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That §30-27-15 of the Code of West Virginia, 1931, as amended, be repealed; that §30-27-3, §30-27-5, §30-27-8, §30-27-11 and §30-27-12 of said code be amended and reenacted; and that §30-37-7 of said code be amended and reenacted,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


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

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

1. Administering cosmetic treatments to enhance or improve the appearance of the skin, including cleansing, toning, performing effleurage or other related movements, stimulating, exfoliating or performing any other similar procedure on the skin of the human body or scalp;

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

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

4. The waxing, tweezing and threading of hair on another person's body;

5. The wrapping of another person's body in a body wrap;
(6) Applying artificial eyelashes and eyebrows; and

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

(b) “Aesthetician” or “esthetician” means a person
licensed under the provisions of this article who engages in
the practice of aesthetics.

c) “Applicant” means a person making application for a
professional license, license, certificate, registration, permit
or renewal under the provisions of this article.

d) “Barber” means a person licensed under the
provisions of this article who engages in the practice of
barbering.

e) “Barbering” means any one or any combination of the
following acts when done on the human body for
compensation and not for the treatment of disease:

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

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

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

(f) “Barber crossover” or “cosmetologist crossover” is a
person who is licensed to perform barbering and
cosmetology.
(g) "Barber permanent waving" means the following acts done on the human body for compensation and not for the treatment of disease:

(1) The bleaching or tinting of hair; and

(2) The permanent waving of hair.

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

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

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

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

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

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

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

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

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

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

(6) Performing aesthetics.

(n) "General supervision" means:

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

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

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

(p) "Hair Styling" means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:
(1) Cutting, styling, shaping, arranging, braiding, weaving, dressing, adding extensions, curling, waving, permanent waving, relaxing, straightening, shampooing, cleansing, singeing, bleaching, tinting, coloring, waxing, tweezing, threading or similarly work on human hair, or a wig or hairpiece, by any means, including hands, mechanical or electrical devices or appliances;

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

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

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

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

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

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

(1) The cleansing, dressing, or polishing of nails of a person;
(2) Performing artificial nail service; and

(3) The cosmetic treatment of the feet up to the knee and the hands up to the elbow.

(v) "Nail technician" or "manicurist" means a person licensed under the provisions of this article who engages in the practice of nail care.

(w) "Permit" means a work permit.

(x) "Permitee" means a person holding a work permit.

(y) "Professional license" means a license to practice as an aesthetician, barber, barber crossover, barber permanent waveist, cosmetologist, cosmetologist crossover or nail technician.

(z) "Registration" means a registration issued by the board to a person who rents or leases a booth or chair from a licensed salon owner and operator, or both, or a registration issued by the board to a person who is a student in a school.

(aa) "Registrant" means a person who holds a registration under the provisions of this article.

(bb) "Salon" means a shop or other facility where a person practices under a professional license.

(cc) "Salon license" means a license to own and operate a salon.

(dd) "Student registration" means a registration issued by the board to a student to study at a school licensed under the provisions of this article.
§30-27-5. Powers and duties of the board.

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

(b) The board shall:

1. Hold meetings, conduct hearings and administer examinations;

2. Establish requirements for licenses, permits, certificates and registrations;

3. Establish procedures for submitting, approving and rejecting applications for licenses, permits, certificates and registrations;

4. Determine the qualifications of any applicant for licenses, permits, certificates and registrations;

5. Prepare, conduct, administer and grade examinations for professional licenses and certificates;

6. Determine the passing grade for the examinations;

7. Maintain records of the examinations the board or a third party administers, including the number of persons taking the examinations and the pass and fail rate;

8. Set operational standards and requirements for licensed schools;

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

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

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

(13) Set the requirements for investigations and inspections;

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

(15) Determine disciplinary action and issue orders;

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

(17) Report violations of the provisions of this article, and legislative rules promulgated pursuant to this article, alleged to have been committed by a licensed school to the West Virginia Council for Community and Technical College Education. The board may continue to investigate any alleged violation that it receives by May 1, 2013, and
shall conclude any such investigation by July 1, 2013. If the board determines that probable cause exists that a violation occurred, the board immediately shall advise and provide its investigation file to the West Virginia Council for Community and Technical College Education;

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

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

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

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

(22) Establish a fee schedule;

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

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

(c) The board may:

(1) Establish joint licenses;

(2) Contract with third parties to administer the examinations required under the provisions of this article;
(3) Sue and be sued in its official name as an agency of this state;

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

§30-27-8. Professional license requirements.

(a) An applicant for a professional license to practice as a aesthetician, barber, barber crossover, barber permanent wavist, cosmetologist, hairstylist, cosmetologist crossover or nail technician shall present satisfactory evidence that he or she:

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

2. (2) Is of good moral character;

3. (3) Has a high school diploma, a GED, or has passed the “ability to benefit test” approved by the United States Department of Education;

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

5. (5) Has passed an examination that tests the applicant’s knowledge of subjects specified by the board: Provided, That the board may recognize a certificate or similar license in lieu of the examination or part of the examination that the board requires;

6. (6) Has paid the applicable fee;
(7) Presents a certificate of health from a licensed physician;

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

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

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


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

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

(2) Is waiting to take the examination;

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

(4) Has paid the work permit fee;
(5) Has presented a certificate of health issued by a licensed physician;

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

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

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

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

§30-27-12. Student registration.

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

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

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

(2) Is of good moral character;

(3) Has paid the required fee;

(4) Has presented a certificate of health issued by a licensed physician; and
(5) is a citizen of the United States or is eligible for employment in the United States.

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

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

ARTICLE 37. MASSAGE THERAPISTS.

§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 Council for Community and Technical College Education pursuant to section nine, article two-b, chapter eighteen-b 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. 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 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 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Originated in the Senate.

In effect from passage.

[Signatures]

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

[Signature]
PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:55 pm