

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 786

By Senator Rucker

[Introduced February 14, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §30-37-13 of the Code of West Virginia, 1931, as amended; and by
 2 amending said code adding thereto a new section, designated §30-37-14, all relating to
 3 massage therapy establishments; modifying implementation dates; establishing
 4 reasonable cause for inspection; providing authority for the board to issue emergency
 5 orders halting operations for violations of establishment regulations; describing posting of
 6 emergency orders; requiring summary and written notice; proscribing prohibitions of
 7 sanctioned establishments; and providing penalties for certain violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 37. MASSAGE THERAPISTS.

§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 as
 3 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 by
 8 the massage establishment, and shall be made available during any inspection or investigation.
 9 Required documentation for each person providing massage therapy or other massage services
 10 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 sole 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 or
59 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 ~~October 1,~~
65 ~~2023~~ July 1, 2025, upon the enactment of this section by the regular session of the Legislature,
66 ~~2023~~ 2025.

67 (k) All establishment license holders who are not licensed massage therapists, shall,

68 beginning July 1, 2025, obtain two hours of continuing education on the laws and rules of massage
69 therapy every two years and shall provide the certificate of completion to the board by October 1,
70 2025, and with the application for biennial renewal of the establishment license.

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

§30-37-14. Emergency orders for establishment violations, penalty for continued violation.

1 (a) The executive director may issue an emergency order halting the operation of a
2 massage establishment if:

3 (1) A law enforcement agency provides notice to the board, that the law enforcement
4 agency is investigating the massage establishment for an offense pursuant to §61-8-1 *et seq.*,
5 §61-14-1 *et seq.*, or §30-37-13 of this code; or

6 (2) The board has reasonable cause to believe that an offense pursuant to §30-37-13 of
7 this code is being committed at the massage establishment, and upon inspection by the board,
8 where one or more violations of the establishment regulations are observed; or

9 (3) Upon inspection of a massage establishment, where one or more violations of §30-37-
10 13 of this code are observed, the executive director shall issue an emergency order; and

11 (4) Upon inspection, where the board believes the massage establishment may be in
12 violation of a local, municipal, or other applicable law, the board shall notify law enforcement of its
13 observations.

14 (b) Emergency Orders shall identify the massage establishment by its business name,
15 state that the massage establishment is closed by Order of the WV Massage Therapy Licensing
16 Board pursuant to §30-37-1 *et seq.* of this code, and shall remain closed to the public until the
17 massage establishment is in compliance with the provisions of §30-37-1 *et seq.* of this code. The
18 board shall provide the massage establishment with a written summary of the findings of the

19 inspection resulting in the emergency order, describing what compliance measures are necessary,
20 and within three business days provide to the establishment, in writing, the board complaint
21 resulting in the emergency order halting the operation of the establishment, and describe what
22 compliance measures must be taken for the emergency order to be rescinded.

23 (c) The emergency order shall be noticed by being printed on 8 ½" x 11" paper, taped to the
24 front door of the massage establishment, clearly visible to the public.

25 (d) A massage establishment may not remove the notice of order halting its operations until
26 the establishment is in compliance with §30-37-1 et seq. of this code, as verified by a board
27 inspection.

28 (e) A massage establishment may not open for business until in compliance with §30-37-1
29 et seq. of this code, as verified by a board inspection.

30 (f) A massage establishment that opens its business to the public while subjected to an
31 emergency order halting its operations, shall be fined \$1,000 per day, for each day of the violation.

32 (g) Where the board has to take legal action against a massage establishment for
33 continued violations of §30-37-1 et seq. of this code, the court may triple the applicable fines and
34 order the massage establishment to reimburse the board for all legal fees, and all administrative
35 costs.

36 (h) An establishment may appeal the action of the executive director to the board pursuant
37 to the provisions of §30-1-8 of this code.

NOTE: The purpose of this bill is to modify the date for implementing massage establishment licensure, and to provide authority for the board to issue an emergency order halting establishment operation until the establishment is in compliance with §30-37-1 et seq. of this code.

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