

Senate Bill No. 573

(By Senator Prezioso)

[Introduced February 13, 2012; referred to the Committee on
Education; and then to the Committee on Government Organization.]

A BILL to repeal §30-27-15 and §30-27-16 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §30-27-3,
§30-27-5, §30-27-6, §30-27-8, §30-27-10, §30-27-11, §30-27-12,
§30-27-14, §30-27-20, §30-27-21, §30-27-22 and §30-27-23 of
said code, all relating to professions and occupations; Board
of Barbers and Cosmetologists; definitions; powers and duties
of the board; rulemaking; professional license requirements
and renewal; student registration; health certificate
requirements; complaints, procedure and disciplinary action;
hearing and right of appeal; judicial review; and licensing
schools of aesthetics, barbering, cosmetology and manicuring
under the West Virginia Higher Education Policy Commission.

Be it enacted by the Legislature of West Virginia:

That §30-27-15 and §30-27-16 of the Code of West Virginia,

1 1931 as amended, be repealed; and that §30-27-3, §30-27-5,
2 §30-27-6, §30-27-8, §30-27-10, §30-27-11, §30-27-12, §30-27-14,
3 §30-27-20, §30-27-21, §30-27-22 and §30-27-23 of said code be
4 amended and reenacted, all to read as follows:

5 **ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.**

6 **§30-27-3. Definitions.**

7 As used in this article, the following words and terms have
8 the following meanings, unless the context clearly indicates
9 otherwise:

10 (a) "Aesthetics" or "esthetics" means any one or any
11 combination of the following acts when done on the human body for
12 compensation and not for the treatment of disease:

13 (1) Administering cosmetic treatments to enhance or improve
14 the appearance of the skin, including cleansing, toning, performing
15 effleurage or other related movements, stimulating, exfoliating or
16 performing any other similar procedure on the skin of the human
17 body or scalp;

18 (2) Applying, by hand or with a mechanical or electrical
19 apparatus, any cosmetics, makeups, oils, powders, clays,
20 antiseptics, tonics, lotions, creams or chemical preparations
21 necessary for the practice of aesthetics to another person's face,
22 neck, back, shoulders, hands, elbows and feet up to and including
23 the knee;

1 (3) The rubbing, cleansing, exercising, beautifying or
2 grooming of another person's face, neck, back, shoulders, hands,
3 elbows and feet up to and including the knee;

4 (4) The waxing, tweezing and threading of hair on another
5 person's body;

6 (5) The wrapping of another person's body in a body wrap;

7 (6) Applying artificial eyelashes and eyebrows; and

8 (7) The lightening of hair on the body except the scalp.

9 (b) "Aesthetician" or "esthetician" means a person licensed
10 under the provisions of this article who engages in the practice of
11 aesthetics.

12 (c) "Applicant" means a person making application for a
13 professional license, license, certificate, registration, permit or
14 renewal under the provisions of this article.

15 (d) "Barber" means a person licensed under the provisions of
16 this article who engages in the practice of barbering.

17 (e) "Barbering" means any one or any combination of the
18 following acts when done on the human body for compensation and not
19 for the treatment of disease:

20 (1) Shaving, shaping and/or trimming the beard;

21 (2) Cutting, singeing, shampooing, arranging, dressing,
22 tinting, bleaching, or applying lotions or tonics on human hair, or
23 a wig or hairpiece; and

1 (3) Applications, treatments or rubs of the scalp, face, or
2 neck with oils, creams, lotions, cosmetics, antiseptics, powders,
3 or other preparations in connection with the shaving, cutting or
4 trimming of the hair or beard.

5 (f) "Barber crossover" or "cosmetologist crossover" is a
6 person who is licensed to perform barbering and cosmetology.

7 (g) "Barber permanent waving" means the following acts done on
8 the human body for compensation and not for the treatment of
9 disease:

10 (1) The bleaching or tinting of hair; and

11 (2) The permanent waving of hair.

12 (h) "Barber permanent wavist" means a person licensed to
13 perform barbering and barber permanent waving.

14 (i) "Board" means the West Virginia Board of Barbers and
15 Cosmetologists.

16 ~~(j) "Certificate" means an instructor certificate to teach in~~
17 ~~a school under the provisions of this article.~~

18 ~~(k) "Certificate holder" means a person certified as an~~
19 ~~instructor to teach in a school under the provisions of this~~
20 ~~article.~~

21 ~~(l)~~ (j) "Cosmetologist" means a person licensed under the
22 provisions of this article who engages in the practice of
23 cosmetology.

1 ~~(m)~~ (k) "Cosmetology" means any one or any combination of the
2 following acts when done on the human body for compensation and not
3 for the treatment of disease:

4 (1) Cutting, styling, shaping, arranging, braiding, weaving,
5 dressing, adding extensions, curling, waving, permanent waving,
6 relaxing, straightening, shampooing, cleansing, singeing,
7 bleaching, tinting, coloring, waxing, tweezing, or similarly work
8 on human hair, or a wig or hairpiece, by any means, including
9 hands, mechanical or electrical devices or appliances;

10 (2) Nail care;

11 (3) Applying by hand or with a mechanical or electrical device
12 or appliance, any cosmetics, makeups, oils, powders, clays,
13 antiseptics, tonics, lotions, creams or chemical preparations
14 necessary for the practice of aesthetics to another person's face,
15 neck, shoulders, hands, elbows and feet up to and including the
16 knee;

17 (4) The rubbing, cleansing, exercising, beautifying or
18 grooming of another person's face, neck, shoulders, hands, elbows
19 and feet up to and including the knee;

20 (5) The wrapping of another person's body in a body wrap; and

21 (6) Performing aesthetics.

22 ~~(n)~~ (l) "General supervision" means:

23 (1) For schools, a master or certified instructor is on the

1 premises and is quickly and easily available; or

2 (2) For salons, a professional licensee is on the premises and
3 is quickly and easily available.

4 ~~(o)~~ (m) "Hair braiding" means any one or any combination of
5 the following acts when done on the human body for compensation and
6 not for the treatment of disease: Braiding, plaiting, twisting,
7 wrapping, threading, weaving, extending or locking of natural human
8 hair by hand or mechanical device.

9 ~~(p)~~ (n) "License" means a professional license, a salon
10 license or a school license.

11 (o) "Licensed School" means a facility which has been approved
12 by the West Virginia Higher Education Policy Commission to educate
13 persons to be licensed with professional licenses under the
14 provisions of this article.

15 ~~(q)~~ (p) "Licensee" means a person, corporation or firm holding
16 a license issued under the provisions of this article.

17 ~~(r)~~ (q) "Nail care" means any one or any combination of the
18 following acts when done on the human body for compensation and not
19 for the treatment of disease:

20 (1) The cleansing, dressing, or polishing of nails of a
21 person;

22 (2) Performing artificial nail service; and

23 (3) The cosmetic treatment of the feet up to the knee and the

1 hands up to the elbow.

2 ~~(s)~~ (r) "Nail technician" or "manicurist" means a person
3 licensed under the provisions of this article who engages in the
4 practice of nail care.

5 ~~(t)~~ (s) "Permit" means a work permit.

6 ~~(u)~~ (t) "Permitee" means a person holding a work permit.

7 ~~(v)~~ (u) "Professional license" means a license to practice as
8 a aesthetician, barber, barber crossover, barber permanent wavist,
9 cosmetologist, cosmetologist crossover or nail technician.

10 ~~(w)~~ (v) "Registration" means a registration issued by the
11 board to a person who rents or leases a booth or chair from a
12 licensed salon owner and/or operator or a registration issued by
13 the board to a person who is a student in a school.

14 ~~(x)~~ (w) "Registrant" means a person who holds a registration
15 under the provisions of this article.

16 ~~(y)~~ (x) "Salon" means a shop or other facility where a person
17 practices under a professional license.

18 ~~(z)~~ (y) "Salon license" means a license to own and operate a
19 salon.

20 ~~(aa)~~ "School" means a facility to educate persons to be
21 licensed with professional licenses under the provisions of this
22 article.

23 ~~(bb)~~ "School license" means a license to own and operate a

1 ~~school.~~

2 ~~(cc)~~ (z) "Student registration" means a registration issued by
3 the board to a student to study at a school licensed under the
4 provisions of this article.

5 **§30-27-5. Powers and duties of the board.**

6 (a) The board has all the powers and duties set forth in this
7 article, by rule, in article one of this chapter and elsewhere in
8 law.

9 (b) The board shall:

10 (1) Hold meetings, conduct hearings and administer
11 examinations;

12 (2) Establish requirements for licenses, permits, ~~certificates~~
13 and registrations;

14 (3) Establish procedures for submitting, approving and
15 rejecting applications for licenses, permits, ~~certificates~~ and
16 registrations;

17 (4) Determine the qualifications of any applicant for
18 licenses, permits, ~~certificates~~ and registrations;

19 (5) Prepare, conduct, administer and grade examinations for
20 professional licenses ~~and certificates~~;

21 (6) Determine the passing grade for the examinations;

22 (7) Maintain records of the examinations the board or a third
23 party administers, including the number of persons taking the

1 examinations and the pass and fail rate;

2 (8) Hire, discharge, establish the job requirements and fix
3 the compensation of the executive director;

4 (9) Maintain an office, and hire, discharge, establish the job
5 requirements and fix the compensation of employees,
6 investigators/inspectors and contracted employees necessary to
7 enforce the provisions of this article: *Provided*, That any
8 investigator/inspector employed by the board on July 1, 2009, shall
9 retain their coverage under the classified service, including job
10 classification, job tenure and salary, until that person retires or
11 is dismissed: *Provided, however*, That nothing may prohibit the
12 disciplining or dismissal of any investigator/inspector for cause;

13 (10) Investigate alleged violations of the provisions of this
14 article, legislative rules, orders and final decisions of the
15 board;

16 (11) Establish the criteria for the training of
17 investigators/inspectors;

18 (12) Set the requirements for investigations and inspections;

19 (13) Conduct disciplinary hearings of persons regulated by the
20 board;

21 (14) Determine disciplinary action and issue orders;

22 (15) Institute appropriate legal action for the enforcement of
23 the provisions of this article;

1 (16) Maintain an accurate registry of names and addresses of
2 all persons regulated by the board;

3 (17) Keep accurate and complete records of its proceedings,
4 and certify the same as may be necessary and appropriate;

5 (18) Establish the continuing education requirements for
6 professional licensees ~~and certificate holders~~;

7 (19) Issue, renew, combine, deny, suspend, revoke or reinstate
8 licenses, permits, ~~certificates~~ and registrations;

9 (20) Establish a fee schedule;

10 (21) Propose rules in accordance with the provisions of
11 article three, chapter twenty-nine-a of this code to implement the
12 provisions of this article; and

13 (22) Take all other actions necessary and proper to effectuate
14 the purposes of this article.

15 (c) The board may:

16 (1) Establish joint licenses;

17 (2) Contract with third parties to administer the examinations
18 required under the provisions of this article;

19 (3) Sue and be sued in its official name as an agency of this
20 state; and

21 (4) Confer with the Attorney General or his or her assistant
22 in connection with legal matters and questions.

23 **§30-27-6. Rulemaking.**

1 (a) The board shall propose rules for legislative approval, in
2 accordance with the provisions of article three, chapter twenty-
3 nine-a of this code, to implement the provisions of this article,
4 including:

5 (1) Standards and requirements for licenses, permits,
6 ~~certificates~~ and registrations;

7 (2) Procedures for examinations and reexaminations;

8 (3) Requirements for third parties to prepare and/or
9 administer examinations and reexaminations;

10 ~~(4) Educational and experience requirements;~~

11 ~~(5)~~ (4) The passing grade on the examinations;

12 ~~(6) Standards for approval of courses and curriculum;~~

13 ~~(7)~~ (5) Procedures for the issuance and renewal of licenses,
14 permits, ~~certificates~~ and registrations;

15 ~~(8)~~ (6) A fee schedule;

16 ~~(9)~~ (7) Continuing education requirements for professional
17 licensees and ~~certificate holders~~;

18 ~~(10)~~ (8) The procedures for denying, suspending, revoking,
19 reinstating or limiting the practice of licensees, permittees,
20 ~~certificate holders~~ and registrants;

21 ~~(11)~~ (9) Designating the regions for investigators/inspectors;

22 ~~(12)~~ (10) Criteria for the training of investigators/inspectors;

23 ~~(13)~~ (11) Requirements for investigations and inspections;

1 ~~(14)~~ (12) Requirements for inactive or revoked licenses,
2 permits, certificates and registrations;

3 ~~(15)~~ ~~Establishing the training program and requirements for~~
4 ~~instructors for schools licensed under this article;~~

5 ~~(16)~~ (13) Establishing operating procedures for salons; and

6 ~~(17)~~ (14) Any other rules necessary to effectuate the
7 provisions of this article.

8 (b) All of the board's rules in effect on July 1, 2009, shall
9 remain in effect until they are amended or repealed, and references
10 to provisions of former enactments of this article are interpreted
11 to mean provisions of this article.

12 (c) The board is authorized to file an emergency rule for the
13 implementation of its fee schedule in 2009.

14 **§30-27-8. Professional license requirements.**

15 (a) An applicant for a professional license to practice as a
16 aesthetician, barber, barber crossover, barber permanent waviest,
17 cosmetologist, cosmetologist crossover or nail technician shall
18 present satisfactory evidence that he or she:

19 (1) Is at least eighteen years of age;

20 (2) Is of good moral character;

21 (3) Has a high school diploma, a GED, or has passed the
22 "ability to benefit test" approved by the United States Department
23 of Education;

1 (4) Has graduated from a licensed school ~~which has been~~
2 ~~approved by the board~~ in a program approved by the West Virginia
3 Higher Education Policy Commission. This school shall require
4 completion of a program of supervised academic instruction of at
5 least: two thousand hours for a barber permanent wave or
6 cosmetology program; eighteen hundred hours for a barber stylist
7 program; six hundred hours for an aesthetician program; four
8 hundred hours for a manicuring program; five hundred hours for a
9 crossover course from a barber stylist course; three hundred hours
10 for a crossover course from a barber permanent wave or cosmetology
11 program;

12 (5) Has passed an examination that tests the applicant's
13 knowledge of subjects specified by the board: *Provided*, That the
14 board may recognize a ~~certificate or~~ similar license in lieu of the
15 examination or part of the examination that the board requires;

16 (6) Has paid the applicable fee;

17 (7) Presents a certificate of health from a licensed
18 physician;

19 (8) Is a citizen of the United States or is eligible for
20 employment in the United States; and

21 (9) Has fulfilled any other requirement specified by the
22 board.

23 (b) A license to practice issued by the board prior to July 1,

1 2009, shall for all purposes be considered a professional license
2 issued under this article: *Provided*, That a person holding a
3 license issued prior to July 1, 2009, must renew the license
4 pursuant to the provisions of this article.

5 **§30-27-10. Professional license and certificate renewal**
6 **requirements.**

7 (a) A professional licensee ~~and certificate holder~~ shall
8 annually or biennially on or before January 1, renew his or her
9 professional license ~~or certificate~~ by completing a form prescribed
10 by the board, paying the renewal fee and submitting any other
11 information required by the board.

12 (b) The board shall charge a fee for each renewal of a license
13 ~~or certificate~~, and a late fee for any renewal not paid by the due
14 date.

15 (c) The board shall require as a condition of renewal of a
16 professional license ~~or certificate~~ that each licensee ~~or~~
17 ~~certificate holder~~ complete continuing education.

18 (d) The board may deny an application for renewal for any
19 reason which would justify the denial of an original application
20 for a license ~~or certificate~~.

21 **§30-27-11. Work permit.**

22 (a) The board may issue a work permit to practice to an
23 applicant who:

1 (1) Has graduated from a licensed school ~~approved by the board~~
2 ~~or has completed the course requirements in a specific field;~~

3 (2) Is waiting to take the examination;

4 (3) Has employment in the field in which he or she applied to
5 take the examination and is working under the general supervision
6 of a professional licensee;

7 (4) Has paid the work permit fee;

8 (5) Has presented a certificate of health issued by a licensed
9 physician;

10 (6) Is a citizen of the United States or is eligible for
11 employment in the United States; and

12 (7) Meets all the other requirements specified by the board.

13 (b) A work permit expires at the end of the month after
14 issuance following the next examination in the specific field. A
15 work permit may be renewed once.

16 (c) While in effect, a work permittee is subject to the
17 restrictions and requirements imposed by this article.

18 **§30-27-12. Student registration.**

19 (a) Prior to commencing studies in a licensed school ~~licensed~~
20 ~~under the provisions of this article,~~ a student shall acquire a
21 student registration issued by the board.

22 (b) An applicant for a student registration shall present
23 satisfactory evidence that he or she:

1 (1) Is enrolled as a student in ~~an approved~~ a licensed school
2 ~~or enrolled in an approved course;~~

3 (2) Is of good moral character;

4 (3) Has paid the required fee;

5 (4) Has presented a certificate of health issued by a licensed
6 physician; and

7 (5) Is a citizen of the United States or is eligible for
8 employment in the United States.

9 (c) The student registration is good during the prescribed
10 period of study for the student.

11 (d) The student may perform acts constituting barbering,
12 barber permanent waving, cosmetology, aesthetics or nail care in a
13 school under the general supervision of a master or certified
14 instructor.

15 **§30-27-14. Health certificate requirements.**

16 (a) It is unlawful for a person to practice as a professional
17 licensee, ~~be~~ or a permittee ~~or be a certified instructor~~ while
18 having an infectious, contagious or communicable disease.

19 (b) The board may, with cause, require a professional
20 licensee, or a permittee ~~or certified instructor~~ to submit to a
21 physical examination and file a certificate of health.

22 **§30-27-20. Complaints; investigations; due process procedure;**
23 **grounds for disciplinary action.**

1 (a) The board may upon its own motion based on credible
2 information, and shall upon the written complaint of any person
3 cause an investigation to be made to determine whether grounds
4 exist for disciplinary action under this article or the legislative
5 rules of the board.

6 (b) Upon initiation or receipt of the complaint, the board
7 shall provide a copy of the complaint to the licensee, permittee or
8 registrant. ~~or certificate holder.~~

9 (c) After reviewing any information obtained through an
10 investigation, the board shall determine if probable cause exists
11 that the licensee, permittee, or registrant ~~or certificate holder~~
12 has violated subsection (g) of this section or rules promulgated
13 pursuant to this article.

14 (d) Upon a finding that probable cause exists that the
15 licensee, permittee, or registrant ~~or certificate holder~~ has
16 violated subsection (g) of this section or rules promulgated
17 pursuant to this article, the board may enter into a consent decree
18 or hold a hearing for the suspension or revocation of the license,
19 permit, or registration ~~or certification~~ or the imposition of
20 sanctions against the licensee, permittee or registrant ~~or~~
21 ~~certificate holder.~~ Any hearing shall be held in accordance with
22 the provisions of this article.

23 (e) Any member of the board or the executive director of the

1 board may issue subpoenas and subpoenas duces tecum to obtain
2 testimony and documents to aid in the investigation of allegations
3 against any person regulated by the article.

4 (f) Any member of the board or its executive director may sign
5 a consent decree or other legal document on behalf of the board.

6 (g) The board may, after notice and opportunity for hearing,
7 deny or refuse to renew, suspend or revoke the license, permit, or
8 registration ~~or certification~~ of, impose probationary conditions
9 upon or take disciplinary action against, any licensee, permittee
10 or registrant ~~or certificate holder~~ for any of the following
11 reasons once a violation has been proven by a preponderance of the
12 evidence:

13 (1) Obtaining a license, permit, or registration ~~or~~
14 ~~certification~~ by fraud, misrepresentation or concealment of
15 material facts;

16 (2) Being convicted of a felony or other crime involving moral
17 turpitude;

18 (3) Being guilty of unprofessional conduct which placed the
19 public at risk, as defined by legislative rule of the board;

20 (4) Intentional violation of a lawful order or legislative
21 rule of the board;

22 (5) Having had a license or other authorization revoked or
23 suspended, other disciplinary action taken, or an application for

1 licensure or other authorization revoked or suspended by the proper
2 authorities of another jurisdiction;

3 (6) Aiding or abetting unlicensed practice; or

4 (7) Engaging in an act while acting in a professional capacity
5 which has endangered or is likely to endanger the health, welfare
6 or safety of the public.

7 (h) For the purposes of subsection (g) of this section,
8 effective July 15, 2009, disciplinary action may include:

9 (1) Reprimand;

10 (2) Probation;

11 (3) Administrative fine, not to exceed \$1,000 per day per
12 violation;

13 (4) Mandatory attendance at continuing education seminars or
14 other training;

15 (5) Practicing under supervision or other restriction;

16 (6) Requiring the licensee, permittee, or registrant ~~or~~
17 ~~certificate holder~~ to report to the board for periodic interviews
18 for a specified period of time; or

19 (7) Other corrective action considered by the board to be
20 necessary to protect the public, including advising other parties
21 whose legitimate interests may be at risk.

22 **§30-27-21. Procedures for hearing; right of appeal.**

23 (a) Hearings shall be governed by the provisions of section

1 eight, article one of this chapter.

2 (b) The board may conduct the hearing or elect to have an
3 administrative law judge conduct the hearing.

4 (c) If the hearing is conducted by an administrative law
5 judge, at the conclusion of a hearing he or she shall prepare a
6 proposed written order containing findings of fact and conclusions
7 of law. The proposed order may contain proposed disciplinary
8 actions if the board so directs. The board may accept, reject or
9 modify the decision of the administrative law judge.

10 (d) Any member or the executive director of the board has the
11 authority to administer oaths, examine any person under oath and
12 issue subpoenas and subpoenas duces tecum.

13 (e) If, after a hearing, the board determines the licensee,
14 permittee, or registrant ~~or certificate holder~~ has violated
15 subsection (g) of this section or the board's rules, a formal
16 written decision shall be prepared which contains findings of fact,
17 conclusions of law and a specific description of the disciplinary
18 actions imposed.

19 **§30-27-22. Judicial review.**

20 Any licensee, permittee, or registrant ~~or certificate holder~~
21 adversely affected by a decision of the board entered after a
22 hearing may obtain judicial review of the decision in accordance
23 with section four, article five, chapter twenty-nine-a of this

1 code, and may appeal any ruling resulting from judicial review in
2 accordance with article six, chapter twenty-nine-a of this code.

3 **§30-27-23. Criminal proceedings; penalties.**

4 (a) When, as a result of an investigation under this article
5 or otherwise, the board has reason to believe that a licensee,
6 permittee, or registrant ~~or certificate holder~~ has committed a
7 criminal offense under this article, the board may bring its
8 information to the attention of an appropriate law-enforcement
9 official.

10 (b) Effective July 15, 2009, a person violating a provision of
11 this article is guilty of a misdemeanor and, upon conviction
12 thereof, shall be fined not less than \$500 nor more than \$1,000 or
13 confined in jail not more than six months, or both fined and
14 confined.

NOTE: The purpose of this bill is to move the licensing of
Cosmetology and Barber schools and instructors from the
professional licensing board to the West Virginia Higher Education
Policy Commission the same as other occupational and vocational
schools, specifically modeled after the language covering Massage
Therapy schools. The bill moves the various program length
requirements from regulation into code. It provides for the
continuation of school and instructor licenses as if originally
issued by the West Virginia Higher Education Policy Commission.
And, it removes superfluous language from the code.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.