

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 586**

4 (By Senators Plymale, Prezioso, Snyder and Beach)

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

8 _____
9
10
11 A BILL 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24 be repealed; that §30-27-3, §30-27-5, §30-27-8, §30-27-11 and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 waviest" 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 ~~(s)~~ (t) "Licensee" means a person, corporation or firm holding
2 a license issued under the provisions of this article.

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

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

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

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

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

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

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

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

5 ~~(cc)~~ "School" means a facility to educate persons to be
6 licensed under the provisions of this article.

7 ~~(dd)~~ "School license" means a license to own and operate a
8 school.

9 ~~(ee)~~ (dd) "Student registration" means a registration issued
10 by the board to a student to study at a school licensed under the
11 provisions of this article.

12 **§30-27-5. Powers and duties of the board.**

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

16 (b) The board shall:

17 (1) Hold meetings, conduct hearings and administer
18 examinations;

19 (2) Establish requirements for licenses, permits, certificates
20 and registrations;

21 (3) Establish procedures for submitting, approving and
22 rejecting applications for licenses, permits, certificates and
23 registrations;

24 (4) Determine the qualifications of any applicant for

1 licenses, permits, certificates and registrations;

2 (5) Prepare, conduct, administer and grade examinations for
3 professional licenses and certificates;

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

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

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

10 ~~(8)~~ (9) Hire, discharge, establish the job requirements and
11 fix the compensation of the executive director;

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

21 ~~(10)~~ (11) Investigate alleged violations of the provisions of
22 this article, legislative rules, orders and final decisions of the
23 board;

24 ~~(11)~~ (12) Establish the criteria for the training of

1 investigators/inspectors;

2 ~~(12)~~ (13) Set the requirements for investigations and
3 inspections;

4 ~~(13)~~ (14) Conduct disciplinary hearings of persons regulated
5 by the board;

6 ~~(14)~~ (15) Determine disciplinary action and issue orders;

7 ~~(15)~~ (16) Institute appropriate legal action for the
8 enforcement of the provisions of this article;

9 (17) Report violations of the provisions of this article, and
10 legislative rules promulgated pursuant to this article, alleged to
11 have been committed by a licensed school to the West Virginia
12 Council for Community and Technical College Education: *Provided,*
13 That the board may continue to investigate any alleged violation
14 committed by a licensed school that was received prior to July 1,
15 2013, until the board determines whether probable cause exists that
16 the licensed school did commit the violation: *Provided, however,*
17 That if the board finds that probable cause exists that the
18 licensed school did commit the violation alleged, the board shall
19 immediately advise and provide its investigation file to the West
20 Virginia Council for Community and Technical College;

21 ~~(16)~~ (18) Maintain an accurate registry of names and addresses
22 of all persons regulated by the board;

23 ~~(17)~~ (19) Keep accurate and complete records of its
24 proceedings, and certify the same as may be necessary and

1 appropriate;

2 ~~(18)~~ (20) Establish the continuing education requirements for
3 professional licensees and certificate holders;

4 ~~(19)~~ (21) Issue, renew, combine, deny, suspend, revoke or
5 reinstate licenses, permits, certificates and registrations;

6 ~~(20)~~ (22) Establish a fee schedule;

7 ~~(21)~~ (23) Propose rules in accordance with the provisions of
8 article three, chapter twenty-nine-a of this code to implement the
9 provisions of this article; and

10 ~~(22)~~ (24) Take all other actions necessary and proper to
11 effectuate the purposes of this article.

12 (c) The board may:

13 (1) Establish joint licenses;

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

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

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

20 **§30-27-8. Professional license requirements.**

21 (a) An applicant for a professional license to practice as a
22 aesthetician, barber, barber crossover, barber permanent waviest,
23 cosmetologist, hair stylist, cosmetologist crossover or nail
24 technician shall present satisfactory evidence that he or she:

- 1 (1) Is at least eighteen years of age;
- 2 (2) Is of good moral character;
- 3 (3) Has a high school diploma, a GED, or has passed the
4 "ability to benefit test" approved by the United States Department
5 of Education;
- 6 (4) Has graduated from a licensed school which has been
7 approved by the ~~board~~ West Virginia Council for Community and
8 Technical College Education;
- 9 (5) Has passed an examination that tests the applicant's
10 knowledge of subjects specified by the board: *Provided*, That the
11 board may recognize a certificate or similar license in lieu of the
12 examination or part of the examination that the board requires;
- 13 (6) Has paid the applicable fee;
- 14 (7) Presents a certificate of health from a licensed
15 physician;
- 16 (8) Is a citizen of the United States or is eligible for
17 employment in the United States; and
- 18 (9) Has fulfilled any other requirement specified by the
19 board.
- 20 (b) A license to practice issued by the board prior to July 1,
21 2009, shall for all purposes be considered a professional license
22 issued under this article: *Provided*, That a person holding a
23 license issued prior to July 1, 2009, must renew the license
24 pursuant to the provisions of this article.

1 **§30-27-11. Work permit.**

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

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

7 (2) Is waiting to take the examination;

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

11 (4) Has paid the work permit fee;

12 (5) Has presented a certificate of health issued by a licensed
13 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 board.

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

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

22 **§30-27-12. Student registration.**

23 (a) Prior to commencing studies in a licensed school, ~~licensed~~
24 ~~under the provisions of this article~~ a student shall acquire a

1 student registration issued by the board.

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

5 (1) Is enrolled as a student in an approved a licensed school;
6 ~~or enrolled in an approved course;~~

7 (2) Is of good moral character;

8 (3) Has paid the required fee;

9 (4) Has presented a certificate of health issued by a licensed
10 physician; and

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

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

15 (d) The student may perform acts constituting barbering,
16 barber permanent waving, cosmetology, aesthetics or nail care in a
17 school under the general supervision of a master or certified
18 instructor.

19 **ARTICLE 37. MESSAGE THERAPISTS.**

20 **§30-37-7. Requirements for licensure; renewal of licenses;**
21 **reinstatement; penalties.**

22 (a) The board shall propose rules for legislative approval in
23 accordance with article three, chapter twenty-nine-a of this code,
24 establishing a procedure for licensing of massage therapists.

1 License requirements shall include the following:

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

14 (2) Successful completion of the National Certification for
15 Therapeutic Massage and Bodywork (NCTMB) examination, or other
16 board approved examination; and

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

20 (b) A license to practice massage therapy issued by the board
21 prior to July 1, 2006, shall for all purposes be considered a
22 license issued under this section: *Provided*, That a person holding
23 a license to practice massage therapy issued prior to July 1, 2006,
24 must renew the license pursuant to the provisions of this article:

1 *Provided, however,* That a person whose license was issued by the
2 board prior to July 1, 2006, and whose license subsequently lapses
3 may, in the discretion of the board, be subject to the licensing
4 requirements of this section.

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

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

9 (2) Requirements for issuance of a reciprocal license to
10 licensees of states with requirements which may include the
11 successful completion of the NCTMB examination or other board
12 approved examination.

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

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

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

