

HB 2609

OFFICE OF THE CLERK
SECRETARIAT
STATE HOUSE

97 MAR -1 AM 9:50

RECEIVED

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2609

(By Delegate Fleischauer, Yeager, Staton, Varner,
Hutchins, Fragale and Dalton)



Passed April 11, _____ 1997

In Effect July 1, 1997 _____ Passage

RECEIVED

97 MAY -1 AM 10:50

OFFICE OF THE CLERK
STATE OF WEST VIRGINIA

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2609

(By DELEGATES FLEISCHAUER, YEAGER, STATON,
VARNER, HUTCHINS, FRAGALE AND DALTON)

[Passed April 11, 1997; in effect July 1, 1997.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-seven, relating to licensing massage therapists; license required after the of thirtieth day of June, one thousand nine hundred ninety-eight; definitions; creating the West Virginia massage therapy licensure board; appointment and terms of members of board; meetings of board; reimbursement of members' expenses; establishment of massage therapy licensure board fund; powers of board; requirements for licensure; authority of board to enforce provisions of article; proceedings for the revocation, suspension or nonrenewal of licenses; criminal penalties for violations of provisions; persons and activities exempt from provisions of article; and termination of the board.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-seven, to read as follows:

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-1. License required to practice.

1 To protect the health, safety and welfare of the public
2 and to ensure standards of competency, it is necessary to
3 require licensure of those engaged in the practice of
4 massage therapy. After the thirtieth day of June, one
5 thousand nine hundred ninety-eight, it shall be unlawful
6 for any person not licensed under the provisions of this
7 article to practice massage therapy in this state, or to use
8 the initials LMT, C.M.T., or the words "licensed massage
9 therapist," "masseur," or "masseuse," or any other
10 words or titles which imply or represent that the person,
11 corporation or association is engaging in the practice of
12 massage therapy, or employ any person, not duly licensed,
13 who is engaging in the practice of massage therapy or who
14 is using such words or titles to imply or represent that he
15 or she is engaging in the practice of massage therapy.

§30-37-2. Definitions.

1 (a) "Board" means the West Virginia massage
2 therapy licensure board.

3 (b) "Massage therapist" means a person licensed to
4 practice the health care service of massage therapy under
5 this article who practices or administers massage therapy
6 to a client of either gender for compensation. No person
7 licensed by the massage therapy licensure board may be
8 referred to as a primary care provider nor be permitted to
9 use such designation.

10 (c) "Massage therapy" means a health care service
11 which is a scientific and skillful manipulation of soft tissue
12 for therapeutic or remedial purposes, specifically for
13 improving muscle tone, circulation, promoting health and
14 physical well being. Massage therapy includes massage,
15 myotherapy, massotherapy, bodywork, bodywork therapy,
16 or therapeutic massage including hydrotherapy,
17 superficial hot and cold applications, vibration and topical
18 applications or other therapies which involve manipulation
19 of the muscle and connective tissue of the body, for the
20 purpose of enhancing health, reducing stress, improving

21 circulation, aiding muscle relaxation, increasing range of
22 motion, or relieving neuro-muscular pain. Massage
23 therapy does not include diagnosis or service which
24 requires a license to practice medicine or surgery,
25 osteopathic medicine, chiropractic, or podiatry, and does
26 not include service performed by nurses, occupational
27 therapists, or physical therapists who act under their own
28 professional license, certificate or registration.

29 (d) "Massage establishment" means a place of
30 business wherein massage therapy is practiced.

§30-37-3. Board established; membership; terms.

1 There is hereby created the West Virginia massage
2 therapy licensure board. The board shall consist of five
3 members who shall be appointed by the governor with the
4 advice and consent of the Senate. Three members of the
5 board shall be massage therapists, chosen from a list of not
6 less than five names submitted by the West Virginia
7 chapter of the American massage therapy association.
8 One member of the board shall be an osteopathic
9 physician or chiropractor who is knowledgeable of
10 modalities which are included in massage therapy, and one
11 member of the board shall be a lay person who is not a
12 massage therapist or other health care professional.

13 The terms of board members shall be staggered
14 initially from the first day of July, one thousand nine
15 hundred ninety-seven. The governor shall appoint
16 initially three members for a term of one year and two
17 members for a term of two years. Subsequent
18 appointments shall be for a term of two years. Each
19 member shall serve until that member's successor is
20 appointed and qualified, unless the board member is no
21 longer competently performing the duties of office. Any
22 vacancy on the board shall be filled by the governor for
23 the balance of the unexpired term. The governor may
24 remove members of the board from office for cause.

§30-37-4. Quorum meetings; officers; reimbursement; staff.

1 (a) A majority of the full authorized membership of
2 the board constitutes a quorum.

3 (b) The board shall meet at least twice a year, at the
4 times and places that it determines.

5 (c) The board shall annually elect a chairperson and a
6 secretary/treasurer.

7 (d) Each member of the board is entitled to
8 reimbursement of travel and other necessary expenses
9 actually incurred while engaging in board activities. All
10 reimbursement of expenses shall be paid out of the
11 massage therapy board fund created by the provisions of
12 this article.

13 (e) The board may employ staff as necessary to
14 perform the functions of the board, including an
15 administrative secretary, and pay all personnel out of the
16 massage therapy board fund created by the provisions of
17 this article.

18 (f) The board may contract with other state boards or
19 state agencies to share offices, personnel, and other
20 administrative functions as authorized under this article.

**§30-37-5. Massage therapy board fund; fees; expenses;
disposition of funds.**

1 (a) There is hereby established a massage therapy
2 licensure board fund in the state treasurer's office.

3 (b) The board may set reasonable fees for the issuance
4 or renewal of licenses and its other services. All funds to
5 cover the compensation and expenses of the board
6 members shall be generated by the fees set under this
7 subsection.

8 (c) The disposition of all funds received by the board
9 shall be governed by the provisions of section ten, article
10 one, chapter thirty of this code.

**§30-37-6. Duties of board; authorization to propose rules and
fees.**

1 (a) The board shall be responsible for licensure and
2 continuing education requirements, standards of practice
3 and professional ethics, disciplinary actions, and other
4 issues of concern.

5 (b) The board shall propose rules for legislative
6 approval in accordance with the provisions of article three,
7 chapter twenty-nine-a of this code as are necessary to
8 implement the provisions of this article.

9 (c) The board shall adopt reasonable rules regarding
10 personal cleanliness of massage therapists and the sanitary
11 conditions of towels, linens, creams, lotions and other
12 materials, facilities, and equipment used in the practice of
13 massage therapy.

14 (d) All fees for licensure, renewal of licensure, and all
15 other related matters shall be set by the board.

§30-37-7. Requirements for licensure.

1 (a) The board shall propose rules establishing a
2 procedure for licensing of massage therapists. License
3 requirements shall include the following:

4 (1) Completion of a curriculum of massage education
5 at a school approved by the commission on massage
6 training accreditation approval or the West Virginia state
7 college system board. This school shall require a diploma
8 from an accredited high school, or the equivalent, and
9 require completion of at least five hundred hours of
10 supervised academic instruction. This requirement may
11 be waived for those practitioners who were practicing
12 massage therapy prior to the first day of December, one
13 thousand nine hundred ninety-four;

14 (2) Successful completion of the national certification
15 for therapeutic massage and body work (NCTMB)
16 examination; except that any person who is currently
17 practicing massage therapy and who completed the
18 American massage therapy association educational and
19 testing requirements prior to the first day of December,
20 one thousand nine hundred ninety-four, may be granted a
21 two year provisional license without having successfully
22 completed the national certification for therapeutic
23 massage and body work examination. Any such
24 provisional license granted under this exception shall
25 expire in two years if the national certification for

26 therapeutic massage and body work examination is not
27 successfully completed within that time; and

28 (3) Payment of a reasonable fee annually required by
29 the board which shall compensate and be retained by the
30 board for the costs of administration.

31 (b) In addition to provisions for licensure, the rules
32 shall include the following:

33 (1) Requirements for completion of continuing
34 education hours conforming to NCTMB guidelines; and

35 (2) Requirements for issuance of a reciprocal license
36 to licensees of states with requirements including the
37 successful completion of the NCTMB examination.

38 (c) A massage therapist who is licensed by the board
39 shall be issued a certificate and a license number. The
40 current, valid license certificate must be publicly displayed
41 and available for inspection by the board and the public at
42 a massage therapist's work site.

§30-37-8. Enforcement.

1 (a) The board has the power and authority to enter
2 into any court of this state having proper jurisdiction to
3 seek an injunction against any person, corporation or
4 association not in compliance with the provisions of this
5 article, and is further empowered to enter into any court to
6 enforce the provisions of this article to ensure compliance
7 with such provisions.

8 (b) The board may suspend, revoke, or impose
9 probationary conditions upon a license issued pursuant to
10 rules adopted in accordance with this article concerning
11 board requirements for licensure. The following are
12 grounds for revocation, suspension, or annulment when a
13 person, corporation or association is:

14 (1) Guilty of fraud in practice of massage, or fraud or
15 deceit in the licensee's application for licensure;

16 (2) Engaged in practice under a false or assumed
17 name, or impersonating another practitioner of a like or
18 different name;

19 (3) Addicted to the habitual use of drugs, alcohol or
20 stimulants to an extent as to incapacitate that person's
21 performance of professional duties;

22 (4) Guilty of fraudulent, false, misleading or deceptive
23 advertising, or for prescribing medicines or drugs, or
24 practicing any licensed profession without legal authority.
25 The licensee may not diagnose, or imply or advertise in
26 any way a service for a condition that would require
27 diagnosis;

28 (5) Grossly negligent in the practice of massage or
29 guilty of employing, allowing or permitting an unlicensed
30 person to perform massage in the licensee's work site.

31 (6) Practicing massage or bodywork with a license
32 from another state or jurisdiction that has been canceled,
33 revoked, suspended or otherwise restricted;

34 (7) Incapacitated by a physical or mental disability
35 which is determined by a physician to render further
36 practice by the licensee inconsistent with competency and
37 ethics requirements;

38 (8) Convicted of sexual misconduct, assignation or the
39 solicitation or attempt thereof; or

40 (9) In violation of any of the provisions of this article
41 or any substantive rule adopted under the authority of this
42 article.

§30-37-9. Hearing for revocation, suspension, nonrenewal.

1 All proceedings for the revocation, suspension or
2 nonrenewal of licenses issued under the authority of this
3 chapter shall be governed by the provisions of section
4 eight, article one, chapter thirty of this code.

§30-37-10. Prohibitions and penalties.

1 (a) After the thirtieth day of June, one thousand nine
2 hundred ninety-eight, a person, corporation or association
3 who is not licensed pursuant to the provisions of this
4 article may not engage in the practice of massage therapy
5 and may not use the initials LMT, C.M.T., or the words
6 "licensed massage therapist," "masseur," or

7 “masseuse,” or any other words or titles which imply or
8 represent that the person, corporation or association is
9 engaging in the practice of massage therapy, nor may a
10 person, corporation or association employ any person, not
11 duly licensed, who is engaging in the practice of massage
12 therapy or who is using such words or titles to imply or
13 represent that he or she is engaging in the practice of
14 massage therapy.

15 (b) Any person, corporation or association who
16 violates the provisions of subsection (a) of this section is
17 guilty of a misdemeanor and, upon conviction thereof,
18 shall be fined not less than one hundred dollars nor more
19 than five hundred dollars, or confined in the county or
20 regional jail not more than one year, or both fined and
21 imprisoned.

§30-37-11. Exemptions.

1 Nothing in this article may be construed to prohibit or
2 otherwise limit:

3 (1) The practice of a profession by persons who are
4 licensed, certified or registered under the laws of this state
5 and who are performing services within their authorized
6 scope of practice. Persons exempted under this
7 subdivision include, but are not limited to, those licensed,
8 certified or registered to practice within the scope of any
9 branch of medicine, nursing, osteopathy, chiropractic and
10 podiatry, as well as licensed, certified or registered barbers,
11 cosmetologists, athletic trainers, physical and occupational
12 therapists; and any student of a West Virginia state college
13 system certified or authorized massage therapy school,
14 provided that the student does not hold himself or herself
15 out as a licensed massage therapist; and

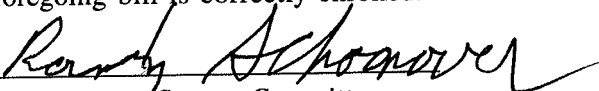
16 (2) The activities of any resort spa that has been
17 operating on a continuing basis since the first day of
18 January, one thousand nine hundred seventy-five, or any
19 employees thereof. The exemption set forth in this
20 subsection does not extend to any person, corporation or
21 association providing escort services, nude dancing, or
22 other sexually oriented services not falling within the
23 scope of massage therapy as defined in this article,

24 irrespective of how long the person, corporation or
25 association has been in operation.

§30-37-12. Termination of board.

1 The massage therapy licensure board shall be
2 terminated pursuant to the provisions of article ten,
3 chapter four of this code, on the first day of July, two
4 thousand one, unless sooner terminated, continued or
5 reestablished pursuant to the provisions of such article.

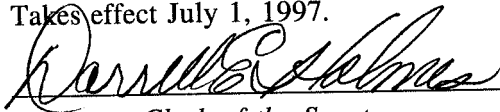
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

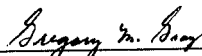

Chairman Senate Committee

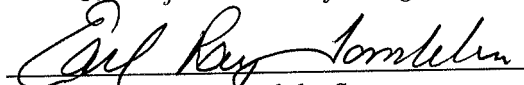

Chairman House Committee

Originating in the House.

Takes effect July 1, 1997.

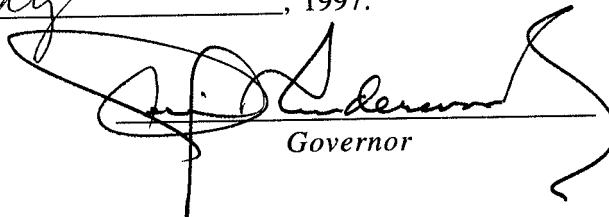

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 18th
day of May, 1997.


Governor

PRESENTED TO THE

GOVERNOR

Date

4/25/97

Time

2:00 pm