

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 665

BY SENATOR RUCKER

[Originating in the Committee on Government
Organization; reported on February 22, 2023]

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
23 this article, who is not an employee or contractor of the sole practitioner or an establishment, and
24 who 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 and bodywork licensing
10 examination administered through the Federation of State Massage Therapy Boards (FSMTB)
11 and any other board approved examination. This school shall require a diploma from an
12 accredited high school, or the equivalent, and on July 1, 2023, upon adoption of the amendments
13 to this section during the regular session of the Legislature, 2023, require completion of at least
14 ~~five hundred~~ 625 hours of supervised academic instruction;

15 (2) Successful completion of the National Certification for Therapeutic Massage and
16 Bodywork (NCTMB) examination, the Massage and Bodywork Licensing Examination (MBLEx),
17 or 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
22 holding 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 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
36 is 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 rule-making authority.

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

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

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

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

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

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

18 (d) Each applicant for a massage establishment shall:

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

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

21 (e) Exemptions:

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

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

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

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

29 (3) Uses a business name or an assumed name and provides the massage therapist's full
30 legal name or license number in each advertisement and each time the business name or
31 assumed name appears in writing.

32 (f) A massage establishment license shall be renewed biennially on a form prescribed by
33 the board, with the appropriate fee.

34 (g) Massage establishment requirements:

35 (1) A massage establishment shall post, in a prominent location, the board administered
36 establishment license, the state license of each licensed massage therapist employed by the
37 establishment, and any business licenses required by any state, municipality or local
38 governmental entity.

39 (2) Properly maintain and secure for each client the initial consultation documents, all
40 session notes, written consent documents, and related billing records; and

41 (3) Maintain a current list of all establishment employees and/or contractors on the
42 premises at all times which includes:

43 (A) The full name; and

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

45 (h) A massage establishment may not:

46 (1) Employ or contract with an individual to perform massage services who is not a
47 licensed massage therapist in this state and who is not a United States citizen or a legal resident
48 with a valid work permit;

49 (2) Allow a nude or partially nude employee to provide massage therapy or other massage
50 services to a customer;

51 (3) Allow any individual, including a client, license holder, or employee, to engage in sexual
52 contact in the massage establishment;

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

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

58 (i) A licensee of a massage establishment may be disciplined, including the suspension
59 or revocation of the license for cause:

60 (1) Pursuant to the general provisions of §30-1-1 et seq. and §30-37-1 et seq. of this code;

61 (2) For violating any provision of this article;

62 (3) For violating any applicable state law, rule, or policy; and

63 (4) For violating any applicable local ordinance.

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

66 (k) All establishment license holders who are not licensed massage therapists, shall,
67 beginning July 1, 2025, 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 biennial renewal of the establishment license.

70 (l) The board shall propose emergency legislative rules pursuant to §29A-3-1 et seq. of
71 this code to establish reasonable fees for the licensure of massage establishments, including the
72 fee for the establishment license and any establishment inspection fees as deemed necessary by
73 the board.