WEST VIRGINIA CODE: §30-27A-9

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

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

(b) Membership, voting, and meetings.

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

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

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

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

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

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

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

(c) The commission shall have the following powers:

(1) Establish the fiscal year of the commission;

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

(3) Adopt rules and bylaws;

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

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

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

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

(8) Purchase and maintain insurance and bonds;

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

(10) Conduct an annual financial review;

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

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

(13) Assess and collect fees;

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

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

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

(17) Establish a budget and make expenditures;

(18) Borrow money;

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

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

(21) Elect a Chair, Vice Chair, Secretary and Treasurer and such other officers of the commission as provided in the commission's bylaws;

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

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

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

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

(d) The executive committee:

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

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

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

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

(D) Preparing and recommending the budget;

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

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

(G) Establishing additional committees as necessary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Protect public health and safety.

(e) The commission shall adopt and provide to the member states an annual report.

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(f) Meetings of the commission:

(1) All meetings of the commission that are not closed pursuant to §30-27A-9 of this code shall be open to the public. Notice of public meetings shall be posted on the commission's website at least 30 days prior to the public meeting.

(2) Notwithstanding §30-27A-9 of this code, the commission may convene an emergency public meeting by providing at least 24 hours' prior notice on the commission's website, and any other means as provided in the commission's rules, for any of the reasons it may dispense with notice of proposed rulemaking under §30-27A-11 of this code. The commission's legal counsel shall certify that one of the reasons justifying an emergency public meeting has been met.

(3) Notice of all commission meetings shall provide the time, date, and location of the meeting, and if the meeting is to be held or accessible via telecommunication, video conference, or other electronic means, the notice shall include the mechanism for access to the meeting.

(4) The commission may convene in a closed, non-public meeting for the commission to discuss:

(A) Non-compliance of a member state with its obligations under the compact;

(B) The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(C) Current or threatened discipline of a licensee by the commission or by a member state's Licensing Authority;

(D) Current, threatened, or reasonably anticipated litigation;

(E) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

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

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

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

(I) Investigative records compiled for law enforcement purposes;

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

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(K) Legal advice;

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

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

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

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

(g) Financing of the commission:

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

(2) The commission may accept any and all appropriate sources of revenue, donations, and grants of money, equipment, supplies, materials, and services.

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

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

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

(h) Qualified immunity, defense, and indemnification:

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

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

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

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

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

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

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