



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Massage Therapy Licensure Board TITLE-SERIES: 194-07

RULE TYPE: Legislative Amendment to Existing Rule: No

RULE NAME: ESTABLISHMENT LICENSURE

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

§30-37-6 and § 30-37-13

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

SB 665 2023 Legislative Session

PRIMARY CONTACT:

NAME: Linda Lyter

ADDRESS: 179 Summers St Ste 711

Charleston, WV 25301

EMAIL: linda_lyter@frontier.com

PHONE NUMBER: 304-558-1060

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

ESTABLISHMENT LICENSURE REQUIRES MASSAGE ESTABLISHMENTS TO BE LICENSED BY OCTOBER 1, 2023.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

EXPENSES & REVENUE MAY BALANCE OUT - BASED ON A BEST GUESS ESTIMATE AT THIS TIME.

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			10,000.00
Personal Services			8000.00
Current Expenses			2000.00
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			10,000.00

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

NOT SURE AT THIS TIME HOW MANY ESTABLISHMENTS TO BE LICENSED THIS YEAR. THIS IS JUST AN ESTIMATE

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Linda Lyter--By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 194
LEGISLATIVE RULE
MESSAGE THERAPY LICENSURE BOARD

SERIES 7
ESTABLISHMENT LICENSURE

§194-7-1. General.

1.1. Scope. -- This rule establishes the policies and procedures for obtaining and renewing an establishment license issued by the Massage Therapy Licensure Board.

1.2. Authority. -- W. Va. Code §30-37-6 and W. Va. Code §30-37-13.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision -- This rule shall terminate and have no further force or effect on August 1, 2029.

§194-7-2. Definitions.

2.1. "Massage establishment" means a place of business wherein massage therapy is practiced, with a physical site or premise, including mobile sites, licensed as required by this article, in which licensed massage therapists are employees, partners, or contractors practicing massage therapy on clients.

2.2. "Sole practitioner" means a licensed massage therapist who is licensed pursuant to this article, who is not an employee or contractor of the sole practitioner or an establishment, and who provides massage therapy to clients at a specific location including, but not limited to, a rental space, home office space, offsite, or onsite space.

2.3. "License" or "Massage Establishment License" means a license issued by the West Virginia Massage Therapy Licensure Board to a business that offers massage therapy services for hire.

§194-7-3. Establishment License Required; licensee responsibilities and prohibitions.

3.1. All massage establishments shall, on or before October 1, 2023, apply for a Board issued massage establishment license, on a form prescribed by the West Virginia Massage Therapy Licensure Board. After October 1, 2023, it shall be unlawful to operate a massage establishment without a board issued massage establishment license, unless exempt as provided by W. Va. Code §30-37-1 et. seq., and this rule.

3.2. A massage establishment license shall be renewed biennially on an application renewal form prescribed by the board, with the appropriate fee, and all of the required documentation.

3.3. Message establishment requirements:

3.3.a. A message establishment shall post, in a prominent location, the board administered establishment license, the state license of each licensed massage therapist employed by the establishment, and any business licenses required by any state, municipality or local governmental entity.

3.3.b. Properly maintain and secure for each client the initial consultation documents, all session notes, written consent documents, and related billing records; and

3.3.c. Maintain a current list of all establishment employees and/or contractors on the premises at all times which includes the full name of each employee or contractor, and the board issued massage therapy license number and expiration date of the license for each massage therapist.

3.4. A message establishment may not:

3.4.a. Employ or contract with an individual to perform massage services who is not a licensed massage therapist in this state and who is not a United States citizen or a legal resident with a valid work permit;

3.4.b. Allow a nude or partially nude employee to provide massage therapy or other massage services to a customer;

3.4.c. Allow any individual, including a client, license holder, contractor, or employee, to engage in sexual contact in the massage establishment.

3.4.d. Allow any individual, including a license holder, employee, or contract employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual; or

3.4.e. Allow any individual, including a license holder, employee, or contract employee to reside on the premises of the massage establishment.

3.5. An adult oriented business may not obtain a license from the board or operate as a massage establishment.

§194-7-4. Exemptions.

4.1. A place of business is not required to hold a massage establishment license under this article if:

4.1.a. The place of business is owned by the federal government, the state, or a political subdivision of the state, or otherwise offers massage services as authorized under any other state issued professional or occupational license; or

4.1.b. At their place of business, a licensed massage therapist practices as a sole practitioner, *Provided: that the sole practitioner does not use a business name or assumed name; or the sole practitioner uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing.*

§194-7-5. Grounds for denying a license renewal, license suspension, or revocation.

5.1. A licensee of a massage establishment may be disciplined, including the suspension or revocation of the license for cause, pursuant to the general provisions of W. Va. Code §30-1-1 *et seq.* and §30-37-1 *et seq.*, for violating any provision of this rule, or for violating any applicable state law, rule, or policy, and for violating any applicable local ordinance.

5.2. Disciplinary action shall be governed by the provisions of 194 CSR 2, Hearing Procedures.

§194-7-6. Massage Establishment License Holders Continuing Education requirements.

6.1. All establishment license holders who are not licensed massage therapists, shall, beginning July 1, 2025, obtain two hours of continuing education on the laws and rules of massage therapy every two years, and shall provide the certificate of completion to the board by October 1, 2025, and submitted with the application for biennial renewal of the establishment license.