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WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998



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**Com. Sub. for
House Bill No. 4035**

(By Delegates Fleischauer, Staton, Fragale,
Dalton, Varner, Hutchins and Yeager)



Passed March 14, 1998

In Effect from Passage

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STATE OF WEST VIRGINIA

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COMMITTEE SUBSTITUTE

FOR

H. B. 4035

(BY DELEGATES FLEISCHAUER, STATON, FRAGALE, DALTON, VARNER,
HUTCHINS AND YEAGER)

[Passed March 14, 1998; in effect from passage.]

AN ACT to amend and reenact section three-z, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, five, six, seven and eleven, article thirty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensing massage therapists; excepting licensed massage therapists from the authority of county commissions; composition of board; duties of board to propose rules; requirements for licensure; and exemptions.

Be it enacted by the Legislature of West Virginia:

That section three-z, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three, five, six, seven and eleven, article thirty-seven, chapter thirty, be amended and reenacted to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3z. Authority of counties to govern business of massage.

1 (a) In addition to all other powers and duties now
2 conferred by law upon county commissions, county
3 commissions, may by order duly entered of record, adopt
4 an ordinance which provides for the licensing for the
5 regulation of the business of massage when carried on
6 within the county. The ordinances may be adopted either
7 for the entire county, or for any portion or portions of the
8 county which may constitute an effective area or areas for
9 those purposes, without the necessity of adopting the
10 ordinances for any other portion of the county.
11 Notwithstanding any other provision of this section to the
12 contrary, no ordinance shall apply to or affect any
13 territory within the boundaries of any municipal
14 corporation which has adopted and has in effect an
15 ordinance which provides for the regulation of the
16 business of massage, unless and until the municipal
17 corporation provides for the regulation of the business of
18 massage by ordinance.

19 (b) The ordinance may condition the issuance of a
20 license to engage in the business of massage upon proof
21 that a massage business meets the reasonable standards set
22 by the ordinance, which may include, but need not be
23 limited to, the following areas:

24 (1) Requirement that massage personnel be at least
25 eighteen years of age;

26 (2) Sanitary conditions of the massage establishment;

27 (3) Hours of operation of the massage business; and

28 (4) Prohibition of the sale or serving of food or
29 beverage or the conducting of nonmassage business on
30 the premises of the massage business. In the event that the
31 business premises in which the massage business is
32 conducted has separate quarters used for purposes other
33 than the massage business, the prohibition of this
34 subsection applies only to the portion of the premises

35 exclusively devoted to the conduct of the massage
36 business.

37 (c) The ordinance may also provide that a license to
38 engage in the business of massage may be denied upon a
39 showing by the licensing authority of any of the
40 following:

41 (1) Proof that the massage personnel or the owners or
42 operators of a massage business have been convicted of a
43 violation of any of the provisions of article eight, eight-a,
44 eight-b or eight-c, chapter sixty-one of this code or proof
45 that massage personnel or the owners or operators of a
46 massage business have been convicted in any other state of
47 any offense which, if committed or attempted in this state,
48 would have been punishable as one of the offenses set
49 forth in this subsection.

50 (2) Proof that the massage personnel, or the owners, or
51 operators of a massage business have been convicted of
52 any felony offense involving the sale of a controlled
53 substance specified in section two hundred four, two
54 hundred six, two hundred eight, two hundred ten or two
55 hundred twelve, article two, chapter sixty-a of this code or
56 proof that the massage personnel or the owners or
57 operators of the massage business have been convicted in
58 any other state of any offense, which if committed or
59 attempted in this state, would have been punishable as one
60 or more of the offenses set forth in this subsection.

61 (d) The ordinance may require that application to
62 conduct the business of massage be made on a form
63 prescribed by the licensing authority, which may require
64 the following information:

65 (1) The name of the applicant;

66 (2) If the applicant is an unincorporated association,
67 the names and addresses of the members of its governing
68 board;

69 (3) If the applicant is a corporation, the names and
70 addresses of its officers and directors;

71 (4) The place at which the applicant will conduct its
72 operations and whether that place is owned or leased by
73 the applicant;

74 (5) The name of the owner of the place at which the
75 applicant will conduct its operation, if not the same as the
76 applicant;

77 (6) The number of members of the applicant;

78 (7) The names of all massage personnel, owners,
79 operators or other employees of the massage business;

80 (8) Any other information as the licensing authority
81 may reasonably require which may include, but need not
82 be limited to, the criminal records, if any, of each member
83 of the applicant's governing board and/or its officers and
84 directors, or any of the massage personnel, owners,
85 operators or other employees of the massage business who
86 have been convicted of any violation of any of the
87 provisions set forth in subsection (c) of this section.

88 The ordinance may require that the application be
89 verified by the applicant or by each member of the
90 governing board of the applicant if an unincorporated
91 association or, if the applicant is a corporation, by each of
92 its officers and all members of its board of directors. The
93 ordinance may also require that the application be
94 accompanied by a license fee not exceeding the sum of
95 one hundred dollars. Any license issued under the
96 provisions of this section is effective for one year and may
97 be renewed upon the same showing as required for the
98 issuance of the initial license, together with the payment of
99 fees, if any. The ordinance may require license holders to
100 notify the licensing authority of any changes in the
101 information required by the application within a
102 reasonable period after the changes occurred.

103 (e) This section does not apply to barbers or
104 beauticians licensed to practice, or to persons licensed to
105 practice in any of the health professions, or to persons
106 licensed to practice as massage therapists, under the

107 provisions of chapter thirty of this code when engaging in
108 the practice within the scope of his or her license.

109 (f) Nothing contained in this chapter precludes a
110 county commission from prohibiting a person of one sex
111 from engaging in the massage of a person of the other
112 sex.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-3. Board established; membership; terms.

1 (a) The West Virginia massage therapy licensure
2 board consists of five members who are appointed by the
3 governor with the advice and consent of the Senate.
4 Three members of the board shall be massage therapists,
5 one member of the board shall be an osteopathic
6 physician or chiropractor who is knowledgeable of
7 modalities which are included in massage therapy, and one
8 member of the board shall be a lay person who is not a
9 massage therapist or other health care professional.

10 (b) The terms of board members shall be staggered
11 initially from the first day of July, one thousand nine
12 hundred ninety-seven. The governor shall appoint
13 initially three members for a term of one year and two
14 members for a term of two years. Subsequent
15 appointments shall be for a term of two years. Each
16 member shall serve until that member's successor is
17 appointed and qualified, unless the board member is no
18 longer competently performing the duties of office. Any
19 vacancy on the board shall be filled by the governor for
20 the balance of the unexpired term. The governor may
21 remove members of the board from office for cause.

§30-37-5. Massage therapy board fund; fees; expenses; disposition of funds.

1 (a) There is hereby continued a massage therapy
2 licensure board fund in the state treasurer's office.

3 (b) The board may set, by legislative rule, reasonable
4 fees for the issuance or renewal of licenses and its other
5 services. All funds to cover the compensation and
6 expenses of the board members shall be generated by the
7 fees set under this subsection.

8 (c) The disposition of all funds received by the board
9 shall be governed by the provisions of section ten, article
10 one, chapter thirty of this code.

§30-37-6. Duties of board; authorization to propose rules and fees.

The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as are necessary to implement the provisions of this article, which shall include provisions regarding:

(a) Licensure and continuing education requirements, standards of practice, professional ethics, disciplinary actions, and other issues of concern;

(b) Personal cleanliness of massage therapists and the sanitary conditions of towels, linens, creams, lotions and other materials, facilities, and equipment used in the practice of massage therapy, and;

(c) All fees for licensure, renewal of licensure, and all other related matters.

§30-37-7. Requirements for licensure.

1 (a) The board shall propose rules for legislative
2 approval establishing a procedure for licensing of massage
3 therapists. License requirements shall include the
4 following:

5 (1) Completion of a program of massage education at
6 a school approved by the West Virginia state college
7 system board or by a state agency in another state, the
8 District of Columbia or a United States territory which
9 approves educational programs and which meets
10 qualifications for the National Certification Exam
11 administered through the National Certification Board for

12 Therapeutic Massage and Bodywork. This school shall
13 require a diploma from an accredited high school, or the
14 equivalent, and require completion of at least five hundred
15 hours of supervised academic instruction. The
16 requirements of this subdivision may be waived for those
17 practitioners who were practicing massage therapy prior to
18 the first day of December, one thousand nine hundred
19 ninety-four; or,

20 (2) Successful completion of the national certification
21 for therapeutic massage and body work (NCTMB)
22 examination; except that any person who is currently
23 practicing massage therapy as of the thirtieth day of June,
24 one thousand nine hundred ninety-eight and has
25 completed at least 250 hours of training in a massage
26 therapy educational program and is currently working
27 toward completion of a program accepted by the national
28 Certification Board for Therapeutic Massage and
29 Bodywork to be eligible to take the National Certification
30 Exam, may be granted a two year provisional license
31 without having successfully completed the national
32 certification for therapeutic massage and body work
33 examination. Any provisional license granted under this
34 exception expires in two years if the national certification
35 for therapeutic massage and body work examination is not
36 successfully completed within that time; and

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

40 (b) In addition to provisions for licensure, the rules
41 shall include the following:

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

44 (2) Requirements for issuance of a reciprocal license
45 to licensees of states with requirements which may include
46 the successful completion of the NCTMB examination.

47 (c) A massage therapist who is licensed by the board
48 shall be issued a certificate and a license number. The

49 current, valid license certificate shall be publicly displayed
50 and available for inspection by the board and the public at
51 a massage therapist's work site.

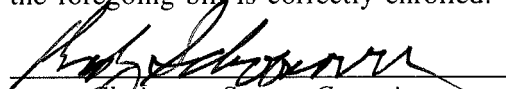
§30-37-11. Exemptions.

1 Nothing in this article may be construed to prohibit or
2 otherwise limit:

3 (a) The practice of a profession by persons who are
4 licensed, certified or registered under the laws of this state
5 and who are performing services within their authorized
6 scope of practice. Persons exempted under this
7 subdivision include, but are not limited to, those licensed,
8 certified or registered to practice within the scope of any
9 branch of medicine, nursing, osteopathy, chiropractic and
10 podiatry, as well as licensed, certified or registered barbers,
11 cosmetologists, athletic trainers, physical and occupational
12 therapists; and any student enrolled in a program of
13 massage education at a school approved by the West
14 Virginia state college system board or by a state agency in
15 another state, the District of Columbia or a United States
16 territory which approves educational programs and which
17 meets qualifications for the National Certification Exam
18 administered through the National Certification Board for
19 Therapeutic Massage and Bodywork, provided that the
20 student does not hold himself or herself out as a licensed
21 massage therapist; and

22 (b) The activities of any resort spa that has been
23 operating on a continuing basis since the first day of
24 January, one thousand nine hundred seventy-five, or any
25 employees of the resort spa. The exemption set forth in
26 this subsection does not extend to any person, corporation
27 or association providing escort services, nude dancing, or
28 other sexually oriented services not falling within the
29 scope of massage therapy as defined in this article,
30 irrespective of how long the person, corporation or
31 association has been in operation.

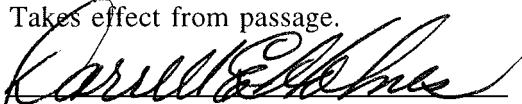
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee


Chairman House Committee


Originating in the House.

Takes effect from passage.

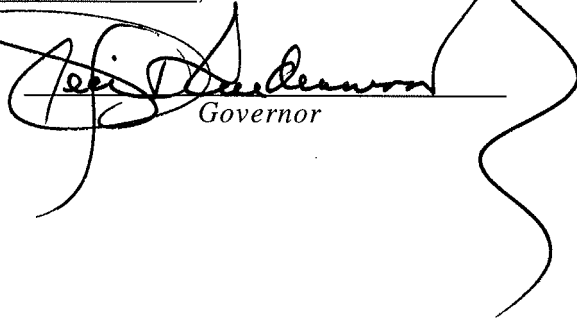

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 7th
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 2:58 pm