

HOUSE BILL No. 2760

By Committee on Health and Human Services

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

2-6

1 AN ACT concerning health professions and practices; relating to
2 estheticians; enacting the esthetics licensure compact to provide
3 interstate practice privileges.
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 esthetics licensure compact.

8 ARTICLE 1—PURPOSE

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

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 esthetics; and

30 (6) provide for the licensure and mobility of the workforce in the
31 profession.

32 ARTICLE 2—DEFINITIONS

33 As used in this compact and except as otherwise provided, the

1 following definitions shall apply:

2 (a) "Active duty military" means any individual in full-time duty
3 status in the active uniformed service of the United States, including
4 members of the national guard and reserve.

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

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

17 (d) "Alternative program" means a nondisciplinary monitoring or
18 prosecutorial diversion program approved by a member state's licensing
19 authority.

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

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

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

32 (h) "Current significant investigative information" means
33 investigative information that:

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

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

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

1 (j) "Disqualifying event" means any event that shall disqualify an
2 individual from holding a multistate license under this compact, which the
3 commission may by rule or order specify.

4 (k) "Encumbered license" means a license in which an adverse action
5 restricts the practice of esthetics by a licensee or in which such adverse
6 action has been reported to the commission.

7 (l) "Encumbrance" means a revocation or suspension of or any
8 limitation on the full and unrestricted practice of esthetics by a licensing
9 authority.

10 (m) "Esthetician" means an individual licensed in such individual's
11 home state to engage in the practice of esthetics as defined in this article.

12 (n) "Esthetics" means the skin care and services for cosmetic
13 purposes provided by an esthetician in a member state as set forth in the
14 relevant statutes and regulations of a member state. The practice of
15 esthetics occurs in the member state where the client is located at the time
16 of service.

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

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

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

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

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

31 (t) "Licensing authority" means a state's administrative or regulatory
32 body responsible for regulating the practice of esthetics or that is
33 responsible for issuing licenses to estheticians or otherwise overseeing the
34 practice of esthetics in that state.

35 (u) "Member state" means any state that has adopted this compact.

36 (v) "Multistate license" means a license issued and subject to the
37 enforcement jurisdiction of the licensing authority in a licensee's home
38 state that authorizes the practice of esthetics in member states and includes
39 authorizations to practice esthetics in all remote states pursuant to this
40 compact.

41 (w) "Remote state" means any member state other than the licensee's
42 home state.

43 (x) "Rule" means any rule or regulation adopted by the commission

1 under this compact, **or an authorized entity**, that has the force of law.

2 (y) "Single-state license" means a license issued by a member state
3 that authorizes the practice of esthetics only within the issuing state and
4 does not include any authorization outside of the issuing state.

5 (z) "State" means a state, commonwealth, territory or possession of
6 the United States and the District of Columbia.

7 ARTICLE 3—MEMBER STATE REQUIREMENTS

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

10 (1) License estheticians and regulate esthetics;

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

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

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

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

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

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

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

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

36 (10) accept licensees from other member states as established in this
37 compact.

38 (b) Member states may charge a fee for granting a multistate license
39 to practice esthetics.

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

1 provide services in any other member state.

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

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

7 (f) The commission shall not have the power to define the educational
8 or professional requirements for a license to practice esthetics. The
9 member states shall retain sole jurisdiction over the provision of these
10 requirements.

11 ARTICLE 4—MULTISTATE LICENSE

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

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

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

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

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

33 (f) To maintain a multistate license under this compact, a licensee
34 shall:

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

38 (2) pay all required fees related to the application and process and any
39 other fees that the commission may provide by rule; and

40 (3) comply with any and all other requirements regarding multistate
41 licenses that the commission may provide by rules.

42 (g) A licensee practicing in a member state shall be subject to all
43 scope of practice laws governing esthetics services in that state.

1 (h) The practice of esthetics under a multistate license granted
2 pursuant to this compact shall subject the licensee to the jurisdiction of the
3 licensing authority, the courts and the laws of the member state where the
4 esthetics services are provided.

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

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

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

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

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

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

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

30 (c) If a licensee changes their primary state of residence by moving
31 from a member state to a nonmember state, or from a nonmember state to
32 a member state, then the licensee shall be subject to the state requirements
33 for the issuance of a single-state license in the new home state.

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

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

40 ARTICLE 6—AUTHORITY OF THE COMPACT COMMISSION
41 AND MEMBER STATE LICENSING AUTHORITIES

42 (a) Nothing in this compact, nor any rules or regulation of the
43 commission, shall be construed to limit, restrict or in any way reduce the

1 ability of a member state to enact and enforce laws, rules or regulations
2 related to the practice of esthetics in that state where those laws, rules or
3 regulations are not inconsistent with the provisions of this compact.

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

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

15 ARTICLE 7—ADVERSE ACTIONS

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

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

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

24 (1) Take adverse action against a licensee's authorization to practice
25 esthetics through the multistate license in that member state, except 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 purpose of taking an adverse action, the home state's
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 licensing authority shall also be empowered to report the results of
38 such an investigation to the commission through the data system as
39 described in this compact;

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 licensing authority in a member state for
43 the attendance and testimony of witnesses or the production of evidence

1 from another member state shall be enforced in the latter. State by any
2 court of competent jurisdiction, according to the practice and procedure of
3 that court applicable to subpoenas issued in proceedings before it. The
4 issuing licensing authority shall pay any witness fees, travel expenses,
5 mileage and other fees required by the service statutes of the state where
6 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 an esthetician who changes their primary state of residence while the
14 investigation is pending. The home state shall also have the authority to
15 take appropriate action and shall promptly report the conclusions of the
16 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 esthetician'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 DUTY MILITARY AND THEIR SPOUSES

37 An active duty military service member or their spouse shall designate
38 a home state where the individual has a current license in good standing.
39 The individual or spouse may retain their home state designation during
40 any period of service when that individual is on active duty.

41 ARTICLE 9—ESTABLISHMENT AND OPERATION OF 42 THE ESTHETICS LICENSURE COMPACT COMMISSION

43 (a) The compact member states create and establish a joint

1 government agency whose membership consists of all member states that
2 have enacted the compact known as the esthetics licensure compact
3 commission. The commission is an instrumentality of the compact states
4 acting jointly and not an instrumentality of any one state. The commission
5 shall come into existence on or after the effective date of the compact as
6 set forth in article 13.

7 (b) Membership, voting and meetings.

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

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

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

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

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

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

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

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

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

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

27 (3) adopt rules and bylaws;

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

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

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

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

37 (8) purchase and maintain insurance and bonds;

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

40 (10) conduct an annual financial review;

41 (11) hire employees, elect or appoint officers, fix compensation,
42 define duties, grant such individuals appropriate authority to carry out the
43 purposes of the compact and establish the commission's personnel policies

1 and programs relating to conflicts of interest, qualifications of personnel
2 and other related personnel matters;

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

11 (13) assess and collect fees;

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

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

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

21 (17) establish a budget and make expenditures;

22 (18) borrow money;

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

27 (20) provide and receive information from and cooperate with law
28 enforcement agencies;

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

31 (22) establish and elect an executive committee, including a chair and
32 a vice chair;

33 (23) adopt and provide to the participating states an annual report;

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

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

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

42 (1) Overseeing the day-to-day activities of the administration of the
43 compact, including compliance with the provisions of the compact, the

1 commission's rules and bylaws and other such duties as deemed necessary;

2 (2) recommending to the commission changes to the rules or bylaws,
3 changes to this compact legislation, fees charged to compact member
4 states, fees charged to licensees and other fees;

5 (3) ensuring compact administration services are appropriately
6 provided, including by contract;

7 (4) preparing and recommending the budget;

8 (5) maintaining financial records on behalf of the commission;

9 (6) monitoring compact compliance of member states and providing
10 compliance reports to the commission;

11 (7) establishing additional committees as necessary;

12 (8) exercise the powers and duties of the commission during the
13 interim between commission meetings, except for adopting or amending
14 rules, adopting or amending bylaws and exercising any other powers and
15 duties expressly reserved to the commission by rule or bylaw; and

16 (9) other duties as provided in the rules or bylaws of the commission.

17 (A) The executive committee shall be composed of up to seven
18 voting members:

19 (i) The chair and vice chair of the commission and any other
20 members of the commission who serve on the executive committee shall
21 be voting members of the executive committee.

22 (ii) Other than the chair, vice chair, secretary and treasurer, the
23 commission shall elect three voting members from the current membership
24 of the commission.

25 (iii) The commission may elect ex officio, nonvoting members from a
26 recognized national organization as approved by the commission. The
27 commission's bylaws shall identify qualifying organizations and the
28 manner of appointment if the number of organizations seeking to appoint
29 an ex officio member exceeds the number of members specified in this
30 article.

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

33 (C) The executive committee shall meet at least annually.

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

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

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

- 3 (i) Meet an imminent threat to public health, safety or welfare;
- 4 (ii) prevent a loss of commission or participating state funds; or
- 5 (iii) protect public health and safety.

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

8 (f) Meetings of the commission.

9 (1) All meetings of the commission that are not closed pursuant to
10 this subsection shall be open to the public. Notice of public meetings shall
11 be posted on the commission's website at least 30 days prior to the public
12 meeting.

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

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

24 (4) The commission may convene in a closed, nonpublic meeting for
25 the commission to discuss:

26 (A) Noncompliance of a member state with its obligations under the
27 compact;

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

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

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

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

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

37 (G) trade secrets or commercial or financial information that is
38 privileged or confidential;

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

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

42 (J) information related to any investigative reports prepared by or on
43 behalf of or for use of the commission or other committee charged with

1 responsibility of investigation or determination of compliance issues
2 pursuant to the compact;

3 (K) legal advice;

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

6 (M) other matters as adopted by the commission by rule.

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

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

19 (g) Financing the commission.

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

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

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

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

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

1 included in and become part of the annual report of the commission.

2 (h) Qualified immunity, defense and indemnification.

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

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

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

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

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

43 (6) Nothing in this compact shall be construed to be a waiver of

1 sovereign immunity by the member states or by the commission.

2 ARTICLE 10—DATA SYSTEM

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

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

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

11 (1) Identifying information;

12 (2) licensure data;

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

14 (4) nonconfidential information related to alternative program
15 participation, the beginning and ending dates of such participation and
16 other information related to such participation;

17 (5) any denial of application for licensure and the reason for such
18 denial, excluding the reporting of any criminal history record information
19 where prohibited by law;

20 (6) the existence of investigative information;

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

22 (8) other information that may facilitate the administration of this
23 compact or the protection of the public, as determined by the rules of the
24 commission.

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

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

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

39 (g) Member states contributing information to the data system may
40 designate information that shall not be shared with the public without the
41 express permission of the contributing state.

42 (h) Any information submitted to the data system that is subsequently
43 expunged pursuant to federal law or the laws of the member state

1 contributing the information shall be removed from the data system.

2 ARTICLE 11— RULEMAKING

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

10 (b) The rules of the commission shall have the force of law in each
11 member state, provided, however, that where the rules of the commission
12 conflict with the laws of the member state that establish the member state's
13 scope of practice laws governing the practice of esthetics as held by a
14 court of competent jurisdiction, the rules of the commission shall be
15 ineffective in that state to the extent of the conflict.

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

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

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

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

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

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

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

38 (3) in such other ways as the commission may specify by rule.

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

40 (1) The time, date and location of the public hearing where the
41 commission will hear public comments on the proposed rules and, if
42 different, the time, date and location of the meeting where the commission
43 will consider and vote on the proposed rules;

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

4 (3) the text of the proposed rules and the reason therefor;

5 (4) a request for comments on the proposed rules from any interested
6 person; and

7 (5) the manner in which interested persons may submit written
8 comments.

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

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

15 (k) The commission shall, by majority vote of all members, take final
16 action on the proposed rules based on the rulemaking record and the full
17 text of the rules.

18 (1) The commission may adopt changes to the proposed rules
19 provided the changes do not enlarge the original purpose of the proposed
20 rules.

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

24 (3) The commission shall determine a reasonable effective date for
25 the rules. Except for an emergency as provided in subsection (l), the
26 effective date of the rules shall not be earlier than 45 days after the
27 commission adopted or amended the rules.

28 (l) Upon determination that an emergency exists, the commission
29 may consider and adopt an emergency rule with five days' notice, with
30 opportunity to comment, provided that the usual rulemaking procedures
31 provided in the compact and in this article shall be retroactively applied to
32 the rules as soon as reasonably possible, in no event later than 90 days
33 after the effective date of the rules. For the purposes of this provision, an
34 emergency rule is one that shall be adopted immediately to:

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

36 (2) prevent the loss of commission or member state funds;

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

39 (4) protect public health and safety.

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

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

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

11 ARTICLE 12—OVERSIGHT, DISPUTE RESOLUTION AND
12 ENFORCEMENT

13 (a) Oversight.

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

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

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

31 (b) Default, technical assistance and termination.

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

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

41 (3) If a state in default fails to cure the default, the defaulting state
42 may be terminated from the compact upon an affirmative vote of a
43 majority of the delegates of the member states, and all rights, privileges

1 and benefits conferred on that state by this compact may be terminated on
2 the effective date of termination. A cure of the default does not relieve the
3 offending state of obligations or liabilities incurred during the period of
4 default.

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

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

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

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

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

29 (c) Dispute resolution.

30 (1) Upon request by a member state, the commission shall attempt to
31 resolve disputes related to the compact that arise among member states and
32 between member and nonmember states.

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

35 (d) Enforcement.

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

38 (2) By majority vote as provided by commission rules, the
39 commission may initiate legal action against a member state in default in
40 the United States District Court for the District of Columbia or the federal
41 district where the commission has its principal offices to enforce
42 compliance with the provisions of the compact and its adopted rules. The
43 relief sought may include both injunctive relief and damages. In the event

1 that judicial enforcement is necessary, the prevailing party shall be
2 awarded all costs of such litigation, including reasonable attorney fees.
3 The remedies in this compact shall not be the exclusive remedies of the
4 commission. The commission may pursue any other remedies available
5 under federal or the defaulting member state's laws.

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

13 (4) No individual or entity other than a member state shall enforce
14 this compact against the commission.

15 ARTICLE 13—EFFECTIVE DATE, WITHDRAWAL AND 16 AMENDMENT

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

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

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

30 (3) member states enacting the compact after the charter member
31 states shall be subject to the process set forth in article 9(c)(21) to
32 determine if their enactments are materially different from the model
33 compact statute and whether they qualify for participation in **this** compact.

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

39 (5) Any state that joins the compact shall be subject to the
40 commission's rules and bylaws as they exist on the date that the compact
41 becomes law in that state. Any rules that have been previously adopted by
42 the commission shall have the full force and effect of law on the day the
43 compact becomes law in that state.

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

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

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

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

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

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

22 ARTICLE 14—CONSTRUCTION AND SEVERABILITY

23 (a) This compact and the commission's rulemaking authority shall be
24 liberally construed to effectuate the purposes and the implementation and
25 administration of the compact. The provisions of the compact expressly
26 authorizing or requiring the adoption of rules shall not be construed to
27 limit the commission's rulemaking authority solely for those purposes.

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

37 (c) Notwithstanding article 14(b), the commission may deny a state's
38 participation in the compact or, in accordance with the requirements of
39 article 12, terminate a member state's participation in the compact if it
40 determines that a constitutional requirement of a member state is a
41 material departure from the compact. Otherwise, if this compact shall be
42 held to be contrary to the constitution of any member state, the compact
43 shall remain in full force and effect as to the remaining member states and

1 in full force and effect as to the member state affected as to all severable
2 matters.

3 ARTICLE 15—CONSISTENT EFFECT AND CONFLICT WITH
4 OTHER STATE LAWS

5 (a) Nothing in this compact shall prevent or inhibit the enforcement
6 of any other law of a member state that is not inconsistent with the
7 compact.

8 (b) Any laws, statutes, rules and regulations or other legal
9 requirements in a member state in conflict with the compact are
10 superseded to the extent of the conflict.

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

13 (d) The purpose of this compact is to facilitate multistate licensure for
14 estheticians. Nothing in this compact shall subject a member state to any
15 laws, regulations, rules or policies from any other member state beyond
16 the intended purpose of this compact.

17 (e) Nothing in this compact shall require any member state to adopt
18 additional laws, regulations, rules or policies beyond the intended purpose
19 of this compact.

20 Sec. 2. This act shall take effect and be in force from and after its
21 publication in the ~~statute book~~ ***Kansas register***.