

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5566

By Delegate Foster

[Introduced February 12, 2024; Referred to the
Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §30-27A-1, §30-27A-2, §30-27A-3, §30-27A-4, §30-27A-5, §30-27A-6, §30-
 3 27A-7, §30-27A-8, §30-27A-9, §30-27A-10, §30-27A-11, §30-27A-12, §30-27A-13, §30-
 4 27A-14, and §30-27A-15, all relating to establishing the Interstate Cosmetology Licensure
 5 Compact, defining terms, providing requirements for membership, establishing data
 6 process, providing regulations for multistate licensures, establishing the Interstate
 7 Cosmetology Licensure Compact Commission, establishing an effective date, providing
 8 for oversight, dispute resolution, and enforcement powers, granting rulemaking authority,
 9 establishing construction and severability, and providing for disputes with other states'
 10 laws.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27A. INTERSTATE COSMETOLOGY LICENSURE COMPACT.

§30-27A-1. Purpose.

1 The purpose of this compact is to facilitate the interstate practice and regulation of
 2 cosmetology with the goal of improving public access to, and the safety of, cosmetology services
 3 and reducing unnecessary burdens related to cosmetology licensure. Through this compact, the
 4 member states seek to establish a regulatory framework which provides for a new multistate
 5 licensing program. Through this new licensing program, the member states seek to provide
 6 increased value and mobility to licensed cosmetologists in the member states, while ensuring the
 7 provision of safe, effective, and reliable services to the public.

8 This compact is designed to achieve the following objectives, and the member states
 9 hereby ratify the same intentions by subscribing hereto:

10 (a) Provide opportunities for interstate practice by cosmetologists who meet uniform
 11 requirements for multistate licensure;

12 (b) Enhance the abilities of member states to protect public health and safety, and prevent
 13 fraud and unlicensed activity within the profession;

14 (c) Ensure and encourage cooperation between member states in the licensure and
15 regulation of the practice of cosmetology;

16 (d) Support relocating military members and their spouses;

17 (e) Facilitate the exchange of information between member states related to the licensure,
18 investigation, and discipline of the practice of cosmetology;

19 (f) Provide for the licensure and mobility of the workforce in the profession, while
20 addressing the shortage of workers and lessening the associated burdens on the member states.

§30-27A-2.

Definitions.

1 As used in this compact, and except as otherwise provided, the following definitions shall
2 govern the terms herein:

3 (a) "Active military member" means any person with full-time duty status in the armed
4 forces of the United States, including members of the National Guard and Reserve.

5 (b) "Adverse action" means any administrative, civil, equitable, or criminal action permitted
6 by a member state's laws which is imposed by a state licensing authority or other regulatory body
7 against a cosmetologist, including actions against an individual's license or authorization to
8 practice such as revocation, suspension, probation, monitoring of the licensee, limitation of the
9 licensee's practice, or any other encumbrance on a license affecting an individual's ability to
10 participate in the cosmetology industry, including the issuance of a cease and desist order.

11 (c) "Authorization to practice" means a legal authorization associated with a multistate
12 license permitting the practice of cosmetology in that remote state, which shall be subject to the
13 enforcement jurisdiction of the state licensing authority in that remote state.

14 (d) "Alternative program" means a non-disciplinary monitoring or prosecutorial diversion
15 program approved by a member state's state licensing authority.

16 (e) "Background check" means the submission of information for an applicant for the
17 purpose of obtaining that applicant's criminal history record information, as further defined in 28
18 C.F.R. § 20.3(d), from the Federal Bureau of Investigation and the agency responsible for retaining

19 state criminal or disciplinary history in the applicant's home state.

20 (f) "Charter member state" means member states who have enacted legislation to adopt
21 this compact where such legislation predates the effective date of this compact as defined in §30-
22 27A-13 of this code.

23 (g) "Commission" means the government agency whose membership consists of all states
24 that have enacted this compact, which is known as the Cosmetology Licensure Compact
25 Commission, as defined in §30-27A-9 of this code, and which shall operate as an instrumentality
26 of the member states.

27 (h) "Cosmetologist" means an individual licensed in their home state to practice
28 cosmetology.

29 (i) "Cosmetology", "cosmetology services", and the "practice of cosmetology" mean the
30 care and services provided by a cosmetologist as set forth in the member state's statutes and
31 regulations in the state where the services are being provided.

32 (j) "Current significant investigative information" means:

33 (1) Investigative information that a state licensing authority, after an inquiry or investigation
34 that complies with a member state's due process requirements, has reason to believe is not
35 groundless and, if proved true, would indicate a violation of that state's laws regarding fraud or the
36 practice of cosmetology; or

37 (2) Investigative information that indicates that a licensee has engaged in fraud or
38 represents an immediate threat to public health and safety, regardless of whether the licensee has
39 been notified and had an opportunity to respond.

40 (k) "Data system" means a repository of information about licensees, including, but not
41 limited to, license status, investigative information, and adverse actions.

42 (l) "Disqualifying event" means any event which shall disqualify an individual from holding
43 a multistate license under this compact, which the commission may by rule or order specify.

44 (m) "Encumbered license" means a license in which an adverse action restricts the

45 practice of cosmetology by a licensee, or where said adverse action has been reported to the
46 commission.

47 (n) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and
48 unrestricted practice of cosmetology by a state licensing authority.

49 (o) "Executive committee" means a group of delegates elected or appointed to act on
50 behalf of, and within the powers granted to them by, the commission.

51 (p) "Home state" means the member state which is a licensee's primary state of residence,
52 and where that licensee holds an active and unencumbered license to practice cosmetology.

53 (q) "Investigative information" means information, records, or documents received or
54 generated by a state licensing authority pursuant to an investigation or other inquiry.

55 (r) "Jurisprudence requirement" means the assessment of an individual's knowledge of the
56 laws and rules governing the practice of cosmetology in a state.

57 (s) "Licensee" means an individual who currently holds a license from a member state to
58 practice as a cosmetologist.

59 (t) "Member state" means any state that has adopted this compact.

60 (u) "Multistate license" means a license issued by and subject to the enforcement
61 jurisdiction of the state licensing authority in a licensee's home state, which authorizes the practice
62 of cosmetology in member states and includes authorizations to practice cosmetology in all
63 remote states pursuant to this compact.

64 (v) "Remote state" means any member state, other than the licensee's home state.

65 (w) "Rule" means any rule or regulation promulgated by the commission under this
66 compact which has the force of law.

67 (x) "Single-state license" means a cosmetology license issued by a member state that
68 authorizes practice of cosmetology only within the issuing state and does not include any
69 authorization outside of the issuing state.

70 (y) "State" means a state, territory, or possession of the United States and the District of

71 Columbia.

72 (z) "State licensing authority" means a member state's regulatory body responsible for
73 issuing cosmetology licenses or otherwise overseeing the practice of cosmetology in that state.

§30-27A-3. Member state requirements.

1 (a) To be eligible to join this compact, and to maintain eligibility as a member state, a state
2 must:

3 (1) License and regulate cosmetology;

4 (2) Have a mechanism or entity in place to receive and investigate complaints about
5 licensees practicing in that state;

6 (3) Require that licensees within the state pass a cosmetology competency examination
7 prior to being licensed to provide cosmetology services to the public in that state;

8 (4) Require that licensees satisfy educational or training requirements in cosmetology prior
9 to being licensed to provide cosmetology services to the public in that state;

10 (5) Implement procedures for considering one or more of the following categories of
11 information from applicants for licensure: criminal history; disciplinary history; or background
12 check. Such procedures may include the submission of information by applicants for the purpose
13 of obtaining an applicant's background check as defined herein;

14 (6) Participate in the data system, including through the use of unique identifying numbers;

15 (7) Share information related to adverse actions with the commission and other member
16 states, both through the data system and otherwise;

17 (8) Notify the commission and other member states, in compliance with the terms of the
18 compact and rules of the commission, of the existence of investigative information or current
19 significant investigative information in the state's possession regarding a licensee practicing in
20 that state;

21 (9) Comply with such rules as may be enacted by the commission to administer the
22 compact; and

23 (10) Accept licensees from other member states as established herein.

24 (b) Member states may charge a fee for granting a license to practice cosmetology.

25 (c) Individuals not residing in a member state shall continue to be able to apply for a
26 member state's single-state license as provided under the laws of each member state. However,
27 the single-state license granted to these individuals shall not be recognized as granting a
28 multistate license to provide services in any other member state.

29 (d) Nothing in this compact shall affect the requirements established by a member state for
30 the issuance of a single-state license.

31 (e) A multistate license issued to a licensee by a home state to a resident of that state shall
32 be recognized by each member state as authorizing a licensee to practice cosmetology in each
33 member state.

34 (f) At no point shall the commission have the power to define the educational or
35 professional requirements for a license to practice cosmetology. The member states shall retain
36 sole jurisdiction over the provision of these requirements.

§30-27A-4. Multi-state licenses.

1 (a) To be eligible to apply to their home state's state licensing authority for an initial
2 multistate license under this compact, a licensee must hold an active and unencumbered single-
3 state license to practice cosmetology in their home state.

4 (b) Upon the receipt of an application for a multistate license, according to the rules of the
5 commission, a member state's state licensing authority shall ascertain whether the applicant
6 meets the requirements for a multistate license under this compact.

7 (c) If an applicant meets the requirements for a multistate license under this compact and
8 any applicable rules of the commission, the state licensing authority in receipt of the application
9 shall, within a reasonable time, grant a multistate license to that applicant, and inform all member
10 states of the grant of said multistate license.

11 (d) A multistate license to practice cosmetology issued by a member state's state licensing

12 authority shall be recognized by each member state as authorizing the practice thereof as though
13 that licensee held a single-state license to do so in each member state, subject to the restrictions
14 herein.

15 (e) A multistate license granted pursuant to this compact may be effective for a definite
16 period of time, concurrent with the licensure renewal period in the home state.

17 (f) To maintain a multistate license under this compact, a licensee must:

18 (1) Agree to abide by the rules of the state licensing authority, and the state scope of
19 practice laws governing the practice of cosmetology, of any member state in which the licensee
20 provides services;

21 (2) Pay all required fees related to the application and process, and any other fees which
22 the commission may by rule require; and

23 (3) Comply with any and all other requirements regarding multistate licenses which the
24 commission may by rule provide.

25 (g) A licensee practicing in a member state is subject to all scope of practice laws
26 governing cosmetology services in that state.

27 (h) The practice of cosmetology under a multistate license granted pursuant to this
28 compact will subject the licensee to the jurisdiction of the state licensing authority, the courts, and
29 the laws of the member state in which the cosmetology services are provided.

§30-27A-5. Re-issuance of a new multi-state license by a new home state.

1 (a) A licensee may hold a multistate license, issued by their home state, in only one
2 member state at any given time.

3 (b) If a licensee changes their home state by moving between two member states:

4 (1) The licensee shall immediately apply for the reissuance of their multistate license in
5 their new home state. The licensee shall pay all applicable fees and notify the prior home state in
6 accordance with the rules of the commission.

7 (2) Upon receipt of an application to reissue a multistate license, the new home state shall

8 verify that the multistate license is active, unencumbered, and eligible for reissuance under the
9 terms of the compact and the rules of the commission. The multistate license issued by the prior
10 home state will be deactivated and all member states notified in accordance with the applicable
11 rules adopted by the commission.

12 (3) If required for initial licensure, the new home state may require a background check as
13 specified in the laws of that state, or the compliance with any jurisprudence requirements of the
14 new home state.

15 (4) Notwithstanding any other provision of this compact, if a licensee does not meet the
16 requirements set forth in this compact for the reissuance of a multistate license by the new home
17 state, then the licensee shall be subject to the new home state requirements for the issuance of a
18 single-state license in that state.

19 (c) If a licensee changes their primary state of residence by moving from a member state to
20 a non-member state, or from a non-member state to a member state, then the licensee shall be
21 subject to the state requirements for the issuance of a single-state license in the new home state.

22 (d) Nothing in this compact shall interfere with a licensee's ability to hold a single-state
23 license in multiple states; however, for the purposes of this compact, a licensee shall have only
24 one home state, and only one multistate license.

25 (e) Nothing in this compact shall interfere with the requirements established by a member
26 state for the issuance of a single-state license.

§30-27A-6. Authority of the Compact Commission and member licensing authorities.

1 (a) Nothing in this compact, nor any rule or regulation of the commission, shall be
2 construed to limit, restrict, or in any way reduce the ability of a member state to enact and enforce
3 laws, regulations, or other rules related to the practice of cosmetology in that state, where those
4 laws, regulations, or other rules are not inconsistent with the provisions of this compact.

5 (b) Insofar as practical, a member state's state licensing authority shall cooperate with the
6 commission and with each entity exercising independent regulatory authority over the practice of

7 cosmetology according to the provisions of this compact.

8 (c) Discipline shall be the sole responsibility of the state in which cosmetology services are
9 provided. Accordingly, each member state's state licensing authority shall be responsible for
10 receiving complaints about individuals practicing cosmetology in that state, and for communicating
11 all relevant investigative information about any such adverse action to the other member states
12 through the data system in addition to any other methods the commission may by rule require.

§30-27A-7. Adverse actions.

1 (a) A licensee's home state shall have exclusive power to impose an adverse action
2 against a licensee's multistate license issued by the home state.

3 (b) A home state may take adverse action on a multistate license based on the
4 investigative information, current significant investigative information, or adverse action of a
5 remote state.

6 (c) In addition to the powers conferred by state law, each remote state's state licensing
7 authority shall have the power to:

8 (1) Take adverse action against a licensee's authorization to practice Cosmetology through
9 the multistate license in that member state, provided that:

10 (A) Only the licensee's home state shall have the power to take adverse action against the
11 multistate license issued by the home state; and

12 (B) For the purposes of taking adverse action, the home state's state licensing authority
13 shall give the same priority and effect to reported conduct received from a remote state as it would
14 if such conduct had occurred within the home state. In so doing, the home state shall apply its own
15 state laws to determine the appropriate action.

16 (2) Issue cease and desist orders or impose an encumbrance on a licensee's authorization
17 to practice within that member state.

18 (3) Complete any pending investigations of a licensee who changes their primary state of
19 residence during the course of such an investigation. The state licensing authority shall also be

20 empowered to report the results of such an investigation to the commission through the data
21 system as described herein.

22 (4) Issue subpoenas for both hearings and investigations that require the attendance and
23 testimony of witnesses, as well as the production of evidence. Subpoenas issued by a state
24 licensing authority in a member state for the attendance and testimony of witnesses or the
25 production of evidence from another member state shall be enforced in the latter state by any court
26 of competent jurisdiction, according to the practice and procedure of that court applicable to
27 subpoenas issued in proceedings before it. The issuing state licensing authority shall pay any
28 witness fees, travel expenses, mileage, and other fees required by the service statutes of the state
29 in which the witnesses or evidence are located.

30 (5) If otherwise permitted by state law, recover from the affected licensee the costs of
31 investigations and disposition of cases resulting from any adverse action taken against that
32 licensee.

33 (6) Take adverse action against the licensee's authorization to practice in that state based
34 on the factual findings of another remote state.

35 (d) A licensee's home state shall complete any pending investigation(s) of a cosmetologist
36 who changes their primary state of residence during the course of the investigation(s). The home
37 state shall also have the authority to take appropriate action(s) and shall promptly report the
38 conclusions of the investigations to the data system.

39 (e) If an adverse action is taken by the home state against a licensee's multistate license,
40 the licensee's authorization to practice in all other member states shall be deactivated until all
41 encumbrances have been removed from the home state license. All home state disciplinary orders
42 that impose an adverse action against a licensee's multistate license shall include a statement that
43 the cosmetologist's authorization to practice is deactivated in all member states during the
44 pendency of the order.

45 (f) Nothing in this compact shall override a member state's authority to accept a licensee's

46 participation in an alternative program in lieu of adverse action. A licensee's multistate license
47 shall be suspended for the duration of the licensee's participation in any alternative program.

48 (g) Joint Investigations

49 (1) In addition to the authority granted to a member state by its respective scope of practice
50 laws or other applicable state law, a member state may participate with other member states in
51 joint investigations of licensees.

52 (2) Member states shall share any investigative, litigation, or compliance materials in
53 furtherance of any joint or individual investigation initiated under the compact.

§30-27A-8. Active military members and their spouses.

1 Active military members, or their spouses, shall designate a home state where the
2 individual has a current license to practice cosmetology in good standing. The individual may
3 retain their home state designation during any period of service when that individual or their
4 spouse is on active duty assignment.

§30-27A-9. Establishment and operation of the Cosmetology Licensure Compact
Commission.

1 (a) The compact member states hereby create and establish a joint government agency
2 whose membership consists of all member states that have enacted the compact known as the
3 Cosmetology Licensure Compact Commission. The commission is an instrumentality of the
4 compact member states acting jointly and not an instrumentality of any one state. The commission
5 shall come into existence on or after the effective date of the compact as set forth in §30-27A-13.

6 (b) Membership, voting, and meetings

7 (1) Each member state shall have and be limited to one delegate selected by that member
8 state's state licensing authority.

9 (2) The delegate shall be an administrator of the state licensing authority of the member
10 state or their designee.

11 (3) The commission shall by rule or bylaw establish a term of office for delegates and may

12 by rule or bylaw establish term limits.

13 (4) The commission may recommend removal or suspension of any delegate from office.

14 (5) A member state's state licensing authority shall fill any vacancy of its delegate occurring
15 on the commission within 60 days of the vacancy.

16 (6) Each delegate shall be entitled to one vote on all matters that are voted on by the
17 commission.

18 (7) The commission shall meet at least once during each calendar year. Additional
19 meetings may be held as set forth in the bylaws. The commission may meet by
20 telecommunication, video conference or other similar electronic means.

21 (c) The commission shall have the following powers:

22 (1) Establish the fiscal year of the commission;

23 (2) Establish code of conduct and conflict of interest policies;

24 (3) Adopt rules and bylaws;

25 (4) Maintain its financial records in accordance with the bylaws;

26 (5) Meet and take such actions as are consistent with the provisions of this compact, the
27 commission's rules, and the bylaws;

28 (6) Initiate and conclude legal proceedings or actions in the name of the commission,
29 provided that the standing of any state licensing authority to sue or be sued under applicable law
30 shall not be affected;

31 (7) Maintain and certify records and information provided to a member state as the
32 authenticated business records of the commission, and designate an agent to do so on the
33 commission's behalf;

34 (8) Purchase and maintain insurance and bonds;

35 (9) Borrow, accept, or contract for services of personnel, including, but not limited to,
36 employees of a member state;

37 (10) Conduct an annual financial review;

38 (11) Hire employees, elect, or appoint officers, fix compensation, define duties, grant such
39 individuals appropriate authority to carry out the purposes of the compact, and establish the
40 commission's personnel policies and programs relating to conflicts of interest, qualifications of
41 personnel, and other related personnel matters;

42 (12) As set forth in the commission rules, charge a fee to a licensee for the grant of a
43 multistate license and thereafter, as may be established by commission rule, charge the licensee a
44 multistate license renewal fee for each renewal period. Nothing herein shall be construed to
45 prevent a home state from charging a licensee a fee for a multistate license or renewals of a
46 multistate license, or a fee for the jurisprudence requirement if the member state imposes such a
47 requirement for the grant of a multistate license;

48 (13) Assess and collect fees;

49 (14) Accept any and all appropriate gifts, donations, grants of money, other sources of
50 revenue, equipment, supplies, materials, and services, and receive, utilize, and dispose of the
51 same; provided that at all times the commission shall avoid any appearance of impropriety or
52 conflict of interest;

53 (15) Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or
54 mixed, or any undivided interest therein;

55 (16) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of
56 any property real, personal, or mixed;

57 (17) Establish a budget and make expenditures;

58 (18) Borrow money;

59 (19) Appoint committees, including standing committees, composed of members, state
60 regulators, state legislators or their representatives, and consumer representatives, and such
61 other interested persons as may be designated in this compact and the bylaws;

62 (20) Provide and receive information from, and cooperate with, law enforcement agencies;

63 (21) Elect a Chair, Vice Chair, Secretary and Treasurer and such other officers of the

64 commission as provided in the commission's bylaws;

65 (22) Establish and elect an executive committee, including a chair and a vice chair;

66 (23) Adopt and provide to the member states an annual report.

67 (24) Determine whether a state's adopted language is materially different from the model
68 compact language such that the state would not qualify for participation in the compact; and

69 (25) Perform such other functions as may be necessary or appropriate to achieve the
70 purposes of this compact.

71 (d) The executive committee:

72 (1) The executive committee shall have the power to act on behalf of the commission
73 according to the terms of this compact. The powers, duties, and responsibilities of the executive
74 committee shall include:

75 (A) Overseeing the day-to-day activities of the administration of the compact including
76 compliance with the provisions of the compact, the commission's rules and bylaws, and other such
77 duties as deemed necessary;

78 (B) Recommending to the commission changes to the rules or bylaws, changes to this
79 compact legislation, fees charged to compact member states, fees charged to licensees, and
80 other fees;

81 (C) Ensuring compact administration services are appropriately provided, including by
82 contract;

83 (D) Preparing and recommending the budget;

84 (E) Maintaining financial records on behalf of the commission;

85 (F) Monitoring compact compliance of member states and providing compliance reports to
86 the commission;

87 (G) Establishing additional committees as necessary;

88 (H) Exercising the powers and duties of the commission during the interim between
89 commission meetings, except for adopting or amending rules, adopting, or amending bylaws, and

90 exercising any other powers and duties expressly reserved to the commission by rule or bylaw;

91 and

92 (1) Other duties as provided in the rules or bylaws of the commission.

93 (2) The executive committee shall be composed of up to seven voting members:

94 (A) The chair and vice chair of the commission and any other members of the commission
95 who serve on the executive committee shall be voting members of the executive committee; and

96 (B) Other than the chair, vice-chair, secretary and treasurer, the commission shall elect
97 three voting members from the current membership of the commission.

98 (C) The commission may elect ex-officio, nonvoting members from a recognized national
99 cosmetology professional association as approved by the commission. The commission's bylaws
100 shall identify qualifying organizations and the manner of appointment if the number of
101 organizations seeking to appoint an ex officio member exceeds the number of members specified
102 in this section.

103 (3) The commission may remove any member of the executive committee as provided in
104 the commission's bylaws.

105 (4) The executive committee shall meet at least annually.

106 (A) Annual executive committee meetings, as well as any executive committee meeting at
107 which it does not take or intend to take formal action on a matter for which a commission vote
108 would otherwise be required, shall be open to the public, except that the executive committee may
109 meet in a closed, non-public session of a public meeting when dealing with any of the matters
110 covered under §30-27A-9 of this code.

111 (B) The executive committee shall give five business days advance notice of its public
112 meetings, posted on its website, and as determined to provide notice to persons with an interest in
113 the public matters the executive committee intends to address at those meetings.

114 (5) The executive committee may hold an emergency meeting when acting for the
115 commission to:

- 116 (A) Meet an imminent threat to public health, safety, or welfare;
- 117 (B) Prevent a loss of commission or member state funds; or
- 118 (C) Protect public health and safety.
- 119 (e) The commission shall adopt and provide to the member states an annual report.
- 120 (f) Meetings of the commission:
- 121 (1) All meetings of the commission that are not closed pursuant to §30-27A-9 of this code
- 122 shall be open to the public. Notice of public meetings shall be posted on the commission's website
- 123 at least 30 days prior to the public meeting.
- 124 (2) Notwithstanding §30-27A-9 of this code, the commission may convene an emergency
- 125 public meeting by providing at least 24 hours' prior notice on the commission's website, and any
- 126 other means as provided in the commission's rules, for any of the reasons it may dispense with
- 127 notice of proposed rulemaking under §30-27A-11 of this code. The commission's legal counsel
- 128 shall certify that one of the reasons justifying an emergency public meeting has been met.
- 129 (3) Notice of all commission meetings shall provide the time, date, and location of the
- 130 meeting, and if the meeting is to be held or accessible via telecommunication, video conference, or
- 131 other electronic means, the notice shall include the mechanism for access to the meeting.
- 132 (4) The commission may convene in a closed, non-public meeting for the commission to
- 133 discuss:
- 134 (A) Non-compliance of a member state with its obligations under the compact;
- 135 (B) The employment, compensation, discipline or other matters, practices or procedures
- 136 related to specific employees or other matters related to the commission's internal personnel
- 137 practices and procedures;
- 138 (C) Current or threatened discipline of a licensee by the commission or by a member
- 139 state's Licensing Authority;
- 140 (D) Current, threatened, or reasonably anticipated litigation;
- 141 (E) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real

142 estate;

143 (F) Accusing any person of a crime or formally censuring any person;

144 (G) Trade secrets or commercial or financial information that is privileged or confidential;

145 (H) Information of a personal nature where disclosure would constitute a clearly
146 unwarranted invasion of personal privacy;

147 (I) Investigative records compiled for law enforcement purposes;

148 (J) Information related to any investigative reports prepared by or on behalf of or for use of
149 the commission or other committee charged with responsibility of investigation or determination of
150 compliance issues pursuant to the compact;

151 (K) Legal advice;

152 (L) Matters specifically exempted from disclosure to the public by federal or member state
153 law; or

154 (M) Other matters as promulgated by the commission by rule.

155 (5) If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the
156 meeting will be closed and reference each relevant exempting provision, and such reference shall
157 be recorded in the minutes.

158 (6) The commission shall keep minutes that fully and clearly describe all matters discussed
159 in a meeting and shall provide a full and accurate summary of actions taken, and the reasons
160 therefore, including a description of the views expressed. All documents considered in connection
161 with an action shall be identified in such minutes. All minutes and documents of a closed meeting
162 shall remain under seal, subject to release only by a majority vote of the commission or order of a
163 court of competent jurisdiction.

164 (g) Financing of the commission:

165 (1) The commission shall pay, or provide for the payment of, the reasonable expenses of
166 its establishment, organization, and ongoing activities.

167 (2) The commission may accept any and all appropriate sources of revenue, donations,

168 and grants of money, equipment, supplies, materials, and services.

169 (3) The commission may levy on and collect an annual assessment from each member
170 state and impose fees on licensees of member states to whom it grants a multistate license to
171 cover the cost of the operations and activities of the commission and its staff, which must be in a
172 total amount sufficient to cover its annual budget as approved each year for which revenue is not
173 provided by other sources. The aggregate annual assessment amount for member states shall be
174 allocated based upon a formula that the commission shall promulgate by rule.

175 (4) The commission shall not incur obligations of any kind prior to securing the funds
176 adequate to meet the same; nor shall the commission pledge the credit of any member states,
177 except by and with the authority of the member state.

178 (5) The commission shall keep accurate accounts of all receipts and disbursements. The
179 receipts and disbursements of the commission shall be subject to the financial review and
180 accounting procedures established under its bylaws. All receipts and disbursements of funds
181 handled by the commission shall be subject to an annual financial review by a certified or licensed
182 public accountant, and the report of the financial review shall be included in and become part of
183 the annual report of the commission.

184 (h) Qualified immunity, defense, and indemnification:

185 (1) The members, officers, executive director, employees and representatives of the
186 commission shall be immune from suit and liability, both personally and in their official capacity, for
187 any claim for damage to or loss of property or personal injury or other civil liability caused by or
188 arising out of any actual or alleged act, error, or omission that occurred, or that the person against
189 whom the claim is made had a reasonable basis for believing occurred within the scope of
190 commission employment, duties or responsibilities; provided that nothing in this paragraph shall
191 be construed to protect any such person from suit or liability for any damage, loss, injury, or liability
192 caused by the intentional or willful or wanton misconduct of that person. The procurement of
193 insurance of any type by the commission shall not in any way compromise or limit the immunity

194 granted hereunder.

195 (2) The commission shall defend any member, officer, executive director, employee, and
196 representative of the commission in any civil action seeking to impose liability arising out of any
197 actual or alleged act, error, or omission that occurred within the scope of commission employment,
198 duties, or responsibilities, or as determined by the commission that the person against whom the
199 claim is made had a reasonable basis for believing occurred within the scope of commission
200 employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit
201 that person from retaining their own counsel at their own expense; and provided further, that the
202 actual or alleged act, error, or omission did not result from that person's intentional or willful or
203 wanton misconduct.

204 (3) The commission shall indemnify and hold harmless any member, officer, executive
205 director, employee, and representative of the commission for the amount of any settlement or
206 judgment obtained against that person arising out of any actual or alleged act, error, or omission
207 that occurred within the scope of commission employment, duties, or responsibilities, or that such
208 person had a reasonable basis for believing occurred within the scope of commission
209 employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission
210 did not result from the intentional or willful or wanton misconduct of that person.

211 (4) Nothing herein shall be construed as a limitation on the liability of any licensee for
212 professional malpractice or misconduct, which shall be governed solely by any other applicable
213 state laws.

214 (5) Nothing in this compact shall be interpreted to waive or otherwise abrogate a member
215 state's state action immunity or state action affirmative defense with respect to antitrust claims
216 under the Sherman Act, Clayton Act, or any other state or federal antitrust or anticompetitive law or
217 regulation.

218 (6) Nothing in this compact shall be construed to be a waiver of sovereign immunity by the
219 member states or by the commission.

§30-27A-10. Data system.

1 (a) The commission shall provide for the development, maintenance, operation, and
2 utilization of a coordinated database and reporting system.

3 (b) The commission shall assign each applicant for a multistate license a unique identifier,
4 as determined by the rules of the commission.

5 (c) Notwithstanding any other provision of state law to the contrary, a member state shall
6 submit a uniform data set to the data system on all individuals to whom this compact is applicable
7 as required by the rules of the commission, including:

8 (1) Identifying information;

9 (2) Licensure data;

10 (3) Adverse actions against a license and information related thereto;

11 (4) Non-confidential information related to alternative program participation, the beginning
12 and ending dates of such participation, and other information related to such participation;

13 (5) Any denial of application for licensure, and the reason(s) for such denial (excluding the
14 reporting of any criminal history record information where prohibited by law);

15 (6) The existence of investigative information;

16 (7) The existence of current significant investigative information; and

17 (8) Other information that may facilitate the administration of this compact or the protection
18 of the public, as determined by the rules of the commission.

19 (d) The records and information provided to a member state pursuant to this compact or
20 through the data system, when certified by the commission or an agent thereof, shall constitute the
21 authenticated business records of the commission, and shall be entitled to any associated
22 hearsay exception in any relevant judicial, quasi-judicial or administrative proceedings in a
23 member state.

24 (e) The existence of current significant investigative information and the existence of
25 investigative information pertaining to a licensee in any member state will only be available to

26 other member states.

27 (f) It is the responsibility of the member states to monitor the database to determine
28 whether adverse action has been taken against such a licensee or license applicant. adverse
29 action information pertaining to a licensee or license applicant in any member state will be
30 available to any other member state.

31 (g) member states contributing information to the data system may designate information
32 that may not be shared with the public without the express permission of the contributing state.

33 (h) Any information submitted to the data system that is subsequently expunged pursuant
34 to federal law or the laws of the member state contributing the information shall be removed from
35 the data system.

§30-27A-11.

Rulemaking.

1 (a) The commission shall promulgate reasonable rules in order to effectively and efficiently
2 implement and administer the purposes and provisions of the compact. A rule shall be invalid and
3 have no force or effect only if a court of competent jurisdiction holds that the rule is invalid because
4 the commission exercised its rulemaking authority in a manner that is beyond the scope and
5 purposes of the compact, or the powers granted hereunder, or based upon another applicable
6 standard of review.

7 (b) The rules of the commission shall have the force of law in each member state,
8 Provided, That where the rules of the commission conflict with the laws of the member state that
9 establish the member state's scope of practice laws governing the practice of cosmetology as held
10 by a court of competent jurisdiction, the rules of the commission shall be ineffective in that state to
11 the extent of the conflict.

12 (c) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in
13 this section and the rules adopted thereunder. Rules shall become binding as of the date specified
14 by the commission for each rule.

15 (d) If a majority of the legislatures of the member states rejects a rule or portion of a rule, by

16 enactment of a statute or resolution in the same manner used to adopt the compact within four
17 years of the date of adoption of the rule, then such rule shall have no further force and effect in any
18 member state or to any state applying to participate in the compact.

19 (e) Rules shall be adopted at a regular or special meeting of the commission.

20 (f) Prior to adoption of a proposed rule, the commission shall hold a public hearing and
21 allow persons to provide oral and written comments, data, facts, opinions, and arguments.

22 (g) Prior to adoption of a proposed rule by the commission, and at least thirty (30) days in
23 advance of the meeting at which the commission will hold a public hearing on the proposed rule,
24 the commission shall provide a notice of proposed rulemaking:

25 (1) On the website of the commission or other publicly accessible platform;

26 (2) To persons who have requested notice of the commission's notices of proposed
27 rulemaking; and

28 (3) In such other way(s) as the commission may by rule specify.

29 (h) The notice of proposed rulemaking shall include:

30 (1) The time, date, and location of the public hearing at which the commission will hear
31 public comments on the proposed rule and, if different, the time, date, and location of the meeting
32 where the commission will consider and vote on the proposed rule;

33 (2) If the hearing is held via telecommunication, video conference, or other electronic
34 means, the commission shall include the mechanism for access to the hearing in the notice of
35 proposed rulemaking;

36 (3) The text of the proposed rule and the reason therefor;

37 (4) A request for comments on the proposed rule from any interested person; and

38 (5) The manner in which interested persons may submit written comments.

39 (i) All hearings will be recorded. A copy of the recording and all written comments and
40 documents received by the commission in response to the proposed rule shall be available to the
41 public.

42 (j) Nothing in this section shall be construed as requiring a separate hearing on each rule.

43 Rules may be grouped for the convenience of the commission at hearings required by this section.

44 (k) The commission shall, by majority vote of all members, take final action on the
45 proposed rule based on the rulemaking record and the full text of the rule.

46 (1) The commission may adopt changes to the proposed rule provided the changes do not
47 enlarge the original purpose of the proposed rule.

48 (2) The commission shall provide an explanation of the reasons for substantive changes
49 made to the proposed rule as well as reasons for substantive changes not made that were
50 recommended by commenters.

51 (3) The commission shall determine a reasonable effective date for the rule. Except for an
52 emergency as provided in §30-27A-11 of this code, the effective date of the rule shall be no sooner
53 than 45 days after the commission issuing the notice that it adopted or amended the rule.

54 (l) Upon determination that an emergency exists, the commission may consider and adopt
55 an emergency rule with five days' notice, with opportunity to comment, provided that the usual
56 rulemaking procedures provided in the compact and in this section shall be retroactively applied to
57 the rule as soon as reasonably possible, in no event later than 90 days after the effective date of
58 the rule. For the purposes of this provision, an emergency rule is one that must be adopted
59 immediately to:

60 (1) Meet an imminent threat to public health, safety, or welfare;

61 (2) Prevent a loss of commission or member state funds;

62 (3) Meet a deadline for the promulgation of a rule that is established by federal law or rule;

63 or

64 (4) Protect public health and safety.

65 (m) The commission or an authorized committee of the commission may direct revisions to
66 a previously adopted rule for purposes of correcting typographical errors, errors in format, errors in
67 consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of

68 the commission. The revision shall be subject to challenge by any person for a period of 30 days
69 after posting. The revision may be challenged only on grounds that the revision results in a
70 material change to a rule. A challenge shall be made in writing and delivered to the commission
71 prior to the end of the notice period. If no challenge is made, the revision will take effect without
72 further action. If the revision is challenged, the revision may not take effect without the approval of
73 the commission.

74 (n) No member state's rulemaking requirements shall apply under this compact.

§30-27A-12. Oversight, dispute resolution, and enforcement.

1 (a) Oversight:

2 (1) The executive and judicial branches of state government in each member state shall
3 enforce this compact and take all actions necessary and appropriate to implement the compact.

4 (2) Venue is proper and judicial proceedings by or against the commission shall be brought
5 solely and exclusively in a court of competent jurisdiction where the principal office of the
6 commission is located. The commission may waive venue and jurisdictional defenses to the extent
7 it adopts or consents to participate in alternative dispute resolution proceedings. Nothing herein
8 shall affect or limit the selection or propriety of venue in any action against a licensee for
9 professional malpractice, misconduct or any such similar matter.

10 (3) The commission shall be entitled to receive service of process in any proceeding
11 regarding the enforcement or interpretation of the compact and shall have standing to intervene in
12 such a proceeding for all purposes. Failure to provide the commission service of process shall
13 render a judgment or order void as to the commission, this compact, or promulgated rules.

14 (b) Default, technical assistance, and termination:

15 (1) If the commission determines that a member state has defaulted in the performance of
16 its obligations or responsibilities under this compact or the promulgated rules, the commission
17 shall provide written notice to the defaulting state. The notice of default shall describe the default,
18 the proposed means of curing the default, and any other action that the commission may take, and

19 shall offer training and specific technical assistance regarding the default.

20 (2) The commission shall provide a copy of the notice of default to the other member
21 states.

22 (3) If a state in default fails to cure the default, the defaulting state may be terminated from
23 the compact upon an affirmative vote of a majority of the delegates of the member states, and all
24 rights, privileges and benefits conferred on that state by this compact may be terminated on the
25 effective date of termination. A cure of the default does not relieve the offending state of
26 obligations or liabilities incurred during the period of default.

27 (4) Termination of membership in the compact shall be imposed only after all other means
28 of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be
29 given by the commission to the governor, the majority and minority leaders of the defaulting state's
30 legislature, the defaulting state's state licensing authority, and each of the member states' state
31 licensing authority.

32 (5) A state that has been terminated is responsible for all assessments, obligations, and
33 liabilities incurred through the effective date of termination, including obligations that extend
34 beyond the effective date of termination.

35 (6) Upon the termination of a state's membership from this compact, that state shall
36 immediately provide notice to all licensees who hold a multistate license within that state of such
37 termination. The terminated state shall continue to recognize all licenses granted pursuant to this
38 compact for a minimum of 180 days after the date of said notice of termination.

39 (7) The commission shall not bear any costs related to a state that is found to be in default
40 or that has been terminated from the compact, unless agreed upon in writing between the
41 commission and the defaulting state.

42 (8) The defaulting state may appeal the action of the commission by petitioning the United
43 States District Court for the District of Columbia or the federal district where the commission has its
44 principal offices. The prevailing party shall be awarded all costs of such litigation, including

45 reasonable attorney's fees.

46 (c) Dispute resolution:

47 (1) Upon request by a member state, the commission shall attempt to resolve disputes
48 related to the compact that arise among member states and between member and non-member
49 states.

50 (2) The commission shall promulgate a rule providing for both mediation and binding
51 dispute resolution for disputes as appropriate.

52 (d) Enforcement:

53 (1) The commission, in the reasonable exercise of its discretion, shall enforce the
54 provisions of this compact and the commission's rules.

55 (2) By majority vote as provided by commission rule, the commission may initiate legal
56 action against a member state in default in the United States District Court for the District of
57 Columbia or the federal district where the commission has its principal offices to enforce
58 compliance with the provisions of the compact and its promulgated rules. The relief sought may
59 include both injunctive relief and damages. In the event judicial enforcement is necessary, the
60 prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.
61 The remedies herein shall not be the exclusive remedies of the commission. The commission may
62 pursue any other remedies available under federal or the defaulting member state's law.

63 (3) A member state may initiate legal action against the commission in the United States
64 District Court for the District of Columbia or the federal district where the commission has its
65 principal offices to enforce compliance with the provisions of the compact and its promulgated
66 rules. The relief sought may include both injunctive relief and damages. In the event judicial
67 enforcement is necessary, the prevailing party shall be awarded all costs of such litigation,
68 including reasonable attorney's fees.

69 (4) No individual or entity other than a member state may enforce this compact against the
70 commission.

§30-27A-13. Effective date, withdrawal, and amendment.

1 (a) The compact shall come into effect on the date on which the compact statute is enacted
2 into law in the seventh member state.

3 (1) On or after the effective date of the compact, the commission shall convene and review
4 the enactment of each of the charter member states to determine if the statute enacted by each
5 such charter member state is materially different than the model compact statute.

6 (A) A charter member state whose enactment is found to be materially different from the
7 model compact statute shall be entitled to the default process set forth in §30-27A-12 of this code.

8 (B) If any member state is later found to be in default, or is terminated or withdraws from the
9 compact, the commission shall remain in existence and the compact shall remain in effect even if
10 the number of member states should be fewer than seven.

11 (2) Member states enacting the compact subsequent to the charter member states shall be
12 subject to the process set forth in §30-27A-9 of this code to determine if their enactments are
13 materially different from the model compact statute and whether they qualify for participation in the
14 compact.

15 (3) All actions taken for the benefit of the commission or in furtherance of the purposes of
16 the administration of the compact prior to the effective date of the compact or the commission
17 coming into existence shall be considered to be actions of the commission unless specifically
18 repudiated by the commission.

19 (4) Any state that joins the compact shall be subject to the commission's rules and bylaws
20 as they exist on the date on which the compact becomes law in that state. Any rule that has been
21 previously adopted by the commission shall have the full force and effect of law on the day the
22 compact becomes law in that state.

23 (b) Any member state may withdraw from this compact by enacting a statute repealing that
24 state's enactment of the compact.

25 (1) A member state's withdrawal shall not take effect until 180 days after enactment of the

26 repealing statute.

27 (2) Withdrawal shall not affect the continuing requirement of the withdrawing state's state
28 licensing authority to comply with the investigative and adverse action reporting requirements of
29 this compact prior to the effective date of withdrawal.

30 (3) Upon the enactment of a statute withdrawing from this compact, a state shall
31 immediately provide notice of such withdrawal to all licensees within that state. Notwithstanding
32 any subsequent statutory enactment to the contrary, such withdrawing state shall continue to
33 recognize all licenses granted pursuant to this compact for a minimum of 180 days after the date of
34 such notice of withdrawal.

35 (c) Nothing contained in this compact shall be construed to invalidate or prevent any
36 licensure agreement or other cooperative arrangement between a member state and a non-
37 member state that does not conflict with the provisions of this compact.

38 (d) This compact may be amended by the member states. No amendment to this compact
39 shall become effective and binding upon any member state until it is enacted into the laws of all
40 member states.

§30-27A-14. Construction and severability.

1 (a) This compact and the commission's rulemaking authority shall be liberally construed so
2 as to effectuate the purposes, and the implementation and administration of the compact.
3 Provisions of the compact expressly authorizing or requiring the promulgation of rules shall not be
4 construed to limit the commission's rulemaking authority solely for those purposes.

5 (b) The provisions of this compact shall be severable and if any phrase, clause, sentence
6 or provision of this compact is held by a court of competent jurisdiction to be contrary to the
7 constitution of any member state, a state seeking participation in the compact, or of the United
8 states, or the applicability thereof to any government, agency, person or circumstance is held to be
9 unconstitutional by a court of competent jurisdiction, the validity of the remainder of this compact
10 and the applicability thereof to any other government, agency, person or circumstance shall not be

11 affected thereby.

12 (c) Notwithstanding §30-27A-14 of this code, the commission may deny a state's
13 participation in the compact or, in accordance with the requirements of §30-27A-12 of this code,
14 terminate a member state's participation in the compact, if it determines that a constitutional
15 requirement of a member state is a material departure from the compact. Otherwise, if this
16 compact shall be held to be contrary to the constitution of any member state, the compact shall
17 remain in full force and effect as to the remaining member states and in full force and effect as to
18 the member state affected as to all severable matters.

§30-27A-15. Consistent effect and conflict with other state laws.

1 (a) Nothing herein shall prevent or inhibit the enforcement of any other law of a member
2 state that is not inconsistent with the compact.

3 (b) Any laws, statutes, regulations, or other legal requirements in a member state in conflict
4 with the compact are superseded to the extent of the conflict.

5 (c) All permissible agreements between the commission and the member states are
6 binding in accordance with their terms.

NOTE: The purpose of this bill is to establish the Interstate Cosmetology Licensure Compact and to establish the Interstate Cosmetology Licensure Compact Commission.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.