

STATE OF NEW YORK

8199

2023-2024 Regular Sessions

IN ASSEMBLY

October 27, 2023

Introduced by M. of A. MILLER -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, in relation to adopting the cosmetology licensure compact

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new section 401-a to read as follows:

§ 401-a. Cosmetology licensure compact. The cosmetology licensure compact is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

COSMETOLOGY LICENSURE COMPACT ARTICLE 1 - PURPOSE

The purpose of this Compact is to facilitate the interstate practice and regulation of Cosmetology with the goal of improving public access to, and the safety of, Cosmetology Services and reducing unnecessary burdens related to Cosmetology licensure. Through this Compact, the Member States seek to establish a regulatory framework which provides for a new multistate licensing program. Through this new licensing program, the Member States seek to provide increased value and mobility to licensed Cosmetologists in the Member States, while ensuring the provision of safe, effective, and reliable services to the public.

This Compact is designed to achieve the following objectives, and the Member States hereby ratify the same intentions by subscribing hereto:

A. Provide opportunities for interstate practice by Cosmetologists who meet uniform requirements for multistate licensure;

B. Enhance the abilities of Member States to protect public health and safety, and prevent fraud and unlicensed activity within the profession;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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C. Ensure and encourage cooperation between Member States in the licensure and regulation of the Practice of Cosmetology;

D. Support relocating military members and their spouses;

E. Facilitate the exchange of information between Member States related to the licensure, investigation, and discipline of the Practice of Cosmetology;

F. Provide for the licensure and mobility of the workforce in the profession, while addressing the shortage of workers and lessening the associated burdens on the Member States.

ARTICLE 2 - DEFINITIONS

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

A. "Active Military Member" means any person with full-time duty status in the armed forces of the United States, including members of the National Guard and Reserve.

B. "Adverse Action" means any administrative, civil, equitable, or criminal action permitted by a Member State's laws which is imposed by a State Licensing Authority or other regulatory body against a Cosmetologist, including actions against an individual's license or Authorization to Practice such as revocation, suspension, probation, monitoring of the Licensee, limitation of the Licensee's practice, or any other Encumbrance on a license affecting an individual's ability to participate in the Cosmetology industry, including the issuance of a cease and desist order.

C. "Authorization to Practice" means a legal authorization associated with a Multistate License permitting the Practice of Cosmetology in that Remote State, which shall be subject to the enforcement jurisdiction of the State Licensing Authority in that Remote State.

D. "Alternative Program" means a non-disciplinary monitoring or prosecutorial diversion program approved by a Member State's State Licensing Authority.

E. "Background Check" means the submission of information for an applicant for the purpose of obtaining that applicant's criminal history record information, as further defined in 28 C.F.R. § 20.3(d), from the Federal Bureau of Investigation and the agency responsible for retaining State criminal or disciplinary history in the applicant's Home State.

F. "Charter Member State" means Member States who have enacted legislation to adopt this Compact where such legislation predates the effective date of this Compact as defined in Article 13.

G. "Commission" means the government agency whose membership consists of all States that have enacted this Compact, which is known as the Cosmetology Licensure Compact Commission, as defined in Article 9, and which shall operate as an instrumentality of the Member States.

H. "Cosmetologist" means an individual licensed in their Home State to practice Cosmetology.

I. "Cosmetology", "Cosmetology Services", and the "Practice of Cosmetology" mean the care and services provided by a Cosmetologist as set forth in the Member State's statutes and regulations in the State where the services are being provided.

J. "Current Significant Investigative Information" means:

1. Investigative Information that a State Licensing Authority, after an inquiry or investigation that complies with a Member State's due process requirements, has reason to believe is not groundless and, if

1 proved true, would indicate a violation of that State's laws regarding
2 fraud or the Practice of Cosmetology; or

3 2. Investigative Information that indicates that a Licensee has
4 engaged in fraud or represents an immediate threat to public health and
5 safety, regardless of whether the Licensee has been notified and had an
6 opportunity to respond.

7 K. "Data System" means a repository of information about Licensees,
8 including, but not limited to, license status, Investigative Informa-
9 tion, and Adverse Actions.

10 L. "Disqualifying Event" means any event which shall disqualify an
11 individual from holding a Multistate License under this Compact, which
12 the Commission may by Rule or order specify.

13 M. "Encumbered License" means a license in which an Adverse Action
14 restricts the Practice of Cosmetology by a Licensee, or where said
15 Adverse Action has been reported to the Commission.

16 N. "Encumbrance" means a revocation or suspension of, or any limita-
17 tion on, the full and unrestricted Practice of Cosmetology by a State
18 Licensing Authority.

19 O. "Executive Committee" means a group of delegates elected or
20 appointed to act on behalf of, and within the powers granted to them by,
21 the Commission.

22 P. "Home State" means the Member State which is a Licensee's primary
23 State of residence, and where that Licensee holds an active and unencum-
24 bered license to practice Cosmetology.

25 Q. "Investigative Information" means information, records, or docu-
26 ments received or generated by a State Licensing Authority pursuant to
27 an investigation or other inquiry.

28 R. "Jurisprudence Requirement" means the assessment of an individual's
29 knowledge of the laws and rules governing the Practice of Cosmetology in
30 a State.

31 S. "Licensee" means an individual who currently holds a license from a
32 Member State to practice as a Cosmetologist.

33 T. "Member State" means any State that has adopted this Compact.

34 U. "Multistate License" means a license issued by and subject to the
35 enforcement jurisdiction of the State Licensing Authority in a
36 Licensee's Home State, which authorizes the Practice of Cosmetology in
37 Member States and includes Authorizations to Practice Cosmetology in all
38 Remote States pursuant to this Compact.

39 V. "Remote State" means any Member State, other than the Licensee's
40 Home State.

41 W. "Rule" means any rule or regulation promulgated by the Commission
42 under this Compact which has the force of law.

43 X. "Single-State License" means a Cosmetology license issued by a
44 Member State that authorizes practice of Cosmetology only within the
45 issuing State and does not include any authorization outside of the
46 issuing State.

47 Y. "State" means a State, territory, or possession of the United
48 States and the District of Columbia.

49 Z. "State Licensing Authority" means a Member State's regulatory body
50 responsible for issuing Cosmetology licenses or otherwise overseeing the
51 Practice of Cosmetology in that State.

52 ARTICLE 3 - MEMBER STATE REQUIREMENTS

53 A. To be eligible to join this Compact, and to maintain eligibility as
54 a Member State, a State must:

- 1 1. License and regulate Cosmetology;
- 2 2. Have a mechanism or entity in place to receive and investigate
- 3 complaints about Licensees practicing in that State;
- 4 3. Require that Licensees within the State pass a Cosmetology compe-
- 5 tency examination prior to being licensed to provide Cosmetology
- 6 Services to the public in that State;
- 7 4. Require that Licensees satisfy educational or training requirements
- 8 in Cosmetology prior to being licensed to provide Cosmetology Services
- 9 to the public in that State;
- 10 5. Implement procedures for considering one or more of the following
- 11 categories of information from applicants for licensure: criminal histo-
- 12 ry; disciplinary history; or Background Check. Such procedures may
- 13 include the submission of information by applicants for the purpose of
- 14 obtaining an applicant's Background Check as defined herein;
- 15 6. Participate in the Data System, including through the use of unique
- 16 identifying numbers;
- 17 7. Share information related to Adverse Actions with the Commission
- 18 and other Member States, both through the Data System and otherwise;
- 19 8. Notify the Commission and other Member States, in compliance with
- 20 the terms of the Compact and Rules of the Commission, of the existence
- 21 of Investigative Information or Current Significant Investigative Infor-
- 22 mation in the State's possession regarding a Licensee practicing in that
- 23 State;
- 24 9. Comply with such Rules as may be enacted by the Commission to
- 25 administer the Compact; and
- 26 10. Accept Licensees from other Member States as established herein.
- 27 B. Member States may charge a fee for granting a license to practice
- 28 Cosmetology.
- 29 C. Individuals not residing in a Member State shall continue to be
- 30 able to apply for a Member State's Single-State License as provided
- 31 under the laws of each Member State. However, the Single-State License
- 32 granted to these individuals shall not be recognized as granting a
- 33 Multistate License to provide services in any other Member State.
- 34 D. Nothing in this Compact shall affect the requirements established
- 35 by a Member State for the issuance of a Single-State License.
- 36 E. A Multistate License issued to a Licensee by a Home State to a
- 37 resident of that State shall be recognized by each Member State as
- 38 authorizing a Licensee to practice Cosmetology in each Member State.
- 39 F. At no point shall the Commission have the power to define the
- 40 educational or professional requirements for a license to practice
- 41 Cosmetology. The Member States shall retain sole jurisdiction over the
- 42 provision of these requirements.

43 ARTICLE 4 - MULTISTATE LICENSE

- 44 A. To be eligible to apply to their Home State's State Licensing
- 45 Authority for an initial Multistate License under this Compact, a Licen-
- 46 see must hold an active and unencumbered Single-State License to prac-
- 47 tice Cosmetology in their Home State.
- 48 B. Upon the receipt of an application for a Multistate License,
- 49 according to the Rules of the Commission, a Member State's State Licens-
- 50 ing Authority shall ascertain whether the applicant meets the require-
- 51 ments for a Multistate License under this Compact.
- 52 C. If an applicant meets the requirements for a Multistate License
- 53 under this Compact and any applicable Rules of the Commission, the State
- 54 Licensing Authority in receipt of the application shall, within a

1 reasonable time, grant a Multistate License to that applicant, and
2 inform all Member States of the grant of said Multistate License.

3 D. A Multistate License to practice Cosmetology issued by a Member
4 State's State Licensing Authority shall be recognized by each Member
5 State as authorizing the practice thereof as though that Licensee held a
6 Single-State License to do so in each Member State, subject to the
7 restrictions herein.

8 E. A Multistate License granted pursuant to this Compact may be effec-
9 tive for a definite period of time, concurrent with the licensure
10 renewal period in the Home State.

11 F. To maintain a Multistate License under this Compact, a Licensee
12 must:

13 1. Agree to abide by the rules of the State Licensing Authority, and
14 the State scope of practice laws governing the Practice of Cosmetology,
15 of any Member State in which the Licensee provides services;

16 2. Pay all required fees related to the application and process, and
17 any other fees which the Commission may by Rule require; and

18 3. Comply with any and all other requirements regarding Multistate
19 Licenses which the Commission may by Rule provide.

20 G. A Licensee practicing in a Member State is subject to all scope of
21 practice laws governing Cosmetology Services in that State.

22 H. The Practice of Cosmetology under a Multistate License granted
23 pursuant to this Compact will subject the Licensee to the jurisdiction
24 of the State Licensing Authority, the courts, and the laws of the Member
25 State in which the Cosmetology Services are provided.

26 ARTICLE 5 - REISSUANCE OF A MULTISTATE LICENSE BY A NEW HOME STATE

27 A. A Licensee may hold a Multistate License, issued by their Home
28 State, in only one Member State at any given time. B. If a Licensee
29 changes their Home State by moving between two Member States:

30 1. The Licensee shall immediately apply for the reissuance of their
31 Multistate License in their new Home State. The Licensee shall pay all
32 applicable fees and notify the prior Home State in accordance with the
33 Rules of the Commission.

34 2. Upon receipt of an application to reissue a Multistate License, the
35 new Home State shall verify that the Multistate License is active, unen-
36 cumbered and eligible for reissuance under the terms of the Compact and
37 the Rules of the Commission. The Multistate License issued by the prior
38 Home State will be deactivated and all Member States notified in accord-
39 ance with the applicable Rules adopted by the Commission.

40 3. If required for initial licensure, the new Home State may require a
41 Background Check as specified in the laws of that State, or the compli-
42 ance with any Jurisprudence Requirements of the new Home State.

43 4. Notwithstanding any other provision of this Compact, if a Licensee
44 does not meet the requirements set forth in this Compact for the reissu-
45 ance of a Multistate License by the new Home State, then the Licensee
46 shall be subject to the new Home State requirements for the issuance of
47 a Single-State License in that State.

48 C. If a Licensee changes their primary state of residence by moving
49 from a Member State to a non-Member State, or from a non-Member State to
50 a Member State, then the Licensee shall be subject to the State require-
51 ments for the issuance of a Single-State License in the new Home State.

52 D. Nothing in this Compact shall interfere with a Licensee's ability
53 to hold a Single-State License in multiple States; however, for the

purposes of this Compact, a Licensee shall have only one Home State, and only one Multistate License.

E. Nothing in this Compact shall interfere with the requirements established by a Member State for the issuance of a Single-State License.

ARTICLE 6 - AUTHORITY OF THE COMPACT COMMISSION AND MEMBER STATE LICENSING AUTHORITIES

A. Nothing in this Compact, nor any Rule or regulation of the Commission, shall be construed to limit, restrict, or in any way reduce the ability of a Member State to enact and enforce laws, regulations, or other rules related to the Practice of Cosmetology in that State, where those laws, regulations, or other rules are not inconsistent with the provisions of this Compact.

B. Insofar as practical, a Member State's State Licensing Authority shall cooperate with the Commission and with each entity exercising independent regulatory authority over the Practice of Cosmetology according to the provisions of this Compact.

C. Discipline shall be the sole responsibility of the State in which Cosmetology Services are provided. Accordingly, each Member State's State Licensing Authority shall be responsible for receiving complaints about individuals practicing Cosmetology in that State, and for communicating all relevant Investigative Information about any such Adverse Action to the other Member States through the Data System in addition to any other methods the Commission may by Rule require.

ARTICLE 7 - ADVERSE ACTIONS

A. A Licensee's Home State shall have exclusive power to impose an Adverse Action against a Licensee's Multistate License issued by the Home State.

B. A Home State may take Adverse Action on a Multistate License based on the Investigative Information, Current Significant Investigative Information, or Adverse Action of a Remote State.

C. In addition to the powers conferred by State law, each Remote State's State Licensing Authority shall have the power to:

1. Take Adverse Action against a Licensee's Authorization to Practice Cosmetology through the Multistate License in that Member State, provided that:

a. Only the Licensee's Home State shall have the power to take Adverse Action against the Multistate License issued by the Home State; and

b. For the purposes of taking Adverse Action, the Home State's State Licensing Authority shall give the same priority and effect to reported conduct received from a Remote State as it would if such conduct had occurred within the Home State. In so doing, the Home State shall apply its own State laws to determine the appropriate action.

2. Issue cease and desist orders or impose an Encumbrance on a Licensee's Authorization to Practice within that Member State.

3. Complete any pending investigations of a Licensee who changes their primary state of residence during the course of such an investigation. The State Licensing Authority shall also be empowered to report the results of such an investigation to the Commission through the Data System as described herein.

4. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as the production of

evidence. Subpoenas issued by a State Licensing Authority in a Member State for the attendance and testimony of witnesses or the production of evidence from another Member State shall be enforced in the latter State by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings before it. The issuing State Licensing Authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the State in which the witnesses or evidence are located.

5. If otherwise permitted by State law, recover from the affected Licensee the costs of investigations and disposition of cases resulting from any Adverse Action taken against that Licensee.

6. Take Adverse Action against the Licensee's Authorization to Practice in that State based on the factual findings of another Remote State.

D. A Licensee's Home State shall complete any pending investigation(s) of a Cosmetologist who changes their primary state of residence during the course of the investigation(s). The Home State shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the Data System.

E. If an Adverse Action is taken by the Home State against a Licensee's Multistate License, the Licensee's Authorization to Practice in all other Member States shall be deactivated until all Encumbrances have been removed from the Home State license. All Home State disciplinary orders that impose an Adverse Action against a Licensee's Multistate License shall include a statement that the Cosmetologist's Authorization to Practice is deactivated in all Member States during the pendency of the order.

F. Nothing in this Compact shall override a Member State's authority to accept a Licensee's participation in an Alternative Program in lieu of Adverse Action. A Licensee's Multistate License shall be suspended for the duration of the Licensee's participation in any Alternative Program.

G. Joint Investigations

1. In addition to the authority granted to a Member State by its respective scope of practice laws or other applicable State law, a Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

ARTICLE 8 - ACTIVE MILITARY MEMBERS AND THEIR SPOUSES

Active Military Members, or their spouses, shall designate a Home State where the individual has a current license to practice Cosmetology in good standing. The individual may retain their Home State designation during any period of service when that individual or their spouse is on active duty assignment.

ARTICLE 9 - ESTABLISHMENT AND OPERATION OF THE COSMETOLOGY LICENSURE COMPACT COMMISSION

A. The Compact Member States hereby create and establish a joint government agency whose membership consists of all Member States that have enacted the Compact known as the Cosmetology Licensure Compact Commission. The Commission is an instrumentality of the Compact Member

1 States acting jointly and not an instrumentality of any one State. The
2 Commission shall come into existence on or after the effective date of
3 the Compact as set forth in Article 13.

4 B. Membership, Voting, and Meetings

5 1. Each Member State shall have and be limited to one (1) delegate
6 selected by that Member State's State Licensing Authority.

7 2. The delegate shall be an administrator of the State Licensing
8 Authority of the Member State or their designee.

9 3. The Commission shall by Rule or bylaw establish a term of office
10 for delegates and may by Rule or bylaw establish term limits.

11 4. The Commission may recommend removal or suspension of any delegate
12 from office.

13 5. A Member State's State Licensing Authority shall fill any vacancy
14 of its delegate occurring on the Commission within 60 days of the vacan-
15 cy.

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

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

22 C. The Commission shall have the following powers:

23 1. Establish the fiscal year of the Commission;

24 2. Establish code of conduct and conflict of interest policies;

25 3. Adopt Rules and bylaws;

26 4. Maintain its financial records in accordance with the bylaws;

27 5. Meet and take such actions as are consistent with the provisions of
28 this Compact, the Commission's Rules, and the bylaws;

29 6. Initiate and conclude legal proceedings or actions in the name of
30 the Commission, provided that the standing of any State Licensing
31 Authority to sue or be sued under applicable law shall not be affected;

32 7. Maintain and certify records and information provided to a Member
33 State as the authenticated business records of the Commission, and
34 designate an agent to do so on the Commission's behalf;

35 8. Purchase and maintain insurance and bonds;

36 9. Borrow, accept, or contract for services of personnel, including,
37 but not limited to, employees of a Member State;

38 10. Conduct an annual financial review;

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

44 12. As set forth in the Commission Rules, charge a fee to a Licensee
45 for the grant of a Multistate License and thereafter, as may be estab-
46 lished by Commission Rule, charge the Licensee a Multistate License
47 renewal fee for each renewal period. Nothing herein shall be construed
48 to prevent a Home State from charging a Licensee a fee for a Multistate
49 License or renewals of a Multistate License, or a fee for the jurispru-
50 udence requirement if the Member State imposes such a requirement for the
51 grant of a Multistate License;

52 13. Assess and collect fees;

53 14. Accept any and all appropriate gifts, donations, grants of money,
54 other sources of revenue, equipment, supplies, materials, and services,
55 and receive, utilize, and dispose of the same; provided that at all

1 times the Commission shall avoid any appearance of impropriety or
2 conflict of interest;

3 15. Lease, purchase, retain, own, hold, improve, or use any property,
4 real, personal, or mixed, or any undivided interest therein;

5 16. Sell, convey, mortgage, pledge, lease, exchange, abandon, or
6 otherwise dispose of any property real, personal, or mixed;

7 17. Establish a budget and make expenditures;

8 18. Borrow money;

9 19. Appoint committees, including standing committees, composed of
10 members, State regulators, State legislators or their representatives,
11 and consumer representatives, and such other interested persons as may
12 be designated in this Compact and the bylaws;

13 20. Provide and receive information from, and cooperate with, law
14 enforcement agencies;

15 21. Elect a Chair, Vice Chair, Secretary and Treasurer and such other
16 officers of the Commission as provided in the Commission's bylaws;

17 22. Establish and elect an Executive Committee, including a chair and
18 a vice chair;

19 23. Adopt and provide to the Member States an annual report.

20 24. Determine whether a State's adopted language is materially differ-
21 ent from the model Compact language such that the State would not quali-
22 fy for participation in the Compact; and

23 25. Perform such other functions as may be necessary or appropriate to
24 achieve the purposes of this Compact.

25 D. The Executive Committee

26 1. The Executive Committee shall have the power to act on behalf of
27 the Commission according to the terms of this Compact. The powers,
28 duties, and responsibilities of the Executive Committee shall include:

29 a. Overseeing the day-to-day activities of the administration of the
30 Compact including compliance with the provisions of the Compact, the
31 Commission's Rules and bylaws, and other such duties as deemed neces-
32 sary;

33 b. Recommending to the Commission changes to the Rules or bylaws,
34 changes to this Compact legislation, fees charged to Compact Member
35 States, fees charged to Licensees, and other fees;

36 c. Ensuring Compact administration services are appropriately
37 provided, including by contract;

38 d. Preparing and recommending the budget;

39 e. Maintaining financial records on behalf of the Commission;

40 f. Monitoring Compact compliance of Member States and providing
41 compliance reports to the Commission;

42 g. Establishing additional committees as necessary;

43 h. Exercising the powers and duties of the Commission during the
44 interim between Commission meetings, except for adopting or amending
45 Rules, adopting or amending bylaws, and exercising any other powers and
46 duties expressly reserved to the Commission by Rule or bylaw; and

47 i. Other duties as provided in the Rules or bylaws of the Commission.

48 2. The Executive Committee shall be composed of up to seven voting
49 members:

50 a. The chair and vice chair of the Commission and any other members of
51 the Commission who serve on the Executive Committee shall be voting
52 members of the Executive Committee; and

53 b. Other than the chair, vice-chair, secretary and treasurer, the
54 Commission shall elect three voting members from the current membership
55 of the Commission.

1 c. The Commission may elect ex-officio, nonvoting members from a
2 recognized national Cosmetology professional association as approved by
3 the Commission. The Commission's bylaws shall identify qualifying organ-
4 izations and the manner of appointment if the number of organizations
5 seeking to appoint an ex officio member exceeds the number of members
6 specified in this Article.

7 3. The Commission may remove any member of the Executive Committee as
8 provided in the Commission's bylaws.

9 4. The Executive Committee shall meet at least annually.

10 a. Annual Executive Committee meetings, as well as any Executive
11 Committee meeting at which it does not take or intend to take formal
12 action on a matter for which a Commission vote would otherwise be
13 required, shall be open to the public, except that the Executive Commit-
14 tee may meet in a closed, non-public session of a public meeting when
15 dealing with any of the matters covered under Article 9.F.4.

16 b. The Executive Committee shall give five business days advance
17 notice of its public meetings, posted on its website and as determined
18 to provide notice to persons with an interest in the public matters the
19 Executive Committee intends to address at those meetings.

20 5. The Executive Committee may hold an emergency meeting when acting
21 for the Commission to:

22 a. Meet an imminent threat to public health, safety, or welfare;

23 b. Prevent a loss of Commission or Member State funds; or

24 c. Protect public health and safety.

25 E. The Commission shall adopt and provide to the Member States an
26 annual report.

27 F. Meetings of the Commission

28 1. All meetings of the Commission that are not closed pursuant to
29 Article 9.F.4 shall be open to the public. Notice of public meetings
30 shall be posted on the Commission's website at least thirty (30) days
31 prior to the public meeting.

32 2. Notwithstanding Article 9.F.1, the Commission may convene an emer-
33 gency public meeting by providing at least twenty-four (24) hours prior
34 notice on the Commission's website, and any other means as provided in
35 the Commission's Rules, for any of the reasons it may dispense with
36 notice of proposed rulemaking under Article 11.L. The Commission's legal
37 counsel shall certify that one of the reasons justifying an emergency
38 public meeting has been met.

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

43 4. The Commission may convene in a closed, non-public meeting for the
44 Commission to discuss:

45 a. Non-compliance of a Member State with its obligations under the
46 Compact;

47 b. The employment, compensation, discipline or other matters, prac-
48 tices or procedures related to specific employees or other matters
49 related to the Commission's internal personnel practices and procedures;

50 c. Current or threatened discipline of a Licensee by the Commission or
51 by a Member State's Licensing Authority;

52 d. Current, threatened, or reasonably anticipated litigation;

53 e. Negotiation of contracts for the purchase, lease, or sale of goods,
54 services, or real estate;

55 f. Accusing any person of a crime or formally censuring any person;

1 g. Trade secrets or commercial or financial information that is privi-
2 leged or confidential;

3 h. Information of a personal nature where disclosure would constitute
4 a clearly unwarranted invasion of personal privacy;

5 i. Investigative records compiled for law enforcement purposes;

6 j. Information related to any investigative reports prepared by or on
7 behalf of or for use of the Commission or other committee charged with
8 responsibility of investigation or determination of compliance issues
9 pursuant to the Compact;

10 k. Legal advice;

11 l. Matters specifically exempted from disclosure to the public by
12 federal or Member State law; or

13 m. Other matters as promulgated by the Commission by Rule.

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

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

26 G. Financing of the Commission

27 1. The Commission shall pay, or provide for the payment of, the
28 reasonable expenses of its establishment, organization, and ongoing
29 activities.

30 2. The Commission may accept any and all appropriate sources of reven-
31 ue, donations, and grants of money, equipment, supplies, materials, and
32 services.

33 3. The Commission may levy on and collect an annual assessment from
34 each Member State and impose fees on Licensees of Member States to whom
35 it grants a Multistate License to cover the cost of the operations and
36 activities of the Commission and its staff, which must be in a total
37 amount sufficient to cover its annual budget as approved each year for
38 which revenue is not provided by other sources. The aggregate annual
39 assessment amount for Member States shall be allocated based upon a
40 formula that the Commission shall promulgate by Rule.

41 4. The Commission shall not incur obligations of any kind prior to
42 securing the funds adequate to meet the same; nor shall the Commission
43 pledge the credit of any Member States, except by and with the authority
44 of the Member State.

45 5. The Commission shall keep accurate accounts of all receipts and
46 disbursements. The receipts and disbursements of the Commission shall be
47 subject to the financial review and accounting procedures established
48 under its bylaws. All receipts and disbursements of funds handled by the
49 Commission shall be subject to an annual financial review by a certified
50 or licensed public accountant, and the report of the financial review
51 shall be included in and become part of the annual report of the Commis-
52 sion.

53 H. Qualified Immunity, Defense, and Indemnification

54 1. The members, officers, executive director, employees and represen-
55 tatives of the Commission shall be immune from suit and liability, both
56 personally and in their official capacity, for any claim for damage to

1 or loss of property or personal injury or other civil liability caused
2 by or arising out of any actual or alleged act, error, or omission that
3 occurred, or that the person against whom the claim is made had a
4 reasonable basis for believing occurred within the scope of Commission
5 employment, duties or responsibilities; provided that nothing in this
6 paragraph shall be construed to protect any such person from suit or
7 liability for any damage, loss, injury, or liability caused by the
8 intentional or willful or wanton misconduct of that person. The procure-
9 ment of insurance of any type by the Commission shall not in any way
10 compromise or limit the immunity granted hereunder.

11 2. The Commission shall defend any member, officer, executive direc-
12 tor, employee, and representative of the Commission in any civil action
13 seeking to impose liability arising out of any actual or alleged act,
14 error, or omission that occurred within the scope of Commission employ-
15 ment, duties, or responsibilities, or as determined by the Commission
16 that the person against whom the claim is made had a reasonable basis
17 for believing occurred within the scope of Commission employment,
18 duties, or responsibilities; provided that nothing herein shall be
19 construed to prohibit that person from retaining their own counsel at
20 their own expense; and provided further, that the actual or alleged act,
21 error, or omission did not result from that person's intentional or
22 willful or wanton misconduct.

23 3. The Commission shall indemnify and hold harmless any member, offi-
24 cer, executive director, employee, and representative of the Commission
25 for the amount of any settlement or judgment obtained against that
26 person arising out of any actual or alleged act, error, or omission that
27 occurred within the scope of Commission employment, duties, or responsi-
28 bilities, or that such person had a reasonable basis for believing
29 occurred within the scope of Commission employment, duties, or responsi-
30 bilities, provided that the actual or alleged act, error, or omission
31 did not result from the intentional or willful or wanton misconduct of
32 that person.

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

36 5. Nothing in this Compact shall be interpreted to waive or otherwise
37 abrogate a Member State's State action immunity or State action affirma-
38 tive defense with respect to antitrust claims under the Sherman Act,
39 Clayton Act, or any other State or federal antitrust or anticompetitive
40 law or regulation.

41 6. Nothing in this Compact shall be construed to be a waiver of sover-
42 eign immunity by the Member States or by the Commission.

43 ARTICLE 10 - DATA SYSTEM

44 A. The Commission shall provide for the development, maintenance,
45 operation, and utilization of a coordinated database and reporting
46 system.

47 B. The Commission shall assign each applicant for a Multistate License
48 a unique identifier, as determined by the Rules of the Commission.

49 C. Notwithstanding any other provision of State law to the contrary, a
50 Member State shall submit a uniform data set to the Data System on all
51 individuals to whom this Compact is applicable as required by the Rules
52 of the Commission, including:

53 1. Identifying information;

54 2. Licensure data;

1 3. Adverse Actions against a license and information related thereto;
2 4. Non-confidential information related to Alternative Program partic-
3 ipation, the beginning and ending dates of such participation, and other
4 information related to such participation;

5 5. Any denial of application for licensure, and the reason(s) for such
6 denial (excluding the reporting of any criminal history record informa-
7 tion where prohibited by law);

8 6. The existence of Investigative Information;

9 7. The existence of Current Significant Investigative Information; and

10 8. Other information that may facilitate the administration of this
11 Compact or the protection of the public, as determined by the Rules of
12 the Commission.

13 D. The records and information provided to a Member State pursuant to
14 this Compact or through the Data System, when certified by the Commis-
15 sion or an agent thereof, shall constitute the authenticated business
16 records of the Commission, and shall be entitled to any associated hear-
17 say exception in any relevant judicial, quasi-judicial or administrative
18 proceedings in a Member State.

19 E. The existence of Current Significant Investigative Information and
20 the existence of Investigative Information pertaining to a Licensee in
21 any Member State will only be available to other Member States.

22 F. It is the responsibility of the Member States to monitor the data-
23 base to determine whether Adverse Action has been taken against such a
24 Licensee or License applicant. Adverse Action information pertaining to
25 a Licensee or License applicant in any Member State will be available to
26 any other Member State.

27 G. Member States contributing information to the Data System may
28 designate information that may not be shared with the public without the
29 express permission of the contributing State.

30 H. Any information submitted to the Data System that is subsequently
31 expunged pursuant to federal law or the laws of the Member State
32 contributing the information shall be removed from the Data System.

33 ARTICLE 11 - RULEMAKING

34 A. The Commission shall promulgate reasonable Rules in order to effec-
35 tively and efficiently implement and administer the purposes and
36 provisions of the Compact. A Rule shall be invalid and have no force or
37 effect only if a court of competent jurisdiction holds that the Rule is
38 invalid because the Commission exercised its rulemaking authority in a
39 manner that is beyond the scope and purposes of the Compact, or the
40 powers granted hereunder, or based upon another applicable standard of
41 review.

42 B. The Rules of the Commission shall have the force of law in each
43 Member State, provided however that where the Rules of the Commission
44 conflict with the laws of the Member State that establish the Member
45 State's scope of practice laws governing the Practice of Cosmetology as
46 held by a court of competent jurisdiction, the Rules of the Commission
47 shall be ineffective in that State to the extent of the conflict.

48 C. The Commission shall exercise its rulemaking powers pursuant to the
49 criteria set forth in this Article and the Rules adopted thereunder.
50 Rules shall become binding as of the date specified by the Commission
51 for each Rule.

52 D. If a majority of the legislatures of the Member States rejects a
53 Rule or portion of a Rule, by enactment of a statute or resolution in
54 the same manner used to adopt the Compact within four (4) years of the

1 date of adoption of the Rule, then such Rule shall have no further force
2 and effect in any Member State or to any State applying to participate
3 in the Compact.

4 E. Rules shall be adopted at a regular or special meeting of the
5 Commission.

6 F. Prior to adoption of a proposed Rule, the Commission shall hold a
7 public hearing and allow persons to provide oral and written comments,
8 data, facts, opinions, and arguments.

9 G. Prior to adoption of a proposed Rule by the Commission, and at
10 least thirty (30) days in advance of the meeting at which the Commission
11 will hold a public hearing on the proposed Rule, the Commission shall
12 provide a notice of proposed rulemaking:

13 1. On the website of the Commission or other publicly accessible plat-
14 form;

15 2. To persons who have requested notice of the Commission's notices of
16 proposed rulemaking; and

17 3. In such other way(s) as the Commission may by Rule specify.

18 H. The notice of proposed rulemaking shall include:

19 1. The time, date, and location of the public hearing at which the
20 Commission will hear public comments on the proposed Rule and, if
21 different, the time, date, and location of the meeting where the Commis-
22 sion will consider and vote on the proposed Rule;

23 2. If the hearing is held via telecommunication, video conference, or
24 other electronic means, the Commission shall include the mechanism for
25 access to the hearing in the notice of proposed rulemaking;

26 3. The text of the proposed Rule and the reason therefor;

27 4. A request for comments on the proposed Rule from any interested
28 person; and

29 5. The manner in which interested persons may submit written comments.

30 I. All hearings will be recorded. A copy of the recording and all
31 written comments and documents received by the Commission in response to
32 the proposed Rule shall be available to the public.

33 J. Nothing in this Article shall be construed as requiring a separate
34 hearing on each Rule. Rules may be grouped for the convenience of the
35 Commission at hearings required by this Article.

36 K. The Commission shall, by majority vote of all members, take final
37 action on the proposed Rule based on the rulemaking record and the full
38 text of the Rule.

39 1. The Commission may adopt changes to the proposed Rule provided the
40 changes do not enlarge the original purpose of the proposed Rule.

41 2. The Commission shall provide an explanation of the reasons for
42 substantive changes made to the proposed Rule as well as reasons for
43 substantive changes not made that were recommended by commenters.

44 3. The Commission shall determine a reasonable effective date for the
45 Rule. Except for an emergency as provided in Article 11.L, the effective
46 date of the Rule shall be no sooner than forty-five (45) days after the
47 Commission issuing the notice that it adopted or amended the Rule.

48 L. Upon determination that an emergency exists, the Commission may
49 consider and adopt an emergency Rule with five (5) days' notice, with
50 opportunity to comment, provided that the usual rulemaking procedures
51 provided in the Compact and in this Article shall be retroactively
52 applied to the Rule as soon as reasonably possible, in no event later
53 than ninety (90) days after the effective date of the Rule. For the
54 purposes of this provision, an emergency Rule is one that must be
55 adopted immediately to:

56 1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Member State funds;
3. Meet a deadline for the promulgation of a Rule that is established by federal law or rule; or
4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

N. No Member State's rulemaking requirements shall apply under this Compact.

ARTICLE 12 - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to implement the Compact.

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

3. The Commission shall be entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the Compact and shall have standing to intervene in such a proceeding for all purposes. Failure to provide the Commission service of process shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Commission shall provide written notice to the defaulting State. The notice of default shall describe the default, the proposed means of curing the default, and any other action that the Commission may take, and shall offer training and specific technical assistance regarding the default.

2. The Commission shall provide a copy of the notice of default to the other Member States.

3. If a State in default fails to cure the default, the defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the delegates of the Member States, and all rights, privileges and benefits conferred on that State by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending State of obligations or liabilities incurred during the period of default.

1 4. Termination of membership in the Compact shall be imposed only
2 after all other means of securing compliance have been exhausted. Notice
3 of intent to suspend or terminate shall be given by the Commission to
4 the governor, the majority and minority leaders of the defaulting
5 State's legislature, the defaulting State's State Licensing Authority
6 and each of the Member States' State Licensing Authority.

7 5. A State that has been terminated is responsible for all assess-
8 ments, obligations, and liabilities incurred through the effective date
9 of termination, including obligations that extend beyond the effective
10 date of termination.

11 6. Upon the termination of a State's membership from this Compact,
12 that State shall immediately provide notice to all Licensees who hold a
13 Multistate License within that State of such termination. The terminated
14 State shall continue to recognize all licenses granted pursuant to this
15 Compact for a minimum of one hundred eighty (180) days after the date of
16 said notice of termination.

17 7. The Commission shall not bear any costs related to a State that is
18 found to be in default or that has been terminated from the Compact,
19 unless agreed upon in writing between the Commission and the defaulting
20 State.

21 8. The defaulting State may appeal the action of the Commission by
22 petitioning the United States District Court for the District of Colum-
23 bia or the federal district where the Commission has its principal
24 offices. The prevailing party shall be awarded all costs of such liti-
25 gation, including reasonable attorney's fees.

26 C. Dispute Resolution

27 1. Upon request by a Member State, the Commission shall attempt to
28 resolve disputes related to the Compact that arise among Member States
29 and between Member and non-Member States.

30 2. The Commission shall promulgate a Rule providing for both mediation
31 and binding dispute resolution for disputes as appropriate.

32 D. Enforcement

33 1. The Commission, in the reasonable exercise of its discretion, shall
34 enforce the provisions of this Compact and the Commission's Rules.

35 2. By majority vote as provided by Commission Rule, the Commission may
36 initiate legal action against a Member State in default in the United
37 States District Court for the District of Columbia or the federal
38 district where the Commission has its principal offices to enforce
39 compliance with the provisions of the Compact and its promulgated Rules.
40 The relief sought may include both injunctive relief and damages. In the
41 event judicial enforcement is necessary, the prevailing party shall be
42 awarded all costs of such litigation, including reasonable attorney's
43 fees. The remedies herein shall not be the exclusive remedies of the
44 Commission. The Commission may pursue any other remedies available under
45 federal or the defaulting Member State's law.

46 3. A Member State may initiate legal action against the Commission in
47 the United States District Court for the District of Columbia or the
48 federal district where the Commission has its principal offices to
49 enforce compliance with the provisions of the Compact and its promulgat-
50 ed Rules. The relief sought may include both injunctive relief and
51 damages. In the event judicial enforcement is necessary, the prevailing
52 party shall be awarded all costs of such litigation, including reason-
53 able attorney's fees.

54 4. No individual or entity other than a Member State may enforce this
55 Compact against the Commission.

ARTICLE 13 - EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the seventh Member State.

1. On or after the effective date of the Compact, the Commission shall convene and review the enactment of each of the Charter Member States to determine if the statute enacted by each such Charter Member State is materially different than the model Compact statute.

a. A Charter Member State whose enactment is found to be materially different from the model Compact statute shall be entitled to the default process set forth in Article 12.

b. If any Member State is later found to be in default, or is terminated or withdraws from the Compact, the Commission shall remain in existence and the Compact shall remain in effect even if the number of Member States should be less than seven (7).

2. Member States enacting the Compact subsequent to the Charter Member States shall be subject to the process set forth in Article 9.C.24 to determine if their enactments are materially different from the model Compact statute and whether they qualify for participation in the Compact.

3. All actions taken for the benefit of the Commission or in furtherance of the purposes of the administration of the Compact prior to the effective date of the Compact or the Commission coming into existence shall be considered to be actions of the Commission unless specifically repudiated by the Commission.

4. Any State that joins the Compact shall be subject to the Commission's Rules and bylaws as they exist on the date on which the Compact becomes law in that State. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that State.

B. Any Member State may withdraw from this Compact by enacting a statute repealing that State's enactment of the Compact.

1. A Member State's withdrawal shall not take effect until one hundred eighty (180) days after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's State Licensing Authority to comply with the investigative and Adverse Action reporting requirements of this Compact prior to the effective date of withdrawal.

3. Upon the enactment of a statute withdrawing from this Compact, a State shall immediately provide notice of such withdrawal to all Licensees within that State. Notwithstanding any subsequent statutory enactment to the contrary, such withdrawing State shall continue to recognize all licenses granted pursuant to this Compact for a minimum of one hundred eighty (180) days after the date of such notice of withdrawal.

C. Nothing contained in this Compact shall be construed to invalidate or prevent any licensure agreement or other cooperative arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

D. This Compact may be amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

ARTICLE 14 - CONSTRUCTION AND SEVERABILITY

A. This Compact and the Commission's rulemaking authority shall be liberally construed so as to effectuate the purposes, and the implemen-

1 tation and administration of the Compact. Provisions of the Compact
2 expressly authorizing or requiring the promulgation of Rules shall not
3 be construed to limit the Commission's rulemaking authority solely for
4 those purposes.

5 B. The provisions of this Compact shall be severable and if any
6 phrase, clause, sentence or provision of this Compact is held by a court
7 of competent jurisdiction to be contrary to the constitution of any
8 Member State, a State seeking participation in the Compact, or of the
9 United States, or the applicability thereof to any government, agency,
10 person or circumstance is held to be unconstitutional by a court of
11 competent jurisdiction, the validity of the remainder of this Compact
12 and the applicability thereof to any other government, agency, person or
13 circumstance shall not be affected thereby.

14 C. Notwithstanding Article 14.B, the Commission may deny a State's
15 participation in the Compact or, in accordance with the requirements of
16 Article 12, terminate a Member State's participation in the Compact, if
17 it determines that a constitutional requirement of a Member State is a
18 material departure from the Compact. Otherwise, if this Compact shall be
19 held to be contrary to the constitution of any Member State, the Compact
20 shall remain in full force and effect as to the remaining Member States
21 and in full force and effect as to the Member State affected as to all
22 severable matters.

23 ARTICLE 15 - CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS

24 A. Nothing herein shall prevent or inhibit the enforcement of any
25 other law of a Member State that is not inconsistent with the Compact.

26 B. Any laws, statutes, regulations, or other legal requirements in a
27 Member State in conflict 845 with the Compact are superseded to the
28 extent of the conflict.

29 C. All permissible agreements between the Commission and the Member
30 States are binding in accordance with their terms.

31 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
32 sion, section, or part of this act shall be adjudged by any court of
33 competent jurisdiction to be invalid, such judgment shall not affect,
34 impair, or invalidate the remainder thereof, but shall be confined in
35 its operation to the clause, sentence, paragraph, subdivision, section,
36 or part thereof directly involved in the controversy in which such judg-
37 ment shall have been rendered. It is hereby declared to be the intent of
38 the legislature that this act would have been enacted even if such
39 invalid provisions had not been included herein.

40 § 3. This act shall take effect immediately; provided, however, that
41 section one of this act shall take effect as specifically set forth in
42 such section.