

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 665**

By Senator Rucker

[Passed March 10, 2023; in effect 90 days from  
passage]

1 AN ACT 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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) A massage therapist who is licensed by the board shall be issued a certificate and a license number. The current, valid license certificate shall be publicly displayed and available for 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 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

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

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

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

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

(g) Massage establishment requirements:

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

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

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

(A) The full name; and

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

(h) A massage establishment may not:

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

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

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

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

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

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

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

(2) For violating any provision of this article;

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

(4) For violating any applicable local ordinance.

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

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

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