WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

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
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.

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

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

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

(2) Sanitary conditions of the massage establishment;

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

(4) Prohibition of the sale or serving of food or beverage or the conducting of nonmassage business on the premises of the massage business. In the event that the business premises in which the massage business is conducted has separate quarters used for purposes other than the massage business, the prohibition of this subsection applies only to the portion of the premises
35 exclusively devoted to the conduct of the massage
36 business.
37
38 (c) The ordinance may also provide that a license to
39 engage in the business of massage may be denied upon a
40 showing by the licensing authority of any of the
41 following:
42
43 (1) Proof that the massage personnel or the owners or
44 operators of a massage business have been convicted of a
45 violation of any of the provisions of article eight, eight-a,
46 eight-b or eight-c, chapter sixty-one of this code or proof
47 that massage personnel or the owners or operators of a
48 massage business have been convicted in any other state of
49 any offense which, if committed or attempted in this state,
50 would have been punishable as one of the offenses set
51 forth in this subsection.
52
53 (2) Proof that the massage personnel, or the owners, or
54 operators of a massage business have been convicted of
55 any felony offense involving the sale of a controlled
56 substance specified in section two hundred four, two
57 hundred six, two hundred eight, two hundred ten or two
58 hundred twelve, article two, chapter sixty-a of this code or
59 proof that the massage personnel or the owners or
60 operators of the massage business have been convicted in
61 any other state of any offense, which if committed or
62 attempted in this state, would have been punishable as one
63 or more of the offenses set forth in this subsection.
64
65 (d) The ordinance may require that application to
66 conduct the business of massage be made on a form
67 prescribed by the licensing authority, which may require
68 the following information:
69
70 (1) The name of the applicant;
71
72 (2) If the applicant is an unincorporated association,
73 the names and addresses of the members of its governing
74 board;
75
76 (3) If the applicant is a corporation, the names and
77 addresses of its officers and directors;
(4) The place at which the applicant will conduct its operations and whether that place is owned or leased by the applicant;

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

(6) The number of members of the applicant;

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

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

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

(e) This section does not apply to barbers or beauticians licensed to practice, or to persons licensed to practice in any of the health professions, or to persons licensed to practice as massage therapists, under the
provisions of chapter thirty of this code when engaging in
the practice within the scope of his or her license.

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

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 37. MASSAGE THERAPISTS.

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

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

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

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

(a) There is hereby continued a massage therapy
licensure board fund in the state treasurer's office.
(b) The board may set, by legislative rule, reasonable fees for the issuance or renewal of licenses and its other services. All funds to cover the compensation and expenses of the board members shall be generated by the fees set under this subsection.

(c) The disposition of all funds received by the board shall be governed by the provisions of section ten, article 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.

(a) The board shall propose rules for legislative approval 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 state college system board 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. This school shall require a diploma from an accredited high school, or the equivalent, and require completion of at least five hundred hours of supervised academic instruction. The requirements of this subdivision may be waived for those practitioners who were practicing massage therapy prior to the first day of December, one thousand nine hundred ninety-four; or,

(2) Successful completion of the national certification for therapeutic massage and body work (NCTMB) examination; except that any person who is currently practicing massage therapy as of the thirtieth day of June, one thousand nine hundred ninety-eight and has completed at least 250 hours of training in a massage therapy educational program and is currently working toward completion of a program accepted by the national Certification Board for Therapeutic Massage and Bodywork to be eligible to take the National Certification Exam, may be granted a two year provisional license without having successfully completed the national certification for therapeutic massage and body work examination. Any provisional license granted under this exception expires in two years if the national certification for therapeutic massage and body work examination is not successfully completed within that time; 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) In addition to provisions for licensure, the rules shall include the following:

(1) Requirements for completion of continuing education hours conforming to NCTMB 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.

(c) 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.


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

(a) The practice of a profession by persons who are licensed, certified or registered under the laws of this state and who are performing services within their authorized scope of practice. Persons exempted under this subdivision include, but are not limited to, those licensed, certified or registered to practice within the scope of any branch of medicine, nursing, osteopathy, chiropractic and podiatry, as well as licensed, certified or registered barbers, cosmetologists, athletic trainers, physical and occupational therapists; and any student enrolled in a program of massage education at a school approved by the West Virginia state college system board 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, provided that the student does not hold himself or herself out as a licensed massage therapist; and

(b) The activities of any resort spa that has been operating on a continuing basis since the first day of January, one thousand nine hundred seventy-five, or any employees of the resort spa. The exemption set forth in this subsection does not extend to any person, corporation or association providing escort services, nude dancing, or other sexually oriented services not falling within the scope of massage therapy as defined in this article, irrespective of how long the person, corporation or association has been in operation.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

Speaker of the House of Delegates

The within ___________ approved this the ___________ day of ___________, 1998.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 3/31/98.
Time 2:58 p.m.