

HOUSE BILL No. 2068

By Committee on Commerce, Labor and Economic Development

Requested by William Wilk on behalf of the Kansas Chamber of Commerce

1-23

1 AN ACT concerning the practice of cosmetology; enacting the
2 cosmetologist licensure compact to provide interstate practice
3 privileges for cosmetologists.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. This section shall be known and may be cited as the
7 cosmetologist licensure compact.

8 ARTICLE 1—PURPOSE

9 (a) The purpose of this compact is to facilitate the interstate practice
10 and regulation of cosmetology with the goal of improving public access
11 thereto, the safety of cosmetology services and reducing unnecessary
12 burdens related to cosmetology licensure. Through this compact the
13 member states seek to establish a regulatory framework that provides for a
14 new multistate licensing program. Through this new licensing program,
15 the member states seek to provide increased value and mobility to licensed
16 cosmetologists in the member states, while ensuring the provision of safe,
17 effective and reliable services to the public.

18 (b) This compact is designed to achieve the following objectives,
19 which are ratified by the member states to this compact:

20 (1) Provide opportunities for interstate practice by cosmetologists
21 who meet uniform requirements for multistate licensure;

22 (2) enhance the abilities of member states to protect public health and
23 safety and prevent fraud and unlicensed activity within the profession;

24 (3) ensure and encourage cooperation between member states in the
25 licensure and regulation of the practice of cosmetology;

26 (4) support relocating military members and their spouses;

27 (5) facilitate the exchange of information between member states
28 related to the licensure, investigation and discipline of the practice of
29 cosmetology; and

30 (6) provide for the licensure and mobility of the workforce in the
31 profession while addressing the shortage of workers and lessening the
32 associated burdens on the member states.

33 ARTICLE 2—DEFINITIONS

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

1 (a) "Active military member" means any person with full-time duty
2 status in the armed forces of the United States, including members of the
3 national guard and reserve.

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

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

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

19 (e) "Background check" means the submission of information for an
20 applicant for the purpose of obtaining such applicant's criminal history
21 record information, as further defined in C.F.R. § 20.3(d), from the federal
22 bureau of investigation and the agency responsible for retaining state
23 criminal or disciplinary history in the applicant's home state.

24 (f) "Charter member state" means member states that have enacted
25 legislation to adopt this compact where such legislation predates the
26 effective date of this compact as defined in article 13.

27 (g) "Commission" means the governmental agency whose
28 membership consists of all states that have enacted this compact, known as
29 the cosmetology licensure compact commission, as defined in article 9,
30 and shall operate as an instrumentality of the member states.

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

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

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

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

43 (2) investigative information that indicates that a licensee has

1 engaged in fraud or represents an immediate threat to public health and
2 safety, regardless of whether the licensee has been notified and had an
3 opportunity to respond.

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

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

10 (m) "Encumbered license" means a license in which an adverse action
11 restricts the practice of cosmetology by a licensee, or where said adverse
12 action has been reported to the commission.

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

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

19 (p) "Home state" means the member state that is a licensee's primary
20 state of residence where such licensee holds an active and unencumbered
21 license to practice cosmetology.

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

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

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

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

31 (u) "Multistate license" means a license issued by and subject to the
32 enforcement jurisdiction of the state licensing authority in a licensee's
33 home state that authorizes the practice of cosmetology in member states
34 and includes authorizations to practice cosmetology in all remote states
35 pursuant to this compact.

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

38 (w) "Rule" means any rule or regulation adopted by the commission
39 under this compact that has the force of law.

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

1 (y) "State" means a state, territory or possession of the United States
2 and the District of Columbia.

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

6 ARTICLE 3—MEMBER STATE REQUIREMENTS

7 (a) To be eligible to join this compact and maintain eligibility as a
8 member state, a state shall:

9 (1) License and regulate cosmetology;

10 (2) have a mechanism or entity in place to receive and investigate
11 complaints about licensees practicing in that state;

12 (3) require that licensees within the state pass a cosmetology
13 competency examination prior to being licensed to provide cosmetology
14 services to the public in that state;

15 (4) require that licensees satisfy educational or training requirements
16 in cosmetology prior to being licensed to provide cosmetology services to
17 the public in that state;

18 (5) implement procedures for considering one or more of the
19 following categories of information from applicants for licensure:
20 Criminal history; disciplinary history; or background check. Such
21 procedures may include the submission of information by applicants for
22 the purpose of obtaining an applicant's background check as defined
23 herein;

24 (6) participate in the data system, including through the use of unique
25 identifying numbers;

26 (7) share information related to adverse actions with the commission
27 and other member states, both through the data system and otherwise;

28 (8) notify the commission and other member states, in compliance
29 with the terms of the compact and rules of the commission, of the
30 existence of investigative information or current significant investigative
31 information in the state's possession regarding a licensee practicing in that
32 state;

33 (9) comply with such rules as may be enacted by the commission to
34 administer the compact; and

35 (10) accept licensees from other member states as established herein.

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

38 (c) Individuals not residing in a member state shall continue to be
39 able to apply for a member state's single-state license as provided under
40 the laws of each member state, except that the single-state license granted
41 to these individuals shall not be recognized as granting a multistate license
42 to provide services in any other member state.

43 (d) Nothing in this compact shall affect the requirements established

1 by a member state for the issuance of a single-state license.

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

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

9 ARTICLE 4—MULTISTATE LICENSE

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

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

18 (c) If an applicant meets the requirements for a multistate license
19 under this compact and any applicable rules of the commission, the state
20 licensing authority in receipt of the application shall, within a reasonable
21 time, grant a multistate license to that applicant and inform all member
22 states of the grant of such multistate license.

23 (d) A multistate license to practice cosmetology issued by a member
24 state's state licensing authority shall be recognized by each member state
25 as authorizing the practice thereof as though that licensee held a single-
26 state license to do so in each member state, subject to the restrictions
27 herein.

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

31 (f) To maintain a multistate license under this compact, a licensee
32 shall:

33 (1) Agree to abide by the rules of the state licensing authority and the
34 state scope of practice laws governing the practice of cosmetology of any
35 member state where the licensee provides services;

36 (2) pay all required fees related to the application and process and any
37 other fees that the commission may, by rule, require; and

38 (3) comply with any and all other requirements regarding multistate
39 licenses that the commission may, by rule, provide.

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

42 (h) The practice of cosmetology under a multistate license granted
43 pursuant to this compact shall subject the licensee to the jurisdiction of the

1 state licensing authority, the courts and the laws of the member state where
2 the cosmetology services are provided.

3 ARTICLE 5—REISSUANCE OF A MULTISTATE LICENSE BY A NEW
4 HOME STATE

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

7 (b) If a licensee changes such licensee's home state by moving
8 between two member states:

9 (1) The licensee shall immediately apply for the reissuance of such
10 multistate license in such licensee's new home state. The licensee shall pay
11 all applicable fees and notify the prior home state in accordance with the
12 rules of the commission;

13 (2) upon receipt of an application to reissue a multistate license, the
14 new home state shall verify that the multistate license is active,
15 unencumbered and eligible for reissuance under the terms of the compact
16 and the rules of the commission. The multistate license issued by the prior
17 home state shall be deactivated and all member states notified in
18 accordance with the applicable rules adopted by the commission;

19 (3) if required for initial licensure, the new home state may require a
20 background check as specified in the laws of that state, or the compliance
21 with any jurisprudence requirements of the new home state; and

22 (4) notwithstanding any other provision of this compact, if a licensee
23 does not meet the requirements set forth in this compact for the reissuance
24 of a multistate license by the new home state, then such licensee shall be
25 subject to the new home state requirements for the issuance of a single-
26 state license in that state.

27 (c) If a licensee changes such licensee's primary state of residence by
28 moving from a member state to a non-member state, or from a non-
29 member state to a member state, then the licensee shall be subject to the
30 state requirements for the issuance of a single-state license in the new
31 home state.

32 (d) Nothing in this compact shall interfere with a licensee's ability to
33 hold a single-state license in multiple states, except that, for the purposes
34 of this compact, a licensee shall have only one home state and one
35 multistate license.

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

38 ARTICLE 6—AUTHORITY OF THE COMPACT COMMISSION AND
39 MEMBER

40 STATE LICENSING AUTHORITIES

41 (a) Nothing in this compact, nor any rule or regulation of the
42 commission, shall be construed to limit, restrict or in any way reduce the
43 ability of a member state to enact and enforce laws, rules or regulations

1 related to the practice of cosmetology in that state where those laws, rules
2 or regulations are not inconsistent with the provisions of this compact.

3 (b) Insofar as practicable, a member state's state licensing authority
4 shall cooperate with the commission and with each entity exercising
5 independent regulatory authority over the practice of cosmetology
6 according to the provisions of this compact.

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

14 ARTICLE 7—ADVERSE ACTIONS

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

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

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

23 (1) Take adverse action against a licensee's authorization to practice
24 cosmetology through the multistate license in that member state, except
25 that:

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

28 (B) for the purposes of taking adverse action, the home state's state
29 licensing authority shall give the same priority and effect to reported
30 conduct received from a remote state as it would if such conduct had
31 occurred within the home state. In so doing, the home state shall apply its
32 own state laws to determine the appropriate action;

33 (2) issue cease and desist orders or impose an encumbrance on a
34 licensee's authorization to practice within that member state;

35 (3) complete any pending investigations of a licensee who changes
36 their primary state of residence during the course of such an investigation.
37 The state licensing authority shall also be empowered to report the results
38 of such an investigation to the commission through the data system as
39 described herein;

40 (4) issue subpoenas for both hearings and investigations that require
41 the attendance and testimony of witnesses, as well as the production of
42 evidence. Subpoenas issued by a state licensing authority in a member
43 state for the attendance and testimony of witnesses or the production of

1 evidence from another member state shall be enforced in the latter state by
2 any court of competent jurisdiction, according to the practice and
3 procedure of that court applicable to subpoenas issued in proceedings
4 before it. The issuing state licensing authority shall pay any witness fees,
5 travel expenses, mileage and other fees required by the service statutes of
6 the state where the witnesses or evidence are located;

7 (5) if otherwise permitted by state law, recover from the affected
8 licensee the costs of investigations and disposition of cases resulting from
9 any adverse action taken against that licensee; and

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

12 (d) A licensee's home state shall complete any pending investigation
13 of a cosmetologist who changes such licensee's primary state of residence
14 during the course of the investigation. The home state shall also have the
15 authority to take appropriate action and promptly report the conclusions of
16 the investigations to the data system.

17 (e) If an adverse action is taken by the home state against a licensee's
18 multistate license, the licensee's authorization to practice in all other
19 member states shall be deactivated until all encumbrances have been
20 removed from the home state license. All home state disciplinary orders
21 that impose an adverse action against a licensee's multistate license shall
22 include a statement that the cosmetologist's authorization to practice is
23 deactivated in all member states during the pendency of the order.

24 (f) Nothing in this compact shall override a member state's authority
25 to accept a licensee's participation in an alternative program in lieu of
26 adverse action. A licensee's multistate license shall be suspended for the
27 duration of the licensee's participation in any alternative program.

28 (g) Joint investigations.

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

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

36 ARTICLE 8—ACTIVE MILITARY MEMBERS AND THEIR SPOUSES

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

42 ARTICLE 9—ESTABLISHMENT AND OPERATION OF THE 43 COSMETOLOGY

1 LICENSURE COMPACT COMMISSION

2 (a) The compact member states create and establish a joint
3 government agency whose membership consists of all member states that
4 have enacted the compact, which shall be known as the cosmetology
5 licensure compact commission. The commission is an instrumentality of
6 the compact member states acting jointly and not an instrumentality of any
7 one state. The commission shall come into existence on or after the
8 effective date of the compact as set forth in article 13.

9 (b) Membership, voting and meetings.

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

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

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

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

18 (5) A member state's state licensing authority shall fill any vacancy of
19 its delegate occurring on the commission within 60 days of the vacancy.
20 Each delegate shall be entitled to one vote on all matters that are voted on
21 by the commission.

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

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

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

28 (2) establish code of conduct and conflict of interest policies;

29 (3) adopt rules and bylaws;

30 (4) maintain the commission's financial records in accordance with
31 the bylaws;

32 (5) meet and take such actions as are consistent with the provisions of
33 this compact, the commission's rules and the bylaws;

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

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

40 (8) purchase and maintain insurance and bonds;

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

43 (10) conduct an annual financial review;

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

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

13 (13) assess and collect fees;

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

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

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

23 (17) establish a budget and make expenditures;

24 (18) borrow money;

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

29 (20) provide and receive information from, and cooperate with, law
30 enforcement agencies;

31 (21) elect a chair, vice chair, secretary and treasurer and such other
32 officers of the commission as provided in the commission's bylaws;

33 (22) establish and elect an executive committee, including a chair and
34 a vice chair;

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

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

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

41 (d) The executive committee.

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

1 and responsibilities of the executive committee shall include:

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

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

8 (C) ensuring compact administration services are appropriately
9 provided, including by contract;

10 (D) preparing and recommending the budget;

11 (E) maintaining financial records on behalf of the commission;

12 (F) monitoring compact compliance of member states and providing
13 compliance reports to the commission;

14 (G) establishing additional committees as necessary;

15 (H) exercising the powers and duties of the commission during the
16 interim between commission meetings, except for adopting or amending
17 rules, adopting or amending bylaws and exercising any other powers and
18 duties expressly reserved to the commission by rule or bylaw; and

19 (I) other duties as provided in the rules or bylaws of the commission.

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

22 (A) The chair and vice chairperson of the commission and any other
23 members of the commission who serve on the executive committee shall
24 be voting members of the executive committee.

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

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

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

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

37 (A) Annual executive committee meetings, as well as any executive
38 committee meeting at which the commission does not take or intend to
39 take formal action on a matter for which a commission vote would
40 otherwise be required, shall be open to the public, except that the
41 executive committee may meet in a closed, non-public session of a public
42 meeting when dealing with any of the matters specified in article 9(f)(4).

43 (B) The executive committee shall give five business days advance

1 notice of its public meetings, posted on its website and as determined to
2 provide notice to persons with an interest in the public matters that the
3 executive committee intends to address at those meetings.

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

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

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

8 (C) protect public health and safety.

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

11 (f) Meetings of the commission.

12 (1) All meetings of the commission that are not closed pursuant to
13 article 9(f)(4) shall be open to the public. Notice of public meetings shall
14 be posted on the commission's website at least 30 days prior to the public
15 meeting.

16 (2) Notwithstanding article 9(f)(1) , the commission may convene an
17 emergency public meeting by providing at least 24 hours' prior notice on
18 the commission's website and any other means as provided in the
19 commission's rules for any of the reasons it may dispense with notice of
20 proposed rulemaking under article 11(l) . The commission's legal counsel
21 shall certify that one of the reasons justifying an emergency public
22 meeting has been met.

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

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

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

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

34 (C) current or threatened discipline of a licensee by the commission
35 or by a member state's licensing authority;

36 (D) current, threatened or reasonably anticipated litigation;

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

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

40 (G) trade secrets or commercial or financial information that is
41 privileged or confidential;

42 (H) information of a personal nature if disclosure would constitute a
43 clearly unwarranted invasion of personal privacy;

1 (I) investigative records compiled for law enforcement purposes;

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

6 (K) legal advice;

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

9 (M) other matters as adopted by the commission by rule. If a meeting,
10 or portion of a meeting, is closed, the presiding officer shall state that such
11 meeting will be closed and reference each relevant exempting provision,
12 and such reference shall be recorded in the minutes.

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

21 (g) Financing of the commission.

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

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

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

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

40 (5) The commission shall keep accurate accounts of all receipts and
41 disbursements. The receipts and disbursements of the commission shall be
42 subject to the financial review and accounting procedures established
43 under its bylaws. All receipts and disbursements of funds handled by the

1 commission shall be subject to an annual financial review by a certified or
2 licensed public accountant, and the report of the financial review shall be
3 included in and become part of the annual report of the commission.

4 (h) Qualified immunity, defense and indemnification.

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

18 (2) The commission shall defend any member, officer, executive
19 director, employee and representative of the commission in any civil action
20 seeking to impose liability arising out of any actual or alleged act, error or
21 omission that occurred within the scope of commission employment,
22 duties or responsibilities, or as determined by the commission that the
23 person against whom the claim is made had a reasonable basis for
24 believing occurred within the scope of commission employment, duties or
25 responsibilities, except that nothing in this paragraph shall be construed to
26 prohibit such person from retaining their own counsel at their own expense
27 and that the actual or alleged act, error or omission did not result from
28 such person's intentional or willful or wanton misconduct.

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

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

41 (5) Nothing in this compact shall be interpreted to waive or otherwise
42 abrogate a member state's state action immunity or state action affirmative
43 defense with respect to antitrust claims under the Sherman antitrust act of

1 1890, the Clayton act 15 U.S.C. §§ 17-27 or any other state or federal
2 antitrust or anticompetitive law or regulation.

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

5 ARTICLE 10—DATA SYSTEM

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

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

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

14 (1) Identifying information;

15 (2) licensure data;

16 (3) adverse actions against a license and information related thereto;

17 (4) non-confidential information related to alternative program
18 participation, the beginning and ending dates of such participation and
19 other information related to such participation;

20 (5) any denial of application for licensure and the reason for such
21 denial, excluding the reporting of any criminal history record information
22 when prohibited by law;

23 (6) the existence of investigative information;

24 (7) the existence of current significant investigative information; and

25 (8) other information that may facilitate the administration of this
26 compact or the protection of the public, as determined by the rules of the
27 commission.

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

34 (e) The existence of current significant investigative information and
35 the existence of investigative information pertaining to a licensee in any
36 member state shall only be available to other member states.

37 (f) It shall be the responsibility of the member states to monitor the
38 database to determine whether adverse action has been taken against such
39 a licensee or license applicant. Adverse action information pertaining to a
40 licensee or license applicant in any member state shall be available to any
41 other member state.

42 (g) Member states contributing information to the data system may
43 designate information that shall not be shared with the public without the

1 express permission of the contributing state.

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

5 ARTICLE 11—RULEMAKING

6 (a) The commission shall adopt reasonable rules in order to
7 effectively and efficiently implement and administer the purposes and
8 provisions of the compact. A rule shall be invalid and have no force or
9 effect only if a court of competent jurisdiction holds that the rule is invalid
10 because the commission exercised its rulemaking authority in a manner
11 that is beyond the scope and purposes of the compact, the powers granted
12 under this compact or based upon another applicable standard of review.

13 (b) The rules of the commission shall have the force of law in each
14 member state, except that where the rules of the commission conflict with
15 the laws of the member state that establish the member state's scope of
16 practice laws governing the practice of cosmetology as held by a court of
17 competent jurisdiction, the rules of the commission shall be ineffective in
18 such state to the extent of the conflict.

19 (c) The commission shall exercise its rulemaking powers pursuant to
20 the criteria set forth in this article and the rules adopted thereunder. Rules
21 shall become binding as of the date specified by the commission for each
22 rule.

23 (d) If a majority of the legislatures of the member states rejects a rule
24 or a portion of a rule, by enactment of a statute or resolution in the same
25 manner used to adopt the compact within four years of the date of adoption
26 of the rule, then such rule shall have no further force and effect in any
27 member state or to any state applying to participate in the compact.

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

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

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

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

39 (2) to persons who have requested notice of the commission's notices
40 of proposed rulemaking; and

41 (3) in such other way as the commission may by rule specify.

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

43 (1) The time, date and location of the public hearing at which the

1 commission will hear public comments on the proposed rule and, if
2 different, the time, date and location of the meeting where the commission
3 will consider and vote on the proposed rule;

4 (2) if the hearing is held via telecommunication, video conference or
5 other electronic means, the commission shall include the mechanism for
6 access to the hearing in the notice of proposed rulemaking;

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

8 (4) a request for comments on the proposed rule from any interested
9 person; and

10 (5) the manner in which interested persons may submit written
11 comments.

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

15 (j) Nothing in this article shall be construed as requiring a separate
16 hearing on each rule. Rules may be grouped for the convenience of the
17 commission at hearings required by this article.

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

21 (1) The commission may adopt changes to the proposed rule if the
22 changes do not enlarge the original purpose of the proposed rule.

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

26 (3) The commission shall determine a reasonable effective date for
27 the rule. Except for an emergency as provided in article 11(l), the effective
28 date of the rule shall not be earlier than 45 days after the commission
29 issues notice that it has adopted or amended such rule.

30 (l) Upon determination that an emergency exists, the commission
31 may consider and adopt an emergency rule with five days' notice, with
32 opportunity to comment, except the usual rulemaking procedures provided
33 in the compact and this article shall be retroactively applied to the rule as
34 soon as reasonably possible, not later than 90 days after the effective date
35 of the rule. For the purposes of this provision, an emergency rule is one
36 that shall be adopted immediately to:

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

38 (2) prevent a loss of commission or member state funds;

39 (3) meet a deadline for the adoption of a rule that is established by
40 federal law or rule; or

41 (4) protect public health and safety.

42 (m) The commission or an authorized committee of the commission
43 may direct revisions to a previously adopted rule for purposes of

1 correcting typographical errors, errors in format, errors in consistency or
2 grammatical errors. Public notice of any revisions shall be posted on the
3 website of the commission. The revision shall be subject to challenge by
4 any person for a period of 30 days after posting. The revision may be
5 challenged only on grounds that the revision results in a material change to
6 a rule. A challenge shall be made in writing and delivered to the
7 commission prior to the end of the notice period. If no challenge is made,
8 the revision will take effect without further action. If the revision is
9 challenged, the revision may not take effect without the approval of the
10 commission.

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

13 ARTICLE 12—OVERSIGHT, DISPUTE RESOLUTION AND
14 ENFORCEMENT

15 (a) Oversight.

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

19 (2) Venue is proper and judicial proceedings by or against the
20 commission shall be brought solely and exclusively in a court of
21 competent jurisdiction where the principal office of the commission is
22 located. The commission may waive venue and jurisdictional defenses to
23 the extent it adopts or consents to participate in alternative dispute
24 resolution proceedings. Nothing in this compact shall affect or limit the
25 selection or propriety of venue in any action against a licensee for
26 professional malpractice, misconduct or any such similar matter.

27 (3) The commission shall be entitled to receive service of process in
28 any proceeding regarding the enforcement or interpretation of the compact
29 and shall have standing to intervene in such a proceeding for all purposes.
30 Failure to provide the commission service of process shall render a
31 judgment or order void as to the commission, this compact or adopted
32 rules.

33 (b) Default, technical assistance and termination.

34 (1) If the commission determines that a member state has defaulted in
35 the performance of its obligations or responsibilities under this compact or
36 adopted rules, the commission shall provide written notice to the
37 defaulting state. The notice of default shall describe the default, the
38 proposed means of curing the default, any other action that the
39 commission may take and offer training and specific technical assistance
40 regarding the default.

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

43 (3) If a state in default fails to cure the default, the defaulting state

1 may be terminated from the compact upon an affirmative vote of a
2 majority of the delegates of the member states, and all rights, privileges
3 and benefits conferred on that state by this compact may be terminated on
4 the effective date of termination. A cure of the default does not relieve the
5 offending state of obligations or liabilities incurred during the period of
6 default.

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

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

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

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

26 (8) The defaulting state may appeal the action of the commission by
27 petitioning the United States district court for the District of Columbia or
28 the federal district where the commission has its principal offices. The
29 prevailing party shall be awarded all costs of such litigation, including
30 reasonable attorney fees.

31 (c) Dispute resolution.

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

35 (2) The commission shall adopt a rule providing for both mediation
36 and binding dispute resolution for disputes as appropriate.

37 (d) Enforcement.

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

40 (2) By majority vote as provided by commission rule, the commission
41 may initiate legal action against a member state in default in the United
42 States district court for the District of Columbia or the federal district
43 where the commission has its principal offices to enforce compliance with

1 the provisions of the compact and its adopted rules. The relief sought may
2 include both injunctive relief and damages. In the event that judicial
3 enforcement is necessary, the prevailing party shall be awarded all costs of
4 such litigation, including reasonable attorney fees. The remedies in this
5 compact shall not be the exclusive remedies of the commission. The
6 commission may pursue any other remedies available under federal or the
7 defaulting member state's law.

8 (3) A member state may initiate legal action against the commission
9 in the United States district court for the District of Columbia or the
10 federal district where the commission has its principal offices to enforce
11 compliance with the provisions of the compact and its adopted rules. The
12 relief sought may include both injunctive relief and damages. In the event
13 that judicial enforcement is necessary, the prevailing party shall be
14 awarded all costs of such litigation, including reasonable attorney fees.

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

17 ARTICLE 13—EFFECTIVE DATE, WITHDRAWAL AND
18 AMENDMENT

19 (a) The compact shall come into effect on the date that the compact
20 statute is enacted into law in the seventh member state. On or after the
21 effective date of the compact, the commission shall convene and review
22 the enactment of each of the charter member states to determine if the
23 statute enacted by each such charter member state is materially different
24 than the model compact statute.

25 (1) A charter member state whose enactment is found to be materially
26 different from the model compact statute shall be entitled to the default
27 process set forth in article 12.

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

32 (3) Member states enacting the compact subsequent to the charter
33 member states shall be subject to the process set forth in article 9(c)(24) to
34 determine if such enactments are materially different from the model
35 compact statute and whether the enactments qualify for participation in the
36 compact.

37 (4) All actions taken for the benefit of the commission or in
38 furtherance of the purposes of the administration of the compact prior to
39 the effective date of the compact or the commission coming into existence
40 shall be considered to be actions of the commission unless specifically
41 repudiated by the commission.

42 (5) Any state that joins the compact shall be subject to the
43 commission's rules and bylaws as they exist on the date that the compact

1 becomes law in that state. Any rule that has been previously adopted by
2 the commission shall have the full force and effect of law on the date that
3 the compact becomes law in that state.

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

6 (1) A member state's withdrawal shall not take effect until 180 days
7 after enactment of the repealing statute.

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

12 (3) Upon the enactment of a statute withdrawing from this compact, a
13 state shall immediately provide notice of such withdrawal to all licensees
14 within that state. Notwithstanding any subsequent statutory enactment to
15 the contrary, such withdrawing state shall continue to recognize all
16 licenses granted pursuant to this compact for a minimum of 180 days after
17 the date of such notice of withdrawal.

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

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

25 ARTICLE 14—CONSTRUCTION AND SEVERABILITY

26 (a) This compact and the commission's rulemaking authority shall be
27 liberally construed so as to effectuate the purposes and the implementation
28 and administration of the compact. Provisions of the compact expressly
29 authorizing or requiring the adoption of rules shall not be construed to
30 limit the commission's rulemaking authority solely for those purposes.

31 (b) The provisions of this compact shall be severable and if any
32 phrase, clause, sentence or provision of this compact is held by a court of
33 competent jurisdiction to be contrary to the constitution of any member
34 state, a state seeking participation in the compact or of the United States or
35 the applicability thereof to any government, agency, person or
36 circumstance is held to be unconstitutional by a court of competent
37 jurisdiction, the validity of the remainder of this compact and the
38 applicability thereof to any other government, agency, person or
39 circumstance shall not be affected thereby.

40 (c) Notwithstanding article 14(b), the commission may deny a state's
41 participation in the compact or terminate a member state's participation in
42 the compact, in accordance with the requirements of article 12, if the
43 commission determines that a constitutional requirement of a member state

