

E N G R O S S E D
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 586

(By Senators Plymale, Prezioso, Snyder and Beach)

[Originating in the Committee on Government Organization;
reported March 28, 2013.]

A BILL to repeal §30-27-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-27-3, §30-27-5, §30-27-8, §30-27-11 and §30-27-12 of said code; and to amend and reenact §30-37-7 of said code, all relating to the Board of Barbers and Cosmetologists; licensing schools of aesthetics, barbering, cosmetology, manicuring and massage; transferring authority to approve licensure for certain schools; clarifying powers and duties of the board; providing requirements for professional licensing, license renewal and work permits;

establishing certain student registration requirements; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §30-27-15 of the Code of West Virginia, 1931, as amended, be repealed; that §30-27-3, §30-27-5, §30-27-8, §30-27-11 and §30-27-12 of said code be amended and reenacted; and that §30-37-7 of said code be amended and reenacted, all to read as follows:

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

§30-27-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) “Aesthetics” or “esthetics” means any one or any
5 combination of the following acts when done on the human
6 body for compensation and not for the treatment of disease:

7 (1) Administering cosmetic treatments to enhance or
8 improve the appearance of the skin, including cleansing,

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9 toning, performing effleurage or other related movements,
10 stimulating, exfoliating or performing any other similar
11 procedure on the skin of the human body or scalp;

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

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

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

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

25 (6) Applying artificial eyelashes and eyebrows; and

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

27 (b) “Aesthetician” or “esthetician” means a person
28 licensed under the provisions of this article who engages in
29 the practice of aesthetics.

30 (c) “Applicant” means a person making application for a
31 professional license, license, certificate, registration, permit
32 or renewal under the provisions of this article.

33 (d) “Barber” means a person licensed under the
34 provisions of this article who engages in the practice of
35 barbering.

36 (e) “Barbering” means any one or any combination of the
37 following acts when done on the human body for
38 compensation and not for the treatment of disease:

39 (1) Shaving, shaping and trimming the beard, or both;

40 (2) Cutting, singeing, shampooing, arranging, dressing,
41 tinting, bleaching, or applying lotions or tonics on human
42 hair, or a wig or hairpiece; and

43 (3) Applications, treatments or rubs of the scalp, face, or
44 neck with oils, creams, lotions, cosmetics, antiseptics,

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45 powders, or other preparations in connection with the
46 shaving, cutting or trimming of the hair or beard.

47 (f) “Barber crossover” or “cosmetologist crossover” is a
48 person who is licensed to perform barbering and
49 cosmetology.

50 (g) “Barber permanent waving” means the following acts
51 done on the human body for compensation and not for the
52 treatment of disease:

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

54 (2) The permanent waving of hair.

55 (h) “Barber permanent waviest” means a person licensed
56 to perform barbering and barber permanent waving.

57 (i) “Board” means the West Virginia Board of Barbers
58 and Cosmetologists.

59 (j) “Certificate” means an instructor certificate to teach in
60 a school under the provisions of this article.

61 (k) “Certificate holder” means a person certified as an
62 instructor to teach in a school under the provisions of this
63 article.

64 (l) "Cosmetologist" means a person licensed under the
65 provisions of this article who engages in the practice of
66 cosmetology.

67 (m) "Cosmetology" means any one or any combination
68 of the following acts when done on the human body for
69 compensation and not for the treatment of disease:

70 (1) Cutting, styling, shaping, arranging, braiding,
71 weaving, dressing, adding extensions, curling, waving,
72 permanent waving, relaxing, straightening, shampooing,
73 cleansing, singeing, bleaching, tinting, coloring, waxing,
74 tweezing, or similarly work on human hair, or a wig or
75 hairpiece, by any means, including hands, mechanical or
76 electrical devices or appliances;

77 (2) Nail care;

78 (3) Applying by hand or with a mechanical or electrical
79 device or appliance, any cosmetics, makeups, oils, powders,
80 clays, antiseptics, tonics, lotions, creams or chemical
81 preparations necessary for the practice of aesthetics to

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82 another person's face, neck, shoulders, hands, elbows and
83 feet up to and including the knee;

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

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

89 (6) Performing aesthetics.

90 (n) "General supervision" means:

91 (1) For schools, a master or certified instructor is on the
92 premises and is quickly and easily available; or

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

95 (o) "Hair braiding" means any one or any combination of
96 the following acts when done on the human body for
97 compensation and not for the treatment of disease: Braiding,
98 plaiting, twisting, wrapping, threading, weaving, extending
99 or locking of natural human hair by hand or mechanical
100 device.

101 (p) "Hair Styling" means any one or any combination of
102 the following acts when done on the human body for
103 compensation and not for the treatment of disease:

104 (1) Cutting, styling, shaping, arranging, braiding,
105 weaving, dressing, adding extensions, curling, waving,
106 permanent waving, relaxing, straightening, shampooing,
107 cleansing, singeing, bleaching, tinting, coloring, waxing,
108 tweezing, threading or similarly work on human hair, or a
109 wig or hairpiece, by any means, including hands, mechanical
110 or electrical devices or appliances;

111 (2) The rubbing, cleansing, exercising, beautifying or
112 grooming of another person's face, neck, shoulders, hands,
113 elbows and feet up to and including the knee.

114 (q) "Hair Stylist" means a person licensed under the
115 provisions of this article who engages in the practice of hair
116 styling.

117 (r) "License" means a professional license, a salon license
118 or a school license.

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119 (s) “Licensed school” means a facility which has been
120 approved by the West Virginia Council for Community and
121 Technical College Education pursuant to section nine, article
122 two-b, chapter eighteen-b of this code, to educate persons to
123 be licensed or issued certain permits under the provisions of
124 this article.

125 ~~(s)~~ (t) “Licensee” means a person, corporation or firm
126 holding a license issued under the provisions of this article.

127 ~~(t)~~ (u) “Nail care” means any one or any combination of
128 the following acts when done on the human body for
129 compensation and not for the treatment of disease:

130 (1) The cleansing, dressing, or polishing of nails of a
131 person;

132 (2) Performing artificial nail service; and

133 (3) The cosmetic treatment of the feet up to the knee and
134 the hands up to the elbow.

135 ~~(u)~~ (v) “Nail technician” or “manicurist” means a person
136 licensed under the provisions of this article who engages in
137 the practice of nail care.

138 ~~(v)~~ (w) “Permit” means a work permit.

139 ~~(w)~~ (x) “Permitee” means a person holding a work
140 permit.

141 ~~(x)~~ (y) “Professional license” means a license to practice
142 as a aesthetician, barber, barber crossover, barber permanent
143 wavist, cosmetologist, cosmetologist crossover or nail
144 technician.

145 ~~(y)~~ (z) “Registration” means a registration issued by the
146 board to a person who rents or leases a booth or chair from a
147 licensed salon owner and operator, or both, or a registration
148 issued by the board to a person who is a student in a school.

149 ~~(z)~~ (aa) “Registrant” means a person who holds a
150 registration under the provisions of this article.

151 ~~(aa)~~ (bb) “Salon” means a shop or other facility where a
152 person practices under a professional license.

153 ~~(bb)~~ (cc) “Salon license” means a license to own and
154 operate a salon.

155 ~~(cc)~~ “School” means a facility to educate persons to be
156 licensed under the provisions of this article.

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157 ~~(dd)~~ “School license” means a license to own and operate
158 ~~a school.~~

159 ~~(ee)~~ (dd) “Student registration” means a registration
160 issued by the board to a student to study at a school licensed
161 under the provisions of this article.

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

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

4 (b) The board shall:

5 (1) Hold meetings, conduct hearings and administer
6 examinations;

7 (2) Establish requirements for licenses, permits,
8 certificates and registrations;

9 (3) Establish procedures for submitting, approving and
10 rejecting applications for licenses, permits, certificates and
11 registrations;

12 (4) Determine the qualifications of any applicant for
13 licenses, permits, certificates and registrations;

14 (5) Prepare, conduct, administer and grade examinations
15 for professional licenses and certificates;

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

17 (7) Maintain records of the examinations the board or a
18 third party administers, including the number of persons
19 taking the examinations and the pass and fail rate;

20 (8) Set operational standards and requirements for
21 licensed schools;

22 ~~(8)~~(9) Hire, discharge, establish the job requirements and
23 fix the compensation of the executive director;

24 ~~(9)~~(10) Maintain an office, and hire, discharge, establish
25 the job requirements and fix the compensation of employees,
26 investigators/inspectors and contracted employees necessary
27 to enforce the provisions of this article: *Provided*, That any
28 investigator/inspector employed by the board on July 1,
29 2009, shall retain their coverage under the classified service,
30 including job classification, job tenure and salary, until that
31 person retires or is dismissed: *Provided, however*, That

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32 nothing may prohibit the disciplining or dismissal of any
33 investigator/inspector for cause;

34 ~~(10)~~ (11) Investigate alleged violations of the provisions
35 of this article, legislative rules, orders and final decisions of
36 the board;

37 ~~(11)~~ (12) Establish the criteria for the training of
38 investigators/inspectors;

39 ~~(12)~~ (13) Set the requirements for investigations and
40 inspections;

41 ~~(13)~~ (14) Conduct disciplinary hearings of persons
42 regulated by the board;

43 ~~(14)~~ (15) Determine disciplinary action and issue orders;

44 ~~(15)~~ (16) Institute appropriate legal action for the
45 enforcement of the provisions of this article;

46 (17) Report violations of the provisions of this article,

47 and legislative rules promulgated pursuant to this article,

48 alleged to have been committed by a licensed school to the

49 West Virginia Council for Community and Technical College

50 Education: *Provided*, That the board may continue to

51 investigate any alleged violation committed by a licensed
52 school that was received prior to July 1, 2013, until the board
53 determines whether probable cause exists that the licensed
54 school did commit the violation: *Provided, however, That if*
55 the board finds that probable cause exists that the licensed
56 school did commit the violation alleged, the board shall
57 immediately advise and provide its investigation file to the
58 West Virginia Council for Community and Technical
59 College;

60 ~~(16)~~ (18) Maintain an accurate registry of names and
61 addresses of all persons regulated by the board;

62 ~~(17)~~ (19) Keep accurate and complete records of its
63 proceedings, and certify the same as may be necessary and
64 appropriate;

65 ~~(18)~~ (20) Establish the continuing education requirements
66 for professional licensees and certificate holders;

67 ~~(19)~~ (21) Issue, renew, combine, deny, suspend, revoke
68 or reinstate licenses, permits, certificates and registrations;

69 ~~(20)~~ (22) Establish a fee schedule;

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70 ~~(21)~~ (23) Propose rules in accordance with the provisions
71 of article three, chapter twenty-nine-a of this code to
72 implement the provisions of this article; and

73 ~~(22)~~ (24) Take all other actions necessary and proper to
74 effectuate the purposes of this article.

75 (c) The board may:

76 (1) Establish joint licenses;

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

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

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

§30-27-8. Professional license requirements.

1 (a) An applicant for a professional license to practice as
2 a aesthetician, barber, barber crossover, barber permanent
3 waviest, cosmetologist, hair stylist, cosmetologist crossover or
4 nail technician shall present satisfactory evidence that he or
5 she:

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

7 (2) Is of good moral character;

8 (3) Has a high school diploma, a GED, or has passed the
9 “ability to benefit test” approved by the United States
10 Department of Education;

11 (4) Has graduated from a licensed school which has been
12 approved by the ~~board~~ West Virginia Council for Community
13 and Technical College Education;

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

19 (6) Has paid the applicable fee;

20 (7) Presents a certificate of health from a licensed
21 physician;

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

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24 (9) Has fulfilled any other requirement specified by the
25 board.

26 (b) A license to practice issued by the board prior to July
27 1, 2009, shall for all purposes be considered a professional
28 license issued under this article: *Provided*, That a person
29 holding a license issued prior to July 1, 2009, must renew the
30 license pursuant to the provisions of this article.

§30-27-11. Work permit.

1 (a) The board may issue a work permit to practice to an
2 applicant who meets the following conditions:

3 (1) Has graduated from a licensed school approved by the
4 ~~board or has completed the course requirements in a specific~~
5 ~~field;~~ West Virginia Council for Community and Technical
6 College Education;

7 (2) Is waiting to take the examination;

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

11 (4) Has paid the work permit fee;

12 (5) Has presented a certificate of health issued by a
13 licensed physician;

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

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

18 (b) A work permit expires at the end of the month after
19 issuance following the next examination in the specific field.

20 A work permit may be renewed once.

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

§30-27-12. Student registration.

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

4 (b) An applicant for a student registration shall present
5 satisfactory evidence that he or she meets the following
6 conditions:

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7 (1) Is enrolled as a student in ~~an approved~~ a licensed
8 school that is compliant with the board's operational
9 standards and requirements; ~~or enrolled in an approved~~
10 ~~course~~;

11 (2) Is of good moral character;

12 (3) Has paid the required fee;

13 (4) Has presented a certificate of health issued by a
14 licensed physician; and

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

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

19 (d) The student may perform acts constituting barbering,
20 barber permanent waving, cosmetology, aesthetics or nail
21 care in a school under the general supervision of a master or
22 certified instructor.

ARTICLE 37. MESSAGE THERAPISTS.

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

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

6 (1) Completion of a program of massage education at a
7 school approved by the West Virginia ~~Higher Education~~
8 ~~Policy Commission~~ Council for Community and Technical
9 College Education pursuant to section nine, article two-b,
10 chapter eighteen-b of this code or by a state agency in
11 another state, the District of Columbia or a United States
12 territory which approves educational programs and which
13 meets qualifications for the National Certification Exam
14 administered through the National Certification Board for
15 Therapeutic Massage and Bodywork. This school shall
16 require a diploma from an accredited high school, or the
17 equivalent, and require completion of at least five hundred
18 hours of supervised academic instruction;

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19 (2) Successful completion of the National Certification
20 for Therapeutic Massage and Bodywork (NCTMB)
21 examination, or other board approved examination; and

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

25 (b) A license to practice massage therapy issued by the
26 board prior to July 1, 2006, shall for all purposes be
27 considered a license issued under this section: *Provided,*
28 That a person holding a license to practice massage therapy
29 issued prior to July 1, 2006, must renew the license pursuant
30 to the provisions of this article: *Provided, however,* That a
31 person whose license was issued by the board prior to July 1,
32 2006, and whose license subsequently lapses may, in the
33 discretion of the board, be subject to the licensing
34 requirements of this section.

35 (c) In addition to provisions for licensure, the rules shall
36 include:

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

39 (2) Requirements for issuance of a reciprocal license to
40 licensees of states with requirements which may include the
41 successful completion of the NCTMB examination or other
42 board approved examination.

43 (d) Subject to the provisions of subsection (b) of this
44 section, the board may deny an application for renewal for
45 any reason which would justify the denial of an application
46 for initial licensure.

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

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