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S.B. 89*
135th General Assembly

Bill Analysis

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Version: As Reported by Senate Government Oversight

Primary Sponsor: Sen. Roegner

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SUMMARY

- Enters Ohio as a party to the Cosmetology Licensure Compact, the purpose of which is to facilitate the interstate practice and regulation of cosmetology and improve public access to and safety of cosmetology services.
- As a member of the Compact, requires Ohio to allow a cosmetologist licensed in another member state to practice in Ohio, subject to Ohio's laws and rules governing the practice of cosmetology.
- Requires the State Cosmetology and Barber Board to appoint a member to the Cosmetology Licensure Compact Commission, a joint public agency created by the Compact to enforce the provisions and rules of the Compact.
- Requires Ohio to submit data regarding cosmetology licensees to the Commission's data system, including information related to licensure, adverse action, and the presence of investigative information.

DETAILED ANALYSIS

Cosmetology Licensure Compact

The bill enters Ohio into the Cosmetology Licensure Compact. The Compact is an agreement between member states to improve public access to and safety of cosmetology services, and reduce unnecessary burdens related to cosmetology licensure, by permitting

* This analysis was prepared before the report of the Senate Government Oversight Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

eligible cosmetologists to work in multiple states.¹ It applies to a licensed cosmetologist in Ohio authorized to engage in all branches of cosmetology (which includes the practice of esthetics, hair design, manicuring, natural hair styling, and boutique services), but not an individual licensed to practice only a branch of cosmetology.²

The Compact goes into effect when it is enacted by the seventh member state; currently, four states (Arizona, Georgia, Kentucky, and Virginia) have enacted legislation entering into the Compact. Each state's enacting statute cannot be materially different from the model Compact.³ Nothing in the Compact affects Ohio's requirements for a license to practice as a cosmetologist.⁴

State participation in the Compact

To participate in the Cosmetology Licensure Compact, a state must:

1. License and regulate cosmetology;
2. Have a mechanism for receiving and investigating complaints;
3. Require that licensees pass a cosmetology competency examination and satisfy educational or training requirements in cosmetology before being licensed to provide cosmetology services;
4. Implement procedures for considering an applicant's criminal or disciplinary history or background check when making a licensing decision in accordance with the Compact;
5. Participate in the Cosmetology Licensure Compact Commission's data system (see "**Cosmetology Licensure Compact Commission**" and "**Data system**" below);
6. Share information regarding adverse actions with the Commission and other member states (see "**Adverse actions**" below);
7. Notify the Commission and other member states of the availability of investigative information about a licensee;
8. Comply with the Commission's rules;
9. Accept licensees from other member states.⁵

Home state licensure

Under the Compact, a "home state" is the member state that is a licensee's primary state of residence where the licensee holds an active and unencumbered license to practice

¹ R.C. 4713.33; Article 1 ("Article" references in this analysis are to the Compact enacted in R.C. 4713.33).

² Article 2.H and 2.I and R.C. 4713.01, not in the bill.

³ Article 13.A and [Cosmetology Licensure Compact Map](#), which may be accessed by clicking on the "Compact Map" tab on the Cosmetology Licensure Compact website: cosmetologycompact.org.

⁴ Article 3.D.

⁵ Article 3.A.

cosmetology. Active military members, or their spouses, must designate a home state where they have a current license in good standing. That home state designation can remain for as long as the member or spouse is on active duty assignment, regardless of the location of that assignment.⁶

Nothing in the Compact is to be construed to limit, restrict, or in any way reduce a member state's ability to enact and enforce laws and rules relating to the practice of cosmetology that are not inconsistent with the Compact.⁷

Multistate license to practice cosmetology

A multistate license is a license issued by a home state authorizing the practice of cosmetology in member states and that includes authorizations to practice cosmetology in all member states that are not a licensee's home state (referred to as remote states), subject to the enforcement jurisdiction of the licensing authority in the home state.⁸

To be eligible for a multistate license under the Compact, an applicant must hold an active and unencumbered license in the applicant's home state. The home state may charge a fee for the license. A cosmetologist practicing in a remote state is subject to the scope of practice laws and jurisdiction of that state. A multistate license may be valid for the same licensing term as the home state's single-state license. A licensee must pay any applicable renewal fees and comply with the Commission's rules and the rules and scope of practice laws in any member state where the licensee practices cosmetology to maintain the multistate license.⁹

A licensee can hold a multistate license, issued by their home state, in only one member state at a time. If the licensee changes their home state by moving between two member states, the Compact provides a process for a multistate license to be reissued to that cosmetologist. If a licensee moves to a nonmember state, the licensee must get a regular state license from that state to practice.¹⁰

If a home state takes adverse action against a licensee's multistate license, the licensee's authorization to practice is deactivated in all member states until all encumbrances have been removed.¹¹

If an individual who does not reside in a member state applies for a license in a member state, that individual is to receive a nonmultistate license and cannot use that license to practice in other member states.¹²

⁶ Article 2.P and 8.

⁷ Article 6.A.

⁸ Article 2.U and 2.V.

⁹ Article 4.

¹⁰ Article 5.

¹¹ Article 7.E.

¹² Article 3.C.

Temporary special occasion work permits

Continuing law allows an individual licensed to practice cosmetology in another state or country to apply to the State Cosmetology and Barber Board for a temporary special occasion work permit to practice cosmetology in Ohio as part of a promotional or instructional program for a specified period of time. Under the bill, an individual practicing in Ohio in accordance with the compact privilege under the Compact does not need to obtain a temporary special occasion work permit.¹³

Adverse actions

The Compact provides that a home state has the exclusive power to impose adverse action against a licensee's multistate license it issues. "Adverse action" is defined as any administrative, civil, equitable, or criminal action permitted by a member state's laws which is imposed by a licensing authority or other regulatory body against a licensee.¹⁴

A home state may take adverse action on a multistate license based on investigative information or adverse action from a remote state. Joint investigations between member states also are permissible. While states that are not the home state that issued the multistate license cannot impose adverse action against the license, a remote state may take adverse action against a licensee's authorization to practice in that specific state. Additionally, a remote state may issue cease and desist orders or limit a licensee's authorization to practice, issue subpoenas for hearings and investigations, and recover from the licensee the costs related to the adverse action against the licensee (if authorized by state law).¹⁵

The Compact preserves a state's ability to permit participation in an alternative program in lieu of adverse action, but a licensee's multistate license is suspended for the duration of the licensee's participation in the alternative program. "Alternative program" is defined as a nondisciplinary monitoring or prosecutorial diversion program approved by a state licensing authority.¹⁶

A licensee may be subject to discipline by the state licensing authority of the state where the licensee is providing cosmetology services. If a member state receives and investigates a complaint or imposes adverse action against a licensee, it must submit information regarding that investigation or adverse action to the Commission's data system (see "**Data system**" below).¹⁷

¹³ R.C. 4713.37.

¹⁴ Article 7.A and 2.B.

¹⁵ Article 7.

¹⁶ Article 7.F and 2.D.

¹⁷ Article 6.C and 10.C.

Cosmetology Licensure Compact Commission

The bill requires states participating in the Cosmetology Licensure Compact to establish a joint government agency known as the Cosmetology Licensure Compact Commission. Each member state must appoint one delegate, who must be an administrator of the state licensing authority or the administrator's designee. The delegate is entitled to one vote regarding all matters that are voted on by the Commission.

As a party to the Compact, the State Cosmetology and Barber Board must select one delegate to the Commission within 60 days of Ohio entering the Compact and fill any subsequent vacancy within 60 days.¹⁸

Powers and duties

The Commission must enforce the provisions and rules of the Compact.¹⁹ The Commission has numerous powers and duties specified in the bill, some of which include:

1. Establishing bylaws and a code of conduct for the Commission;
2. Electing a chair, vice chair, secretary, and treasurer, and any other officer provided by the Commission's bylaws;
3. Maintaining financial records, establishing a budget, making expenditures, and borrowing money;
4. Adopting rules to effectively and efficiently implement and administer the Compact, including emergency rules;
5. Hiring employees and performing matters related to personnel;
6. Assessing and collecting fees and purchasing and maintaining insurance and bonds;
7. Accepting donations and gifts and taking actions regarding real and personal property;
8. Prosecuting legal proceedings;
9. Electing an Executive Committee (see "**Executive Committee**" below) and appointing other committees;
10. Determining whether a state's adopted language is materially different from the model Compact language to an extent that it disqualifies that state from participation;
11. Performing other functions as necessary and appropriate to achieve the purposes of the Compact.²⁰

Data system

The Commission must provide for the development, maintenance, operation, and use of a coordinated database and reporting system containing licensure, adverse action, and

¹⁸ Article 9 and R.C. 4713.331.

¹⁹ Article 12.D.

²⁰ Article 9.C.

significant investigative information regarding licensed individuals in member states. All member states must submit a uniform data set to the data system regarding licensees that are subject to the Compact. The data set includes: (1) identifying information, (2) licensure data, (3) adverse actions against a licensee, (4) nonconfidential information related to alternative program participation, (5) any denial of an application for licensure and reasons for the denial, (6) the presence of significant investigative information, and (7) other information specified by Commission rules.

Member states contributing information to the data system may designate information that may not be shared with the public without express permission from that state. Investigative information received by a cosmetology licensing board pertaining to the investigation of a licensee in a member state will be available only to other member states. Member states are required to monitor the database to determine if adverse action has been taken against a licensee. If information submitted to the data system is later expunged under federal or member state law, the information is to be removed from the data system.²¹

Commission finances

The Commission is required to pay the reasonable expenses of its establishment, organization, and ongoing activities. The Commission may accept monetary and nonmonetary donations and grants. It may impose annual assessments on member states and fees on the multistate license holders of member states to cover the costs of the Commission's operations and activities. The Commission must keep accurate records of receipts and disbursements, which must be reviewed annually.

The Commission is not permitted to incur obligations before securing funds to meet those obligations and it may not pledge the credit of member states without authority.²²

Executive Committee

The Compact creates a Cosmetology Licensure Compact Commission Executive Committee, and provides that the Executive Committee has the power to act on behalf of the Commission. The Executive Committee consists of the following seven members:

- The chair, vice chair, secretary, and treasurer of the Commission;
- Three other voting members from the Commission, elected by the Commission.

The Commission also may elect ex-officio, nonvoting members from recognized national cosmetology professional associations identified in the Commission's bylaws.

Duties and responsibilities of the Executive Committee include:

1. Overseeing the day-to-day activities of the administration of the Compact;

²¹ Article 10.

²² Article 9.G.

2. Recommending changes to rules, bylaws, Compact legislation, and fees charged to member states and licensees;
3. Ensuring Compact administration services are appropriately provided;
4. Preparing and recommending the budget;
5. Maintaining financial records;
6. Monitoring Compact compliance of member states and providing compliance reports;
7. Establishing additional committees as necessary;
8. Exercising the powers and duties of the Commission during the interim period between Commission meetings;
9. Any other duties provided in the bylaws.²³

Meetings

The Commission and the Executive Committee are required to meet at least annually. Meetings may take place by telecommunication, video conference, or other similar electronic means. Generally, meetings must be open to the public. The Compact permits closed, nonpublic meetings of the Commission, the Executive Committee, or other committees in limited circumstances, such as to discuss noncompliance of member states, employment matters, licensee discipline, litigation, contract negotiation, criminal accusations, trade secrets, investigative records, and legal advice.²⁴

Rulemaking

The Commission has the power to adopt rules by majority vote pursuant to the criteria and processes set forth in the Compact. The Commission must hold a public hearing before adopting a rule and allow for public comments, with advanced notice of the proposed rulemaking and other specified information. Commission rules have the force of law in each member state; however, if such a rule conflicts with member state scope of practice laws, as held by a court of competent jurisdiction, the Commission rule is ineffective in that state to the extent of the conflict.

The Commission may adopt emergency rules in limited circumstances, such as in the case of an imminent threat to public health or safety or to prevent a loss of funds. If a majority of the state legislatures of member states reject a rule by enacting a statute or resolution within four years of the date the rule was adopted, the rule has no further force or effect.²⁵

Qualified immunity, defense, and indemnification

The Compact provides that the members, officers, executive director, employees, and representatives of the Commission are immune from suit and liability for damages caused by or

²³ Article 9.D.

²⁴ Article 9.

²⁵ Article 11.

arising out of acts, errors, or omissions occurring within the scope of Commission employment, duties, or responsibilities, so long as the loss is not caused by intentional or willful or wanton misconduct. The Commission must defend individuals entitled to immunity, but individuals also may retain their own counsel.

The Commission must indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of a settlement or judgment obtained against the individual arising out of acts, errors, or omissions occurring within the scope of Commission employment, duties, or responsibilities, except in the case of intentional or willful or wanton misconduct.

The Compact is not to be construed to be a waiver of sovereign immunity by a member state.²⁶

Enforcement and dispute resolution

The Compact requires each member state's executive and judicial branches of government to enforce it.

The Commission must attempt to resolve Compact disputes that arise among member states and between member states and nonmember states. The Commission is required to adopt a rule providing for both mediation and binding dispute resolution.

The Commission may sue a member state in the U.S. District Court for the District of Columbia to enforce a member state's compliance, and a member state may sue the Commission in that court to enforce Commission compliance.²⁷

Conflict with state law

The Cosmetology Licensure Compact does not prevent or inhibit the enforcement of laws in a member state that do not conflict with it. Any laws, statutes, regulations, or other legal requirements in a member state that are in conflict with the Compact are superseded.²⁸

Compact amendment

Member states may amend the Compact by enacting legislation. An amendment is not effective until it has been enacted by all member states.²⁹

Withdrawal and termination

The Compact permits member states to withdraw by enacting a statute repealing it. Such a withdrawal is effective 180 days after the repeal.³⁰

²⁶ Article 9.H.

²⁷ Article 12.

²⁸ Article 15.

²⁹ Article 13.D.

³⁰ Article 13.B.

The Compact provides a process for notifying a member state if the state has defaulted in performing its obligations or responsibilities under the Compact. If the defaulting state fails to cure the default, it may be terminated from the Compact on an affirmative vote of a majority of all member states. Once a state is terminated, that state must recognize the multistate licenses issued under the Compact for at least 180 days after the date of termination. The defaulting state may appeal the action of the Commission to the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal office. The prevailing party is to be awarded costs of litigation, including attorney's fees.³¹

Construction and severability

The Cosmetology Licensure Compact provides that it is to be liberally construed, and its provisions are severable.³²

HISTORY

Action	Date
Introduced	03-22-23
Reported, S. Gov't Oversight	---

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³¹ Article 12.B.

³² Article 14.