

HB 4279

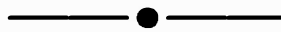
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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

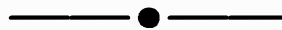
SECOND REGULAR SESSION, 2006



# ENROLLED

## House Bill No. 4279

(By Delegates Beane, Ennis, Butcher, Hatfield,  
Manchin, Martin, Perdue, Swartzmiller,  
Frich, Schoen and Walters)



Passed March 10, 2006

In Effect Ninety Days from Passage

FILED

2006 APR -4 P 2: 17

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**E N R O L L E D**

**H. B. 4279**

(BY DELEGATES BEANE, ENNIS, BUTCHER, HATFIELD,  
MANCHIN, MARTIN, PERDUE, SWARTZMILLER, FRICH,  
SCHOEN AND WALTERS)

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[Passed March 10, 2006; in effect ninety days from passage.]

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AN ACT to amend and reenact §30-37-7, §30-37-8, §30-37-9, §30-37-10 and §30-37-11 of the Code of West Virginia, 1931, as amended, all relating to the Massage Therapy Licensure Board; discontinuing waiver of requirements for licensure; providing that board may require licensees formerly licensed by waiver to meet certain requirements to reinstate lapsed licenses; providing grounds for denial of renewal of licenses; prohibiting practicing under lapsed license; providing for disciplinary sanctions for certain prohibited acts; clarifying that students of massage therapy may not charge or receive fees; and increasing civil penalties.

*Be it enacted by the Legislature of West Virginia:*

That §30-37-7, §30-37-8, §30-37-9, §30-37-10 and §30-37-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**§30-37-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.**

1 (a) The board shall propose rules for legislative approval  
2 in accordance with article three, chapter twenty-nine-a of this  
3 code, establishing a procedure for licensing of massage  
4 therapists. License requirements shall include the following:

5 (1) Completion of a program of massage education at a  
6 school approved by the West Virginia Higher Education Policy  
7 Commission or by a state agency in another state, the District  
8 of Columbia or a United States territory which approves  
9 educational programs and which meets qualifications for the  
10 National Certification Exam administered through the National  
11 Certification Board for Therapeutic Massage and Bodywork.  
12 This school shall require a diploma from an accredited high  
13 school, or the equivalent, and require completion of at least five  
14 hundred hours of supervised academic instruction;

15 (2) Successful completion of the national certification for  
16 therapeutic massage and bodywork (NCTMB) examination, or  
17 other board approved examination; and,

18 (3) Payment of a reasonable fee every two years required by  
19 the board which shall compensate and be retained by the board  
20 for the costs of administration.

21 (b) A license to practice massage therapy issued by the  
22 board prior to the first day of July, two thousand six, shall for  
23 all purposes be considered a license issued under this section:  
24 *Provided*, That a person holding a license to practice massage  
25 therapy issued prior to the first day of July, two thousand six,  
26 must renew the license pursuant to the provisions of this article:  
27 *Provided, however*, That a person whose license was issued by  
28 the board prior to the first day of July, two thousand six, and  
29 whose license subsequently lapses may, in the discretion of the  
30 board, be subject to the licensing requirements of this section.

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

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

35 (2) Requirements for issuance of a reciprocal license to  
36 licensees of states with requirements which may include the  
37 successful completion of the NCTMB examination or other  
38 board approved examination;

39 (d) Subject to the provisions of subsection (b) of this  
40 section, the board may deny an application for renewal for any  
41 reason which would justify the denial of an application for  
42 initial licensure.

43 (e) Any person practicing massage therapy during the time  
44 his or her license has lapsed is in violation of this article and is  
45 subject to the penalties provided in this article.

46 (f) A massage therapist who is licensed by the board shall  
47 be issued a certificate and a license number. The current, valid  
48 license certificate shall be publicly displayed and available for  
49 inspection by the board and the public at a massage therapist's  
50 work site.

**§30-37-8. Enforcement.**

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

7 (b) The board may suspend, revoke, or impose probationary  
8 conditions upon a license or impose disciplinary sanctions upon

9 a licensee pursuant to rules adopted in accordance with this  
10 article concerning board requirements for licensure. The  
11 following are grounds for revocation, suspension, annulment or  
12 the imposition of other disciplinary sanctions when a person,  
13 corporation or association is:

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

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

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

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

27 (5) Practicing or offering to practice beyond the scope of  
28 licensure of massage therapy without legal authority;

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

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

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

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

40 (10) Engaging in any act of sexual abuse, sexual miscon-  
41 duct or sexual exploitation related to the licensee's practice of  
42 massage therapy;

43 (11) Obtaining any fee by fraud, deceit or misrepresenta-  
44 tion; or

45 (12) In violation of any of the provisions of this article or  
46 any substantive rule adopted under the authority of this article.

**§30-37-9. Hearing for revocation, suspension, other discipline,  
nonrenewal of license.**

1 All proceedings for the revocation, suspension, or other  
2 disciplinary sanctions, or nonrenewal of licenses issued under  
3 the authority of this chapter shall be governed by the provisions  
4 of section 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 who  
3 is not licensed pursuant to the provisions of this article may not  
4 engage in the practice of massage therapy and may not use the  
5 initials LMT, C.M.T., or the words "licensed massage thera-  
6 pist," "masseur," or "masseuse," or any other words or titles  
7 which imply or represent that the person, corporation or  
8 association is engaging in the practice of massage therapy, nor  
9 may a person, corporation or association employ any person,  
10 not duly licensed, who is engaging in the practice of massage  
11 therapy or who is using such words or titles to imply or  
12 represent that he or she is engaging in the practice of massage  
13 therapy.

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

### §30-37-11. Exemptions.

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

3 (a) The practice of a profession by persons who are  
4 licensed, certified or registered under the laws of this state and  
5 who are performing services within their authorized scope of  
6 practice. Persons exempted under this subdivision include, but  
7 are not limited to, those licensed, certified or registered to  
8 practice within the scope of any branch of medicine, nursing,  
9 osteopathy, chiropractic and podiatry, as well as licensed,  
10 certified or registered barbers, cosmetologists, athletic trainers,  
11 physical and occupational therapists; and any student enrolled  
12 in a program of massage education at a school approved by the  
13 West Virginia State College System Board or by a state agency  
14 in another state, the District of Columbia or a United States  
15 territory which approves educational programs and which meets  
16 qualifications for the National Certification Exam administered  
17 through the National Certification Board for Therapeutic  
18 Massage and Bodywork, provided that the student does not hold  
19 himself or herself out as a licensed massage therapist and does  
20 not charge or receive a fee; and

21 (b) The activities of any resort spa that has been operating  
22 on a continuing basis since the first day of January, one  
23 thousand nine hundred seventy-five, or any employees of the  
24 resort spa. The exemption set forth in this subsection does not  
25 extend to any person, corporation or association providing

26 escort services, nude dancing or other sexually oriented services  
27 not falling within the scope of massage therapy as defined in  
28 this article, irrespective of how long the person, corporation or  
29 association has been in operation.



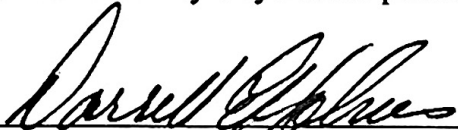
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

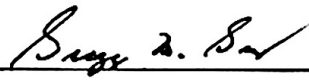
  
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Chairman Senate Committee

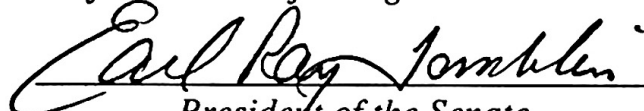
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
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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 4<sup>th</sup>  
day of April, 2006.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 22 2006

Time 3:50 