sports event, convention or trade show. Licensees must report their mailing address and practice location to the DOH. Sexual misconduct, defined as a violation of the professional relationship through the use of such relationship to engage or attempt to engage in verbal or physical sexual activity outside the scope of the profession, is strictly prohibited.<sup>9</sup>

Section 480.43, F.S., provides that a massage establishment license is required at any facility where massage therapy services are offered by a licensed massage therapist and directs the board

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<sup>5</sup> Telephone interview with Terry Coonan, Executive Director of the FSU Center for the Advancement of Human Rights (CAHR). March 17, 2010.

<sup>6</sup> Terry Coonan, CAHR, *Rationale for the Proposed Revisions*. Document on file with the Committee on Health Regulation staff.

<sup>7</sup> Telephone interview with Terry Coonan, CAHR. March 17, 2010.

<sup>8</sup> Section 480.042, F.S.

<sup>9</sup> Section 480.0485, F.S.

to adopt application criteria. It also provides that massage establishment licenses may not be transferred to a new owner, but may be transferred to a new location or business name.

The Board of Massage Therapy's rules include insurance requirements, compliance with building codes, and safety and sanitary requirements, and require a licensed massage therapist to be onsite anytime a client is receiving massage services.<sup>10</sup> Sexual activity by any person or persons in a massage establishment is absolutely prohibited.<sup>11</sup> Upon receiving an application, the DOH inspects the establishment to ensure it meets the licensure requirements.<sup>12</sup> Once licensed, the DOH inspects the establishment at least annually.<sup>13</sup>

An application for a massage establishment license may be denied for an applicant's conviction of crimes related to the practice of massage, and must be denied for convictions of enumerated crimes within 15 years of application<sup>14</sup> and for past sexual misconduct.<sup>15</sup>

Operation of an unlicensed massage establishment is considered a misdemeanor of the first degree. Currently, upon receiving a complaint that unlicensed activity is occurring, the DOH's Medical Quality Assurance inspectors coordinate with local law enforcement. Unlicensed practice of massage therapy is punishable as a third degree felony.<sup>16</sup> The DOH may issue cease and desist notices, enforceable by filing for an injunction or writ of mandamus and seek civil penalties against the unlicensed party in circuit court.<sup>17</sup> The DOH may also impose, by citation, an administrative penalty up to \$5,000. While the DOH has investigative authority, it does not have arrest authority or sworn law enforcement personnel.

### **I-551 Permanent Residence Card, Employment Authorization Document**

The United States Citizen and Immigration Service (USCIS) within the Department of Homeland Security (DHS) is the federal department responsible for granting lawful permanent residence.<sup>18</sup> A permanent resident is someone who has been granted authorization to live and work in the United States on a permanent basis. As proof of that status, a person is granted a Permanent Resident Card or Alien Registration Receipt Card. A Permanent Residence Card is officially called "Form I-551," and commonly called a "green card."<sup>19</sup>

Individuals who are temporarily in the United States and eligible<sup>20</sup> for employment authorization may file a Form I-765, Application for Employment Authorization, to request an Employment

<sup>10</sup> Rule 64B7-26.003, F.A.C.

<sup>11</sup> Rule 64B7-26.010, F.A.C.

<sup>12</sup> Rule 64B7-26.004, F.A.C.

<sup>13</sup> Rule 64B7-26.005, F.A.C.

<sup>14</sup> Section 456.0635, F.S.

<sup>15</sup> Section 456.063, F.S.

<sup>16</sup> Section 456.065, F.S.

<sup>17</sup> Section 456.065, F.S.

<sup>18</sup> U.S. Immigration Support, "USCIS." Available at: <<http://www.usimmigrationsupport.org/uscis.html>> (Last visited on March 18, 2010).

<sup>19</sup> U.S. Citizen and Immigration Service, "Green Card (Permanent Residence)." Available at: <<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=ae853ad15c673210VgnVCM100000082ca60aRCRD&vgnnextchannel=ae853ad15c673210VgnVCM100000082ca60aRCRD>> (Last visited on March 18, 2010).

<sup>20</sup> Employment authorization eligibility is codified in Federal Regulations at 8 C.F.R. §274a.12. Sample document found at: <[http://edocket.access.gpo.gov/cfr\\_2005/janqtr/pdf/8cfr274a.12.pdf](http://edocket.access.gpo.gov/cfr_2005/janqtr/pdf/8cfr274a.12.pdf)> (Last visited on March 18, 2010).

Authorization Document (EAD).<sup>21</sup> An EAD card, commonly called a “work permit,” provides its holder the legal right to work in the U.S.

### III. Effect of Proposed Changes:

The bill creates s. 480.054, F.S., to require each person who provides or offers to provide massage services to possess a wallet-size identification license card or wall license card issued by the DOH pursuant to s. 456.013, F.S., and one of the following documents:

- A current driver’s license;
- An identification card issued by the state of Florida;
- A valid passport issued by the Department of State of the United States;
- A valid I-551 permanent residence card; or
- A valid employment authorization document issued to the person providing or offering to provide the massage services.

The bill requires a person who provides or offers to provide massage services to present to a law enforcement officer, upon request, the wallet size identification license card or wall license card issued by the DOH, and one of the previously listed documents.

The bill prohibits a person from providing or offering to provide massage services without possession of a valid wallet-size identification license card or wall license card issued by the DOH and one of the previously listed documents.

The bill requires any person who operates a massage establishment pursuant to s. 480.043, F.S., to maintain valid work authorization documents on the premises for *each* employee who is not a United States citizen. Valid work authorization documents include:

- A valid I-551 permanent residence card; or
- A valid employment authorization document.

The bill requires a person who operates a massage establishment to present to a law enforcement officer, upon request, the authorization documents on the premises for each employee who is not a U.S. citizen. The bill prohibits a person from operating or otherwise managing a massage establishment without maintaining valid work authorization documents on the premises for each employee who is not a U.S. citizen.

The bill prohibits a person from using a massage establishment license issued pursuant to s. 480.043, F.S., for the purpose of lewdness, assignation, or prostitution at any place, structure, or part thereof, trailer or other conveyance. A person may not use a massage establishment license with the knowledge that the license will be used for the purpose of lewdness, assignation, or prostitution.

The bill specifies that a person who violates any provisions of the bill commits:

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<sup>21</sup> U.S. Citizen and Immigration Service, “Application for Employment Authorization.” Available at: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=73ddd59cb7a5d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD> (Last visited on March 18, 2010).

- A misdemeanor of the second degree for the first violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (maximum imprisonment of 60 days or maximum fine of \$500);
- A misdemeanor of the first degree for the second violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., (maximum imprisonment of 1 year or maximum fine of \$1,000); or
- A felony of the third degree for the third or subsequent violation, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., (maximum imprisonment of 5 years, maximum fine of \$5,000, or penalties applicable for a habitual offender).

The bill has an effective date of July 1, 2010.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Persons providing or offering to provide massage services, and operators or owners of massage establishments, may incur increased costs to comply with the regulations set forth in the bill.

##### **C. Government Sector Impact:**

None.

#### **VI. Technical Deficiencies:**

None.

## VII. Related Issues:

Provisions in subsections (1), (2), and (3) apply to each person who provides or offers to provide massage services. Chapter 480, F.S., the Massage Practice Act, does not define “person,” “provide(s),” “massage services,” or “services.” The term “massage,” as defined in s. 480.033(3), F.S., does not specify any certain persons who can provide a massage. Therefore, the bill currently applies to all persons, not just massage therapists.

The bill would require any person who provided or offered to provide massage services, whether for compensation or not, to obtain and possess a wallet-size identification license card or wall license card issued by the DOH, as well as a government issued identification document as listed in the bill. The bill would prohibit any person from providing or offering to provide massage services, whether for compensation or not, unless that person possessed a DOH issued wallet-size identification license card, or wall license card, and one of the government issued identification documents.

Subsections (1), (2), and (3) may need to include “for compensation” following each use of “person providing or offering to provide massage services.”

Provisions in subsections (1), (2), and (3) require that a person who provides or offers to provide massage services possess and be able to present to law enforcement officers certain documents. Currently, the bill requires only that a valid employment authorization document be issued to the person providing or offering to provide the massage services. The bill does not specifically require that any of the other documents, including the DOH issued wallet-size identification license card or wall license card, actually be that of the person providing or offering to provide massage services.

The phrase “issued to the person providing or offering to provide the massage services” used in each paragraph (e) of subsections (1), (2), and (3) may need to be relocated in each subsection. For example, the phrase may be included following “issued by the Department of Health” in each of the subsections; or following “and one of the following documents” in each of the subsections.

## VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

### **CS by Health Regulation on March 18, 2010:**

The Committee Substitute substantially changes requirements for massage therapists and massage establishments as filed in the original bill. The CS also removes the responsibilities and fiscal impact for the DOH and Florida Department of Law Enforcement (FDLE) as filed in the original bill.

The CS requires a person who provides or offers to provide massage services to possess and be able to present to law enforcement officers specified documents for identification. Massage establishments are required to maintain and be able to provide certain

identification documents for certain employees. The CS prohibits certain acts and establishes criminal penalties for violations.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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