

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### Senate Bill 665

FISCAL  
NOTE

By Senator Rucker

[Introduced February 16, 2023; referred  
to the Committee on Government Organization; and  
then to the Committee on Finance]

1 A BILL to amend and reenact §30-37-2 and §30-37-7 of the Code of West Virginia, 1931, as  
2 amended; and to amend said code by adding thereto a new section, designated §30-37-  
3 13, all relating to licensure requirements; amending the required hours of coursework for  
4 therapist licensure; defining terms; requiring a license to operate a massage  
5 establishment; providing establishment license requirements; prohibiting certain acts;  
6 providing for massage establishment licensure renewal, suspension, and revocation;  
7 specifying exemptions; requiring certain establishment licensees to have continuing  
8 education; and providing emergency rule-making authority.

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

## **ARTICLE 37. MASSAGE THERAPISTS.**

### **§30-37-2. Definitions.**

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

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

6 (c) "Massage therapy" means a health care service which is a scientific and skillful  
7 manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle  
8 tone, circulation, promoting health and physical well-being. Massage therapy includes massage,  
9 myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including  
10 hydrotherapy, superficial hot and cold applications, vibration and topical applications or other  
11 therapies which involve manipulation of the muscle and connective tissue of the body, for the  
12 purpose of enhancing health, reducing stress, improving circulation, aiding muscle relaxation,  
13 increasing range of motion, or relieving neuro-muscular pain. Massage therapy does not include  
14 diagnosis or service which requires a license to practice medicine or surgery, osteopathic  
15 medicine, chiropractic, or podiatry, and does not include service performed by nurses,

16 occupational therapists, or physical therapists who act under their own professional license,  
17 certificate or registration.

18 (d) "Massage establishment" means a place of business wherein massage therapy is  
19 practiced, with a physical site or premise, including mobile sites, licensed as required by this  
20 article, in which licensed massage therapists are employees or contractors practicing massage  
21 therapy on clients.

22 (e) "Sole practitioner" means a licensed massage therapist who is licensed pursuant to this  
23 article, who is not an employee or contractor of the sole practitioner or an establishment, and who  
24 provides massage therapy to clients at a specific location including, but not limited to, a rental  
25 space, home office space, outcall, or onsite space.

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

1 (a) The board shall propose rules for legislative approval in accordance with §29A-3-1 *et*  
2 *seq.* of this code, establishing a procedure for licensing of massage therapists. License  
3 requirements shall include the following:

4 (1) Completion of a program of massage education at a school approved by the West  
5 Virginia Council for Community and Technical College Education pursuant to §18B-2B-9 of this  
6 code or by a state agency in another state, the District of Columbia or a United States territory  
7 which approves educational programs and which meets qualifications for the National Certification  
8 Exam administered through the National Certification Board for Therapeutic Massage and  
9 Bodywork (NCBTMB) prior to February 1, 2015, the Massage & Bodywork Licensing Examination  
10 administered through the Federation of State Massage Therapy Boards (FSMTB) and any other  
11 board approved examination. This school shall require a diploma from an accredited high school,  
12 or the equivalent, and on July 1, 2023, upon adoption of the amendments to this section during the  
13 2023 regular session require completion of at least ~~five hundred~~ 625 hours of supervised  
14 academic instruction;

15 (2) Successful completion of the National Certification for Therapeutic Massage and

16 Bodywork (NCTMB) examination, the Massage & Bodywork Licensing Examination (MBLEx) or  
17 any other board approved examination; and

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

20 (b) A license to practice massage therapy issued by the board prior to July 1, 2006, shall  
21 for all purposes be considered a license issued under this section: *Provided*, That a person holding  
22 a license to practice massage therapy issued prior to July 1, 2006, must renew the license  
23 pursuant to the provisions of this article: *Provided, however*, That a person whose license was  
24 issued by the board prior to July 1, 2006, and whose license subsequently lapses may, in the  
25 discretion of the board, be subject to the licensing requirements of this section.

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

27 (1) Requirements for completion of continuing education hours conforming to NCBTMB,  
28 (FSMTB) or board approved guidelines; and

29 (2) Requirements for issuance of a reciprocal license to licensees of states with  
30 requirements which may include the successful completion of the NCTMB examination, MBLEx  
31 examination or any other board approved examination.

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

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

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

**§30-37-13. Massage establishment license required; exemptions; renewals; suspension  
and revocation; and emergency rulemaking authority.**

1 (a) Massage establishment requirements.

2 (b) A place of business that is not a sole practitioner, that advertises or offers massage  
3 therapy or other massage services must be licensed by the board as a massage establishment as  
4 provided by this article §30-37-1 et seq. of this code.

5 (c) A massage establishment shall employ or contract only with massage therapists  
6 licensed in this state to perform massage therapy or other massage services. Documentation of  
7 the employment or contract relationship and verification that the licensed massage therapist is a  
8 United States citizen or a legal permanent resident with a valid work permit shall be maintained by  
9 the massage establishment, and shall be made available during any inspection or investigation.  
10 Required documentation for each person providing massage therapy or other massage services  
11 shall include:

12 (1) A copy of the current active West Virginia massage therapist license;

13 (2) Proof of eligibility to work in the United States; and

14 (3) If an employee, a completed I-9 form, or if under an independent contractor or contract  
15 labor agreement, a copy of the contract signed by both the owner or operator of the establishment  
16 and the licensed massage therapist.

17 (d) An adult oriented business may not obtain a license from the board or operate as a  
18 massage establishment.

19 (e) Each applicant for a massage establishment shall:

20 (1) Submit a completed application on a board approved form; and

21 (2) Pay the appropriate fee as prescribed by the board by legislative rule.

22 (f) Exemptions:

23 (1) A place of business is not required to hold a massage establishment license under this  
24 article if:

25 (A) The place of business is owned by the federal government, the state, or a political  
26 subdivision of the state, or otherwise offers massage services as authorized under any other state

27 issued professional or occupational license; or

28 (B) At the place of business, a licensed massage therapist practices as a solo practitioner.

29 (2) The sole practitioner does not use a business name or assumed name; or

30 (3) Uses a business name or an assumed name and provides the massage therapist's full

31 legal name or license number in each advertisement and each time the business name or

32 assumed name appears in writing.

33 (g) A massage establishment license shall be renewed biannually on a form prescribed by

34 the board, with the appropriate fee.

35 (h) Massage establishment requirements:

36 (1) A massage establishment shall post, in a prominent location, the board administered

37 establishment license, the state license of each licensed massage therapist employed by the

38 establishment, and any business licenses required by any state, municipality or local

39 governmental entity.

40 (2) Properly maintain and secure for each client the initial consultation documents, all

41 session notes, written consent documents, and related billing records; and

42 (3) Maintain a current list of all establishment employees and/or contractors on the

43 premises at all times which includes:

44 (A) The full name; and

45 (B) License number and expiration date of the licensed as a massage therapist.

46 (i) A massage establishment may not:

47 (I) Employ or contract with an individual to perform massage services who is not a licensed

48 massage therapist in this state and who is not a United States citizen or a legal resident with a valid

49 work permit;

50 (II) Allow a nude or partially nude employee to provide massage therapy or other massage

51 services to a customer;

52 (III) Allow any individual, including a client, license holder, or employee, to engage in

53 sexual contact in the massage establishment;

54 (IV) Allow any individual, including a license holder, employee, or contract employee to  
55 practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire  
56 of any individual; or

57 (V) Allow any individual, including a license holder, employee, or contract employee to  
58 reside on the premises of the massage establishment.

59 (j) Suspensions and revocations of establishment licensees:

60 (1) A licensee of an establishment may be disciplined pursuant to the general provisions of  
61 §30-1-1 et seq. of this code, and §30-37-1 et seq. of this code, for violating any provision of this  
62 article, for violating any applicable state law, rule or policy, and for violating any applicable local  
63 ordinance, including the suspension or revocation of the establishment license for cause.

64 (k) A license to operate a massage establishment shall be required, starting on July 1,  
65 2023, upon the enactment of this section by the Legislature during the 2023 regular session.

66 (l) All establishment license holders, shall beginning July 1, 2025, who are not licensed  
67 massage therapists, obtain two hours of continuing education on the laws and rules of massage  
68 therapy every two years and shall provide the certificate of completion to the board by July 1,  
69 2025, and with the application for biannual renewal of the establishment license.

70 (m) The board shall propose emergency legislative rules to establish the reasonable fees  
71 for the licensure of massage establishments, including the fee for the establishment license and  
72 any establishment inspection fees as deemed necessary by the board.

NOTE: The purpose of this bill is to amend the requirements for licensure as a massage therapist and establish a massage establishment license. Course work hours are amended to conform with the massage therapy interstate compact being considered nationally and in alignment with the course work required by WV Massage Therapy instructional programs. This bill further provides for the licensure of massage establishments.

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