

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 586

(SENATORS PLYMALE, PREZIOSO, SNYDER AND BEACH,
ORIGINAL SPONSORS)

[PASSED APRIL 13, 2013; IN EFFECT FROM PASSAGE.]

SB 586

FILED
2013 MAY -3 PM 2:31
CLERK OF STATE

2013 MAY -3 PM 2: 31

ENROLLED
COMMITTEE SUBSTITUTE

WEST VIRGINIA
LEGISLATURE
SENATE

FOR

Senate Bill No. 586

(SENATORS PLYMALE, PREZIOSO, SNYDER AND BEACH,
original sponsors)

[Passed April 13, 2013; in effect from passage.]

AN ACT to repeal §30-27-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-27-3, §30-27-5, §30-27-8, §30-27-11 and §30-27-12 of said code; and to amend and reenact §30-37-7 of said code, all relating to the Board of Barbers and Cosmetologists; licensing schools of aesthetics, barbering, cosmetology, manicuring and massage; transferring authority to approve licensure for certain schools; clarifying powers and duties of the board; providing requirements for professional licensing, license renewal and work permits; establishing certain student registration requirements; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §30-27-15 of the Code of West Virginia, 1931, as amended, be repealed; that §30-27-3, §30-27-5, §30-27-8, §30-27-11 and §30-27-12 of said code be amended and reenacted; and that §30-37-7 of said code be amended and reenacted, all to read as follows:

**ARTICLE 27. BOARD OF BARBERS AND
COSMETOLOGISTS.**

§30-27-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) "Aesthetics" or "esthetics" means any one or any
5 combination of the following acts when done on the human
6 body for compensation and not for the treatment of disease:

7 (1) Administering cosmetic treatments to enhance or
8 improve the appearance of the skin, including cleansing,
9 toning, performing effleurage or other related movements,
10 stimulating, exfoliating or performing any other similar
11 procedure on the skin of the human body or scalp;

12 (2) Applying, by hand or with a mechanical or electrical
13 apparatus, any cosmetics, makeups, oils, powders, clays,
14 antiseptics, tonics, lotions, creams or chemical preparations
15 necessary for the practice of aesthetics to another person's
16 face, neck, back, shoulders, hands, elbows and feet up to and
17 including the knee;

18 (3) The rubbing, cleansing, exercising, beautifying or
19 grooming of another person's face, neck, back, shoulders,
20 hands, elbows and feet up to and including the knee;

21 (4) The waxing, tweezing and threading of hair on
22 another person's body;

23 (5) The wrapping of another person's body in a body
24 wrap;

25 (6) Applying artificial eyelashes and eyebrows; and

26 (7) The lightening of hair on the body except the scalp.

27 (b) "Aesthetician" or "esthetician" means a person
28 licensed under the provisions of this article who engages in
29 the practice of aesthetics.

30 (c) "Applicant" means a person making application for a
31 professional license, license, certificate, registration, permit
32 or renewal under the provisions of this article.

33 (d) "Barber" means a person licensed under the
34 provisions of this article who engages in the practice of
35 barbering.

36 (e) "Barbering" means any one or any combination of the
37 following acts when done on the human body for
38 compensation and not for the treatment of disease:

39 (1) Shaving, shaping and trimming the beard, or both;

40 (2) Cutting, singeing, shampooing, arranging, dressing,
41 tinting, bleaching, or applying lotions or tonics on human
42 hair, or a wig or hairpiece; and

43 (3) Applications, treatments or rubs of the scalp, face, or
44 neck with oils, creams, lotions, cosmetics, antiseptics,
45 powders, or other preparations in connection with the
46 shaving, cutting or trimming of the hair or beard.

47 (f) "Barber crossover" or "cosmetologist crossover" is a
48 person who is licensed to perform barbering and
49 cosmetology.

50 (g) "Barber permanent waving" means the following acts
51 done on the human body for compensation and not for the
52 treatment of disease:

53 (1) The bleaching or tinting of hair; and

54 (2) The permanent waving of hair.

55 (h) "Barber permanent waviest" means a person licensed
56 to perform barbering and barber permanent waving.

57 (i) "Board" means the West Virginia Board of Barbers
58 and Cosmetologists.

59 (j) "Certificate" means an instructor certificate to teach
60 in a school under the provisions of this article.

61 (k) "Certificate holder" means a person certified as an
62 instructor to teach in a school under the provisions of this
63 article.

64 (l) "Cosmetologist" means a person licensed under the
65 provisions of this article who engages in the practice of
66 cosmetology.

67 (m) "Cosmetology" means any one or any combination
68 of the following acts when done on the human body for
69 compensation and not for the treatment of disease:

70 (1) Cutting, styling, shaping, arranging, braiding,
71 weaving, dressing, adding extensions, curling, waving,
72 permanent waving, relaxing, straightening, shampooing,
73 cleansing, singeing, bleaching, tinting, coloring, waxing,
74 tweezing, or similarly work on human hair, or a wig or
75 hairpiece, by any means, including hands, mechanical or
76 electrical devices or appliances;

77 (2) Nail care;

78 (3) Applying by hand or with a mechanical or electrical
79 device or appliance, any cosmetics, makeups, oils, powders,
80 clays, antiseptics, tonics, lotions, creams or chemical
81 preparations necessary for the practice of aesthetics to
82 another person's face, neck, shoulders, hands, elbows and
83 feet up to and including the knee;

84 (4) The rubbing, cleansing, exercising, beautifying or
85 grooming of another person's face, neck, shoulders, hands,
86 elbows and feet up to and including the knee;

87 (5) The wrapping of another person's body in a body
88 wrap; and

89 (6) Performing aesthetics.

90 (n) "General supervision" means:

91 (1) For schools, a master or certified instructor is on the
92 premises and is quickly and easily available; or

93 (2) For salons, a professional licensee is on the premises
94 and is quickly and easily available.

95 (o) "Hair braiding" means any one or any combination of
96 the following acts when done on the human body for
97 compensation and not for the treatment of disease: Braiding,
98 plaiting, twisting, wrapping, threading, weaving, extending
99 or locking of natural human hair by hand or mechanical
100 device.

101 (p) "Hair Styling" means any one or any combination of
102 the following acts when done on the human body for
103 compensation and not for the treatment of disease:

104 (1) Cutting, styling, shaping, arranging, braiding,
105 weaving, dressing, adding extensions, curling, waving,
106 permanent waving, relaxing, straightening, shampooing,
107 cleansing, singeing, bleaching, tinting, coloring, waxing,
108 tweezing, threading or similarly work on human hair, or a
109 wig or hairpiece, by any means, including hands, mechanical
110 or electrical devices or appliances;

111 (2) The rubbing, cleansing, exercising, beautifying or
112 grooming of another person's face, neck, shoulders, hands,
113 elbows and feet up to and including the knee.

114 (q) "Hair Stylist" means a person licensed under the
115 provisions of this article who engages in the practice of hair
116 styling.

117 (r) "License" means a professional license, a salon
118 license or a school license.

119 (s) "Licensed school" means a facility which has been
120 approved by the West Virginia Council for Community and
121 Technical College Education pursuant to section nine, article
122 two-b, chapter eighteen-b of this code, to educate persons to
123 be licensed or issued certain permits under the provisions of
124 this article.

125 (t) "Licensee" means a person, corporation or firm
126 holding a license issued under the provisions of this article.

127 (u) "Nail care" means any one or any combination of the
128 following acts when done on the human body for
129 compensation and not for the treatment of disease:

130 (1) The cleansing, dressing, or polishing of nails of a
131 person;

- 132 (2) Performing artificial nail service; and
- 133 (3) The cosmetic treatment of the feet up to the knee and
134 the hands up to the elbow.
- 135 (v) “Nail technician” or “manicurist” means a person
136 licensed under the provisions of this article who engages in
137 the practice of nail care.
- 138 (w) “Permit” means a work permit.
- 139 (x) “Permitee” means a person holding a work permit.
- 140 (y) “Professional license” means a license to practice as
141 a aesthetician, barber, barber crossover, barber permanent
142 waviest, cosmetologist, cosmetologist crossover or nail
143 technician.
- 144 (z) “Registration” means a registration issued by the
145 board to a person who rents or leases a booth or chair from
146 a licensed salon owner and operator, or both, or a registration
147 issued by the board to a person who is a student in a school.
- 148 (aa) “Registrant” means a person who holds a registration
149 under the provisions of this article.
- 150 (bb) “Salon” means a shop or other facility where a
151 person practices under a professional license.
- 152 (cc) “Salon license” means a license to own and operate
153 a salon.
- 154 (dd) “Student registration” means a registration issued by
155 the board to a student to study at a school licensed under the
156 provisions of this article.

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

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

4 (b) The board shall:

5 (1) Hold meetings, conduct hearings and administer
6 examinations;

7 (2) Establish requirements for licenses, permits,
8 certificates and registrations;

9 (3) Establish procedures for submitting, approving and
10 rejecting applications for licenses, permits, certificates and
11 registrations;

12 (4) Determine the qualifications of any applicant for
13 licenses, permits, certificates and registrations;

14 (5) Prepare, conduct, administer and grade examinations
15 for professional licenses and certificates;

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

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

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

22 (9) Hire, discharge, establish the job requirements and fix
23 the compensation of the executive director;

24 (10) Maintain an office, and hire, discharge, establish the
25 job requirements and fix the compensation of employees,
26 investigators/inspectors and contracted employees necessary
27 to enforce the provisions of this article: *Provided*, That any
28 investigator/inspector employed by the board on July 1,
29 2009, shall retain their coverage under the classified service,
30 including job classification, job tenure and salary, until that
31 person retires or is dismissed: *Provided, however*, That
32 nothing may prohibit the disciplining or dismissal of any
33 investigator/inspector for cause;

34 (11) Investigate alleged violations of the provisions of
35 this article, legislative rules, orders and final decisions of the
36 board;

37 (12) Establish the criteria for the training of
38 investigators/inspectors;

39 (13) Set the requirements for investigations and
40 inspections;

41 (14) Conduct disciplinary hearings of persons regulated
42 by the board;

43 (15) Determine disciplinary action and issue orders;

44 (16) Institute appropriate legal action for the enforcement
45 of the provisions of this article;

46 (17) Report violations of the provisions of this article,
47 and legislative rules promulgated pursuant to this article,
48 alleged to have been committed by a licensed school to the
49 West Virginia Council for Community and Technical
50 College Education. The board may continue to investigate
51 any alleged violation that it receives by May 1, 2013, and

52 shall conclude any such investigation by July 1, 2013. If the
53 board determines that probable cause exists that a violation
54 occurred, the board immediately shall advise and provide its
55 investigation file to the West Virginia Council for
56 Community and Technical College Education;

57 (18) Maintain an accurate registry of names and
58 addresses of all persons regulated by the board;

59 (19) Keep accurate and complete records of its
60 proceedings, and certify the same as may be necessary and
61 appropriate;

62 (20) Establish the continuing education requirements for
63 professional licensees and certificate holders;

64 (21) Issue, renew, combine, deny, suspend, revoke or
65 reinstate licenses, permits, certificates and registrations;

66 (22) Establish a fee schedule;

67 (23) Propose rules in accordance with the provisions of
68 article three, chapter twenty-nine-a of this code to implement
69 the provisions of this article; and

70 (24) Take all other actions necessary and proper to
71 effectuate the purposes of this article.

72 (c) The board may:

73 (1) Establish joint licenses;

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

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

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

§30-27-8. Professional license requirements.

1 (a) An applicant for a professional license to practice as
2 a aesthetician, barber, barber crossover, barber permanent
3 wavist, cosmetologist, hair stylist, cosmetologist crossover or
4 nail technician shall present satisfactory evidence that he or
5 she:

6 (1) Is at least eighteen years of age;

7 (2) Is of good moral character;

8 (3) Has a high school diploma, a GED, or has passed the
9 "ability to benefit test" approved by the United States
10 Department of Education;

11 (4) Has graduated from a licensed school which has been
12 approved by the West Virginia Council for Community and
13 Technical College Education or has completed education
14 requirements in another state and meets the licensure
15 provisions of the board;

16 (5) Has passed an examination that tests the applicant's
17 knowledge of subjects specified by the board: *Provided*, That
18 the board may recognize a certificate or similar license in
19 lieu of the examination or part of the examination that the
20 board requires;

21 (6) Has paid the applicable fee;

22 (7) Presents a certificate of health from a licensed
23 physician;

24 (8) Is a citizen of the United States or is eligible for
25 employment in the United States; and

26 (9) Has fulfilled any other requirement specified by the
27 board.

28 (b) A license to practice issued by the board prior to July
29 1, 2009, shall for all purposes be considered a professional
30 license issued under this article: *Provided*, That a person
31 holding a license issued prior to July 1, 2009, must renew the
32 license pursuant to the provisions of this article.

§30-27-11. Work permit.

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

3 (1) Has graduated from a licensed school approved by the
4 West Virginia Council for Community and Technical
5 College Education or has completed education requirements
6 in another state and meets the licensure provisions of the
7 board;

8 (2) Is waiting to take the examination;

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

12 (4) Has paid the work permit fee;

13

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13 (5) Has presented a certificate of health issued by a
14 licensed physician;

15 (6) Is a citizen of the United States or is eligible for
16 employment in the United States; and

17 (7) Meets all the other requirements specified by the
18 board.

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

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

§30-27-12. Student registration.

1 (a) Prior to commencing studies in a licensed school, a
2 student shall acquire a student registration issued by the
3 board.

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

7 (1) Is enrolled as a student in a licensed school;

8 (2) Is of good moral character;

9 (3) Has paid the required fee;

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

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

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

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

ARTICLE 37. MASSAGE THERAPISTS.

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

1 (a) The board shall propose rules for legislative approval
2 in accordance with article three, chapter twenty-nine-a of this
3 code, establishing a procedure for licensing of massage
4 therapists. License requirements shall include the following:

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

17 (2) Successful completion of the National Certification
18 for Therapeutic Massage and Bodywork (NCTMB)
19 examination, or other board approved examination; and

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

23 (b) A license to practice massage therapy issued by the
24 board prior to July 1, 2006, shall for all purposes be
25 considered a license issued under this section: *Provided,*
26 That a person holding a license to practice massage therapy
27 issued prior to July 1, 2006, must renew the license pursuant
28 to the provisions of this article: *Provided, however,* That a
29 person whose license was issued by the board prior to July 1,
30 2006, and whose license subsequently lapses may, in the
31 discretion of the board, be subject to the licensing
32 requirements of this section.

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

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

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

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

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

48 (f) A massage therapist who is licensed by the board shall
49 be issued a certificate and a license number. The current,
50 valid license certificate shall be publicly displayed and
51 available for inspection by the board and the public at a
52 massage therapist's work site.

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

Rocky Ferguson
.....
~~Member~~ ~~Chairman~~ Senate Committee

Danny Wells
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Joseph M. Minard
.....
Clerk of the Senate

Samuel S. S.
.....
Clerk of the House of Delegates

Jeffery
.....
President of the Senate

Keel
.....
Speaker of the House of Delegates

2013 MAY -3 PM 2:31
STATE

The within *is approved* this the *3rd*
Day of *May*, 2013.

Earl Ray Tomlin
.....
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:55 pm