

DEPARTMENT OF HEALTH
BILL ANALYSIS, ECONOMIC STATEMENT
AND FISCAL NOTE

BILL NO.: SB 966

SUBJECT: Human Trafficking

SPONSOR (S): Joyner

STATUTE (S) AFFECTED: 456, 477, 480, 501, 509, 787

COORDINATED WITH: MQA Enforcement Unit, Bureau of Operations

COMPANION BILL (S): HB 633 (S)

Kaye Howerton, Executive Director Board of
Massage Therapy (850) 245-4162

Budget Services Reviewer

Division/Office Director

Legislative Planning Director

Donna Erlich
General Counsel Reviewer

Deputy Secretary/Deputy State Health Officer

I. SUMMARY:

This bill revises the licensure and renewal requirements for massage establishments. This bill requires criminal background checks for persons, firms, or corporations applying for a massage establishment license and prohibits licensure for various offenses. In addition, the bill is attempting to clarify that a massage establishment license is required for cosmetology salons, health studios, and public lodging establishments where massage therapy services are offered. The bill also authorizes additional grounds for disapproval of a massage school and requires all massage licensure examinations be given in English.

Will this bill have a fiscal impact on the Department of Health (DOH)?

Yes No

II. PRESENT SITUATION/EFFECT BILL WOULD HAVE ON DOH AND/OR PUBLIC HEALTH:

SECTION: 1.

What does this section of the bill do?

This section sets forth the legislative intent to provide avenues for law enforcement and the Department of Health (DOH) to investigate, prosecute, and arrest those who are using the massage therapy profession to promote and engage in prostitution and human trafficking.

How is this handled currently by DOH and/or public health?

MQA investigators coordinate with law enforcement when there is a complaint that unlicensed activity is occurring in a licensed or unlicensed massage establishment. Section 456.065, F.S., provides penalties for the unlicensed practice of a health care profession. DOH may issue and deliver a notice to cease and desist to a person who is unlicensed or to any person who aids and abets the unlicensed practice of a profession regulated by DOH. To enforce the cease and desist order DOH may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provisions of the order. In addition to these remedies, DOH may impose, by citation, an administrative penalty not to exceed \$5,000 per incident. DOH may also seek a civil penalty through the circuit court for any violation for which DOH may issue a notice to cease and desist.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

Currently, DOH can investigate and prosecute unlicensed activity; however, DOH does not have arrest authority. The language, as written, creates the potential for confusion of roles because DOH works with law enforcement, but does not have the authority to make an arrest. DOH currently has no sworn law enforcement personnel.

SECTION: 2.

What does this section of the bill do?

This section requires placement on the license and wallet-size card of a current and valid driver's license number or identification card issued by the state in which the massage therapist applicant resides.

How is this handled currently by DOH and/or public health?

Only the license number given by DOH is included on the wallet-size card and license.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

This change would require programming changes to include the driver's license number on the wallet-size card and license. It would also require the Board of Massage Therapy (Board) to change the application forms and rules associated with the application forms.

The collection of the driver's license number and identification number would not be primary source verified or used by DOH for a licensure related purpose. Law enforcement would likely seek to use the driver's license number on the massage therapist license to confirm the identity of the licensee. However, DOH has been informed that driver's license numbers are confidential under federal law. Therefore, the printing of a driver's license number on a license may be a violation of state and/or federal law. Additionally, massage therapists are required to post their license in their place of practice, which would mean the display of the driver's license number to the public.

SECTION: 3

What does this section of the bill do?

This section requires fingerprinting of certain people who are associated with an entity seeking licensure as a massage establishment. The fingerprints are submitted to law enforcement to determine if the person fingerprinted has been convicted of certain criminal offenses, which will bar the applicant from obtaining an establishment license. This section exempts certain people and entities from the fingerprinting requirement.

This section requires the submission of fingerprints as a part of the initial renewal of an establishment license occurring after July 1, 2010. The criminal history check must ensure that the person has not been convicted of any offense prohibited under various Florida Statutes. DOH has the discretion to deny the application for a specified conviction with regard to a massage establishment.

This section requires a newly employed person "in a capacity" requiring a criminal history background check under this section, to notify DOH about the change in employment and submit the information necessary to DOH to conduct a criminal history background check, or provide evidence of compliance with a criminal history background

check within 30 days after being employed. Provides that the person may work in the position during the time it takes for DOH to receive the background check results from the FBI. It further provides that the person must stop working if the report comes back with a finding that he or she has not met the standards set forth in subsections (1) and (3), unless an exemption from disqualification has been granted by DOH. It is unclear what type of exemption is being referenced in this section.

There appears to be an internal conflict as to whether DOH must or may deny an application for massage establishment licensure if certain people associated with the massage establishment have been convicted of certain crimes. The bill also permits the denial of renewal for the same convictions.

How is this handled currently by DOH and/or public health?

No criminal history checks are required of employees, owners or other affiliates of the massage establishment for initial licensure or renewal of massage establishment licensure. Applications for establishment licensure can be denied for a variety of reasons, including the applicant's conviction of crimes as they relate to the practice of massage. Further, section 456.0635, F.S., mandates denials where an applicant has been convicted of certain crimes within 15 years.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

Adding the criminal background check as a part of the initial licensure process for certain massage establishments may increase the length of time required to process applications, based on the need to obtain supporting documentation regarding any convictions. This may cause an increase in establishment applications being brought before the board for review and denial when appropriate.

The proposed language would require additional programming within the licensure data system to tie the administrator, financial officer, and any person with controlling interests to the massage establishment license.

Massage establishments are currently mailed a postcard as their renewal reminder. Requiring the submission of fingerprints as a part of renewal would require an additional process to be put into place prior to the mailing of the postcard reminder to ensure that a massage establishment has adequate time to return the fingerprint results before the expiration of the license.

Additional complaints may be opened and subsequent investigations conducted against people who do not notify DOH of changes in employment and against persons who continue to work after a criminal history check reveals criminal violations.

SECTION: 4

What does this section of the bill do?

This section requires certain cosmetology salons to obtain a massage establishment

license.

How is this handled currently by DOH and/or public health?

A massage establishment is required at any facility where massage therapy services are provided by a licensed massage therapist. Currently certain licensees under Chapter 477, F.S., are permitted to perform certain massage related services.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

It is unclear whether this language is intended to expand or clarify who must hold a massage establishment license.

SECTION: 5

What does this section of the bill do?

This section defines the terms "convicted" and "conviction" to mean a determination of guilt that is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

How is this handled currently by DOH and/or public health?

There is no definition for these terms in Chapter 480, F.S., but it is no different than the current requirements set forth in ss. 480.046 and 456.072, F.S., for having been convicted of a crime that directly relates to the practice or ability to practice massage.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

No effect.

Section: 6

What does this section of the bill do?

This section permits the board to disapprove a massage school if the majority of the graduates of the school have been convicted at least once of violating s. 796.07, F.S., relating to prostitution, during any 2-year period.

How is this handled currently by DOH and/or public health

There is no requirement to disapprove a board approved school based on misconduct or criminal activity of its students.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

There is currently no mechanism for tracking this type of information. Moreover, there is

no knowledge of or authority over individuals simply because they graduated from a board approved massage school.

Section: 7

What does this section of the bill do?

This section requires the application form to include a current and valid driver's license number or identification card issued by the state for every person applying for a massage therapist license.

How is this handled currently by DOH and/or public health?

Currently this information is not collected on the massage therapist application form.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

This would require the board to change the application forms and rules associated with the application forms. The collection of the driver's license number and identification number would not be primary source verified or used by DOH for a licensure related purpose.

Section: 8

What does this section of the bill do?

Requires a current and valid driver's license number or identification card issued by the state to be provided on the renewal application.

How is this handled currently by DOH and/or public health?

Currently this is not a requirement at renewal.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

This would require a programming update to the on-line renewal system and the paper renewal form. This change would require programming changes to include the driver's license number on the wallet-size card and license.

The collection of the driver's license number and identification number would not be primary source verified or used by DOH for a licensure related purpose.

Section 9

What does this section of the bill do?

This section requires that all licensing examinations be conducted in the English language and each applicant shall demonstrate that he or she has the ability to

communicate in English.

How is this handled currently by DOH and/or public health?

The examinations given by board approved examining entities are given in English and Spanish. An applicant for licensure is not required to demonstrate the ability to communicate in English.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

This would require a modification in the contract agreements between DOH and the national entities that administer the examinations. The board would be required to repeal and modify the rules regarding examination requirements.

This section would require an applicant for licensure to demonstrate the ability to communicate in English; however, it does not provide for passage of an English proficiency examination. It is unclear how the applicant would be required to demonstrate English proficiency.

Section 10

What does this section of the bill do?

This section requires a person, firm, or corporation that operates a massage establishment to report to the board the license number of each massage therapist employed or engaged to provide massage services prior to the employment of the massage services at the establishment. The board is provided with rulemaking authority to administer this section.

It requires each massage therapist to report to the board the license number of any massage establishment at which the massage therapist provides massage services. The board may adopt rules governing the reporting.

This section does not require the submittal of the name of the massage therapist or massage establishment associated with the license number provided on the reports.

This section also requires any person, firm, or corporation operating a massage establishment to maintain valid work authorization documents on the premises for each employee who is not a U.S. citizen. Failure to maintain this documentation shall result in a fine, not to exceed \$1,000, against the person, firm, or corporation for the first offense, with fines increasing incrementally by \$500 for each subsequent offense.

How is this handled currently by DOH and/or public health?

Currently, massage therapists are required to report their mailing address and practice location to DOH, pursuant to Chapter 456, F.S. Practice location is further defined in rule 64B7-28.0015, Florida Administrative Code.

Massage establishments are currently not required to maintain valid work authorization documents on the premises.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

It requires more oversight of massage establishments' operations, and would increase workload associated with the tracking and managing of this information. It is not clear how this information, if collected, would be used.

It requires training of field inspectors, who during the course of massage establishment inspections, will be required to check for work authorization documents for all employees who are not U.S. citizens. Additional follow-up action will be required by inspectors. It is anticipated that additional disciplinary cases will be opened and subsequent investigations conducted against establishments who are not in compliance.

Section 11

What does this section of the bill do?

This section provides grounds for disciplinary action against a massage therapist or a massage establishment for failing to submit the reports required in section 7 of the bill. It also provides authority to revoke or suspend a massage establishment license or to deny any subsequent massage establishment license if they employ an unlicensed person.

How is this handled currently by DOH and/or public health?

Presently s. 456.065, F.S., provides DOH authority to investigate and prosecute unlicensed activity. Current authority exists to discipline or deny licensure of massage therapists and massage establishments.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

It is anticipated that additional cases will be opened and subsequent investigations conducted as a result of the additional grounds for discipline.

Section 12

What does this section of the bill do?

This section requires health studios that offer massage therapy services to obtain a massage establishment license.

How is this handled currently by DOH and/or public health?

These facilities are currently required to have a massage establishment license if they

provide massage therapy services.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

This may increase the number of massage establishment licenses issued in the state, only because it clarifies the requirement for licensure.

Section 13

What does this section of the bill do?

This section requires public lodging establishments that offer massage therapy services to obtain a massage establishment license.

How is this handled currently by DOH and/or public health?

These facilities are currently required to have a massage establishment license if they provide massage therapy services.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

This may increase the number of massage establishment licenses issued in the state, only because it clarifies the requirement for licensure.

Section 14

What does this section of the bill do?

This section amends the legislative intent to the state's laws regarding human trafficking to include massage therapy as a profession that is affected.

How is this handled currently by DOH and/or public health?

Massage therapy is not included in this chapter as an affected profession.

How would the changes proposed in the bill affect the way DOH and/or public health operate?

No effect.

Section: 15

What does this section of the bill do?

Gives the effective date of July 1, 2010.

How is this handled currently by DOH and/or public health?

N/A

How would the changes proposed in the bill affect the way DOH and/or public health operate?

The effective date of July 1, 2010, does not provide adequate time to implement the provisions in this bill.

IMPLEMENTATION ISSUES:

- A. Reports and Studies Required: Yes No

Bill section number(s):

Lead department:

Date due:

Description:

Submission to:

- B. Commission, Council, Committee, Task Force or Board Created or Revised:

Yes No

CREATED - or - REVISED

Bill section number(s):

Name of Commission, Council, Committee, Task Force or Board:

Purpose:

Total number of appointees:

Number of Governor's appointees:

Number of DOH appointees:

Date by which appointments must be made:

Repeal date:

- C. Rule Authorization:

Does language in the bill specifically direct DOH or a board to promulgate a rule?

Yes No

IV. DEPARTMENT OF HEALTH ECONOMIC IMPACT AND FISCAL NOTE:

- A. FISCAL IMPACT ON THE DEPARTMENT OF HEALTH:

DOH will require additional budget authority, including 7 FTE positions, to implement the provisions of this bill. No budget authority is granted in this bill.

DOH will experience a recurring increase in workload associated with receipt, processing and review of background screening required upon initial application and initial renewal of a massage establishment, as well as upon a change in employment by an affiliated party.

DOH will incur a recurring cost to process the state and national criminal background check through FDLE and FBI upon initial application and initial renewal of a massage establishment, as well as upon a change in employment by an affiliated party.

DOH will experience a non-recurring cost to add the driver's license identification number to the massage establishment license and wallet-size identification card. The printing of licenses are contracted to a vendor. The vendor will incur and pass on to DOH additional programming costs to make the required addition.

DOH will experience a non-recurring workload associated programming changes required to create a relationship between massage therapists and massage establishments and vice versa to the Customer Oriented Medical Practitioner Administration System (COMPAS) licensure data system. Additionally, a new client will need to be established to link all affiliated parties to the massage establishment.

DOH will experience a recurring increase in inspection time in order to document the license number of each therapist and verify valid work authorization documents. Additionally, DOH estimates an increase in workload related to additional complaints received and subsequent investigations conducted against persons who do not notify the department about changes in employment and against persons who continue to work after a criminal history check reveals violation as well as against establishments found not in compliance with additional inspection requirements.

Estimated Expenditures	1st Year	2nd Year	3rd Year	4th Year
Salaries				
<i>3 - Operations Analyst II (OAIL), PG19</i>	\$ 125,504	\$ 125,504	\$ 125,504	\$ 125,504
<i>4 - Investigation Specialist II (ISII), PG20</i>	\$ 176,563	\$ 176,563	\$ 176,563	\$ 176,563
Expense				
<i>Non-Recurring Exp Pkg - 7 prof. staff</i>	\$ 27,139			
<i>Rec exp, No Travel - 3 prof. staff (OAIL)</i>	\$ 19,524	\$ 19,524	\$ 19,524	\$ 19,524
<i>Rec exp, Max Travel - 4 prof. staff (ISII)</i>	\$ 80,080	\$ 80,080	\$ 80,080	\$ 80,080
Acquisition of Motor Vehicles				
<i>4 - Passenger Vehicles</i>	\$ 67,728			
Contracted Services				
<i>Programming Change - Add ID Number</i>	\$ 7,060			
<i>Background Check Processing - Initial</i>	\$ 401,360	\$ 401,360	\$ 401,360	\$ 401,360
<i>Background Check Processing - Renewal</i>	\$ -	\$ 802,720	\$ -	\$ 802,720
<i>Background Check- Employment</i>	\$ 12,024	\$ 12,024	\$ 12,024	\$ 12,024
Human Resources Services				
<i>7 FTE</i>	\$ 2,793	\$ 2,793	\$ 2,793	\$ 2,793
Total Estimated Expenditures	\$ 919,774	\$ 1,620,567	\$ 817,847	\$ 1,620,567
Estimated Revenue				
<i>Background Check Fee - Initial</i>	\$ 453,979	\$ 450,102	\$ 450,102	\$ 450,102
<i>Background Check Processing - Renewal</i>	\$ -	\$ -	\$ -	\$ -
<i>Background Check- Employment</i>	\$ -	\$ -	\$ -	\$ -
Total Estimated Revenues	\$ 453,979	\$ 450,102	\$ 450,102	\$ 450,102

B. FISCAL COMMENTS:

DOH received 2,320 applications for massage establishment permits in FY08-09. For the purposes of this analysis, it is assumed this same number of applications will be received each year thereafter.

Estimated Expenditures:

Seven (7) full-time equivalent (FTE) positions will be required to implement this bill. Salary was computed at base of the position, plus 35% for benefits. The positions are requested effective as of July 1, 2010.

DOH will experience an increase in workload associated with the receipt, processing and review of criminal background checks. It is unknown how many checks will be required of each establishment, but for the purposes of this analysis, it is assumed four (4) checks will be submitted with each application and upon initial biennial renewal. Therefore, it is estimated that 9,280 checks will be received each year upon initial application (2,320 application X 4 checks). Additionally, it is estimated that all applications will be approved and will be required to submit checks upon initial renewal. Thus, it is estimated an additional 18,560 (9,280 per year X 2 years) checks will be received in year 2 and in year 4. It is unknown how many checks will be submitted as a result in a change of employment. It is estimated that 3% of the population requiring checks will have a change in employment annually. This will result in an additional 278 checks submitted annually (9,280 X .03). According to FY08-09 data, one (1) FTE can receive, process, and review the results of 8,348 background checks (FDLE only); therefore, three (3) FTEs are justified. Three (3) Operations Analyst II positions, no travel.

Programming costs to add the driver's license identification number to the massage establishment license and wallet-size identification card are estimated as \$7,060. This is based on a quote from the current vendor.

The COMPAS licensure system can be updated to accommodate the required program changes without an increase in staff.

DOH will incur costs to process the state and national criminal background check through FDLE and FBI. The cost per check is \$43.25 (\$19.25 FBI; \$24 FDLE). It is estimated 9,280 background checks will be received upon initial application annually. It is further estimated an additional 18,560 checks will be received and submitted upon initial renewal every two years. It is unknown how many checks will be submitted as a result in a change of employment. It is estimated that 3% of the population requiring checks will have a change in employment annually. This will result in an additional 278 checks submitted annually (9,280 X .03)

DOH will experience an increase in the inspection time in order to document the license number of each therapist and verify valid work authorization documents. It is estimated the inspection time will increase by 0.75 hours per inspection. 9,525 inspections were completed in FY08-09. Inspections are required annually; thus DOH workload will increase by 7,144 hours annually. Thus, four (4) FTEs are justified (7,144 hours/1,854

hours per FTE). Four (4) Investigation Specialist II positions, maximum travel, are requested. Additionally, 4 vehicles to travel to inspection sites are requested based on the FY09-10 contract rate of \$16,932 per vehicle.

DOH will also experience an increase in workload associated with an increase in complaints received and subsequent investigations conducted against persons who do not notify the department about changes in employment and against persons who continue to work after a criminal history check reveals violation as well as against establishments found not in compliance with additional inspection requirements. Based on the type of requirements being added and past history of compliance by massage establishments, it is estimated massage establishment complaints will increase by 50%. In FY08-09, 164 massage establishment complaints were received; thus, it is estimated 82 additional complaints will be received annually. This workload can be absorbed by current resources.

DOH will also experience an increase in workload in keeping all the reports from all the establishments and therapists as to who is working where at any given moment. This reporting may be costly with little benefit.

Estimated Revenues:

This bill allows DOH to collect fees equal to the cost incurred by DOH for processing checks submitted upon initial application. The bill does not allow for DOH to collect fees equal to the cost incurred by DOH for processing checks submitted upon initial renewal or upon a change in employment. Amendments have been suggested to allow for collection of fees equal to the cost incurred for all checks completed.

Revenues are calculated based on the cost of processing four background checks for 2,320 applications per year. This includes the costs of the check (\$43.25) plus the cost of one (1) FTE to receive, process, and review the checks.

V. OTHER FISCAL IMPACT:

A. FISCAL IMPACT ON OTHER STATE AGENCIES/STATE FUNDS:

Yes No

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

Yes No

C. DIRECT FISCAL IMPACT ON PRIVATE SECTOR:

Yes No

1. Private Sector Costs: All parties affiliated with the massage establishment will incur the cost of a criminal history background check on initial application.

2. Private Sector Benefits:

3. Effects on Competition, Private Enterprise and Employment Markets:

D. FISCAL COMMENTS:

VI.

A. Does the proposed legislation appear to conflict with existing state laws or rules?

Yes No

If so, identify the laws and/or rules and explain the conflict(s).

This bill requires Drivers License numbers on the publicly displayed license and ID cards of all massage therapists. Chapter 2009-153, L.O.F., amended s. 119.0712(2)(b), F.S., to clarify that "personal information contained in a motor vehicle record is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et. seq. (DPPA). Such information may be released only as authorized by that act. It is a conflict for the law to require the display of a license containing confidential information and, if required on the application, the number would have to be redacted before the release of the application to any person.

Currently massage therapist and massage establishment licensure is subject to s. 456.0635, F. S., which requires the Board of Massage Therapy to refuse to admit a candidate to any examination, refuse to issue or renew a license to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant has been convicted of certain offenses or terminated for cause from Medicaid or Medicare. This statute has been interpreted and applied so that convictions, for purposes of renewals, are only those that occur after the first of July 2009 meaning that s. 456.0635, F.S., as it pertains to licensure renewal is not applied retroactively. Additionally, "any principal, officer, agent, managing employee or affiliated person" is interpreted to apply to business establishments such as massage establishments. It is confusing that this bill uses the terms "administrator, financial officer, and person who has a controlling interest" for those connected to establishments rather than the terms used in s. 456.0635, F. S.

Section 3 of the bill indicates a criminal history check only upon "initial renewal" of an applicant's license, but applicant is not defined in the bill. It appears that no such criminal history check is needed for subsequent renewals to discover more recent criminal convictions. The bill refers to "the applicant, if an individual" and to "administrator, financial officer, and any person with a controlling interest" so, for purposes of initial renewal, it might be assumed that the bill is meant to apply only to massage therapists and not to establishments. On the other hand, (5) of this section speaks of "the applicant" in terms of the massage establishment. While DOH is given the authority to deny an establishment license to the massage establishment (but not the same authority to deny the individual massage therapist who is convicted of a listed offense), the establishment need only appeal the denial and replace the financial officer or other person who has a criminal conviction with another person who does not have a criminal history to successfully appeal the denial and obtain the license.

It is unclear what Section 3 of the bill means where it says, "a person that is newly employed in a capacity that requires a criminal history check under this section." Ordinarily, persons with a license are not required to undergo a criminal history check when accepting new employment. There are certain types of employment, however,

where employees are required to undergo Level 1 or Level 2 screening standards under chapter 435, F.S. If the person who committed a listed offense is a licensed massage therapist, that person must seek an exemption from employment disqualification from the board under s. 456.36, F.S., but the application for a work exemption is not related to holding a license to work in other employment settings not covered by this exclusion. If this section is meant to apply to those who are otherwise required to have a criminal history check under chapter 435, F.S., it appears to be redundant, except that this bill's lengthy list of criminal offenses is not identical to those offenses that are listed in chapter 435, F.S. If this section is meant to cover every massage therapist who accepts new employment, that is unclear from the text of the bill.

The bill requires licensing examinations to be conducted in English, but presently the board's rules provide for examinations to be given in English and in Spanish. It appears that English proficiency by taking an English proficiency examination to demonstrate the ability to communicate in English is more important than mandating that the exam be given solely in English.

This bill requires DOH to discipline establishments and therapists for not keeping valid work authorization documents on the premises where every non-citizen is working. It is not the licensed premises where this is likely to be of concern, but the unlicensed establishments. If this new provision is meant to be a new penalty for unlicensed activity, which is not regulated by the board under chapter 480, F.S., it should be placed within s. 456.065, F.S., which regulates unlicensed activity.

No person receives a license in any health care profession, including massage therapy, unless that person has been issued a social security number by the Federal Government. Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number. See ss. 456.013(1)(b) and (12), F.S. Accordingly, if a person has obtained a license, it is unnecessary for an inspector to be trained to look for permanent residence cards and valid employment authorization documents.

- B. Does the proposed legislation appear to conflict with existing federal law or regulations? Yes No

If so, identify the laws and/or regulations and explain the conflict(s).

This bill requires Drivers License numbers on the publicly displayed license and ID cards of all massage therapists. Chapter 2009-153, L.O.F., amended s. 119.0712(2)(b), F.S., to clarify that "personal information contained in a motor vehicle record is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et. seq. (DPPA). Such information may be released only as authorized by that act

18 U.S.C. §2725 defines "personal information" to include the "driver identification number."

18 U.S.C. §2721(c), provides that unless express consent is obtained from the person to whom the personal information pertains, an authorized recipient of personal information (such as DOH) may only REDISCLOSE the information for a use permitted under subsection (b).

- C. Does the proposed legislation appear to raise significant constitutional concerns under the U.S. or Florida Constitution (e.g., separation of powers, access to the court, equal protection, free speech, establishment clause, impairment of contracts)? Yes No

If yes, explain.

This bill may encourage the unconstitutional application of the statute with regard to licensure renewals and changes of employment. For the initial renewal of an applicant's license, there must be a criminal background check, and a person newly employed "in a capacity that requires a criminal history check," whatever that means, who already has a license must undergo a criminal history check. DOH has the discretion to approve or deny the renewal of a massage establishment license if the application reveals that the applicant has been convicted of one of the enumerated offenses, but it appears that the desire would be for the board to deny renewals to such establishments where the criminal history check of a officer or person with a controlling interest returns with a conviction. It is unclear what authority the board has with regard to massage therapists.

The board can not lawfully apply punitive provisions retroactively to take an existing property right away from an individual or establishment granted a license by not allowing renewal of the license. If a licensee is found to have committed crimes, there is an existing disciplinary process

D. Is the proposed legislation likely to generate or prevent litigation with the Department of Health, and, if so, from what interest group or parties?

Yes

If yes, explain.

Persons denied licenses are likely to sue and to bring challenges against rules proposed by the board.

E. To implement this bill, is DOH's current rule authority, or rule authority provided in the bill, sufficient to meet APA standards?

Yes No

If no, explain.

VII. COMMENTS:

The Board of Massage Therapy supports the intent of this bill, but not the language as currently written. They have stated the following concerns:

- No budget authority has been provided for these changes.
- Concern that the exams have been limited to only English.
- Concern that the reporting requirements would place an undue burden on the licensees and delay the licensure process.

VIII.

PAGE	LINE	AMENDMENT
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SUBSTANTIVE TECHNICAL

3 79 investigate, ~~arrest~~, and prosecute any person, firm, or

TALKING POINT(S)

- The language, as written, suggests that DOH has criminal arrest capabilities. DOH has no sworn law enforcement personnel and can not make arrests.

5 137-
138

SUBSTANTIVE TECHNICAL

occurring on or after July 1, 2010, the applicant shall submit to the Department of Health a set of fingerprints on a form under procedures specified by the Department of Health, along with a payment in an amount equal to the costs incurred by the Department of Health for a criminal background check. The ~~the~~ Department of Health shall submit the fingerprints provided by the ~~an~~ applicant to the

TALKING POINT(S)

- The amendment allows DOH to collect fees equal to the cost of the criminal background checks required upon application for initial renewal.
- This language mirrors that already included in this bill pertaining to criminal background checks required upon initial application.

9 236 -
237

SUBSTANTIVE TECHNICAL

employment and submit to the Department of a set of fingerprints on a form under procedures specified by the Department of Health, along with a payment in an amount equal to the costs incurred by the Department of Health for a criminal background check ~~information necessary to conduct a criminal history check~~ or provide

TALKING POINT(S)

- The amendment allows DOH to collect fees equal to the cost of the criminal background checks required upon a change in employment.
- This language mirrors that already included in this bill pertaining to criminal background checks required upon initial application.

SUBSTANTIVE TECHNICAL

11-12 317-
 320

years immediately following the examination. All licensing examinations shall be conducted in languages determined by rule of the board. English proficiency will be determined by evidence of successful completion of a Board approved English proficiency examination if English was not the language of instruction or if the board has evidence that an applicant is not proficient in English. All licensing examinations shall be conducted in the English language, and each applicant shall demonstrate that he or she has the ability to communicate in English.

TALKING POINT(S)

- Presently, the board rule provides for all exams to be given in English and Spanish by the national exam providers. The proposed amendment will allow the Board to maintain this option as well as ensure that applicants for licensure have attained proficiency in English.

17 482

SUBSTANTIVE TECHNICAL

This act shall take effect January 1, 2011 ~~July 1, 2010~~.

TALKING POINT(S)

The effective date of January 1, 2011 would provide sufficient time to implement the provisions of this bill.