

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 586**

5 (SENATORS PLYMALE, PREZIOSO, SNYDER AND BEACH, *original sponsors*)

6 _____
7 [Passed April 13, 2013; in effect from passage.]
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10
11 AN ACT to repeal §30-27-15 of the Code of West Virginia, 1931, as
12 amended; to amend and reenact §30-27-3, §30-27-5, §30-27-8,
13 §30-27-11 and §30-27-12 of said code; and to amend and reenact
14 §30-37-7 of said code, all relating to the Board of Barbers
15 and Cosmetologists; licensing schools of aesthetics,
16 barbering, cosmetology, manicuring and massage; transferring
17 authority to approve licensure for certain schools; clarifying
18 powers and duties of the board; providing requirements for
19 professional licensing, license renewal and work permits;
20 establishing certain student registration requirements; and
21 providing definitions.

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

23 That §30-27-15 of the Code of West Virginia, 1931, as amended,
24 be repealed; that §30-27-3, §30-27-5, §30-27-8, §30-27-11 and

1 §30-27-12 of said code be amended and reenacted; and that §30-37-7
2 of said code be amended and reenacted, all to read as follows:

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

4 **§30-27-3. Definitions.**

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

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

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

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

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

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

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

4 (6) Applying artificial eyelashes and eyebrows; and

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

6 (b) "Aesthetician" or "esthetician" means a person licensed
7 under the provisions of this article who engages in the practice of
8 aesthetics.

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

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

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

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

18 (2) Cutting, singeing, shampooing, arranging, dressing,
19 tinting, bleaching, or applying lotions or tonics on human hair, or
20 a wig or hairpiece; and

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

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

3 (g) "Barber permanent waving" means the following acts done on
4 the human body for compensation and not for the treatment of
5 disease:

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

7 (2) The permanent waving of hair.

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

10 (i) "Board" means the West Virginia Board of Barbers and
11 Cosmetologists.

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

14 (k) "Certificate holder" means a person certified as an
15 instructor to teach in a school under the provisions of this
16 article.

17 (l) "Cosmetologist" means a person licensed under the
18 provisions of this article who engages in the practice of
19 cosmetology.

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

23 (1) Cutting, styling, shaping, arranging, braiding, weaving,
24 dressing, adding extensions, curling, waving, permanent waving,

1 relaxing, straightening, shampooing, cleansing, singeing,
2 bleaching, tinting, coloring, waxing, tweezing, or similarly work
3 on human hair, or a wig or hairpiece, by any means, including
4 hands, mechanical or electrical devices or appliances;

5 (2) Nail care;

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

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

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

16 (6) Performing aesthetics.

17 (n) "General supervision" means:

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

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

22 (o) "Hair braiding" means any one or any combination of the
23 following acts when done on the human body for compensation and not
24 for the treatment of disease: Braiding, plaiting, twisting,

1 wrapping, threading, weaving, extending or locking of natural human
2 hair by hand or mechanical device.

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

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

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

15 (q) "Hair Stylist" means a person licensed under the
16 provisions of this article who engages in the practice of hair
17 styling.

18 (r) "License" means a professional license, a salon license or
19 a school license.

20 (s) "Licensed school" means a facility which has been approved
21 by the West Virginia Council for Community and Technical College
22 Education pursuant to section nine, article two-b, chapter
23 eighteen-b of this code, to educate persons to be licensed or
24 issued certain permits under the provisions of this article.

1 (t) "Licensee" means a person, corporation or firm holding a
2 license issued under the provisions of this article.

3 (u) "Nail care" means any one or any combination of the
4 following acts when done on the human body for compensation and not
5 for the treatment of disease:

6 (1) The cleansing, dressing, or polishing of nails of a
7 person;

8 (2) Performing artificial nail service; and

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

11 (v) "Nail technician" or "manicurist" means a person licensed
12 under the provisions of this article who engages in the practice of
13 nail care.

14 (w) "Permit" means a work permit.

15 (x) "Permitee" means a person holding a work permit.

16 (y) "Professional license" means a license to practice as a
17 aesthetician, barber, barber crossover, barber permanent wivist,
18 cosmetologist, cosmetologist crossover or nail technician.

19 (z) "Registration" means a registration issued by the board to
20 a person who rents or leases a booth or chair from a licensed salon
21 owner and operator, or both, or a registration issued by the board
22 to a person who is a student in a school.

23 (aa) "Registrant" means a person who holds a registration
24 under the provisions of this article.

1 (bb) "Salon" means a shop or other facility where a person
2 practices under a professional license.

3 (cc) "Salon license" means a license to own and operate a
4 salon.

5 (dd) "Student registration" means a registration issued by the
6 board to a student to study at a school licensed under the
7 provisions of this article.

8 **§30-27-5. Powers and duties of the board.**

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

12 (b) The board shall:

13 (1) Hold meetings, conduct hearings and administer
14 examinations;

15 (2) Establish requirements for licenses, permits, certificates
16 and registrations;

17 (3) Establish procedures for submitting, approving and
18 rejecting applications for licenses, permits, certificates and
19 registrations;

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

22 (5) Prepare, conduct, administer and grade examinations for
23 professional licenses and certificates;

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

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

4 (8) Set operational standards and requirements for licensed
5 schools;

6 (9) Hire, discharge, establish the job requirements and fix
7 the compensation of the executive director;

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

17 (11) Investigate alleged violations of the provisions of this
18 article, legislative rules, orders and final decisions of the
19 board;

20 (12) Establish the criteria for the training of
21 investigators/inspectors;

22 (13) Set the requirements for investigations and inspections;

23 (14) Conduct disciplinary hearings of persons regulated by the
24 board;

1 (15) Determine disciplinary action and issue orders;

2 (16) Institute appropriate legal action for the enforcement of
3 the provisions of this article;

4 (17) Report violations of the provisions of this article, and
5 legislative rules promulgated pursuant to this article, alleged to
6 have been committed by a licensed school to the West Virginia
7 Council for Community and Technical College Education. The board
8 may continue to investigate any alleged violation that it receives
9 by May 1, 2013, and shall conclude any such investigation by July
10 1, 2013. If the board determines that probable cause exists that
11 a violation occurred, the board immediately shall advise and
12 provide its investigation file to the West Virginia Council for
13 Community and Technical College Education;

14 (18) Maintain an accurate registry of names and addresses of
15 all persons regulated by the board;

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

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

20 (21) Issue, renew, combine, deny, suspend, revoke or reinstate
21 licenses, permits, certificates and registrations;

22 (22) Establish a fee schedule;

23 (23) Propose rules in accordance with the provisions of
24 article three, chapter twenty-nine-a of this code to implement the

1 provisions of this article; and

2 (24) Take all other actions necessary and proper to effectuate
3 the purposes of this article.

4 (c) The board may:

5 (1) Establish joint licenses;

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

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

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

12 **§30-27-8. Professional license requirements.**

13 (a) An applicant for a professional license to practice as a
14 aesthetician, barber, barber crossover, barber permanent wavist,
15 cosmetologist, hair stylist, cosmetologist crossover or nail
16 technician shall present satisfactory evidence that he or she:

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

18 (2) Is of good moral character;

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

22 (4) Has graduated from a licensed school which has been
23 approved by the West Virginia Council for Community and Technical
24 College Education or has completed education requirements in

1 another state and meets the licensure provisions of the board;

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

6 (6) Has paid the applicable fee;

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

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

11 (9) Has fulfilled any other requirement specified by the
12 board.

13 (b) A license to practice issued by the board prior to July 1,
14 2009, shall for all purposes be considered a professional license
15 issued under this article: *Provided*, That a person holding a
16 license issued prior to July 1, 2009, must renew the license
17 pursuant to the provisions of this article.

18 **§30-27-11. Work permit.**

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

21 (1) Has graduated from a licensed school approved by the West
22 Virginia Council for Community and Technical College Education or
23 has completed education requirements in another state and meets the
24 licensure provisions of the board;

- 1 (2) Is waiting to take the examination;
- 2 (3) Has employment in the field in which he or she applied to
3 take the examination and is working under the general supervision
4 of a professional licensee;
- 5 (4) Has paid the work permit fee;
- 6 (5) Has presented a certificate of health issued by a licensed
7 physician;
- 8 (6) Is a citizen of the United States or is eligible for
9 employment in the United States; and
- 10 (7) Meets all the other requirements specified by the board.
- 11 (b) A work permit expires at the end of the month after
12 issuance following the next examination in the specific field. A
13 work permit may be renewed once.
- 14 (c) While in effect, a work permittee is subject to the
15 restrictions and requirements imposed by this article.

16 **§30-27-12. Student registration.**

- 17 (a) Prior to commencing studies in a licensed school, a
18 student shall acquire a student registration issued by the board.
- 19 (b) An applicant for a student registration shall present
20 satisfactory evidence that he or she meets the following
21 conditions:
- 22 (1) Is enrolled as a student in a licensed school;
- 23 (2) Is of good moral character;
- 24 (3) Has paid the required fee;

1 (4) Has presented a certificate of health issued by a licensed
2 physician; and

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

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

7 (d) The student may perform acts constituting barbering,
8 barber permanent waving, cosmetology, aesthetics or nail care in a
9 school under the general supervision of a master or certified
10 instructor.

11 **ARTICLE 37. MASSAGE THERAPISTS.**

12 **§30-37-7. Requirements for licensure; renewal of licenses;**
13 **reinstatement; penalties.**

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

18 (1) Completion of a program of massage education at a school
19 approved by the West Virginia Council for Community and Technical
20 College Education pursuant to section nine, article two-b, chapter
21 eighteen-b of this code or by a state agency in another state, the
22 District of Columbia or a United States territory which approves
23 educational programs and which meets qualifications for the
24 National Certification Exam administered through the National

1 Certification Board for Therapeutic Massage and Bodywork. This
2 school shall require a diploma from an accredited high school, or
3 the equivalent, and require completion of at least five hundred
4 hours of supervised academic instruction;

5 (2) Successful completion of the National Certification for
6 Therapeutic Massage and Bodywork (NCTMB) examination, or other
7 board approved examination; and

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

11 (b) A license to practice massage therapy issued by the board
12 prior to July 1, 2006, shall for all purposes be considered a
13 license issued under this section: *Provided*, That a person holding
14 a license to practice massage therapy issued prior to July 1, 2006,
15 must renew the license pursuant to the provisions of this article:
16 *Provided, however*, That a person whose license was issued by the
17 board prior to July 1, 2006, and whose license subsequently lapses
18 may, in the discretion of the board, be subject to the licensing
19 requirements of this section.

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

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

24 (2) Requirements for issuance of a reciprocal license to

1 licensees of states with requirements which may include the
2 successful completion of the NCTMB examination or other board
3 approved examination.

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

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

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