WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2006

ENROLLED

House Bill No. 4279

(By Delegates Beane, Ennis, Butcher, Hatfield, Manchin, Martin, Perdue, Swartzmiller, Frich, Schoen and Walters)

Passed March 10, 2006

In Effect Ninety Days from Passage
AN ACT to amend and reenact §30-37-7, §30-37-8, §30-37-9, §30-37-10 and §30-37-11 of the Code of West Virginia, 1931, as amended, all relating to the Massage Therapy Licensure Board; discontinuing waiver of requirements for licensure; providing that board may require licensees formerly licensed by waiver to meet certain requirements to reinstate lapsed licenses; providing grounds for denial of renewal of licenses; prohibiting practicing under lapsed license; providing for disciplinary sanctions for certain prohibited acts; clarifying that students of massage therapy may not charge or receive fees; and increasing civil penalties.

Be it enacted by the Legislature of West Virginia:

That §30-37-7, §30-37-8, §30-37-9, §30-37-10 and §30-37-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
§30-37-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.

(a) The board shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a 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 Higher Education Policy Commission 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;

(2) Successful completion of the national certification for therapeutic massage and bodywork (NCTMB) examination, or 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 the first day of July, two thousand six, 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 the first day of July, two thousand six, 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 the first day of July, two thousand six, 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 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 or 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.


(a) The board has the power and authority to enter into any court of this state having proper jurisdiction to seek an injunction against any person, corporation or association not in compliance with the provisions of this article, and is further empowered to enter into any court to enforce the provisions of this article to ensure compliance with such provisions.

(b) The board may suspend, revoke, or impose probationary conditions upon a license or impose disciplinary sanctions upon
a licensee pursuant to rules adopted in accordance with this article concerning board requirements for licensure. The following are grounds for revocation, suspension, annulment or the imposition of other disciplinary sanctions when a person, corporation or association is:

(1) Guilty of fraud in practice of massage, or fraud or deceit in the licensee’s application for licensure;

(2) Engaged in practice under a false or assumed name, or impersonating another practitioner of a like or different name;

(3) Addicted to the habitual use of drugs, alcohol or stimulants to an extent as to incapacitate that person’s performance of professional duties;

(4) Guilty of fraudulent, false, misleading or deceptive advertising, or for prescribing medicines or drugs, or practicing or offering to practice any licensed profession without legal authority. The licensee may not diagnose, or imply or advertise in any way a service for a condition that would require diagnosis;

(5) Practicing or offering to practice beyond the scope of licensure of massage therapy without legal authority;

(6) Grossly negligent in the practice of massage or guilty of employing, allowing or permitting an unlicensed person to perform massage in the licensee’s work site;

(7) Practicing massage or bodywork with a license from another state or jurisdiction that has been canceled, revoked, suspended or otherwise restricted;

(8) Incapacitated by a physical or mental disability which is determined by a physician to render further practice by the licensee inconsistent with competency and ethics requirements;
§30-37-9. Hearing for revocation, suspension, other discipline, nonrenewal of license.

All proceedings for the revocation, suspension, or other disciplinary sanctions, or nonrenewal of licenses issued under the authority of this chapter shall be governed by the provisions of section eight, article one, chapter thirty of this code.


(a) After the thirtieth day of June, one thousand nine hundred ninety-eight, a person, corporation or association who is not licensed pursuant to the provisions of this article may not engage in the practice of massage therapy and may not use the initials LMT, C.M.T., or the words “licensed massage therapist,” “masseur,” or “masseuse,” or any other words or titles which imply or represent that the person, corporation or association is engaging in the practice of massage therapy, nor may a person, corporation or association employ any person, not duly licensed, who is engaging in the practice of massage therapy or who is using such words or titles to imply or represent that he or she is engaging in the practice of massage therapy.
(b) Any person, corporation or association who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, or confined in jail not more than one year, or both fined and imprisoned.


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 does not charge or receive a fee; 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
26 escort services, nude dancing or other sexually oriented services
27 not falling within the scope of massage therapy as defined in
28 this article, irrespective of how long the person, corporation or
29 association has been in operation.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was approved this the day of April, 2006.

Governor